

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 330 of 2021
Complaint filed on : 12.02.2021
First date of hearing : 26.03.2021
Date of decision : 21.12.2021

Pooja Agarwal
R/o: Bellevueaan 185, Haarlem 2012 BX,
Netherlands.

Complainant**Versus**

M/s Emaar MGF Land Ltd.
Office: 306-308, 3rd floor, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent**CORAM:**

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member****APPEARANCE:**

Shri Sukhbir Yadav
Shri J.K. dang alongwith Shri
Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 12.02.2021 has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	The Enclave, Sector 66, Gurugram, Haryana
2.	Project area	45.4767 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a. 228 of 2007 dated 27.09.2007 Valid/renewed up to 26.09.2019 b. 93 of 2008 dated 12.05.2008 Valid/renewed up to 11.05.2020 c. 50 of 2010 dated 24.06.2010 Valid/renewed up to 23.06.2020
5.	HRERA registered/ not registered	Not registered
6.	Occupation certificate granted on	25.01.2018 [annexure P6, page 108 of complaint]
7.	Provisional allotment letter dated	15.09.2009 [annexure P3, page 40 of complaint]
8.	Unit no.	TEN-Q-F08-01, 8 th floor, tower no. Q [annexure P4, page 46 of complaint]
9.	Unit measuring	1895 sq. ft. [Page 46 of complaint]
10.	Date of execution of buyer's agreement	07.07.2010 [annexure P4, page 42 of complaint]
11.	Payment plan	Construction linked payment plan [Page 79 of complaint]
12.	Total consideration as per statement of account dated 18.03.2021 at page 134 of reply	Rs. 69,12,117/-
13.	Total amount paid by the complainant as per statement	Rs. 63,00,995/-

	of account dated 18.03.2021 at page 135 of reply	
14.	Date of start of excavation as per statement of account dated 18.03.2021 at page 134 of reply	21.08.2010
15.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 24 months from the date of start of construction (21.08.2010) + grace period of 6 months, for applying and obtaining the occupation certificate in respect of the complex. [Page 60 of complaint]	21.08.2012 [Note: Grace period is not included]
16.	Date of offer of possession to the complainant	14.03.2018 [annexure P7, page 110 of complaint]
17.	Delay in handing over possession w.e.f. 21.08.2012 till 14.05.2018 i.e. date of offer of possession (14.03.2018) + 2 months	5 years 8 months 23 days

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That in August 2008, the complainant received a marketing call from the office of the respondent, who represents himself as the sales manager of the respondent and marketed a residential project namely "The Meadows" situated at Sector - 76, Gurgaon. The complainant visited the Gurugram office and project site of the respondent/builder. There she met with the marketing staff of builder and got information about the project "The Meadows". Marketing staff gave her a brochure and pricelist etc. and allured her with a shady picture of the project. The complainant signed an

application form and paid the booking amount of the unit. The respondent issued an allotment letter on 23.09.2008 for apartment no. e-704 in the Meadows, Sector 76, Gurgaon. Later on, the respondent shut their project and offered the complainant a unit in the project "The Enclave" situated at Sector 66, Gurugram, and adjusted the booking amount paid by the complainant in the project "The Meadows". The marketing staff of builder assured to the complainant that possession of flat will be handover within 24 months of the start of the construction.

- ii. That believing on the representations and assurances of respondent, the complainant booked one flat/apartment bearing no. TEN-Q-F08-01 in Tower Q for tentative size admeasuring 1895 sq. ft. on 05.09.2009 in the Project "The Enclave". The flat/apartment was purchased under the construction linked plan for a sale consideration of Rs.62,42,804/-. On 15.09.2009, the respondent issued an allotment letter and payment schedule in name of the complainant conforming the allotment of said flat.
- iii. That after a long follow-up on 07.07.2010, a pre-printed, unilateral, arbitrary buyer's agreement was executed inter-se the respondent and the complainant. According to clause no. 14(a) of the buyer agreement, the respondent has to handover the possession of the unit within 24 months from the start of construction and further the developer shall be entitled to a grace period of 6 months for



applying and obtaining the occupation certificate in respect of the complex. The construction was commenced on 21.08.2010 and therefore the due date of possession was on or before 21.02.2013 (with 6 months grace period).

- iv. That on 22.12.2010, the complainant sent a grievance email to the respondent stating that "(1) I keep getting letters that I have not make my last payment. Please see receipt below and correct this error. (2) I get Payment Request letter a few days before the due date. The last letter has a courier sent date of 18 Dec and I got it on 22nd Dec. Even if I make the payment the same day, it will NOT get to you in time. I have requested MANY times to send me a copy of the demand letter by email but to no avail. If you can send receipt by email, why can't you send the payment request letter? I am sending the payment today itself-same day as receiving the letter. Please DO NOT charge interest. Here are the details Amount Remitted: Rs.43,67,37/-"

- v. That on 25.01.2018, the respondent received occupation certificate from the Town & Country Planning department vide memo no. ZP-308-Vol-I/SD(BS)/2018/3486 dated 25.01.2018. The said occupation certificate also has conditions "that you shall be fully responsible for supply of water, disposal of sewerage and stormwater of your colony till these services are made available by HUDA/ State Government as per their scheme".

- vi. That on 14.03.2018, the respondent issued a notice/letter for an offer of possession and settlement of final dues and demanded various unreasonable demands under various heads i.e. Rs. 12,626/- as electricity meter charges, Rs. 14,160/- as administrative charges, Rs. 79,694/- as electrification charges and Rs. 68,220/- as advance monthly maintenance charges without any justification and calculation. It is again pertinent to mention here that the notice for possession contains illegal and unjustifiable demands, therefore not tenable in the eyes of the law. Moreover, the respondent did not credit the delayed possession interest as per the Act and the rules.
- vii. That in January-February 2019, the complainant visited the project site, it was an utter surprise that the project was still incomplete, and not fit for habitation, therefore the complainant raised his grievance before the senior officials of the respondent company, but all went in vain, as there was no satisfactory response/reply from the respondent. Therefore, the complainant asked for delayed possession interest calling back of extra charges, which are not the part of the buyer's agreement, but the respondent outrightly refused to adhere to the reasonable demands of the complainant.
- viii. That as per the statement of account issued by the respondent, the complainant has paid Rs. 63,00,995/-. It is pertinent to mention here that the complainant has paid more than 100% of the total

sale consideration. It is also pertinent to mention here that the respondent has demanded Rs 23,59,851/- as holding charges. It is again pertinent to mention here that the respondent has levied an illegal demand under the head holding charges. The respondent has not offered a legal offer of possession to the complainant and further raised many unreasonable demands. The flat/apartment is still not ready for possession then how the respondent issued a letter for the offer of possession and because the unit is not ready for possession, the complainant did not take possession of the unit therefore the respondent must refrain from charging unreasonable demands.

- ix. That the main grievance of the complainant in the present complaint is that despite the complainant have paid more than 100% of the actual cost of flat and ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of apartment on promised time and till date project is without amenities.
- x. That the cause of action for the present complaint arose in February 2013, when the respondent failed to handover the possession of the apartment as per the buyer's agreement. The cause of action again arose on various occasions, including on: a) August 2013; b) October 2014; c) January 2015, d) May 2016; e) April 2017, f) December 2018, g) January 2020 and on many time

till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant

4. The complainant is seeking the following relief:

- i. Direct the respondent to give possession of fully developed/constructed flat and to give delay possession interest on the amount paid by the allottee, at the prescribed rate, from the due date of possession till actual flat is handed over as per the proviso to section 18(1) of the Act.
- ii. Refrain the respondent from charging administrative charges.
- iii. Refrain the respondent from charging electrification charges.
- iv. Refrain the respondent from charging holding charges.
- v. Refrain the respondent from charging maintenance charges.
- vi. Any other relief/direction which the hon'ble authority deems fit and proper in the facts and circumstances of the present complaint.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:

- i. That the complainant has filed the present complaint seeking, inter alia, compensation and interest for alleged delay in delivering



possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, interest, compensation etc. are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

- ii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 07.07.2010. The the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and negation of the provisions of the buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation or any other amount, beyond the terms and conditions incorporated in the buyer's agreement.
- iii. That the complainant had approached the respondent sometime in the year 2008 for purchase of a unit in its upcoming residential project "The Meadows". The complainant was allotted unit no E-

704, The Meadows vide allotment letter dated 23.09.2008. The complainant did not continue with the said allotment and therefore requested the respondent to shift her allotment to the project known as "The Enclave" situated in Sector 65/66, Gurgaon. The respondent acceded to the request made by the complainant and agreed to adjust the payment made by the complainant towards the previous project (The Meadows) against the present project. It was specifically conveyed to the complainant and also specifically mentioned in the application form that the building plans of the tower in which the unit in question is situated, was yet to be approved by the competent authority. It was conveyed by the respondent that the respondent had no power and control over working of Government Departments and as such it was not possible for the respondent to estimate when the building plans would be approved. It was also explicitly and unambiguously conveyed by the respondent to the complainant that construction of the project would only commence after all the requisite approvals were in place.

iv. That the complainant therefore made an application to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted unit bearing no. TEN-Q-F08-01, located on the 8th floor, in tower/block Q, having tentative super area of 1895 sq. ft., in the project vide provisional allotment letter dated 15.09.2009. The complainant consciously and willingly opted for a payment plan in which the first instalment was to be paid in a time bound manner while the remaining instalments were construction linked. The

complainant agreed and undertook to remit the sale consideration for the unit in question on time as per the payment schedule. The buyer's agreement was executed between the parties on 07.07.2010.

- v. That the respondent completed construction of the complex and made an application to the competent authority for issuance of the occupation certificate on 01.07.2017. Occupation certificate was issued by the competent authority vide memo no. 3486 dated 25.01.2018. By letter dated 14.03.2018, the respondent offered possession of the unit to the complainant. The complainant was called upon to remit balance payment and to complete the necessary formalities/documentation necessary for handover of the unit to the complainant. Since the complainant failed to make balance payment and take possession of the unit, numerous reminders for possession were issued to the complainant. Instead, the complainant sent frivolous communications to the respondent in order to delay payment of balance sale consideration and take possession of the unit.
- vi. That the complainant did not have adequate funds to remit the balance payment requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainant has preferred the instant complaint. The complainant is needlessly avoiding the completion of the transaction with the intent of evading the consequences as enumerated in the buyer's agreement for delay in obtaining of possession on the part of the respective allottee. The complainant

is an investor who had booked the unit in question as an investment to earn profit on its resale. The complainant never intended to reside in the said unit. It appears that the complainant has been unable to locate a prospective purchaser for the said property and hence is avoiding his contractual obligations under the buyer's agreement on false and specious pretexts. That it is pertinent to mention that the complainant has one more unit in another project being developed by the respondent bearing no. EPS-FF-095.

vii. That all the demands for payment are in accordance with the buyer's agreement executed by the complainant. Electricity meter charges and electrification charges are payable by the complainant under clauses 2, 11(d) and (l) of the buyer's agreement. Administrative charges for registration of the conveyance deed are payable under clause 7 of the buyer's agreement and maintenance charges are payable under clause 21 of the buyer's agreement. In so far as compensation/interest for alleged delay in possession is concerned, it is submitted that the complainant, being in default of the buyer's agreement is not entitled to any delayed possession interest under clause 16(c) and also under the Act. Holding charges which are payable by the complainant under clause 17 of the buyer's agreement for her failure to take possession even after possession of the unit, complete in all respects, has been offered as far back as on 14.03.2018.

viii. That several allottees, including the complainant, have defaulted in timely remittance of payment of instalments which was an

essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the unit in question stands completed and the respondent already offered possession of the unit in question to the complainant. It is submitted that all demands which have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

6. The preliminary objection raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject

matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

8. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act and provisions of the Act are not retrospective in nature

10. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into force of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/ situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

11. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

12. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained

therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

G. Findings of the authority

G.1 Delay possession charges

13. **Relief sought by the complainant:** Direct the respondent to give possession of fully developed/constructed flat and to give delay possession interest on the amount paid by the allottee, at the prescribed rate, from the due date of possession till actual flat is handed over as per the proviso to section 18(1) of the Act.
14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. Clause 14(a) of the buyer's agreement provides time period for handing over the possession and the same is reproduced below:

"14. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities, documentation etc. as prescribed by the Developer, the Developer proposes to hand over the possession of the Unit **within 24 months from the start of construction**. The Allottee(s) agrees and understands that the Developer shall be entitled to a **grace period of 6 months, for applying and obtaining the occupation certificate in respect of the Complex.**"*
(Emphasis supplied)

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of

their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 6 months for applying and obtaining the occupation certificate in respect of said unit. The date of start of construction is 21.08.2010 as per statement of account dated 18.03.2021. The period of 24 months expired on 21.08.2012. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (24 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only when the period of 24 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 6 months cannot be allowed to the promoter at this stage.
18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate. Proviso to section 18 provides that where an allottee

does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "Interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month of the super area as per clause 16 of the buyer's agreement for the period of such delay; whereas, as per clause 13 of the buyer's agreement, the promoter was entitled to interest @ 24% till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter

cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.12.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.
22. **Rate of interest to be paid by the complainant in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) 'interest' means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 07.07.2010, the possession of the subject flat was to be delivered within a period of 24 months from the date of start of construction plus 6 months grace period for applying and obtaining the occupation certificate in respect of the unit and/or the project. The construction was started on 21.08.2010. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 21.08.2012. Occupation certificate was granted by the concerned

authority on 25.01.2018 and thereafter, the possession of the subject flat was offered to the complainant on 14.03.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat to the complainant as per the terms and conditions of the buyer's agreement dated 07.07.2010 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 07.07.2010 to hand over the possession within the stipulated period.

25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 25.01.2018. The respondent offered the possession of the unit in question to the complainant only on 14.03.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking

possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 21.08.2012 till the expiry of 2 months from the date of offer of possession (14.03.2018) which comes out to be 14.05.2018.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 21.08.2012 till 14.05.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.II Administrative charges

27. **Relief sought by the complainant:** Refrain the respondent from charging administrative charges.
28. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held a nominal amount of up to Rs.15000/- can be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

29. In the present complaint, the respondent has charged an amount of Rs.14,160/- towards administrative charges vide letter of offer of possession dated 14.03.2018 which is less than 15,000/- therefore, the complainant is liable to pay the same.

G.III Electrification charges

30. **Relief sought by the complainant:** Refrain the respondent from charging electrification charges.
31. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
32. In the present complaint, vide letter of offer of possession dated 14.03.2018, the respondent has demanded an amount of Rs.79,694/- towards electrification charges. In light of the judgement (supra), the respondent is not entitled to charge electrification charges.

G.IV Holding charges

33. **Relief sought by the complainant:** Refrain the respondent from charging holding charges.
34. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the

authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

35. Therefore, in light of the above, the respondent shall not be entitled to any holding charges though it would be entitled to the interest at prescribed rate for the period the payment is delayed by the allottee.

G.V Advance maintenance charges

36. **Relief sought by the complainant:** Refrain the respondent from charging maintenance charges.
37. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

38. In the present complaint, as per clause 21 of the buyer's agreement, following provisions has been made with respect to the advance maintenance charges:

"21. MAINTENANCE

- (a) *The Allottee(s) hereby agrees and undertakes that he/she/they/it shall enter into a separate tripartite maintenance agreement in the draft provided at Annexure-VIII with the maintenance agency as may be appointed or nominated by the Developer for the maintenance of the Complex and the common areas therein.*
- (b) *The Allottee(s) agrees and undertakes to execute a separate tripartite maintenance agreement with the designated maintenance agency identified, nominated, and/or appointed by the Developer. The Allottee(s) further agrees and undertakes to pay the indicative and approximate maintenance charges as may be levied by the maintenance agency for the upkeep and maintenance of the Complex, its common areas, utilities, equipment installed in the Complex. Such charges payable by the Allottee will be subject to escalation of such costs and expenses as may be levied by the maintenance agency. The Developer reserves the right to change, modify, amend, and impose additional conditions in the tripartite maintenance agreement at the time of its final execution."*
39. In the present complaint, the respondent has demanded Rs.68,220/- towards advance maintenance charges (@ Rs.3 per sq. ft. + GST @ 18%) for period of 12 months as per letter of offer of possession dated 14.03.2018. Therefore, in the light of the judgement (supra), the complainant is liable to pay the same.

H. Directions of the authority

40. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of

obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 21.08.2012 till 14.05.2018 i.e. expiry of 2 months from the date of offer of possession (14.03.2018). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainant is liable to pay administrative charges as the respondent has charged an amount of Rs.14,160/- towards administrative charges vide letter of offer of possession dated 14.03.2018 which is less than 15,000/-.
- iii. The respondent shall not charge electrification charges.
- iv. The complainant is liable to pay Rs.68,220/- towards advance maintenance charges (@ Rs.3 per sq. ft. + GST @ 18%) for period of 12 months as per letter of offer of possession dated 14.03.2018.
- v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of

the buyer's agreement as per law settled by hon'ble Supreme Court
in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

41. Complaint stands disposed of.
42. File be consigned to registry.

VI-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2021


(Dr. K.K. Khandelwal)
Chairman

Judgement uploaded on 25.01.2022.



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