

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

**Complaint no. : 1390 of 2019**  
**First date of hearing : 27.08.2019**  
**Date of decision : 18.02.2022**

1. Mr. Ankit Sharma
  2. Mrs. Ruchi Sharma
  3. Mr. Arvind Kumar Sharma
- All RR/o F-23, Madhuban Colony,  
Kisan Marg, Jaipur, Rajasthan.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: 306-303, 3<sup>rd</sup> floor, Square One,  
C2, District Centre, New Delhi-110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Venket Rao  
Shri Dheeraj Kapoor

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 09.04.2019 has been filed by the complainants/allottees 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.

2. Since the buyer's agreement has been executed on 13.10.2010 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act ibid.

**A. Project and unit related details**

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	Palm Hills, Sector 77, Gurugram.
2.	Total licensed project area	29.34 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 Valid/renewed up to 30.08.2024 b) 62 of 2013 dated 05.08.2013 Valid/renewed up to 04.08.2019
5.	HRERA registered/ not registered	<b>Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.</b>
6.	HRERA registration valid up to	<b>02.10.2022</b>

7.	Occupation certificate	24.12.2019 [Additional document placed by the respondent]
8.	Date of provisional allotment letter	08.09.2010 [Page 51 of reply]
9.	Unit no.	PH4-77-0701, 7 <sup>th</sup> floor, building no. 77 [Page 53 of complaint]
10.	Unit measuring (super area)	1950 sq. ft.
11.	Date of execution of buyer's agreement	13.10.2010 [Page 51 of complaint]
12.	Payment plan	Construction linked payment plan [Page 81 of complaint]
13.	Total consideration as per statement of account dated 07.01.2020	Rs.91,43,164/- [Additional document placed by the respondent]
14.	Total amount paid by the complainants as per statement of account dated 07.01.2020	Rs.85,66,270/- [Additional document placed by the respondent]
15.	Date of start of construction as per statement of account dated 07.01.2020	22.05.2011 [Additional document placed by the respondent]
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 33 months from the date of start of construction i.e. 22.05.2011 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 64 of complaint]	22.02.2014

17.	Date of offer of possession to the complainants	07.01.2020 [Additional document placed by the respondent]
18.	Delay in handing over possession w.e.f. 22.02.2014 till 07.03.2020 i.e., date of offer of possession (07.01.2020) plus 2 months	6 years 14 days

**B. Facts of the complaint**

4. The complainants made the following submissions in the complaint:

- i. That after learning about the upcoming residential project of the respondent, the complainants met its officials at its office and the respondent convinced the complainants with their lucrative promises to provide them with the world class residential property in Gurugram. The complainants booked the unit with the respondent by paying booking amount of Rs.5,00,000/- on 11.08.2010 and unit bearing no. PH4-77-0701 admeasuring 1950 sq. ft. in the project "Palm Hills" was allotted to them.
- ii. That at the time of payment of booking amount, the officials of the respondent told the complainants that the possession of the booked unit shall be given within 33 + 3 months from the booking date. Thereafter, the buyer's agreement was signed between the parties on 13.10.2010. But the respondent deliberately failed to insert the possession date in the buyer's agreement and only mentioned that the possession will be delivered from the start of



construction work whereas there is no mention of the date of commencement of construction. The construction work started on 22.05.2011 at the site of the project as per statement of account. The complainants had paid Rs.30,34,585/- before start of construction.

iii. That the buyer's agreement was signed between the parties on 13.10.2010. The complainants had paid 95% of the total amount of the sale consideration as per the payment schedule i.e. Rs.85,37,902/- as demanded by the respondent. There is no default on their part as regard to the payments and the same have been duly paid to the respondent within time. As per clause 11(a) of the buyer's agreement dated 13.10.2010, the respondent was required to handover the actual physical possession of the said unit within a period of 33 + 3 months from the date of start of construction, i.e., on or before 22.05.2014.

iv. That as per clause 13(a) of the buyer's agreement dated 13.10.2010, in the event the respondent fails to deliver the possession of the unit to the complainants within the stipulated time period and as per the terms and conditions of the buyer's agreement, then the respondent shall pay to the complainants compensation at the rate of Rs.7.50/- per sq. ft. of the super area of the unit per month for the period of delay.

- v. That since, the respondent miserably failed to timely deliver the possession, the complainants had filed a complaint dated 22.04.2016 before the District Public Grievances Redressed Committee. The complainants regularly chased the respondent and demanded timely handing over of the possession of the unit in dispute but all in vain. On 30.11.2016, after repeated requests, the respondent called upon the complainants and entered into a settlement agreement wherein it again promised to hand over the unit in dispute by March 2018. On the basis of that agreement, the complaint dated 22.04.2016 was withdrawn by the complainants and as a 'Goodwill Gesture' a compensation for delay in handing over of the possession (@Rs.7.50/- per sq. ft.) of Rs.6,80,063/- was offered alongwith the assurances of the respondent to hand over the possession of the unit by March 2018. The complainants pleaded that the amount of compensation should be equal to the delay penalty charged by the builder i.e. 24% but they were given an option of 'Take it or leave it'. It was also stated by the respondent that if the complainants continued to pursue the District Public Grievances Redressed Complaint & FIR, then it would stall the progress of the overall project leading to further delay. The respondent violated every promise to provide a liveable property till date despite taking 95% of the total sale consideration from the complainants due to their own reasons of delay in



completion of project at the site for which they have suffered. That the respondent again for the second time failed to keep its word as per this settlement agreement and did not handover the possession of the unit in dispute.

- vi. That the complainants received an email dated 16.12.2018 from the respondent after repeated requests wherein the respondent assured them that the occupation certificate will be applied till the end of January 2019. But the respondent failed to apply for the same as assured till date. Again on 07.02.2019, when the complainants enquired about status of applying for the OC from the respondent, it sent an email on 07.02.2019 where the respondent did not mention any specific date for applying the OC with the competent authorities and gave a vague response. The respondent accepted that there has been delay in handing over possession of the apartment in dispute to the complainants but again failed to disclose any specific date of handing over of possession after obtaining the occupation certificate.

**C. Relief sought**

5. The complainants have filed the present compliant for seeking following reliefs:
- i. Direct the respondent to pay 24% interest on delay in handing over of the possession of the unit in dispute on the entire deposited amount by the complainants i.e. Rs. 85,37,902/- till date as the

respondent itself has miserably failed to comply with the terms and conditions of the buyer's agreement and hand over the possession of the unit in dispute to the complainants on due date of handing over of the possession as per the buyer's agreement i.e. on or before 22.05.2014 after deducting the amount of Rs.6,80,063/- which was received already as per the settlement agreement dated 30.11.2016 which was breached by the respondent after proper calculations.

ii. Direct the respondent to handover the actual physical possession of the unit in dispute to the complainants.

6. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

7. The respondent while filing reply has also moved an application for rejection of complaint on the ground of jurisdiction. The respondent has contested the present complaint on the following grounds:

i. That the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Act are required to be filed before the adjudicating officer under rule 29 of the rules read with section 31 and section 71 of the said Act and not before this hon'ble regulatory authority under rule 28 of the rules.



- ii. That the complainants had also filed two complaints earlier against the respondent i.e., a complaint dated 22.04.2016 before the District Public Grievances Redressal Committee and an FIR No. 188 dated 05.07.2016, P.S.: DLF Phase-I, Gurugram, for the same apartment for which they have filed the present complaint. However, later on, the parties out of their own free will and without any coercion or duress of any kind whatsoever, decided to settle the matter and vide settlement agreement dated 30.11.2016, the parties entered into a 'Full and Final Settlement' wherein the respondent agreed to extend certain benefits to the complainants towards all their claims, contentions and grievances pertaining to the apartment in question. They also agreed to withdraw all complaints, including the abovementioned two complaints. That apart from one additional car parking space given to them, the respondent, as a goodwill gesture, also paid a compensation of Rs. 6,80,063/- as per the terms of apartment buyer's agreement (which is otherwise payable at the time of possession) till the scheduled date of application of OC (which as per the schedule at that time was March 2018). The complainants also agreed that in case the date is changed, the amount of compensation shall be increased/decreased accordingly and also that after this settlement, the complainants were left with no further claims, benefits, compensation, etc. of any nature whatsoever regarding

the said unit and shall not raise any other claim, compensation, etc. of any nature whatsoever. The complainants also released and discharged the respondent from any claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation, if any, on account of or in any way touching the allotment of the said unit. The complainants also undertook that they would not raise any similar or identical issues against the respondent before any court, police or any other statutory authority in future and also to keep the respondent indemnified and harmless against any loss or damages that the respondent might suffer as a result of their non-observance or non-performance of the terms and conditions of the settlement agreement. Subsequent to the settlement agreement, the complainants withdrew their complaints which was pending before the District Public Grievances Redressal Committee and also the FIR No. 188.

- iii. That despite several adversities, the respondent continued with the construction of the said project and even though the due date of possession as mentioned at the time of registration of the said project with RERA is 02.10.2022. However, the respondent has already applied the occupation certificate for the apartment in question on 21.02.2019. That upon issuance of the occupation certificate and subject to force majeure conditions (as mentioned

hereinafter), possession of the apartment shall be offered to the complainants. However, as the complainants were only speculative investors and not interested in taking over the possession of the said apartment and because of slump in the real estate market, the complainants failed to make the timely payments. Having failed to resell the said apartment due to general recession, the complainants could not make the payments in time and now have developed an intention to raise false and frivolous issues to engage the respondent in unnecessary and protracted litigation.

- iv. That the authority is deprived of the jurisdiction to go into the interpretation of, rights of the parties inter-se in accordance with the buyer's agreement signed by the complainants. That no such agreement, as referred to under the provisions of the said Act or said rules, has been executed between the complainants and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of complaint, is the buyer's agreement dated 13.10.2010, executed much prior to coming into force of the said Act or said rules. The adjudication of complaint for interest and compensation under section 12, 14, 18 and 19 of the said Act has to be in reference to the agreement for sale executed in terms of the said Act and rules and no other agreement.
- v. That the respondent has made huge investments in obtaining approvals and carrying on the construction and development of

the said project and despite several adversities, the respondent has continued with the construction of the said project and even though the due date of possession as mentioned at the time of registration of the project is 02.10.2022. However, the respondent has already applied the occupation certificate for the apartment in question on 21.02.2019. Upon issuance of the occupation certificate and subject to force majeure conditions, possession of the apartment would be offered to the complainants. They persuaded the respondent to allot the said apartment in question with promise to execute all documents as per format of the respondent and to make all due payments. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers. The complainants prevented the respondent from allotting the said apartment in question to any other suitable customer at the rate prevalent at that time and thus the respondent has suffered huge financial losses on account of breach of contract by the complainants. Hence, the present complaint deserves to be dismissed at the very threshold.

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

9. On 01.02.2021, both the parties have brought on record the events that took place subsequently to the filing of the present complaint. That on 07.01.2020, the respondent has offered the possession of the subject unit to the complainants after receipt of occupation certificate dated 24.12.2019.

**E. Jurisdiction of the authority**

10. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

11. 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**

12. Section 11(4)(a) of the Act, 2016 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.*

13. 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 complainants at a later stage.

**F. Findings on the relief sought by the complainants**

**F.I Possession and delay possession charges**

14. **Reliefs sought by the complainants:** The below-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected:

- i. Direct the respondent to pay 24% interest on delay in handing over of the possession of the unit in dispute on the entire deposited amount of the complainants i.e. Rs. 85,37,902/- till date as the

respondent itself has miserably failed to comply with the terms and conditions of the buyer's agreement and hand over the possession of the unit in dispute to the complainants on due date of handing over of the possession as per the buyer's agreement i.e. on or before 22.05.2014 after deducting the amount of Rs.6,80,063/- which was received already as per the settlement agreement dated 30.11.2016 which was breached by the respondent after proper calculations.

ii. Direct the respondent to handover the actual physical possession of the unit in dispute to the complainants.

15. In the present complaint, the complainants intend to continue with the project and are 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."*

16. Clause 11(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"11. POSSESSION**

**(a) Time of handing over the Possession**

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions,*

*formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **33 months from the date of start of construction**, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a **grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.**"*

*(Emphasis supplied)*

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 33 months from the date of start of construction and it is further provided in the agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit/project. The construction commenced on 22.05.2011 as per the statement of account dated 07.01.2020. The period of 33 months expired on 22.02.2014. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 22.02.2014.
18. The counsel for the complainants pointed to the facts of the matter including details of the settlement agreement dated 30.11.2016 as





entered between both the parties. Clause 1 of the settlement agreement provides that the respondent agreed to pay an amount of compensation of Rs.6,80,063/- till the date of application of occupation certificate which as per schedule was March 2018. There was also a provision for increase or decrease of amount of compensation in case the date of occupation certificate is postponed or preponed.

19. The counsel for the complainants pleaded and specifically pointed out that clause 6 of the settlement agreement provides that both parties have every right to take any legal course of action if this agreement is not fulfilled as per agreed terms therein. The occupation certificate was applied on 21.02.2019 for tower in which the unit under reference is situated. Accordingly, there is a failure on the part of the respondent to apply for OC timely as per schedule i.e. March 2018. The counsel for the complainants also pointed out to an email sent by the respondent to the complainants regarding intimation for applying OC which is 19.08.2019. It is contended by learned counsel for complainants though there was a settlement agreement executed between the parties on 30.11.2016 but the same was not adhered to by the respondent builder. The possession of the allotted unit was to be offered to the complainants by applying for OC by March 2018 besides paying a sum of Rs. 6,80,063/-. Though the amount was paid but the unit was not offered for possession. Its possession was offered only on 07.01.2020 i.e. after a gap of above two years. So as per clause 6 of the settlement agreement,

the parties were given liberty to take any legal course of action if the agreement is not fulfilled as per the agreed terms therein. Since the respondent failed to fulfil its obligation as per terms and conditions of settlement, so the claimants are entitled for delayed possession charges as per builder buyer agreement dated 13.10.2010.

20. The counsel for the respondent categorically drew attention of the authority towards clause 1, 6 and 9 of the said settlement agreement. It is contended on behalf of the respondent builder that though the possession of the allotted unit was offered to the allottees on 07.01.2020 after receipt of occupation certificate dated 24.12.2019 but the same was offered as per settlement agreement dated 30.11.2016 wherein it is specific provided under clause 1 that "The allottee agrees that in case the date is changed whether prior to the mentioned date or post the same, the amount of compensation shall be increased/decreased accordingly. In case the date is preponed then the Allottee undertakes to remit the differential amount back to the Company at the time of hand over." In view of this settlement, the allottees received Rs. 6,80,063/- as compensation till the date of occupation. No doubt both the parties were given liberty to take any legal course of action if the agreement is not fulfilled as per agreed terms therein but it was also mentioned under clause 6 that both the parties have obtained independent advice and opinion from competent professionals, consultants and lawyers, and have read and understood



the entire contents of the agreement and other related documents and are fully aware of the meaning and effect of this agreement. After the execution of this agreement, the claimants have already received the above-mentioned amount from the respondent builder one additional car parking and also withdrew the complaints filed before the District Public Grievances Redressal Committee and the criminal case arising out of FIR No. 188, dated 05.07.2016 registered at DLF Phase 1, Police Station, Gurugram. There is nothing on record to show that after the settlement dated 30.11.2016, the complainants challenged the validity of the same before any forum. If there has been any coercion or duress of any kind on the complainants, then they might have approached some authority for redressal of their grievances. But they kept mum and filed the present complaint only on 09.04.2019 i.e. after a gap of about 3 years. Thus, the complaint filed is not maintainable. Reliance has been placed on the ratio of law laid down in cases of *Har Shankar and Ors. etc. VS The Dy. Excise & Taxation Commr. & Ors. AIR 1975 SC 1121, Premji Bhai Parmar & Ors. VS Delhi Development Authority & Ors. AIR 1980 SC 738, Bihar State Electricity Board, Patna and Ors. VS. Green Rubber Industries and Ors. AIR 1990 SC 699, Bharathi Knitting Co. VS. DHL Worldwide Express (Courier Division of Airfreight Ltd.) AIR 1996 SC 2508 and Bhagwati Prasad Pawan Kumar Vs. Union of India MANU/SC/2931/2006*, and wherein it was held that an offeree cannot be permitted to change his mind after the

unequivocal acceptance of the offer and to blow hot and cold in the same breath. When the allottees choose to settle the dispute with the respondent and receive some amount as compensation on the basis of that settlement, then the principles of estoppel and waiver are applicable and their claim with regard to delayed possession charges is barred under the law.

21. The authority has considered the rival submissions made on behalf of both the parties. Before commenting on the validity of settlement agreement dated 30.11.2016 entered into between the parties may be considered, a reference to some clauses of settlement is must and which are as under:

***"NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:***

1. *That the Company has, without prejudice, assured the Allottee that the parking spaces (covered) allotted to the Allottee in terms of the buyer's agreement will be allotted to the Allottee under or around the Tower in which the Said Unit is located along with 1 additional car parking space at MLCP (Multi level car parking) area. Further, the Allottee is eligible for compensation for delay in possession as per terms of buyer's agreement which is payable at the time of possession. However, as a gesture of goodwill the Company is paying an amount of RS.6,80,063/- as compensation till the date of application of OC which as per schedule shared is March 2018, on signing of this settlement agreement.*

*The Allottee agrees that in case the date is changed whether prior to the mentioned date or post the same, the amount of compensation shall be increased/decreased accordingly. In case the date is preponed then the Allottee undertakes to remit the differential amount back to the Company at the time of hand over.*

*It is mutually agreed that the abovementioned benefits being given to the Allottee shall be towards full and final settlement and the Allottee acknowledges that he/she/they is/are not left with any further claims, benefits, compensation, etc. of any nature whatsoever regarding the Said Unit and henceforth the ALLOTTEE shall not raise any other claim, compensation, etc. of any nature whatsoever. The said benefits shall be*



*extended only after withdrawal of the complaint before the District Grievance Redressal Committee and quashing of the FIR.*

2. ....

3. ....

4. ....

5. ....

6. *That the both parties have obtained independent advice and opinion from competent professionals, consultants and lawyers and have read and understood the entire contents of this Agreement and other related documents, and he is fully aware of the meaning and effect of this Agreement. However, both parties will have the rights to take any legal course of action if this agreement is not fulfilled as per agreed terms therein.*

7. ....

8. ....

9. *That the Parties acknowledge and confirm that this agreement shall be irrevocable in nature to the extent that Parties fulfill all the terms in the settlement and is made with free will and without coercion and duress of any kind whatsoever on the Parties hereto....." (Emphasis supplied)*

22. It is not disputed that prior to filing of the complaint before this authority on 09.04.2019, the complainants had already approached the local police for registration of a criminal case against the respondent-builder which led to registration of FIR No.188 dated 05.07.2016. Secondly, the complainants had already filed a complaint with regard to subject-matter before the District Public Grievance Redressal Committee on 22.04.2016. So, to settle both the cases pending before the different forums, the parties entered into a settlement on 30.11.2016 and which also led to withdrawal of both the cases detailed above against the respondent-builder. It is also not disputed that in pursuant to the settlement agreement, the complainants received a sum of Rs. 6,80,063/- as compensation till the date of application for OC i.e.

March 2018 besides one additional car parking. It is contended on behalf of the complainants that since the settlement agreement dated 30.11.2016 was not adhere to by the respondent-builder i.e., with regard to applying for occupation certificate by March 2018 and changing that date unilaterally to March 2019, so that settlement agreement is not binding on the complainants. So, taking into consideration all these facts, it is to be seen as to whether the settlement agreement entered into between the parties on 30.11.2016 is binding on the parties. *Firstly*, the authority observes that whatever will be the date for applying OC out of the two dates mentioned above, there is no denial of the fact that there was delay/failure on the part of the respondent in applying for OC as per the settlement agreement. It is matter of fact that in clause 1 of the settlement agreement dated 30.11.2016, it is clearly mentioned that the respondent promoter will make an application for OC by March 2018. However, as per the documents placed on record, the respondent has made final application for obtaining OC on 21.02.2019 and the competent authority had granted the same on 24.12.2019. The authority observes that the respondent promoter has not kept his own promise as made by him in the said settlement agreement. Furthermore, clause 1 of the settlement agreement provides that the allottee agrees that in case the date (i.e., March 2018) was changed whether prior to the mentioned date or post the same, the amount of compensation shall be increased or decreased



accordingly. However, the statement of account sent along with the "letter of offer of possession" on 07.01.2020, does not contain any adjustment of compensation as has been agreed in the settlement agreement.

23. **Secondly**, it is admitted by the respondent that the compensation of Rs.6,80,063/- under the settlement agreement is as per the terms of buyer's agreement only and has been paid in advance which was otherwise payable at the time of possession. Vide settlement agreement, the parties agreed to extend time period of handing over possession of the said unit as per the schedule for possession shared by the company and in lieu of the allottee agreeing to extended timeline for handing over possession, the respondent has agreed to pay compensation at the rate prescribed in the buyer's agreement. As per clause 13 of the buyer's agreement, the allottee(s) shall be entitled to payment of compensation for delay at the rate of Rs.7.50/- per sq. ft. per month of the super area till the date of notice of possession. The promoter cannot take advantage of its dominant position as it extended timeline of handing over possession but in lieu of that it failed to give adequate advantage to the allottee. It is observed that as per the settlement-cum-amendment agreement, the respondent is still giving compensation as per the buyer's agreement i.e., @ Rs.7.50/- per sq. ft. per month of super area and is still very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent

and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Hon'ble Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

24. Hon'ble Supreme Court and various High Courts in a plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** (decided on 02.04.2019) as well as by the Hon'ble Bombay High Court in the **Neelkamal Realtors Suburban Pvt. Ltd.** (supra). A similar view has also been taken by the Apex court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.** (Civil appeal no. 5785 of 2019 dated 11.01.2021) as under:

*".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices."*



*An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.*

*In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."*

The same analogy can easily be applied in the present case where the respondent is promising to give very nominal amount of compensation and the complainants cannot be bound by such one-sided clause

25. **Thirdly**, the Hon'ble Bombay High Court in the **Neelkamal Realtors Suburban Pvt. Ltd.** (supra) has held that the scheme of the Act is retroactive in character and the relevant para is reproduced below:

*"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."*

26. Accordingly, a law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest as has been done in this Act where specific remedy has been provided under section 18 of the Act, in case of failure of promoter to handover possession as per agreement for sale and this specific remedy abrogates provisions of the agreement to that extent. Also, it is matter of fact that the provision of section 18 of the Act has not come into effect at the time



when the parties entered into the settlement agreement dated 30.11.2016. Moreover, as per the said settlement agreement, the promoter has agreed to apply for the OC by March 2018. After lapse of such time, the complainants after waiting for a reasonable period of time have approached the authority by filing the present complaint on 09.04.2019 and the respondent has finally applied for OC on 21.02.2019. Thus, due to retroactive nature of section 18 of the Act, the complainants are entitled to prescribed rate of interest as per the provisions of the Act and not nominal compensation as per the terms of the buyer's agreement/settlement agreement.

27. In light of the aforesaid reasons, the authority is of the view that it cannot take into consideration such settlement agreement, the terms of which are not kept by the one who has made it and is also in a dominant position. Further, also such agreement cannot take the statutory rights of the one who is in recessive position. In the interest of the natural justice, such settlement agreement cannot be taken into consideration by this authority while adjudicating on statutory rights of the complainants. Hence, the authority does not place reliance on the said settlement agreement and is of the view that mere nomenclature of document as "Settlement Agreement" will not take away the rights of the allottees to claim the statutory relief i.e. delayed possession charges as pre the provisions of section 18 of the Act.



28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 24% p.a. However, 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.*

29. The legislature in its wisdom in the subordinate legislation under the 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.
30. 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., 18.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

31. **Rate of interest to be paid by complainants/allottees for 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;"*

32. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.
33. 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 11(a) of the buyer's agreement executed between the parties on 13.10.2010, the possession

of the said unit was to be delivered within a period of 33 months from the date of start of construction and it is further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit/project. As far as grace period is concerned, the same is disallowed for the reasons quoted above. The construction commenced on 22.05.2011 as per statement of account dated 07.01.2020. Therefore, the due date of handing over possession comes out to be 22.02.2014. In the present case, the complainants were offered possession by the respondent on 07.01.2020 after obtaining occupation certificate on 24.12.2019 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 13.10.2010 executed between the parties.

34. Section 19(10) of the Act obligates the allottees 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 24.12.2019. However, the respondent offered the possession of the unit in question to the complainants only on 07.01.2020, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural

justice, they should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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. 22.02.2014 till the expiry of 2 months from the date of offer of possession (07.01.2020) which comes out to be 07.03.2020.

35. The counsel for the complainants requested for handing over possession which stand already offered. Therefore, the complainants are directed to take possession of the subject unit within 2 months from the date of this order. No holding charges shall be charged by the respondent. Maintenance charges are payable after two months from the date of offer of possession.

36. 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 complainants are entitled to delay possession charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 22.02.2014 till 07.03.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules. The respondent has already paid Rs.6,80,063/- towards delay in handing over possession vide settlement agreement



dated 30.11.2016, therefore the amount i.e. Rs.6,80,063/- already paid to the complainants by the respondent as delay compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

**G. Directions of the authority**

37. 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 complainants from due date of possession i.e. 22.02.2014 till 07.03.2020 i.e. expiry of 2 months from the date of offer of possession (07.01.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The amount i.e. Rs.6,80,063/- already paid to the complainants by the respondent as delay compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

- iii. The complainants are directed to take possession within 2 months from the date of this order as the respondent has already offered possession of the subject unit on 07.01.2020.
- iv. Interest on the delay payments from the complainants 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 complainants in case of delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees 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.
38. Complaint stands disposed of.
39. File be consigned to registry.

V.I - 3  
(Vijay Kumar Goyal)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.02.2022

Order uploaded on 16.03.2022.