BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**102 of 2021**
Complaint filed on	**:**	**28.01.2021**
First date of hearing	**:**	**16.04.2021**
Date of decision	**:**	**01.02.2022**

1. Rahul Jindal
2. Rekha Jindal
Both RR/o: B-231, West Patel Nagar,
New Delhi-110008. **Complainants**

Versus

M/s Emaar India Ltd.
(Formerly known as Emaar MGF land Ltd.)
Address: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28, Gurugram-122002, Haryana. **Respondent**

Coram:
Dr. K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

Appearance:
Shri Varun Chug Advocate for the complainants
Shri J.K. Dang Advocate for the respondent

ORDER

1. The present complaint 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 27.03.2010 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	"Emerald Estate Apartments at Emerald Estate" in Sector 65, Gurugram, Haryana.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and others, C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	"Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
	HRERA registration valid up to	23.08.2022

7.	Occupation certificate granted on	11.11.2020 [annexure R10, page 129 of reply]
8.	Provisional allotment letter dated	24.09.2009 [annexure R2, page 40 of reply]
9.	Revised allotment letter	15.03.2010 [annexure R4, page 42 of reply]
10.	Unit no.	EEA-J-F10-05, 10th floor, building no. J [annexure A1, page 21 of complaint]
11.	Unit measuring	1020 sq. ft. [Page 21 of complaint]
12.	Date of execution of buyer's agreement	27.03.2010 [annexure A1, page 19 of complaint]
13.	Payment plan	Construction linked payment plan [annexure A1, page 52 of complaint]
14.	Date of commencement of construction as per statement of account dated 24.03.2021 at page 125 of reply	26.08.2010
15.	Complainants are subsequent allottees	The names of the complainants were endorsed on the buyer's agreement on 14.05.2012 in pursuance of agreement to sell dated 27.03.2012 executed between the complainants and the original allottees (Mr. Ramandeep Chawla and Deepti).
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of commencement of construction (26.08.2010) + grace period of 6 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 34 of complaint]	26.08.2013 **[Note:** Grace period is not included]

17.	Total consideration as per statement of account dated 24.03.2021 at page 125 of reply	Rs.44,32,008/-
18.	Total amount paid by the complainants as per statement of account dated 24.03.2021 at page 126 of reply	Rs.44,69,209/-
19.	**Date of offer of possession to the complainants**	**21.11.2020** [annexure A3, page 57 of complaint]
20.	Delay in handing over possession w.e.f. 26.08.2013 till 21.01.2021 i.e. date of offer of possession (21.11.2020) + 2 months	7 year 4 months 26 days
21.	Delay compensation already paid by the respondent as per statement of account dated 24.03.2021 at page 125 of reply	Rs.3,82,123/-

B. Facts of the complaint

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

i. That the property in question i.e. apartment bearing no. EEA-J-F10-05 (tenth floor) admeasuring 1020 sq. ft. in the project of the respondent known as "Emerald Estate Apartment" situated at Sector-65, Gurugram, Haryana, was booked by Mr. Ramandeep Chawla and Ms. Deepti, in the year 2009. Thereafter, on 27.03.2010, Mr. Ramandeep Chawla and Ms. Deepti entered into a buyer's agreement with the respondent, by virtue of which the respondent allotted the subject apartment along-with car parking space in the said project.

ii. That the total cost of the apartment is Rs.44,32,008/- only and since it was a construction linked plan, hence the payment was to be made on the basis of schedule of payment provided by the respondent. The complainants had made the entire payment towards the cost of the apartment, and nothing is due and payable by them. In fact, a sum of Rs.79, 649/- which was lying in the credit balance of the complainants has been adjusted by the respondent towards cost of stamp duty and registration charges. Also, the complainants were entitled to get a sum of Rs.9,519/- towards early payment rebate scheme introduced by the respondent and which amount was even reflected in the previous statement of accounts issued by the respondent, however, the said amount was reduced to Rs.4,225/- by the respondent unilaterally in its latest statement of accounts without any rhyme or reason. The complainants, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent. The balance payment was to be made at the time of offering of possession.

iii. That as per the clause 11(a) of the said buyer's agreement dated 27.03.2010, the respondent had categorically stated that the possession of the said apartment would be handed over to the complainants within 36 months from the date of commencement of construction and development of the unit, with a further grace period of another 6 months but the respondent never intended to

keep its promise and upon the complainant's enquiry regarding the project status via emails, the latter used to hoodwink the complainants by giving false deadlines to complete the project.

iv. That the said buyer's agreement is totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.5/- per sq. ft., on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.50/- per sq. ft. and 24% penal interest on the unpaid amount of instalment due to the respondent.

v. That the respondent has compromised with levels of quality and is guilty of mis-selling. There are various deviations from the initial representations and the complainants were charged additionally for PLC whereas what all that was promised by the respondent was never delivered to the complainants. The respondent marketed luxury high end apartments, but has compromised even with the basic features, designs and quality to save costs. The structure which has been constructed on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard, low grade, defective and despicable construction quality.

vi. That the respondent has duped and misled the complainants by charging a hefty sum of Rs.2,81,265/- towards preferential location charges on account of the unit being park and pool facing which is clearly spelled out in the builder buyer's agreement. However, strangely, the size of the said park and pool has been considerably reduced, by the respondent.

vii. That that due to the delay and lapses on the part of the respondent in handing over the possession of the property, the complainants have been additionally burdened to pay the HVAT (post 2014) amounting to Rs.10,966/- and GST of Rs.1,59, 240/- on the cost of the property, which was introduced much lately and ought not to be paid by the complainants had the possession of the property been offered in the February 2014 i.e. the due date of possession.

viii. That the respondent had promised to complete the project by February 2014 including the grace period of six months. The buyer's agreement was executed on 27.03.2010 and the possession of the apartment was finally offered on 21.11.2020 which resulted in extreme kind of mental distress, pain and agony to the complainants.

ix. That the complainants vide their emails addressed to the respondent had asked to indemnify them, for the delay in handing over the possession of the apartment but the respondent company had indemnified the complainants as per the buyer's agreement and had only offered a meagre sum of Rs.3,82,123/- and that too after the

deduction of three months period towards Force Majeure on account of Covid-19 pandemic, which is not applicable to the present case as the delay in handing over of the possession of the property is solely attributable to the respondent. It is worth mentioning here that the pandemic situation has taken place much after the due date of possession as committed by the respondent in the buyer's agreement and hence cannot take advantage of its own wrongdoing. In fact, the complainants through their emails had demanded compensation as per the Act but the respondent company had miserably failed to accede to their legitimate request and has turned a deaf ear. The respondent had committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the flat in question and not giving the delayed possession interest to the complainants as per provisions of the Act.

C. Relief sought by the complainants

5. The complainants have filed the present compliant for seeking following reliefs:

i. Direct the respondent to handover the possession of the property in question to the complainants, in time bound manner and direct the respondent to pay interest @18% p.a. as interest towards delay in handing over the property in question as per the provisions of the Act and the rules.

ii. Direct the respondent to return PLC charges of Rs.2,81,265/- as per provisions of the Act and the rules.

iii. Direct the respondent to return the HVAT (post 2014) amounting to Rs.10,966/- and GST amount of Rs.1,59,240/- charged from the complainants as per provisions of the Act and the rules.

iv. Direct the respondent to pay a sum of Rs.5,294/- to the complainants towards the balance amount of Early Payment Rebate.

v. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.

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 and to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

i. That the complainants have filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivering possession of the apartment purchased by them. It is respectfully submitted that such complaints 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. Moreover, it is respectfully

submitted that the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.

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 27.03.2010. That 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. 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 complainants for seeking interest cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and

conditions incorporated in the buyer's agreement. Moreover, the complainants cannot demand any amount for the period during which no association subsisted between the complainants and the respondent.

iii. That Mr. Ramandeep Chawla and Ms. Deepti (hereinafter "original allottees") vide application form dated 27.08.2009 applied to the respondent for provisional allotment of a unit in the project. The original allottees, in pursuance of the aforesaid application, were allotted an independent unit bearing no. EEA-L-F10-05 in the project vide provisional allotment letter dated 18.09.2009. The original allottees consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to respondent that the original allottees shall remit every installment on time as per the payment schedule. That on account of changes in the layout plan, the location of the unit allotted to the original allottees had been changed and consequently, the unit number initially allotted to the original allottees was renumbered to EEA-J-F10-05 located on the 10th floor. The buyer's agreement dated 27.03.2010 was executed between the original allottees and respondent.

iv. That thereafter the complainants approached the original allottees for purchasing their rights and title in the unit in question. The original allottees acceded to the request of the complainants and

agreed to transfer and convey their rights, entitlement and title in the unit in question and executed an agreement to sell dated 27.03.2012 with the complainants. Furthermore, the respondent, at the time of endorsement of the unit in question in favour of the complainants, had specifically indicated to the complainants that being the assignee of the original allottees they would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by the complainants. The complainants are conscious and aware of the fact that they are not entitled to any right or claim against respondent. The complainants have intentionally distorted the real and true facts and have filed the present complaint in order to harass the respondent and mount undue pressure upon it.

v. That the complainants had defaulted in remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by them. However, the complainants despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent. Statement of account dated 24.03.2021 as maintained by respondent in due course of its business reflects the delay in

remittance of various instalments on the part of the original allottees.

vi. That it is categorically provided in clause 11(b)(iv) of the buyer's agreement that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on respondent's discretion till the payment of all outstanding amounts to the satisfaction of respondent. Since, the complainants have consciously defaulted in timely remittance of the instalments as well as refrained from obtaining possession of the unit in question, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainants. Furthermore, clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees.

vii. That the time period utilised by the concerned statutory authority to grant occupation certificate to respondent needs to be necessarily excluded from computation of the time period for implementation of the project. Furthermore, no compensation or interest or any other amount can be claimed for the period utilised by the concerned statutory authority for issuing occupation certificate in terms of the buyer's agreement. The respondent had submitted an application dated 20.03.2020 for issuance of occupation certificate before the concerned statutory authority. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-441-Vol.-II/AD(RA)/2020/20094 dated 11.11.2020. It is submitted that once an application is submitted before the statutory authority, the respondent ceases to exercise any control over the matter. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent cannot exercise any influence over the same. Thus, the time period utilised by the concerned statutory authority to grant occupation certificate to respondent needs to be necessarily excluded from computation of the time period for implementation of the project.

viii. That the project got delayed on account of various reasons which were/are beyond the power and control of the respondent and hence, the respondent cannot be held responsible for the same. *Firstly,* there were defaults on the part of the contractor (M/s B L

Kashyap and Sons). The contractor was not able to meet the agreed timelines for construction of the project. The progress of the work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of material etc. and hence, the respondent cannot be held responsible for the same. *Secondly*, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well. Also, the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd. are pending before Justice A P Shah (retd.), Sole arbitrator and vide order dated 27.04.2019, the hon'ble arbitrator gave liberty to the respondent to

appoint another contractor w.e.f. 15.05.2019. It is evident from the aforesaid, that the respondent had been diligently pursuing the matter before the sole arbitrator and no fault can be attributed to the respondent in this regard. A force majeure situation that had arisen on account of which the respondent was unable to fulfill its obligations till the situation persisted.

ix. That the complainants were offered possession of the unit in question through letter of offer of possession dated 21.11.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/ documentation necessary for handover of the unit in question to them. However, the complainants have consciously refrained from obtaining possession of the unit in question. The complainants did not/do not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and thus refrained from obtaining possession of the unit in question. Therefore, there is no equity in favour of the complainants.

x. That the project of the respondent has been registered under the Act and the rules. Registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-482/2017/829 dated 24.08.2017. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the

contentions of the respondent, it is respectfully submitted that the complaint preferred by the complainants is devoid of any cause of action. It is submitted that the registration of the project is valid till 23.08.2022 and therefore cause of action, if any, would accrue in favour of the complainants to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period.

xi. That the respondent has paid an amount of Rs.22,496/- as benefit on account of Anti-Profiting and Rs. 4,225/- on account of Early Payment Rebate (EPR). Furthermore, an amount of Rs. 3,82,123/- has been credited by the respondent to the account of the complainants, as a gesture of goodwill, at the time of offer of possession. Without prejudice to the rights of the respondent, delayed interest if any has to calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.

xii. That outstanding amount is liable to be paid by the complainants to the respondent is Rs.3,95,266/- inclusive of holding charges, CAM, stamp duty charges and E-challan charges. Balance amount, if payable by the respondent, shall be refunded to the complainants at

the time of registration of the conveyance deed in their favour. It is wrong and denied that the complainants are/were entitled to an amount of Rs. 9,519/-. It is further submitted that the complainants have intentionally refrained from obtaining possession of the unit in question.

xiii. It was denied that the respondent has not provided the facilities for which the PLC has been charged from the complainants. The quantum of PLC charged by the respondent is a matter of record. It was denied that the respondent had made any representation to the complainants regarding the area of the park/pool. It is wrong and denied that the area of the park/pool is very small and inadequate or has been reduced by the respondent in the manner alleged by the complainants.

xiv. That the complainants are under a legal and contractual obligation to pay all the taxes levied in respect of the unit in question. It is wrong and denied that the complainants had to pay an amount of Rs. 1,59,240/- or any part thereof as additional amount to the respondent. It is wrong and denied that the HVAT and GST leviable in respect of the unit in question are not liable to be paid by the complainants. It has been unambiguously stated in the buyer's agreement that the taxes pertaining to the unit in question are separate and independent charges which are liable to be paid by the complainants apart from the sale consideration of the unit in

question. In any event, the said charges are levied by the Government and payable to the concerned statutory authority. The respondent does not derive any advantage by collecting any taxes from the concerned allottees. The complainants have always been conscious and aware of the aforesaid facts and are needlessly distorting the real and true facts of the matter in order to generate an unwarranted controversy.

xv. That several allottees have defaulted in timely remittance of payment of installments 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 tower in which the unit in question is situate has been completed by the respondent. The respondent has already delivered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there in no equity in favour of the complainants. 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

8. The preliminary objections 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

9. 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

10. 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.

11. 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 objections raised by the respondent

F.I Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate

12. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 21.07.2020 and thereafter vide memo no. ZP-441-Vol.-II/AD(RA)/2020/20094 dated 11.11.2020, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiencies in the application submitted by the promoter for issuance of occupancy

certificate. It is evident from the occupation certificate dated 11.11.2020 that an incomplete application for grant of OC was applied on 21.07.2020 as fire NOC from the competent authority was granted only on 25.09.2020 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 22.09.2020 and 24.09.2020. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite reports' about this project on 21.09.2020 and 23.09.2020 respectively. As such, the application submitted on 21.07.2020 was incomplete and an incomplete application is no application in the eyes of law.

13. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 25.09.2020 and consequently the concerned authority has granted occupation certificate on 11.11.2020. Therefore, in view of the deficiency in the said application dated 21.07.2020 and aforesaid reasons, no delay in granting

occupation certificate can be attributed to the concerned statutory authority.

F.II Objection regarding handing over possession as per declaration given under section 4(2)(l)(C) of RERA Act.

14. The counsel for the respondent has stated that the registration of the project is valid till 23.08.2022 and therefore cause of action, if any, would accrue in favour of the complainants to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period. That the entitlement to claim possession or interest would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(l)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to it by the authority at the time of registering the project under section 3 & 4 of the Act.

15. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.

16. Section 4(2)(l)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(l)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

(l): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — .....

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."

17. The time period for handing over the possession is committed by the builder as per the relevant clause of buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(l)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the buyer's agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as ***Neelkamal***

Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors. and has observed 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..."*

F.III Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

18. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

19. 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."*

20. 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

> *"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*

rate of compensation mentioned in the agreement for sale is liable to be ignored."

21. 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 and are not unreasonable or exorbitant in nature.

F.IV Whether the subsequent allottee who had executed an indemnity-cum-undertaking with waiver clause is entitled to claim delay possession charge.

22. The authority has decided the entitlement of delay possession charges under proviso to section 18(1) of the Act to a subsequent allottee in the complaint titled as ***Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019).*** The complainants in the present complaint are subsequent allottee and have purchased the unit in question from the previous allottees vide agreement to sell dated 27.03.2012 and thereafter, their name was endorsed on the buyer's agreement on 14.05.2012. In terms of the order passed by the authority in complaint titled as ***Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019),***

the allottee is entitled to delayed possession charges w.e.f. due date of handing over possession as per the terms of the buyer's agreement.

G. Findings on the reliefs sought by the complainants

G.I Possession and delay possession charges

23. **Relief sought by the complainants**: Direct the respondent to handover the possession of the property in question to the complainants, in time bound manner and direct the respondent to pay interest @18% p.a. as interest towards delay in handing over the property in question as per the provisions of the Act and the rules.

24. 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."*

25. 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 36 months from the date of commencement of construction and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

26. 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 complainants 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 floor 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.

27. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. The construction commenced on 26.08.2010 as per statement of account dated 24.03.2021. The period of 36 months expired on 26.08.2013. 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 six months cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 26.08.2013.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% 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. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per clause 13(a) of the buyer's agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till the date of payment as per clause 1.2(c) of the buyer's agreement. 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 dominate 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.

31. 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., 01.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

32. **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;"

33. 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.

34. 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 27.03.2010, possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. 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 26.08.2013. The complainants in the present complaint are subsequent allottees and had purchased the unit in question from the original allottees and thereafter, the respondent had acknowledged the same vide endorsement on the buyer's agreement on 14.05.2012. In terms of the order passed by the authority in complaint titled as ***Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)***,

the complainants are entitled to delayed possession charges w.e.f. the due date of handing over the possession as per the terms of the buyer's agreement. In the present case, the complainants were offered possession by the respondent on 21.11.2020 after obtaining occupation certificate dated 11.11.2020 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 27.03.2010 executed between the parties.

35. 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 11.11.2020. However, the respondent offered the possession of the unit in question to the complainants only on 21.11.2020, 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. 26.08.2013 till the expiry of 2 months from the date of offer of possession (21.11.2020) which comes out to be 21.01.2021. Also, the complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.

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. 26.08.2013 till 21.01.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

37. Also, the amount of Rs.3,82,123/- (as per statement of account dated 24.03.2021) so paid by the respondent to the complainants towards compensation for delay in handing over possession in terms of the buyer's agreement shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

G.II Preferential location charges

38. The counsel for the complainants submitted that the respondent has charged hefty sum of Rs.2,81,265/- towards preferential location charges on account of the unit being park and pool facing which is clearly spelled

out in the builder buyer's agreement. However, strangely, the size of the said park and pool has been considerably reduced, by the respondent. The counsel for the respondent had denied the aforesaid contention of the complainants.

39. The authority observed that as per clause 1.2(a) and (e) of the buyer's agreement, following provisions have been made regarding PLC:

> ***"1.2 Sale Price for Sale of Unit***
> ***(a) Sale Price***
> *i. The sale price of the Unit ("Total Consideration") payable by the Allottee(s) to the Company includes the basis sale price ("Basic Sale Price") of Rs.3262980.00/-, cost towards car parking space(s) of Rs.250000/-, External Development Charges ('EDC') of Rs. 244800/-, Infrastructure Development Charges ('IDC') of Rs. 30600/- and applicable PLC of Rs. 255000/-, if any and Club Membership charges of Rs. 75000/-. Save as aforesaid, the Allottee(s) understands that the Total Consideration does not include any other charges, as reserved in this Buyer's Agreement and the Allottee(s) shall be under an obligation to pay such additional cost as may be intimated to him by the company, from time to time. The Allottee(s) specifically understands that time is the essence with respect to the Allottee(s)' obligations and undertakes to make all payments in time, without any reminders from the Company through A/c Payee Cheque(s)/ Demand Draft(s) payable at Delhi. The Allottee(s) agrees that the payments on due dates as set out in Annexure – 3 shall be made promptly and the Company shall not be required to send any notice or demand for payment as per the Schedule of Payment.*
> .....
> ***(e) Preferential Location Charges***
> *i. The proportionate amount of the preferential location charges ('PLC') for certain Units in the Project and if the Allottee(s) opts for any such Unit are included in the Total Consideration payable by the Allottee(s) as set out in clause 1.2(a)(i) above for the said Unit.*
> *ii. The Total Consideration for preferentially located Unit is calculated at additional rate of as applicable for the Unit located in the Project. The Allottee(s) understands that if due to change in layout plan, the location of any Unit, whether preferentially located or otherwise is changed to any other preferential location, where the PLC are higher than the rate as*

mentioned hereinabove, then in such a case the Allottee(s) shall be liable to pay the PLC as per the revised PLC decided by the Company within thirty (30) days of any such communication received by the Allottee(s) in this regard. However, if due to the change in the layout plan the Unit ceases to be preferentially located, then in such an event the Company shall be liable to refund only the amount of preferential location charges paid by the Allottee(s) without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the following installment for the Unit."

40. Needless to say, that the agreement for sale/the builder buyer's agreement executed between the parties i.e. the promoter and the allottee is binding on them and they are not entitled to avoid any terms or conditions contained therein except for the provisions which have been abrogated by the Act itself or where there are reasons to believe that the same were incorporated in the agreement by the promoter by taking benefit of his being in dominant position and the allottee had no option but to sign on the dotted lines.

41. The authority, taking cognizance in the matter, appointed a team of local commissioners/engineering team to visit the project site in order to substantiate the claims raised by the allottee. The local commission has submitted its report on 01.10.2021 with the following findings:

"1. The swimming pool has been developed by the promoter in front of the tower J and same is visible from both balconies of the complainant's unit which is located on 10th floor.

2. Promoter has developed a small patch of green area having area approximately 2200-2500 sq. ft. in front of tower J which is visible from the complainant's unit.

3. Site photographs captured during the site visit has been attached with report."

42. Therefore, in the light of the abovesaid report and clauses of the buyer's agreement, it can be concluded that the unit is still preferentially located, and the buyer's agreement clearly provides that the allottee had agreed to pay preferential location charges for preferentially located unit and such preferential location charges were payable by the allottee in the manner and within such time as stated in the schedule of payment. Thus, the authority is of the view that the amount levied towards preferential location charges is justified.

G.III Direct the respondent to return the HVAT (post 2014) amounting to Rs.10,966/-

43. The complainants are contending that they have been additionally burdened to pay HVAT (upto 31.03.2014) amounting to Rs.10,966/- for the period w.e.f. 01.04.2014 till 30.06.2017. On the other hand, the respondent submitted that the HVAT has been validly and legally charged by the respondent in terms of the buyer's agreement and the same are statutory charges and are liable to be passed on to the Government by the respondent.

44. The authority has decided the issue w.r.t. liability of payment of HVAT in complaint titled as ***Varun Gupta. Versus Emaar MGF Land Ltd. (CR/4031/2019)*** wherein it has been held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, the promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017

since the same was to be borne by the promoter-developer only. The respondent-promoter is directed to adjust the said amount, if charged from the allottee with the dues payable by the allottee or refund the amount if no dues are payable by the allottee.

45. In the present complaint, the respondent has demanded Rs.10,966/- towards lien marked FD for HVAT liability post 01.04.2014 till 30.062017 vide letter of offer of possession dated 21.11.2020. Therefore, the respondent is bound to adjust the said amount from the complainants with the dues payable by them or refund the amount if no dues are payable by them.

G.IV Direct the respondent to return the GST amount of Rs.1,59,240/- charged from the complainants as per provisions of RERA and HRERA.

46. The complainants submitted that due to the delay and lapses on the part of the respondent in handing over the possession of the property, the complainants have been additionally burdened to pay the GST of Rs 1,59,240/- on the cost of the property, which was introduced much lately and ought not to be paid by the complainants, had the possession of the property been offered by the due date of possession in terms of the buyer's agreement. On the other hand, the counsel for the respondent submitted that GST has been levied strictly in accordance with the terms and conditions of the buyer's agreement.

47. The relevant clause from the agreement is reproduced as under:

"10.(f) Taxes and levies:

(i) The Allottee(s) shall be responsible for payment of all taxes, levies, assessments, demands or charges including but not limited to sale tax,

VAT, if applicable, levied or leviable in future on the Plot, building or Unit or any part of the Project in proportion to his/her/their/its Super Area of the Unit.

(ii) ....."

48. The authority after hearing the parties at length is of the view that admittedly, the due date of possession of the unit was 26.08.2013 but the offer of possession has been made only on 21.11.2020. Had the unit been delivered within the due date or even with some justified delay, the incidence of GST would not have fallen on the allottee. Therefore, an additional tax burden with respect to GST was enforced upon the complainants for no fault of their since and is due to the wrongful act of the promoter in not delivering the unit within due date of possession.

49. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.** of the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to

be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

50. In appeal no. 21 of 2019 titled as **M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi**, Haryana Real Estate Appellate Tribunal, has upheld the **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra).** The relevant para is reproduced below:

"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."

51. Therefore, the delay in delivery of possession is the default on the part of the respondent/promoter and the possession was offered on 21.11.2020 and by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the respondent/promoter is not entitled to charge GST from the

complainants/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.

G.V Direct the respondent to pay a sum of Rs.5,294/- to the complainants towards the balance amount of Early Payment Rebate.

52. The complainants submitted that they are entitled to get a sum of Rs.9,519/- towards early payment rebate scheme introduced by the respondent and which amount was even reflected in the previous statement of accounts issued by the respondent, however, the said amount was reduced to Rs.4,225/- by the respondent unilaterally in its latest statement of accounts without any rhyme or reason. However, the respondent submitted that the complainants were not entitled to amount of Rs.9,519/- as claimed by the complainants.

53. The authority observes that there is nothing on record to substantiate the claim of the complainants. Thus, due to lack of documents on the record, the said relief cannot be granted.

H. Directions of the authority

54. 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. 26.08.2013 till 21.01.2021 i.e. expiry of 2 months from the date of offer of

possession (21.11.2020). 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. Also, the amount of Rs.3,82,123/- so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

iii. The complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.

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 is justified in charging the preferential location charges in the facts and circumstances of the present case. Thus, the complainants are liable to pay the same.

vi. The promoter cannot charge any HVAT from the allottees/ complainants for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the

allottees with the dues payable by them or refund the amount if no dues are payable by them.

vii. The respondent/promoter is not entitled to charge any amount towards GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the buyer's agreement.

viii. 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.

55. Complaint stands disposed of.

56. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.02.2022