

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

Complaint no. : 4582 of 2021
Complaint filed on : 30.11.2021
First date of hearing : 01.02.2022
Date of decision : 01.02.2022

1. Saumendu Sinha
2. Smita Sinha
Both RR/o: Flat no.1202, Tower 26, Gurgaon Greens,
Sector 102, Gurugram, Haryana-122505.

Complainants

Versus

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

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Jagdeep Kumar
Shri Harshit Batra

Advocate for the complainants
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 28.05.2013 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	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of	01 of 2019 dated 02.08.2019

	registration vide	
	Extension valid up to	31.12.2019
7.	Occupation certificate granted on	16.07.2019 [annexure R6, page 134 of reply]
8.	Allotment letter dated	27.01.2013 [annexure R2, page 39 of reply]
9.	Unit no.	GGN-26-1202, 12 th floor, building no. 26 [annexure P2, page 45 of complaint]
10.	Unit measuring	1650 sq. ft. [Page 45 of complaint]
11.	Date of execution of buyer's agreement	28.05.2013 [annexure P2, page 42 of complaint]
12.	Payment plan	Construction linked payment plan [Page 73 of complaint]
13.	Total consideration as per statement of account dated 02.12.2021 at page 192 of reply	Rs.1,32,78,012/- Rs.1,22,91,913/- exclusive of taxes as per buyer's agreement
14.	Total amount paid by the complainants as per statement of account dated 02.12.2021 at page 194 of reply	Rs.1,32,83,780/-
15.	Date of start of construction as per statement of account dated 02.12.2021 at page 192 of reply	25.06.2013
16.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of start of construction (25.06.2013) + grace period of 5 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 58 of complaint]	25.06.2016 [Note: Grace period is not included]
17.	Date of offer of possession to the complainants	19.07.2019 [annexure R7, page 137 of reply]

18.	Unit handover dated	24.10.2019 [annexure R7, page 146 of reply]
19.	Conveyance deed executed on	05.11.2019 [annexure R8, page 150 of reply]
20.	Delay in handing over possession w.e.f. 25.06.2016 till 19.09.2019 i.e. date of offer of possession (19.07.2019) + 2 months	3 years 2 month 25 days
21.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 02.12.2021 at page 193 of reply	Rs.4,05,222/-

B. Facts of the complaint

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

- i. That somewhere in the month of November 2012, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in the proposed project of respondent. On 28.11.2012, the complainants had a meeting with the respondent where the respondent explained the project details and highlighted the amenities of the project like Joggers Park, Joggers Track, rose garden, 2 swimming pool, amphitheater and many more. Relying on these details, the complainants enquired about the availability of flat on 12th floor in tower 26 which was a unit consisting area of 1650 sq. ft. It was assured to the complainants that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the



development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to them and assured that the allotment letter and builder buyer agreement for the said project would be issued to them within one week of booking. The complainants, relying upon those assurances and believing them to be true, booked a residential flat bearing no. 1202 on 12th floor in tower no. 26 in the said project measuring approximately super area of 1650 sq. ft. Accordingly, they paid Rs. 7,50,000/- as booking amount on 28.11.2012.

- ii. That on 27.01.2013, approximately after 2 months, the respondent issued a provisional allotment letter containing very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause was drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost them forfeiture of 15% of total consideration value of unit. Respondent exceptionally increased the net consideration value of flat by adding EDC, IDC and PLC and when complainants opposed the unfair trade practices of respondent, they were informed that EDC, IDC and PLC are just the government levies, and they are as per the standard rules of government. Further,

the delay payment charges will be imposed @ 24% which is standard rule of company and company will also compensate at the rate of Rs. 7.50/- per sq. ft. per month in case of delay in possession of flat by company. Complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but there was no other option left with them because if they stop the further payment of installments then in that case, respondent may forfeit 15% of total consideration value from the total amount paid by the complainants. Thereafter, on 28.05.2013, the buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

- iii. That as per the clause 14 of the said buyer's agreement dated 28.05.2013, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period thereon from the date of start of construction. The proposed possession date as per buyer's agreement was due on 25.06.2016. However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the buyer's agreement.

- iv. That from the date of booking 28.11.2012 and till 19.07.2019, the respondent had raised various demands for payment of installments towards sale consideration of the said flat and the complainants have duly paid and satisfied all those demands as agreed in the flat buyer's agreement without any default or delay on their part and had also otherwise fulfilled their part of obligations as agreed in the flat buyer's agreement. The complainants were and have always been ready and willing to fulfill their part of agreement, if any pending.
- v. That as per Annexure-III (Schedule of Payments) of buyer's agreement, the sales consideration for the said flat was Rs.1,22,91,913/- (which includes the charges towards basic price of Rs.1,04,82,075/-; EDC & IDC of Rs. 5,70,900/-, club membership of Rs.50,000/-, IFMS of Rs.82,500/-, car park of Rs.3,00,000/- and PLC for joggers park of Rs.3,22,575/- and PLC for central greens of Rs.4,83,863/-) exclusive of service tax and GST. But later at the time of possession, the respondent added Rs.30,076/- in sale consideration and increased sale consideration to Rs.1,23,21,989/- without any reason for the same and the respondent also charged IFMS of Rs.82,500/- separately whereas IFMS charges were already included in sale consideration. That way the respondent charges IFMS twice from the residents. The respondent increased the sale consideration by

Rs.1,12,576/- (Rs.30,076/- + Rs.82,500/-) without any reason which is illegal, arbitrary and unfair trade practice.

- vi. That as per the statement dated 07.10.2021, issued by the respondent, the complainants have already paid Rs.1,32,83,780/- towards total sale consideration and applicable taxes as demanded by the respondent from time to time and now nothing is pending to be paid on the part of complainants. Although, the respondent charged Rs.1,12,576/- extra from the complainants.
- vii. That the possession was offered by respondent through letter "Intimation of Possession" dated 19.07.2019 which was not a valid offer of possession because respondent had offered the possession with stringent condition to pay certain amounts which were never part of agreement. At the time of offer of possession, builder did not adjust the delay penalty for delayed possession. Respondent demanded Rs.1,44,540/- towards two-year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs.2,85,591/- on pretext of future liability against HVAT which are also unfair trade practice. The respondent demanded Rs. 4,63,560/- towards e-stamp duty and Rs.50,000/- towards registration charges of above said unit in addition to final demand raised by respondent along with offer of

possession. The respondent gave physical handover of aforesaid property on 24.10.2019.

- viii. That after taking possession of flat on 24.10.2019, the complainants also identified some major structural changes which were done by respondent in project in comparison to features of project narrated to them on 28.11.2012 at the office of respondent. The area of the central park was told 8 acres but in reality, it is very small as compared to 8 acres; respondent-built car parking underneath 'Central Park', respondent charged PLC of Rs.4,83,863/- from the complainants on the pretext of Central Park. Respondent did many structural changes and cut down on the internal features of the project based on which the respondent sold this flat to the complainants and other buyers of this project.
- ix. That on 16.08.2019, the complainants telephonically informed the respondent that the respondent is creating anomaly by not compensating the complainants for delay possession charges at the rate of interest specified as per the Act. The complainants made it clear to the respondent that if it does not compensate them at the same rate of interest then they will approach the appropriate forum to get redressal.
- x. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat within

the agreed timelines as agreed in the buyer's agreement and otherwise. That on 24.10.2019, there has been total delay of 3 years. The cause of action accrued in the favour of the complainants and against the respondent on 28.11.2012 when the said flat was booked by the complainants, and it further arose when respondent failed/neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants

5. The complainants are seeking the following relief:

- i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.
- ii. Direct the respondent to return Rs.1,12,576/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and the complainants.
- iii. Direct the respondent to return entire amount paid as GST by complainants between 01.07.2017 till 24.07.2019.
- iv. Direct the respondent to return entire amount paid as VAT tax by the complainants between 01.04.2014 to 30.06.2017 and issue necessary instructions to the complainant's bank to remove lien



marked over FD of Rs.2,85,591/- in favour of the respondent on the pretext of future payment of HVAT.

- v. Any other relief/order or direction which this hon'ble authority may deems fit and proper considering the facts and circumstances of the present complaint.

D. Reply filed by the respondent

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

- i. That the complainants have not approached the court with clean hands as have nowhere divulged the hon'ble authority with the fact that they have been in constant defaults in making good on their part of the obligations. That the complainants are willful and persistent defaulters in making the payments and have willfully concealed that fact thereof. That the complainants enjoy complete title over the unit and have been in peaceful possession of the unit since over two years. That approaching this forum with half cooked and manipulated stories is a grave violation of the doctrine of clean hands and hence, this complaint is liable to be dismissed on this ground alone.
- ii. That the complainants being interested in the real estate development of the respondent under the name and style of "Gurgaon Greens" situated at Sector 102, Gurugram, Haryana tentatively applied for provisional allotment of the unit vide application form, and were consequently was allotted unit no. GGN-26-1202 on 12th floor in building/tower no. 26, having a

- super area of 1650 sq. ft. vide a provisional allotment letter dated 27.01.2013. The project is duly registered with the Haryana RERA vide memo no. HRERA-139/2017/2294 dated 05.12.2017, and has been extended till 31.12.2019.
- iii. That the complainants have had *malafide* conduct from the very beginning. They have been engaged in delaying tactics. That after the provisional allotment of the unit, the complainants were required to execute the buyer's agreement, two copies of which were given to them on 20.03.2013. The complainants were requested to return both the copies at the earliest. However, they failed to do so. Consequently, the complainants were served with buyer's agreement reminder -I on 22.04.2013. Upon continuous defaults on part of the complainants, they were further given a buyer's agreement reminder-II on 09.05.2013 and final buyer's agreement reminder dated 17.05.2013. It was only after continuous efforts on part of the respondent, that the buyer's agreement was finally executed on 28.05.2013.
- iv. That as per the clause 14(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of start of construction and a grace period of 5 months, i.e., 25.11.2016. That the delivery of possession of the unit was "*subject to the Allottee having timely complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and compliance with all provisions, formalities, documentation etc...*"



- v. That it must be noted by the hon'ble authority that despite the default caused by the complainants in fulfilling their obligations, the respondent did not default and instead completed the construction of the project without having regular payment of monies by the allottees like the complainants. That in case of delays caused by the complainants, the proposed due date of delivery of possession is liable to be extended. That as is known and practically understood that regular and timely payments by the allottees are pertinent towards the completion of a real estate project, yet, without the same being done in the present case, the respondent has shown an exemplary conduct as a real estate promoter which should be duly taken into account. Upon the complainants' default of making timely payments after payment request letters, a number of reminders were served to the complainants.
- vi. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated 11.02.2019 before the concerned authority and successfully attained the occupation certificate dated 16.07.2019. It is to be noted that the construction of all the booked apartments has been

completed, out of which more than 500 units have been handed over till date.

- vii. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 19.07.2019. The complainants thereafter executed the indemnity cum undertaking for possession on 09.08.2019 and subsequently, the physical possession of the unit was taken on 24.10.2019. It needs to be categorically noted that the complainants had satisfied themselves with regard to the measurement, location, dimension and development etc. of the unit and the complainants had no claim of any nature whatsoever against the company with regard to the size, dimension, area, location and legal status of the unit, as is evident in the unit handover letter.
- viii. That thereafter, the absolute title over the said unit was transferred to the complainants through conveyance deed bearing vasika no. 8858 dated 05.11.2019. That the complainants after having executed the conveyance deed for more than two years, taking peaceful possession of the unit, and having enjoyed such possession for such a long period, the complainants should not be entitled to claim the interest on the delayed possession. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of the conveyance deed and hence the present complaint is liable to be dismissed with heavy costs. That after having slept on their rights

for a number of years, the complainants cannot be allowed to have the present claims.

- ix. That moreover, without accepting the contents of the complaint in any manner whatsoever, the *bonafide* conduct of the respondent has to be highlighted as the respondent has credited an amount of Rs.19,302/- towards Early Payment Rebate, Rs. 1,00,784/- towards Anti-Profiting and Rs. 4,05,222 as compensation credited on intimation of possession, as is evident from the statement of account dated 02.12.2021. Without prejudice to the rights of the respondent, delayed interest if any has to be 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.
- x. That the respondent denied that that the respondent increased the charges without any reason. It is categorically submitted that the charges of the agreement are agreed to between the parties wilfully and voluntarily, without any protest. It is submitted that the charge for IFMS has been charged as per the agreement, at one instance only. The amount of Rs.1,12,576 has been charged as per the agreement: the sum being resultant of other charges @ Rs.63/-sq. ft. + Administrative charges of Rs.12,000 + Miscellaneous Expenditure for registration charges of INR 2,500 - with a deduction of Rs.5,874/- for reverse EDC. At this juncture, it

is categorically submitted that as per clause 1.2(a)(i) of the buyer's agreement, the *Total Consideration does not include any other charges, as reserved in this Agreement and the Allottee shall be under an obligation to pay such additional cost as may be intimated to him by the Company, from time to time.* These demands and deductions made are also evident from the Annexure 1 of the letter of offer of possession.

- xi. That the payment of GST is an obligation of the complainants, as per clause 3 of the buyer's agreement which makes the complainants liable for payment of any taxes as may be leviable in the future. That the same is an advance tax paid to the government in accordance with the GST Act, 2017, it is the duty of the respondent to deposit the advance amounts of GST Charge as and when the demand is raised on the allottees for the payment of due amount for allotted/sold units in under construction projects.
- xii. That categorically submitted that the complainants were informed about the payment of HVAT for the period of 01.04.2014 - 30.06.2017, a payment reserved to be made to the Haryana Government, and not the respondent. That the payments charges are lawful and as agreed. That the complainants were communicated and made to understand the creation of lien and payment of HVAT, the conditions of which were adhered to by the complainants without any protest. The charges of maintenance, fixed deposit, stamp duty and registration charges were agreed to between the parties, as evident from definitions of "Maintenance Charge", "Taxes and Cesses", "Total Consideration" on page 4 and

5 of the buyer's agreement and clauses 1.2(a) (Total Consideration), 2 (Costs and Expenses), 3 (Taxes and Cesses) and clause 21 (Maintenance) of the buyer's agreement.

xiii. That in light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainants, compensation taken by the complainants at the time of offer of possession, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favour of the respondent.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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 of the authority

F.I Delay possession charges

11. **Relief sought by the complainants:** Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainants as sale consideration of the



said flat from the date of payment till the date of delivery of possession.

12. 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."

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

"14. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and 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 (Thirty Six) months from the date of start of constructio.**, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a **grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."***

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

15. **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 36 (thirty-six) months from the date of start of construction and 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.

The date of start of construction is 25.06.2013 as per statement of account dated 02.12.2021. The period of 36 months expired on 25.06.2016. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (36 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 11.02.2019 when the period of 36 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 5 months cannot be allowed to the promoter at this stage. Therefore, the due date of possession comes out to be 25.06.2016.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the 18% rate of interest. 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.

17. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7.50/- per sq. ft. per month of the super area as per clause 16 of the buyer's agreement for the period of such delay; whereas, as per clause 13 of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into



between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

19. 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 MCLR +2% i.e., 9.30%.

20. **Rate of interest to be paid by the complainants in case of delay in making payments-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. 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 delay possession charges.
22. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 28.05.2013, the possession of the subject flat was to be delivered within a period of 36 months from the date of start of construction plus 5 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction was started on 25.06.2013. 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 25.06.2016. Occupation certificate was granted by the concerned authority on 16.07.2019 and thereafter, the possession of the subject



flat was offered to the complainants on 19.07.2019. Copies of the same have been placed on record. Thereafter, the complainants had taken possession of the subject unit vide unit handover letter dated 24.10.2019 and subsequently, the conveyance deed was executed on 05.11.2019. The authority in complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* has comprehensively decided that the execution of conveyance deed/unit handover letter between the parties does not waive/extinguish the allottees/complainants right to delay possession charges under section 18(1) of the Act. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat to the complainants as per the terms and conditions of the buyer's agreement dated 28.05.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.05.2013 to hand over the possession within the stipulated period.

23. 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 16.07.2019. The respondent offered the possession of the unit in question to the complainants only on 19.07.2019, 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, the complainants 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. 25.06.2016 till the expiry of 2 months from the date of offer of possession (19.07.2019) which comes out to be 19.09.2019.

24. 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 delayed possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 25.06.2016 till 19.09.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
25. Also, the amount of Rs.4,05,222/- (as per statement of account dated 02.12.2021) 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.

F.II Increase in sale price

26. **Relief sought by the complainants:** Direct the respondent to return Rs.1,12,576/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and the complainants.
27. The counsel for the complainants submitted that as per schedule of payment annexed with the buyer's agreement (annexure P2, page 73 of complaint), the total sale consideration is Rs. 1,22,91,913.04/- which is inclusive of basic sale price, EDC and IDC, club membership, IFMS, car parking, PLC and additional charges. Whereas as per statement of account dated 02.12.2021 (annexure R9, page 192 of reply), the sale consideration has been increased to Rs.1,23,21,989/- i.e. an increase of Rs.30,076/-. Further IFMS of Rs.82,500/- has also been again added. Therefore, Rs.1,12,576/- have been charged extra.
28. The respondent submitted that an amount of Rs.1,12,576/- has been charged as per the agreement: the sum being resultant of other charges @ Rs.63/- per sq. ft. + administrative charges of Rs.12,000/- + miscellaneous expenditure for registration charges of Rs.2,500/- with a deduction of Rs.5,874/- for reverse EDC.

29. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has held that a nominal amount of up to Rs.15000/- may be charged by the promoter for administrative/registration charges which it may have incurred for facilitating the transfer of the subject unit as has been fixed by the DTP office in this regard and for any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.
30. In light of the aforesaid judgment, the respondent is directed not to charge any amount under the head 'other charges' or 'miscellaneous expenditure' and is directed to delete the said amount from the total sale consideration.

F.III GST

31. **Relief sought by the complainants:** Direct the respondent to return entire amount paid as GST.
32. The complainants submitted that GST came into force on 01.07.2017 and the possession was supposed to delivered by 25.06.2016. Therefore, the tax which has come into existence after the due date of possession and this extra cost should not be levied on complainants. On the contrary, the respondent denied that any amount towards GST is liable to be returned to the complainants.

33. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainants/allottees as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.
34. In the present complaint, the possession of the subject unit was required to be delivered by 25.06.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. 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.

F.IV HVAT

35. **Relief sought by the complainants:** Direct the respondent to return entire amount paid as VAT tax by the complainants between 01.04.2014 to 30.06.2017 and issue necessary instructions to the complainant's bank to remove lien marked over FD of Rs.2,85,591/- in

favour of the respondent on the pretext of future payment of HVAT for the period 01.04.2014 to 30.06.2017.

36. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter 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). However, the promoter cannot charge any VAT from the allottees/prospective buyers 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 allottee with the dues payable by him or refund the amount if no dues are payable by him.
37. In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 19.07.2019 has demanded lien marked FD of Rs.2,85,591/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same and the lien so marked be removed. Also, information about the same be sent to the concerned bank by the promoter as well as complainants along with the copy of this order.

G. Directions of the authority


38. 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. 25.06.2016 till 19.09.2019 i.e. expiry of 2 months from the date of offer of possession (19.07.2019). 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.4,05,222/- so paid by the respondent 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 respondent is directed not to charge any amount under the head 'other charges' or 'miscellaneous expenditure' and is directed to delete the said amount from the total sale consideration.

- iv. The respondent shall not 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.
- v. The respondent cannot charge any HVAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. Therefore, the respondent shall not demand the same and the lien so marked be removed. Information about the same be also sent to the concerned bank by the promoter as well as complainants along with copy of this order.
- vi. 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.

39. Complaint stands disposed of.

40. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.02.2022


(Dr. K.K. Khandelwal)

Chairman