

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

Complaint no.: 671 of 2023
Date of first hearing: 22.08.2023
Date of Order: 16.01.2025

Dr. Shybal Das
R/o: - A-2, First Floor, Krishna Building,
GP Road, Panjim, Goa-403001

Complainant**Versus**

M/s Emaar MGF Land Limited
Regd. Office: - ECE House, 28, Kasturba
Gandhi Marg, New Delhi-110001

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Hemant Phogat (Advocate)
Shri Dhruv Rohatgi (Advocate)

Respondent**ORDER**

1. This complaint has been filed by the complainant/allottee 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 under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details:

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

S. No	Particulars	Details
1.	Name of the project	"Palm Gardens", Sector-83, Village-Kherki Daula, Gurugram, Haryana.
2.	Project type	Residential
3.	Area of project	21.90 acres
4.	RERA registered	330 of 2017 dated 24.10.2017
5.	DTCP license	License no. 108 dated 18.12.2010 valid up to 17.12.2023
6.	Name of licensee	Logical Developers Pvt. Ltd. and 5 others
7.	Welcome letter	01.06.2012 (As per page no. 36 of the reply)
8.	Date of provisional allotment	01.06.2012 (As per page no. 38 of the reply)
9.	Date of execution of BBA	19.06.2012 (As per page no. 23 of the complaint)
10.	Unit no.	1401, 14 th floor, Tower-02 (As per page no. 25 of the complaint)
11.	Unit area admeasuring	1720 sq. ft. (As per page no. 25 of the complaint)
12.	Possession clause as per BBA	10. POSSESSION (a) Time of handing over the possession <i>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(Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3(Three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit</i>

		<i>and/or the Project.</i> (As per page no. 32 of the complaint)
13.	Date of start of construction	27.02.2013 (As per page no. 144 of the reply)
14.	Due date of possession	27.05.2016 (Note: Due date to be calculated 36 months from date of start of construction i.e., 27.02.2013 plus grace period of 3 months)
15.	Payment plan	Construction linked payment plan
16.	Total sale consideration	Rs.1,18,84,181/- (As per SOA dated 19.06.2023 on page no. 144 of the reply)
17.	Amount paid by the complainant	Rs.1,18,84,179/- (As per SOA dated 19.06.2023 on page no. 144 of the reply)
18.	Occupation certificate	17.10.2019 (As per page no. 99 of the reply)
19.	Offer of possession	04.11.2019 (As per page no. 89 of the complaint)
20.	Indemnity cum undertaking	03.12.2019 (As per page no. 116 of the reply)
21.	Unit handover letter	16.03.2021 (As per page no. 92 of the complaint)
22.	Conveyance deed	29.06.2021 (As per page no. 62 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That after going through advertisement published by respondent in the newspapers and as per the brochure provided by respondent, the complainant has applied for the allotment of a flat /unit bearing no.1401, on 14th floor, building no.2, admeasuring 1720 sq. ft., in the upcoming project named, Palm Gardens, sector-83, village Kherki Daula, Gurugram, for total sale consideration of Rs.1,17,09,386/-. The respondent has issued the provisional allotment letter to the complainant on 01.06.2012.
- II. That a conveyance deed dated 29.06.2021 vide registration no. 1733 has been registered in the office of Sub-Registrar, Manesar in favour

of the complainant by the respondent in respect of the above said unit.

- III. That as per clause 10(a) of the buyer's agreement, the respondent was under legal obligation to handover the possession of the unit to the complainant within 36 months from the date of start of construction with a grace period of three months.
- IV. That as per the ledger it is evident that the respondent demanded the installment on completion of first basement roof slab in the month of February 2013, as the above said unit was under construction linked plan, as such the respondent was obligated to complete the project and to offer /provide possession to the complainant up-to the month of May 2016 (39 months, including grace period of 3 months).
- V. That the respondent issued offer of possession on 04.11.2019, whereby directed the complainant to complete the payment and to schedule a home orientation of the unit for handover. Upon receiving the offer of possession, the complainant cleared all their final dues timely as per the schedule of payment and visited their unit for taking possession. Upon inspection, the complainant came to know that the flat/unit was not ready as per mandate and lacked several in-deficiency and the said fact was acknowledged by the officials of respondent and they signed a home orientation form mentioning the deficiencies, which officials of the respondent recognized /admitted and realized that the flat is not ready and fit for giving /providing possession and further promised and assured the complainant that they will provide the possession of the said flat after rectifying/removing the deficiencies.
- VI. That the respondent through email again offered the possession to the complainant in the month of September, 2020 stating that they

have completed the flat and it is fit for possession and directed the complainant to come and take possession of the said flat. Due to restriction of COVID-19 and the complainant being aged was unable to travel to Gurugram, as he was a practicing doctor in Goa, which was duly intimated to the respondent through email communications. Finally, the complainant visited Gurugram in the month of March 2021, and took possession of their flat and also a unit handover letter dated 16.03.2021 was signed and executed by the respondent.

VII. That the respondent despite being in default for delay in handing over the possession were imposing CAM Charges from earlier date of possession i.e., 04.11.2019, to which the complainant objected to and after several genuine efforts the respondent waived off the CAM Charges from January 2020 to September 2020. Further, the respondent was also bent upon to impose holding charges upon the complainant despite the fact that the complainant visited timely to take possession as per the offer letter dated 04.11.2019 but it was the respondent, who were in-default for offering of possession of an incomplete /unit /flat.

VIII. That the complainant also requested the respondent to pay the delayed possession charges as per the builder buyer's agreement but the respondent paid no heed and, on the contrary, has threatened to complainant to impose holding and CAM charges if complainant does not get registered conveyance deed in his favour. The complainant under such threatening was left with no other option but to pay all the dues as demanded by the respondent and got registered the conveyance deed in his favour.



- IX. That the respondent has committed grave deficiency in completing the project on time and as per the buyer's agreement, there is a delay of 52 months in delivering the possession of the said unit.
- X. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his flat/unit on the time agreed. Therefore, respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured him to buy a unit in the aforesaid project of the respondent. The respondent has trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering his dream home within deadline.
- XI. That the cause of action accrued in favour of the complainant and against the respondent, when complainant had booked the said flat/unit and it further arose when respondent failed/neglected to pay the delay possession charges to the complainant. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay the delayed possession charges till offer of possession of the said flat/unit along with prevailing interest as per the provisions of the Act of 2016.
 - Direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the litigation;
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

A ✓

D. Reply by the respondent:

6. The respondent contested the complaint on the following grounds:
- i. That the complainant has got no locus standi or cause of action to file the present complaint. 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 19.06.2012.
 - ii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
 - iii. That the complainant is not "allottee" but investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainant.
 - iv. That the complainant had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number PGN-02-1401, 14th floor, admeasuring 1720 sq. ft. situated in the project developed by the respondent, known as "Palm Gardens" at Sector 83, Gurugram, Haryana. That thereafter the complainant vides an application form dated 28.05.2012 applied to



the respondent for provisional allotment of a unit bearing number PGN-02-1401 in the project. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same. The complainant consciously and wilfully opted for an instalment linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent issued the provisional allotment letter to the complainant on 01.06.2012.

- v. That subsequently, the respondent sent the buyer's agreement to the complainant, which was executed between the parties on 19.06.2012. The buyer's Agreement was consciously and voluntarily executed by the complainant after reading and understanding the contents thereof to their full satisfaction.
- vi. That since, the complainant was irregular in payment of instalments that is why the respondent was constrained to issue reminders and letters to the complainant requesting them to make payment of demanded amounts. The payment request letter and reminders thereof were sent to the complainant by the respondent clearly mentioning the outstanding amount and the due date for remittance of the respective amounts as per the schedule of payments, requesting him to timely discharge his outstanding financial liability but to no avail.



- vii. That the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes enormous business losses to the respondent. Despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.
- viii. That the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 10(a) of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, the respondent shall handover the possession of the unit within 36 months from the date of start of construction, which started on 27.02.2013. Furthermore, the respondent is entitled for a grace period of 3 months. It is submitted that the grace period of 3 months cannot be excluded and is liable to be included in terms of the Judgment of the Hon'ble Appellate Tribunal in Fantasy Buildwell Pvt. Ltd. Vs Gaurav Manohar Negi, bearing Appeal No. 299 of 2022, decided on 09.12.2022. It is further provided in the buyer's agreement that time period for delivery of

possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. Furthermore, it is categorically expressed in clause 10(b)(iv) that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that the complainant has defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainant. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. The filing of the present complaint is nothing but an abuse of the process of law.

- ix. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and has diligently developed the project in question. The respondent applied for occupation certificate on 11.02.2019 and the same was thereafter issued on 17.10.2019. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.



- x. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted 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. Merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and ignorance 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. It is submitted that the interest for the alleged delay or compensation demanded by the complainant is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainant being beyond the terms and conditions incorporated in the buyer's agreement. The construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant and the conveyance deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- xi. That on receipt of the occupation certificate, the respondent issued an intimation of possession letter dated 04.11.2019 along with reminders for possession intimating the complainant about the procedure of handing over the possession of the said unit. The complainant was 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 the complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. That thereafter, an indemnity cum undertaking for possession dated 03.12.2019 of the said unit was executed by the complainant in favour of the respondent for use and occupation of the said unit whereby the complainant has declared and acknowledged that he has no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. Moreover, the complainant has admitted his obligation to discharge their HVAT liability thereunder. The instant complaint is preferred in complete contravention of their earlier representations and documents executed. The present frivolous complaint has been filed with the mala fide intention to mount undue pressure upon respondent thereby compelling it to succumb to their unjust and illegitimate demands.



- xii. That subsequently, the complainant approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 16.03.2021 was executed by the complainant, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint.
- xiii. That it is pertinent to mention that after execution of the unit handover letter dated 16.03.2021 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further executed a conveyance deed dated 29.06.2021 in respect of the unit in question. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. The contentions advanced by the complainant in the false and frivolous complaint are barred by estoppel.
- xiv. That the complainant who was not forthcoming with the outstanding amounts as per the schedule of payments, therefore, is disentitled for any compensation/interest. The present complaint is nothing but an abuse of the process of law. Without prejudice to the rights of the respondent, delayed Interest if any has to be calculated only on the amounts deposited by the complainant towards the basic principal amount of the unit in question and not on any amount credited by the

respondent, or any payment made by the allottees/complainant towards delayed payment charges (DPC) or any taxes/statutory payments etc.

xv. That the competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna riverbed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of

such a large scale. Further, the parties have agreed that in the event of delay, the allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the buyer's agreement.

xvi. That the complainant has consciously defaulted in performing their part of obligations as enumerated in the buyer's agreement as well as under the Act and it is trite that the complainant cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law, without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent.

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

E. Jurisdiction of the Authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by them at a later stage.

F. Findings on the objections raised by the respondent:

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

11. Another contention of the respondent is 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 as referred to under the provisions of the Act or the said rules has been executed inter se parties. 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)** decided on 06.12.2017 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."

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

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



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

13. 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's 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 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 any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding the complaint being barred by estoppel.

14. The respondent has raised an objection that the instant complaint is barred by estoppel as upon execution of conveyance deed dated 29.06.2021, the complainant is now estopped from raising these belated claims/demands as they themselves had acknowledged and accepted that *"that the vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said apartment, etc., therein."*
15. The Authority observed that though the conveyance deed has been executed on 29.06.2021 but as per proviso to section 18 of the Act of 2016, if the 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. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was 27.05.2016 but the same was offered on



04.11.2019 after a delay of more than 3 years. Therefore, the complainant is entitled for delay possession charges for the delayed period as statutory right of the allottee as per the provisions of section 18 of the Act of 2016. Thus, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

F.III Objection regarding the complainant being investor.

16. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the flat buyer's agreement, it is revealed that the complainant is buyer and he has paid a total price of Rs.1,18,84,179/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

17. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the

definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.IV Objection regarding the force majeure conditions:

18. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act of 2016 and Rules, 2017.**



19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

20. Clause 10(a) of buyer's agreement dated 19.06.2012 provides for handing over of possession and is reproduced below:

10. 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(Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3(Three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the Project.

(Emphasis supplied)

21. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of start of construction with grace period of 3 months.
22. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

23. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 27.05.2016 including grace period of 90 days.
24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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.

25. The legislature in its wisdom in the subordinate legislation under the provision of 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.

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26. 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., 16.01.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. 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;"*
28. Therefore, interest on the delay payments from the shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
29. The counsel for the respondent vide written submissions dated 16.05.2024 has submitted that an amount of Rs.6,16,549/- has already been credited towards delay compensation and the same has been submitted vide proceedings of the day dated 21.11.2024.
30. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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. The due date of handing over of possession is

27.05.2016 but the offer of possession was made on 04.11.2019 and the conveyance deed was executed on 29.06.2021. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of handing over the possession i.e., 27.05.2016 till offer of possession (04.11.2019) after obtaining occupation certificate plus two months i.e., 04.01.2020 or actual taking over of possession i.e., 16.03.2021, whichever is earlier at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Offer of possession plus two months which comes out to be 04.01.2020 is the earlier date. Thus, the complainants are entitled for delayed possession charges from 27.05.2016 till 04.01.2020. The amount of Rs.6,16,549/- already paid on account of delay compensation shall be adjusted.

G.II Direct the respondent to pay an amount of Rs. 1,00,000/- to the as cost of present litigation.

31. They are seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H.Directions of the authority:

32. 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 interest to the complainant against the paid-up amount at the prescribed rate i.e. 11.10% p.a. for every month of delay from the due date of handing over of possession i.e. 27.05.2016 till offer of possession (04.11.2019) after obtaining occupation certificate plus two months i.e., 04.01.2020, being earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules after adjusting an amount of Rs.6,16,549/- already paid on account of delay compensation.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

33. Complaint stands disposed of.

34. File be consigned to registry.

Dated: 16.01.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram