

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

Complaint no. : 6632 of 2022
Date of order : 25.09.2024

1. Chanderkanta Oberoi
2. Harpreet Kaur
Both R/o: DU-23, Vishaka Enclave,
Pitampura, North West Delhi.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Gaurav Rawat (Advocate)
Harshit Batra (Advocate)

Complainants
Respondent

HARERA
GURUGRAM

ORDER

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

Sr. No.	Particulars	Details
1.	Name of the project	"Premier Terraces at the Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing
3.	DTCP License no.	DS-2007/24799 of 2007 Dated- 27.09.2007
4.	RERA registered	Not registered
5.	Unit no.	Ptt-08-0101, 1 st floor, tower-08 (As on page 36 of complaint)
6.	Unit area	2100sq.ft.. [super-area] Along with 2 car parking (As on page 36 of complaint)
7..	Date of execution of buyer's agreement between original allottee and respondent	26.07.2010 (As on page 35 of complaint)
8.	Nomination letter in favor of complainant	01.03.2019 (As on page 34 of complaint)
9.	Possession clause	14. POSSESSION (a) Time of handing over the

Possession

Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the unit(which falls within ground plus four floors tower/building) **within a period of thirty(30) months from the date of commencement of construction**, and for the Unit(which falls within ground plus thirteen floors tower/building) within a period of thirty six(36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the project.

(Emphasis supplied)

(As on page 48 of complaint)

10.	Date of start of construction	24.06.2011 <i>(As per S.O.A dated 14.03.2019 on page no. 136 of reply)</i>
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11.	Due date of possession	24.03.2014 (calculated 30 months from date of commencement of construction + 3 months)
12.	Total sales consideration	Rs.1,33,13,570/- (As on page 79 of complaint)
13.	Amount paid by the complainant	Rs.1,31,36,771/- (As per S.O.A 14.03.2019 on page 80 of complaint)
14.	Occupation certificate	08.03.2019 (As on page 128 of reply)
15.	Offer of possession	14.03.2019 (As on page 74 of complaint)
16.	Indemnity cum undertaking	26.03.2019 (As on page 141 of reply)
17.	Unit handover letter	02.05.2019 (As on page 142 of reply)
18.	Conveyance deed	06.04.2019 (As on page 144 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the complainants are the law-abiding citizen and are allottees' within the Act, 2016. The respondent i.e., M/s Emaar MGF Land Ltd. is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- II. That the respondent advertised about its new project namely "Palm Terraces" on the 45.48 acres of land, in Sector 66 of the Gurugram. The

respondent painted a rosy picture of the project in its advertisements making tall claims.

- III. Relying on various representations and assurances given by the respondent company and on belief of such assurances, original allottees' namely Gurmeher Singh Allagh and Tarvinder Allagh, booked a unit in the project by paying an amount of Rs.10,00,000/- on 26.04.2010 towards booking of the unit to the respondent on 26.04.2010 and the same was acknowledged by the respondent.
- IV. That a Buyer's Agreement was executed between the original allottees' and respondent on 26.07.2010. As per the buyer's agreement the sale price of the said apartment was Rs.1,29,28,312/-.That would include the basic sale price, EDC, IDC, preferential location charges and exclusive right to use the dedicated car parking. The complainants were also handed over one detailed payment plan which was construction linked plan.
- V. As per clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit within 36 months from the date of commencement of construction with a grace period of 90 days for applying and obtaining the Occupation Certificate. Therefore, the due date of possession is calculated from date of agreement without including grace period as there is admitted delay in completing the construction of the project hence respondent is not entitled for grace period. Hence the due date comes out to be 26.07.2013.
- VI. The original allottees' subsequently transferred / endorsed the unit in favour of the complainants. The balance amount was paid by the complainants according to the demands raised by the respondent. The respondent vide their nomination letter dated 01.03.2019, recorded their consent to the transfer.

- VII. As per the demands raised by the respondent, the complainants already paid a total sum of Rs.1,33,13,570/- towards the unit against the total sale consideration of Rs.1,29,28,312/-. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed.
- VIII. That the complainants have suffered a loss and damage as they had deposited the money in the hope of getting the unit for residential purposes. They have not only been deprived of the timely possession of the unit but the prospective return they could have got if they had invested in fixed deposit in bank. The complainants after many requests and emails; received the offer of possession on 14.03.2019.
- IX. It is pertinent to note here that along with the letter of offer of possession, respondent raised several illegal demands which were actually not payable as per the Builder Buyer Agreement and thus it cannot be considered to be a valid offer of possession.
- X. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession. In fact it is a letter for demand of money rather than being an offer of possession.
- XI. That the respondent has sought advance maintenance charges of Rs.75,600/-from the complainants for 12 months which is absolutely illegal. The respondent demanded Rs.12,626/- on account of electric meter charges and electrification charges of Rs.74,844/- from the complainants is absolutely illegal as the cost of the electric meter in the

market is not more than Rs.2,500/-hence asking for such a huge amount is unjustified and illegal and therefore needs to be withdrawn immediately.

- XII. That the complainants requested the respondent to allow the complainants to inspect the unit before paying any further amount and also requested to provide the car parking space number, but the respondent failed to reply. The respondent asked the complainants to sign the indemnity bond as a pre-requisite condition for handing over of the possession. The complainants raised an objection to the above said pre-requisite condition of the respondent as no delay possession charges were paid to the complainants but instead of paying the delay possession charges, the respondent clearly refused to handover to possession if the indemnity bond is not signed. Further, left with no other option instead of signing the same, the complainants signed it.
- XIII. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed on 19.06.2019.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i Direct the respondent to pay the interest on the total amount paid at the prescribed rate of interest from the due date of possession till date of actual physical possession.
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.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
- I. That the complainants have 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 26.07.2010.
 - II. That the complainants are not "Allottees" but Investors who have 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 as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
 - III. That the original allottees (Mr. Gurmehar Allagh and Ms. Tarvinder Allagh) approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Premier Terraces at Palm Drive" situated in Sector 66, Urban Estate Gurgaon, Haryana..
 - IV. That thereafter the original allottees, vide an application form applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no PTT-08-0101, located on the First Floor, Tower-08 admeasuring 2100 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 05.05.2010. The original allottees consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the Respondent that they shall remit every installment on time as per the payment schedule.
 - V. Thereafter, a Buyer's Agreement dated 26.07.2010 was executed between the original allottees and the respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily

executed between the parties and the terms and conditions of the same are binding on both the parties.

- VI. That as per clause 14(a) of the Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. It is submitted that the remittance of all amounts due and payable by the original allottees under the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent.
- VII. That thereafter, the original allottees approached the respondent in lieu of transferring their rights, title, interest of the said property to the complainants. That pursuant thereto, the unit was transferred to the complainants by the original allottees upon the execution of the affidavit and indemnity cum undertaking dated 14.02.2019 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 01.03.2019.
- VIII. That the complainants being subsequent buyers, have no right to seek delay possession charges. That at the time of nomination of the complainants, the project was already delayed due to reasons beyond the control of the respondent. That such prior knowledge, willing and self-initiated endorsement of the complainants, without any protest amounts to acceptance of the existing circumstances and the complainants cannot be allowed to reap benefits by extracting monies from the respondent.
- IX. That the complainants and the original allottees had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants and had paid delayed payment interest at multiple

occasions. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances.

- x. At this stage, it is categorical to note that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Further, the respondent faced 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 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. 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 and despite all the *force majeure*

circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

- XI. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities.
- XII. That despite the default caused, the respondent applied for Occupation Certificate in respect of the unit on 11.01.2018, 27.02.2019. That thereafter, the complainants were offered possession of the unit in question through letter of offer of possession dated 14.03.2019. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit. It is submitted that the complainants delayed the procedure of taking the possession of the said unit on their own account.
- XIII. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by July, 2013 are wrong, *malafide* and result of an afterthought in view of the fact that the complainants stepped into the shoes of the erstwhile allottees vide nomination letter dated 01.03.2019 duly accepting the delay in the said project.
- XIV. That the respondent earnestly requested the complainants to take possession of the unit in question and participate in execution of the conveyance deed in respect of the unit after completing all the formalities regarding delivery of possession. However, the complainants did not pay any heed to the requests of the respondent and threatened

the respondent with institution of unwarranted litigation. That thereafter, an indemnity cum undertaking for possession dated 26.03.2019 was executed between the complainants and the respondent for use and occupation of the said unit whereby the complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question.

- XV. That the complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the Buyer's Agreement, for not obtaining possession. The complainants finally took the possession of the unit on 02.05.2019 and consequently, the conveyance deed was executed on 19.06.2019. It was specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- XVI. That it needs to be categorically noted that in the present case, since the original allottees entered into an agreement for sale with the complainants, the complainants were very well aware of the delay in the said project but still proceeded to go ahead with the purchase of the said unit under no coercion.
- XVII. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after over 3 years of passing of limitation, which cannot be condoned under any circumstance whatsoever.

- XVIII. That moreover, after the execution of the Conveyance deed, the contractual relationship between the Parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties thereunder. That moreover, it is pertinent top note that the conveyance deed was executed over 3 years before the filing of the present complaint and hence the present complaint is barred by Limitation.
- XIX. That 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 principal amount of the unit and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC). It is pertinent to mention that the respondent has already credited an amount of Rs 6,26,548 in the account of the complainants at the time of offer of possession.
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 submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. 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

10. 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;

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.

F.1 Whether the complainant can claim delayed possession charges after execution of the conveyance deed .

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 06.04.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.

13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.
15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get her title perfected by executing the conveyance deed which is the statutory

right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

17. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as ***Varun Gupta V/s Emaar MGF Land limited and others*** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or

executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

F.II. Whether the complaint is barred by limitation or not?

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 14.03.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 10.10.2022 which is 3 years 6 months and 26 days from the date of cause of action. In the present case the three year period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the

above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.III Objection regarding project being delayed due to force majeure circumstances.

22. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to the order of various authorities. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. The Authority is of the view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings regarding relief sought by the complainant

G.1 Direct the respondent to pay the interest on the total amount paid at the prescribed rate of interest from the due date of possession till date of actual physical possession.

23. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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."

(Emphasis supplied)

24. Clause 14(a) of the apartment buyer's agreement (in short, the agreement) dated 26.07.2010, provides for handing over possession and the same is reproduced below:

14(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 Developer shall make all efforts to handover possession of the unit(which falls within ground plus four floors tower/building) **within a period of thirty(30) months from the date of commencement of construction**, and for the Unit(which falls within ground plus thirteen floors tower/building) within a period of thirty six(36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the project.*

25. The buyer's agreement was executed on 26.07.2010. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 30 months from the date of start of construction. The date of start of construction as per the Statement of Accounts as on 14.03.2019 at page no. 79 of complaint is 24.06.2011. Thus, the Authority have calculated 30 months from the date of start of construction, also the grace period of 3 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 24.03.2014.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

27. 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.
28. 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., 25.09.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
29. 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;"*

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 Authority has observed that the Buyer's Agreement was executed on 26.07.2010 between the original allottee Mr. Gurmeher Allagh and the co-Allottee i.e., Mrs. Tarvinder Allagh and the respondent. The possession of the subject unit was to be offered within a period of 30 months plus 3 months from date of commencement of construction. The Authority calculated due date of possession from the date of start of construction i.e., 24.06.2011 along with a grace period of 3 months which comes out to be 24.03.2014. The respondent has failed to handover possession of the subject unit on the due date.
31. Subsequently, the unit was transferred to the complainants by the original allottees, and this transfer was acknowledged by the respondent through a nomination letter dated 01.03.2019. The occupation certificate for the project was obtained by the respondent/promoter on 08.03.2019, and the unit was subsequently offered to the complainants on 14.03.2019. The conveyance deed in favor of the complainants was executed on 06 .04.2019. While it is clear that the respondent/promoter failed to fulfill its obligations under the agreement by not delivering possession within the stipulated timeframe, the complainants were aware of the delays and chose to proceed with the purchase of the unit. The complainants entered the project with the understanding that possession would be delayed beyond the initial timeline. In the current complaint, the endorsement in favor of the complainants occurred on 01.03.2019, and the occupation certificate was received by the respondent on 08.03.2019. Thus, the complainants have only experienced delays from the date of their endorsement 01.03.2019.

32. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 01.03.2019 till the date of offer of possession plus two months or handover of possession, whichever is earlier, after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority: -

33. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainants from the date 01.03.2019 till the date of offer of possession plus 2 months or handover of possession whichever is earlier after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued, if any , after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.
- iii. The rate of interest chargeable from the allottees/complainants by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

iv. The respondent shall not charge anything from the complainant which is not the part of the agreement.

34. Complaint stands disposed of.
35. File be consigned to the registry.

Dated: 25.09.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM