



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

Date of decision: 08.09.2022

Name of the Builder		Emaar MGF Land Limited	
Project Name		Gurgaon Greens	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/4338/2021	Emaar MGF Land Limited vs. Divya Bhardwaj	Shri Dhruv Rohatgi Shri Sanjeev Sharma
2.	CR/1127/2022	Divya Bhardwaj vs. Emaar MGF Land Limited	Shri Sanjeev Sharma Shri Dhruv Rohatgi

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The present complaint stands disposed of with **Cr. no. 1127 of 2022 titled as Divya Bhardwaj vs. Emaar MGF Land Limited** which was listed at serial no. 69 of the cause list.



**A. Project and unit related details**

3. Since both the cases relate to the allotted unit one filed by the allottee and the other one filed by the builder, so far deciding both the cases, the facts of first case are being taken. But before that the particulars of the project, the details of the sale consideration, the amount paid by the complainant, the date of proposed handing over the possession, delay period, if any are being given in the tabular form.

Sr. No.	Particulars	Details
1.	Name of the project	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	<b>Registered in two phases</b> <b>i. 208 of 2017 dated 15.09.2017</b> [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019]  <b>ii. 14 of 2019 dated 28.03.2019(Phase II)</b> [Valid up to 17.10.2018 for 4.57 acres]
6.	Occupation certificate	17.10.2019 [annexure R10, page 164-167 of reply]



7.	Provisional allotment letter dated	26.02.2013 [annexure R2, page 41-51 of reply]
8.	Unit no.	IG-01-1402, 14 <sup>th</sup> floor, building no. 01
9.	Area of the unit (super area)	2000 sq. ft.
10.	Date of execution of buyer's agreement	01.07.2013 [annexure R3, page 52-107 of reply]
11.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><i>Subject to terms of this clause and barring force majeure conditions, 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 <b>42 (Forty Two) months from the date of start of construction</b>, 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 <b>grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</b></i></p> <p>(Emphasis supplied)</p> <p>[annexure R4, page 64 of reply]</p>



12.	Date of start of construction as per statement of account dated 25.10.2018 at page 84 of complaint	11.11.2013	
13.	Due date of possession	11.05.2017 [Note: Grace period is not included]	
14.	Total consideration	As per statement of account dated 25.10.2018 at page 84 of complaint	As per payment plan annexed with the buyer's agreement
		Rs. 1,55,42,390/-	Rs.1,51,46,976/-
15.	Total amount paid by the complainants as per statement of account dated 25.10.2018 at page 84 of complaint	Rs.1,46,89,220/-	
16.	Offer of possession	25.10.2018 [annexure R11, page 168-175 of reply]	
17.	Request letter for name substitution by the complainant	02.11.2019 [page 192-195]	

**B. Facts of the complaint**

4. The complainant has made the following submissions in the complaint:
- That it is humbly submitted that upon the representation by the respondent no. 1 and advertisement done in said behalf, the respondent no. 1 was to construct a group housing residential complex namely "imperial gardens "on parcel of land belonging to respondent no. 2 measuring 12 acres for which the respondent no.1 was granted licence no. 107 of 2012 dated 15.10.2012 located at sector-102, Gurgaon, Haryana.



- ii. The original allottee/purchaser showed the interest in purchasing a unit with the respondent no. 1 and therefore made a payment of Rs. 5,00,000/- in favour of the respondent no. 1 on 30.10.2012 vide cheque no. 814566 and thereafter a provisional allotment letter dated 26.02.2013 was issued in favour of the original allottee/purchaser whereby the complainant was allotted unit no. IG-01-1402, 14th floor, tower/ building 01, admeasuring 2000 Sq. ft. in the project "imperial gardens" located at sector 102, Gurgaon, Haryana floated by the respondent no. 1 and on the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised.
- iii. That the original allottee/purchaser and the respondents entered into the buyer's agreement on 01.07.2013 for a total sale consideration of Rs. 1,45,71,000/- as per clause 1.2 (a) of the buyer's agreement. Clause 14 talks about handing possession within 42 months from the date of start of construction and therefore, the possession was to be handed over by 11.05.2017.
- iv. That on 02.11.2019, the original allottee/purchaser transferred/ substituted the unit in question in the name of the complainant and the complainant is the wife of the original allottee/purchaser and it is further submitted that as per the statement of account dated 03.03.2021, the complainant had made a total payment of Rs. 1,47,14,239/- between 30.10.2012 to 12.12.2018 as and when demands raised by the respondent no. 1. It is pertinent to note that despite making the payment of the amount more than the total consideration as mentioned in the



- buyer's agreement, the statement of account shows that the revised total cost of the unit stands to be Rs. 1,55,42,390/- .
- v. That when the construction was getting delayed, the original allottee/purchaser refused to make the payment as demanded by the respondent no. 1 and asked for the proof of construction stage to which there was no reply from the respondent no. 1 and the email dated 22.10.2014 sent by the original allottee/purchaser is still lying open to answer. That since the original allottee/ purchaser as well as the complainant were NRI, they were not in a position to travel frequently just for the reason that the respondent no. 1 was not addressing to their emails and therefore, when in the year 2016 the complainant with the original allottee travelled to India, they visited the office of the respondent no. 1, they handed over to the respondent no. 1 Post-dated cheques dated 15.05.2016, 15.06.2016, 15.07.2016, 15.08.2016 and 15.08.2016 each cheque for an amount of Rs. 5,59,906/-. The complainant also got the records checked with the respondent no. 1 and thus, after these cheques, there were no further delays on the part of the original allottee as well as the complainant.
- vi. That thereafter, the complainant in the year 2017 suffered from serious congestive heart failure in Philippines and since she was hospitalised, she was in desperate need of some financial aid and therefore, requested the respondent no. 1 to refund the sale consideration amount paid by the complainant through email as well as with the help of someone got delivered the letter on 12.12.2018 but since the same was not materialized as the



respondent no. 1 declined the request of the complainant vide email dated 21.05.2019.

**C. Relief sought by the complainant:**

5. The complainant has sought following relief(s):
  - (i) Direct the respondent to pay interest at the prescribed rate for the delayed period of handing over of possession.
6. 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**

7. The respondent has contested the complaint on the following grounds.
  - i. 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 authority and can only be adjudicated by the adjudicating officer/civil court. The present complaint deserves to be dismissed on this ground alone.
  - ii. That the instant complaint is barred by limitation. The complainant has alleged that the respondent no. 1 was obligated to offer possession of the unit in question by May 2017 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking



- interest accrued in favour of the complainant in 2017 and consequently the instant complaint is barred by limitation.
- iii. That the complainant has not come before this authority with clean hands and has suppressed vital and material facts from this authority. The correct facts are set out in the succeeding paras of the present reply. That the complainant is not an "allottee" but an 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. Therefore, no equity lies in favour of the complainant.
- iv. That Mr. Parikshat Nagpal (hereinafter "original allottee") had approached the respondent no. 1 sometime in the year 2013 for purchase of an independent unit in its upcoming residential project "**Imperial Gardens**" (hereinafter "the project") situated in sector 102, village Kherki Majra Dhankot, Tehsil & District Gurugram, Haryana. It is submitted that the original allottee prior to approaching the respondent No. 1, had conducted extensive and independent enquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent No. 1 to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent no. 1.





- v. That thereafter the original allottee vide an application form applied to the respondent No. 1 for provisional allotment of a unit in the project and the original allottee was duly welcomed by the respondent no. 1. The original allottee, in pursuance of the aforesaid application form, was allotted an independent unit bearing no **IG-01-1402**, in the project vide provisional allotment letter dated 26.02.2013. The original allottee consciously and willfully undertook to remit the sale consideration for the unit in question in accordance with the payment plan incorporated in the buyer's agreement. The respondent No. 1 had no reason to suspect bona fide of the complainant.
- vi. That it is respectfully submitted that the rights and obligations of original allottee as well as respondent No. 1 are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 01.07.2013 executed between the parties, which continues to be binding upon the parties thereto with full force and effect. It is submitted that the complainant out of his own free will and volition, without any inducement, force, misrepresentation or coercion of the respondent No. 1 purchased the said unit with open eyes.
- vii. That it is submitted that the original allottee consciously and maliciously chose to ignore the payment request letters, notices and reminders issued by the respondent No. 1 and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. It is relevant to submit that 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 No. 1. The original allottee chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent No. 1 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, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent No. 1, 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 and compensation 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 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.
- ix. That the original allottee from the beginning was in default in remittance of the timely installments. It is submitted that despite of many payment requests letters, reminders, notices sent to the original allottee, no response was ever received from him. It is submitted that the respondent no. 1 had to move from pillar to post in order to get the installments from the original allottee. It is further submitted that the original allottee neglected/failed to deposit the payments due and payable to the respondent no. 1. It is pertinent to note that as per clause 13 of the buyer's agreement, in case of delay in making any payment due to the respondent no. 1, the respondent no. 1 company shall have the right to terminate the agreement and forfeit the earnest money. It is noteworthy to mention that the failed to adhere to his part of performance of this agreement. That the respondent no. 1 despite of issuing many payments request letters, notices, didn't received the installments, hence, the respondent no. 1 was constrained to cancel the said unit in question. It is submitted that a cancellation letter dated 21.02.2014 was issued to the original allottee terminating the buyer's agreement.
- 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 no. 1, it is respectfully submitted that after the receipt of the said cancellation letter, the original allottee approached the respondent no. 1 requesting it to not cancel the said unit in



question and undertook to make payments of the sale consideration to the respondent no. 1 in accordance with the schedule of payment attached with the allotment letter. That due to the good reputation of the respondent no. 1 in the real estate sector, the respondent no. 1 agreed to the request of the original allottee subject to the timely remittance of all instalments.

- xi. It is submitted that an amendment agreement to the buyer's agreement dated 11.05.2016 was executed between the original allottee and the respondent no. 1. It is pertinent to note that as per clause 3 of the addendum agreement, clause 14(a) of the buyer's agreement was amended as below:

*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 42 months from the date of execution of this amendment Agreement, 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 occupation certificate in respect of the Unit and/or the Project.*

***It is further submitted that an amount of Rs. 12,58,743/- as delayed payment charges were also waived off by the respondent No. 1 as a onetime gesture of goodwill and the original allottee further undertook to pay all the future installments within the stipulated time.***



- xii. That is respectfully submitted that the rights and obligations of the original allottee as well as the respondent no. 1 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. As per **clause 12** of the buyer's agreement, time is of the essence with respect to the allottee's obligations to perform or observe all the obligations of the allottee under this agreement to pay sale consideration along with other charges on or before due date or as and when demanded by the respondent no. 1 but on the contrary, the original allottee paid no heed to the terms and conditions of the buyer's agreement and defaulted in remitting timely installments. It is submitted that a perusal of the calculation sheet of the original allottee maintained with the respondent no. 1, the original allottee had been levied delay payment charges furthermore, the respondent no. 1 ultimately, in order to amicably resolve the issue and to maintain cordiality and as a goodwill gesture, waived off the said delay payment charges. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent no. 1 and compel the respondent no. 1 to surrender to her illegal demands. it is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- xiii. That the respondent no. 1 had submitted an application dated 11.02.2019 for grant of occupation certificate to the concerned statutory authority. The occupation certificate vide memo bearing no. ZP-845/AD(RA)/2019/25815 was granted on



17.10.2019. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent no. 1 ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority, and the respondent No. 1 does not exercise any control over the matter. Therefore, the time period utilized by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilized in the implementation of the project in terms of the buyer's agreement. As far as respondent no. 1 is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

- xiv. That the original allottee was offered possession of the unit in question through letter of offer of possession dated 25.10.2018 . However, the original allottee failed to take possession of the unit in question and further delayed the process of handover indefinitely. the respondent had to issue several reminders to the original allottee to take the possession of the unit, but to no avail. That the original allottee has also executed an indemnity cum undertaking for possession. The original allottee 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 original allottee. However, the original allottee approached the respondent no. 1 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 no. 1 explained to the original allottee 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 no. 1 earnestly requested the original allottee to obtain possession of the unit in question and further requested the original allottee to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the original allottee did not pay any heed to the legitimate, just and fair requests of the respondent no. 1 and threatened the respondent no. 1 with institution of unwarranted litigation. It is relevant to submit that the complainant has been given compensation to amounting to Rs. 2,16,986/- as a goodwill gesture. The respondent has also credited a sum of Rs. 25,019/- on account of Anti Profiting. Without prejudice to the rights of the respondent no. 1, Delayed Interest if any has to be calculated only on the amounts deposited by the allottees/complainant towards the basic principal amount of the unit in question and not on any amount credited by the respondent no. 1, or any payment made by the allottees/complainant towards delayed payment charges (dpc) or any taxes/statutory payments etc.

- xv. That it is pertinent to mention that the original allottee did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the

original allottee refrained from obtaining possession of the unit in question. The original allottee needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favour of the original allottee. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the original allottee and without prejudice to the contentions of the respondent no. 1, it is submitted that the alleged interest frivolously and falsely sought by the original allottee is baseless and without any credible evidence. The original allottee is not entitled to contend the interest on the amount paid even when the possession was offered with the agreed time as per the addendum agreement to the buyer's agreement. The original allottee has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the original allottee is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xvi. That without prejudice to the contentions of the respondent no. 1, it is submitted that a letter for name substitution was filed by the original allottee in name of the complainant, thereby substituting the complainant as a new allottee in the said agreement as per the terms and conditions set out therein. It is pertinent to mention that the complainant further executed an affidavit dated 02.11.2019 and an indemnity cum undertaking dated 02.11.2019 whereby complainant had consciously and



voluntarily declared and affirmed that she would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the complainant that having been substituted in the place of the original allottees, she is not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent No. 1. Similarly, the original Allottee had also executed an affidavit and indemnity cum undertaking on the same lines. Furthermore, the respondent no. 1, at the time of endorsement of the unit in question in her favour, had specifically indicated to the complainant that the original allottee had defaulted in timely remittance of the installments pertaining to the unit in question and therefore, have disintitiled himself for any compensation/interest. The respondent no. 1 had conveyed to the complainant that on account of the defaults of the original allottee, the complainant would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by the complainant. That the complainant was also apprised with the fact that the respondent no. 1 has already offered the possession of the said unit in question and the original allottee failed to remit the balance outstanding dues and to complete other formalities. The complainant is conscious and aware of the fact that she is not entitled to any right or claim against respondent no. 1. the complainant has intentionally distorted the real and true facts



and have filed the present complaint in order to harass the respondent no. 1 and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

xvii. That it is submitted that after the substitution of the name of the complainant as a new allottee, the complainant was served with possession reminders in order to complete the formalities and to clear the balance outstanding dues, so that the said unit cannot be handed over to the complainant, but the complainant also did not pay any heed to the requests of the respondent no. 1. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent no. 1 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. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent no. 1.

xviii. That it is the obligation of the complainant under the act to take the possession of the allotment within two months of occupancy certificate and to thereafter execute the conveyance deed. The relevant provisions of the Act are reiterated hereinbelow:

**Section 19(10):** *Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.*

**Section 19(11):** *Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or*



*building, as the case may be, as provided under sub-section (1) of section 17 of this Act.*

- xix. That the complainant is not only in breach of the section 19(10) of rera (assuming without in any manner admitting the provisions of the act to be applicable to the project in question), by failing to take possession of the unit but also in breach of the clauses of the buyer's agreement. That the relevant clause 17.1 of the buyer's agreement is reproduced below:

**17.1** *It is agreed by the Allottee(s) that in the event of the failure of the Allottee(s) to take the possession of the said Unit in the manner as aforesaid in Clause 16, then the Company shall the option to cancel this Agreement and avail the remedies as stipulated in Clause 20 of this Agreement or the Company may, without prejudice to its rights under any of the clauses of this Agreement and at its sole discretion, decide to condone the delay by the Allottee(s) in taking over the said Unit in the manner as stated in this clause on the condition that the Allottee(s) shall pay to the Company the following amount:*

- a) *holding charges @ Rs. 7.5/- per sq. ft. of the Super Area of the said Unit per month for the entire period of such delay.*
- b) *Delayed payment charges @ 24% per annum as set out in this Agreement.*
- c) *Maintenance charges from the deemed date of possession as per notice of possession.*

*Further the company also has the right to withhold conveyance or handing over for occupation and use of the said Unit, till the time all outstanding amounts along with overdue interest as prescribed in this Agreement, if any, are fully paid.*

**17.2** *The Allottee agrees and understands that the holding charges as stipulated in clause 17.1(a) shall be a distinct charge and shall be in addition to Maintenance Charges or any other outgoing cesses, taxes, levies etc which shall be payable at the risk, responsibility and cost of the Allottee. Further, the Allottee agrees that in the event of his/her failure to take possession of the said Unit within the time stipulated by the Company in its notice, the Allottee shall have no right or any claim in respect of any item of work in the said Unit which the Allottee may allege not to have been carried out or completed or in respect of any design specifications,*

*building materials, use or any other reason whatsoever and that the Allottee shall be deemed to have been fully satisfied in all matters concerning construction work related to the said Unit / Building/ Project.*

The complainant is responsible for all the consequences of breach of the buyer's agreement and violation of Rera.

- xx. In view thereof, the complainant does not deserve any relief whatsoever. The present complaint merits outright dismissal, with costs and strictures against the complainant. That it is submitted that all the demands that have been raised by the respondent no. 1 are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. Further, the amendment agreement dated 11.05.2016, the date for handing over possession was duly extended and the complainant had accepted the same and further accepted and acknowledged the benefits advanced by the respondent for waiver of the delay payment charges. Moreover, once application grant of occupation certificate is submitted by the respondent no. 1 in the office of concerned statutory authority, the respondent no. 1 ceases to have any control over the same. The respondent no. 1 cannot regulate the functioning of the concerned statutory authority. Therefore, no default or lapse can be attributed to the respondent no. 1. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent no. 1. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

**E. Jurisdiction of the authority**

8. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter jurisdiction**

10. Section 11(4)(a) of the Act, 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;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**Section 34-Functions of the Authority:**



*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act of 2016 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 the complainant at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding entitlement of DPC on ground of complainant being investor**

12. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.
13. The authority observes that the act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter 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 buyer's agreement, it is revealed that the complainants are an allottee/buyer and she has paid total price of Rs. 1,46,89,220/- to the promoter towards purchase of the said unit in the project of the promoter. 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;"*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred 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". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainant-allottee being investors is not entitled to protection of this Act stands rejected.

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

15. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application for issuance of occupation certificate is concerned, the authority observed that the respondent has applied for grant of occupation



certificate on 11.02.2019 and thereafter vide memo no. ZP-845/AD(RA)/2019/25815 dated 17.10.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted only on 30.05.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 06.09.2019 and 07.09.2019 respectively. As such, the application submitted on 11.02.2019 was incomplete and an incomplete application is no application in the eyes of law.

16. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 07.09.2019 and consequently the concerned authority has granted occupation certificate on 17.10.2019. Therefore, in view of the deficiency in the said application dated





11.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

**G. Findings on the relief sought by the complainant:**

G. I Delay possession charges

17. 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."*

18. The attention of the authority was drawn towards amended agreement at page 155 of the reply, wherein it is categorically mentioned in clause 3 (amending clause 14 (a) of the original agreement) that the company proposes to hand over the possession of the unit within 42 months from the execution of this agreement etc. The amended agreement was executed on 07.05.2016 as per page 157 of the reply, the offer of possession was made on 25.10.2018. No case for delayed possession charges is made out and also the promoter has not demanded Rs. 12,58,743/- as per clause 1 of the amended agreement i.e., (that the delayed payment charges of Rs. 12,58,743/- would not be demanded by the company).



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

**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 **42 months from the date of execution of this amendment agreement**, 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 occupation certificate in respect of the Unit and/or the Project.*

**H. Directions of the authority**

20. 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 function entrusted to the authority under section 34(f):

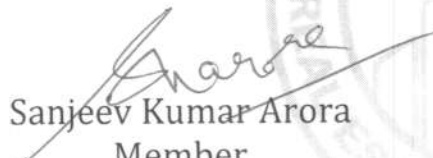
- i. No case for delayed possession charges is made out and also the promoter has not demanded Rs. 12,58,743/- as per clause 1 of the amended agreement i.e., (that the delayed payment charges of Rs. 12,58,743/- would not be demanded by the company).
- ii. The complainant/allottee is directed to pay outstanding dues, if any, after adjustment of interest for the delayed installment.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the

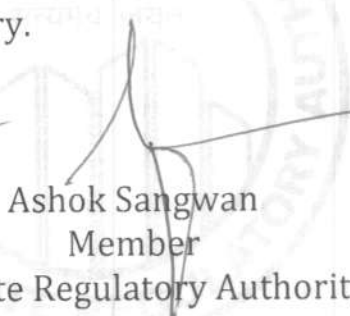


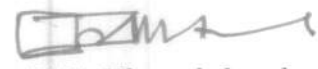
promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iv. The respondent/promoter shall not levy/recover any charges from the complainants/allottee 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.**

21. A copy of this order be placed on the connected case file bearing no. CR/4233/2021.
22. Both the complaints stand disposed of.
23. File be consigned to registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Dr. K.K. Khandelwal  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.09.2022

HARERA  
GURUGRAM