



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

Complaint no. : 1494 of 2022
First date of hearing: 17.05.2022
Date of decision : 01.12.2022

1. Shashi Kant Bhalla
2. Kavita Bhalla
Both RR/O: C3-803, Diplomatic Green,
Ph-II, Sector-110A-111, Dwarka
Expressway, Gurugram-122002

Complainants

Versus

M/s Puri Constructions Pvt. Ltd.
Office: 1208-1210, 12th Floor, Surya
Kiran Building, 19 Kasturba Gandhi
Marg, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Harsh Jain
Sh. Himanshu Juneja

**Counsel for the complainants
AR for the respondent**

ORDER

1. The present complaint dated 22.04.2022 has been filed by the complainant/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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Diplomatic Greens, Sector 110A & Sector 111, Village Chouma, Gurugram.
2.	Date of allotment	07.08.2012 (Page 28 of complaint)
3.	Apartment no.	C3-803 admeasuring 2950 sq. ft. (Page 35 of complaint)
4.	Date of builder buyer agreement	18.10.2012 (Page 65 of complaint)
5.	Possession clause	<p>11(a) Schedule for possession of the said Apartment/Villas</p> <p><i>The company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said building/said apartment/villas within a period of forty two (42) months from the date of execution of this Agreement unless there shall be delay or failure due to force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement. The Apartment/Villas Allottee agrees and understand that beyond 42 months that the Company shall be entitled to period of an additional one hundred eighty days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p>



		(Emphasis supplied)
6.	Due date of possession	18.04.2016 [calculated from the date of execution of agreement] (Note: Grace period of 180 days for applying and obtaining occupation certificate is disallowed)
7.	Basic sale price as per payment plan annexed with BBA	Rs. 2,34,52,500/- (Page 99 of complaint)
8.	Total sale consideration as per payment plan annexed with BBA	Rs.2,80,14,431/- (Page 99 of complaint)
9.	Amount paid by the complainants	Rs. 3,11,57,745/- (As per customer ledger dated 10.05.2022, page 30 of reply)
10.	Occupation certificate	29.08.2016 (Annexure R6, page 33 of reply)
11.	Offer of possession	05.09.2017 (Annexure R4, page 36 of reply)
12.	Conveyance deed dated	01.02.2018 (annexure R5, page 43 of reply)

B. Facts of the complaint:

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

- i. That the original allottee applied for a residential unit in the project of the respondent, the original allottee got provisionally allotted the residential unit no. C3-803 in the said project and paid an initial amount of Rs. 7,50,000/- towards booking of the said unit to the respondent. That thereafter the complainants paid all the instalment to the respondent as per demands and the complainants were shocked to see that the respondent is demanding more than the payment schedule given by the respondent at the time of booking. When the complainants



opposed the same, the respondent threatened the complainants that if they do not fulfil the demand of the respondent, the respondent will cancel their unit and will forfeit all the given amount. Thereafter, the complainants were forced to pay the additional payment which was never mentioned in the payment plan of the respondent.

- ii. That the complainants were shocked to see that the respondent had took an amount of Rs. 3,05,509/- against the Haryana VAT arrears and never paid such amount to the government authorities and the respondent was trying to mislead the complainants regarding the same.
- iii. That after timely payment against each and every demand letter, the complainants were hoping that they will get possession of their apartments as per the delivery date provided in the agreement. Unfortunately, on regularly visiting the site, it was realized by the complainants that the construction on the site was not as per the construction plan. Despite several assurances, the respondent failed to deliver the possession of residential unit in time.
- iv. That the original allottees booked the apartment in October 2012 and made payments towards booking amount but the apartment buyer's agreement was not executed on immediate basis but was executed later on 23.10.2013. The respondent in the present complaint deliberately and with a mala-fide intention delayed the due date of delivery so as to extract money from the complainants and misuse the received consideration which was more than 10% of the sale consideration. It is a well-established law that no promoter can take a deposit or advance without first entering into



agreement for sale. However, in the present case, the respondent was wrong in accepting Rs. 16,16,322/- before executing the builder buyer's agreement which was much more than 10% which is not permissible as per the Act, 2016.

- v. That the respondent is well aware that the project is over delayed and hence are liable to pay interest as per the provisions of the Act and the rules made thereunder. According to sections 18(1) and 19(7) of the Act read with rule 15, the respondents are liable to pay the allottee interest for delaying the possession in violation of the terms of the builder buyer's agreement.
- vi. That the agreement is unfair and one-sided and loaded with terms such as clauses 3(c)(vii), (viii), 7(2)(a) etc. which entitle the respondent to gain undue advantage over the complainants and indirectly penalising the consumers. There is no parity in the remedies available to the complainants and the respondent showing biased and unfair trade practices of the respondent.
- vii. That the complainants had no option but to accept the terms of the builder buyer's agreement without any negotiation because of the assurance given by the respondent that they will stick to their assurances and promises. However, evidently, the respondent has miserably failed in keeping their promises and assurances causing irreparable losses and injury to the complainants.
- viii. In the case of *Wg. Cdr. Rahman Khan and Aleya Sultana and Ors. Versus DLF Southern Homes Pvt Ltd and Ors.* (2020) 16 SCC 512, the Hon'ble Supreme Court has held that the buyers are entitled to



compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to buyers in regard to the provision of amenities and the failure of the developer to hand over possession within the contractually stipulated period amounts to a deficiency of service.

- ix. Further, the Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725*** and ***Kolkata West International City (P) Ltd. v. Devasis Rudra, (2019) CPJ 29 (SC)***, and the Hon'ble National Consumer Disputes Redressal Commission in several cases has opined that the buyers cannot be *made to wait indefinitely for possession of the unit and such practices are manifestly arbitrary*.
- x. The Hon'ble Supreme Court has time and again held that where the buyer has to suffer on account of delay beyond a reasonable time then he/she has to be compensated either by way of interest or penalty and in this connection Hon'ble Supreme Court in ***M/s. Fortune Infrastructure Vs. Trevor Dlima & Ors (2018) 5SCC 442*** observed as follows:

".....Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration....."

- xi. It is submitted that this hon'ble authority in **Complaint No. 1070 of 2018 titled Amit Chaudhry Vs. Emaar MGF Land Ltd.** has held as under:

"The Respondent is directed to pay the interest at the prescribed rate for every month of delay on the amount paid by the complainant from the date of possession till the offer of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

The complainant is directed to pay outstanding payments if any, after adjustment of interest for the delayed period.

The Respondent shall not charge any amount from the complainant which is not a part of the buyer's agreement."

- xii. This Hon'ble Authority in **Simmi Sikka vs. EMAAR MGF Ltd., Complaint no. 7 of 2018** relation to the power of the authority to order compensation for delayed possession has held as follows:

"64.....The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This Tribunal is duty bound to take into consideration the legislative intent Le, to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

- xiii. The inordinate delay on part of the respondent in delivering the possession in violation of the terms of the builder buyer's agreement amounts to deficiency in the services offered by the respondent. That as per section 18 and 19 of the Act, the

respondent is liable to pay interest to the allottees of an apartment, building or project for delay or failure in handing over of such possession as per the terms of the agreement of the sale. The complainants are therefore entitled for interest for the delayed period till the actual proper handover of the unit.

- xiv. That the cause of action accrued in favour of the complainants and against the respondent on the date when the respondent advertised the said project, it again arose on diverse dates when the apartments owners entered into the buyer's agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the complainants have not been given possession of their apartment and have not been paid the amount of interest for delayed possession of the unit in the project till date and the cause of action is still continuing and subsisting on day to day basis.
- xv. That the project of the respondents is registered with the authority, hence the said complaint is amenable to the territorial jurisdiction of this hon'ble authority. The authority has complete territorial as well as subject matter jurisdiction to deal with the present complaint. This has also been held in *Simmi Sikka vs. Emaar MGF Land Ltd.*

C. Relief sought by the complainants:



4. The complainants have sought following relief(s).
 - i. Direct the respondent to delay possession charge , refund of the amount execrably charged by the builder, wrongfully charged GST by the builder, illegally charged Haryana VAT charged by the builder and additional IDC, EDC charged by the builder and at the same time the builder has charged the amount in the sale deed as per the super area which is illegal as per the law and at the same time the complainant was not all aware about the super area of their unit neither the BBA talk about the same.
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 present complaint is barred by law of limitation as the complainants have got their conveyance deed registered on 01.02.2018 vide registration no.12902 and now the complainants after an expiry of 4.3 years from the date of execution of conveyance deed has filed the present complaint for delay in handing over possession which is in itself an abuse of the process of law and highly delayed. Hence the complaint is barred by law of limitation and should be dismissed outrightly by this authority.
 - ii. That the complaint filed by the complainants is not maintainable under the provisions of RERA Act and applicable rules, as the



Occupation Certificate (herein "OC") was received in the year August 2016 before coming into force of Act, 2016. Hence the complaint should be outrightly rejected by this authority.

- iii. That the present complaint does not fall within the ambit of rules, and the authority has got no jurisdiction to try and entertain the same as neither there is any breach of any of the obligations by the respondent nor there is any delay in offer of possession, as the respondent had already obtained the occupation certificate on 29.08.2016 and offered the possession of the apartment to the complainants and also the complainants executed the conveyance deed back in the year 01.02.2018. Further Real Estate Regulatory (Regulation and Development) Act, 2016 came into force after receiving of the occupation certificate on 28.07.2017, a year after receiving of the occupation certificate. Hence the present complaint is prayed to be rejected by this authority.
- iv. The respondent has already delivered the apartment vide offer of possession letter dated 05.09.2017 and also the complainants have executed and registered the conveyance deed back in the year 01.02.2018. It is further put to the notice of this Hon'ble Authority that the complainants cannot now raise the baseless and after thought allegations of losing hard earned money by facing humiliation and harassment, physical as well as mental in the hands of respondent all of a sudden after an expiry of 4.3 years from the date of registration of conveyance deed in the year



01.02.2018. Further the allegations of fraudulent and unfair trade practices on the part of respondent are also all wrong, unsubstantiated, denied and after-thought. It is also further submitted that as per the request of the complainants, the respondent has also already provided compensation/discount to the extent of Rs.7,99,907/-, which is reflected in the statement of accounts by way of credit note and the same is confirmed by the allottee vide his email dated 25.11.2017 and respondent's email dated 08.12.2017. Also, the respondent had waived off interest amounting to Rs.1,08,398/- charged for delay in making payment and also had waived off 6 months maintenance and water charges for the months April, 2018 to September, 2018 for settling all the issues between the parties.

7. Copies of all the relevant documents have been filed and placed on 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. The written submissions made by both the parties along with documents have also been perused by the authority.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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



Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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



F.1 Direct the respondent to delay possession charge , refund of the amount execrably charged by the builder, wrongfully charged GST by the builder, illegally charged Haryana VAT charged by the builder and additional IDC, EDC charged by the builder and at the same time the builder has charged the amount in the sale deed as per the super area which is illegal as per the law and at the same time the complainant was not all aware about the super area of their unit neither the BBA talk about the same.

12. On consideration of the documents available on record and submissions made by both the parties, the authority observes that the unit in question was allotted to the complainants on 07.08.2012 and thereafter, the buyer's agreement was executed inter se parties on 18.10.2012. As per clause 11(a) of the buyer's agreement, the possession of the subject unit was to be offered on or before 18.04.2016. However, the subject unit was offered to the complainants on 05.09.2017 after receipt of occupation certificate from the competent authority on 29.08.2016. Thereafter, the conveyance deed was executed inter se parties on 01.02.2018.
13. The respondent submitted that occupation certificate of the project in question was obtained prior to enactment of the Act and hence as per view taken by the authority in **CR No. 453 of 2019 decided on 04.02.2020** in case titled as **Dharampal Sheoran Vs M/s Emaar MGF Land Ltd**, the complaint is not maintainable. Further, the complaint is barred by limitation as conveyance deed has been executed way back on 01.02.2018 and compensation for delay has already been accounted for at the time of offer of possession and possession has been taken by the complainants without any protest or demur. But the counsel for the complainants submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation. Further, in case of **Ashwani**



Kumar Gupta versus Siri Pal Jain, 1998(2), RCR, 222, the Hon'ble Punjab and Haryana High Court has held that limitation period does not apply in rent cases. Then, the limitation period for filing the complaint does not expire in view of directions of Hon'ble Supreme Court of India, New Delhi in suo moto proceedings titled as **cognizance for extension of limitation with miscellaneous application no. 29 of 2022 in miscellaneous application 665 of 2021 in suo moto writ petition(C) no. 3 of 2020**. The AR of the respondent submitted that period of limitation cannot be counted from date of execution of conveyance deed but from the due date of possession which occurred in 2016 and offer of possession was made in 2017 and hence, the benefit of limitation granted by Hon'ble Supreme Court of India, New Delhi in suo moto proceedings is not applicable in above case.

14. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the compliant on the ground of the limitation but in view of settled proposition of law, the case of complainants can not be thrown away being barred by limitation. As discussed earlier, after the unit was allotted to the complainant on 07.08.2012, a buyer's agreement in this regard was executed on 18.10.2012. Though the possession of the unit was to be offered on or before 18.04.2016 after completion of the project but the same was offered only on 05.09.2017 after receipt of occupation certificate on 29.08.2016 and ultimately leading to execution of conveyance deed of the same on 01.02.2018. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 05.09.2017 and not from 01.02.2018. The present complaint seeking delay possession charges and other reliefs was filed on 22.04.2022 i.e., beyond three years w.e.f. 05.09.2017. But in



view of authoritative pronouncement of the hon'ble apex court in suo moto proceedings vide order dated 10.01.2022, the period in between 15.03.2020 till 28.02.2022 would stand excluded while calculating the period of limitation.

15. With respect to entitlement of delay possession charges after the execution of conveyance deed, the authority is of the view that the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the builder buyer's agreement. The same view has also been upheld by the Hon'ble Supreme Court 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.**
16. As noted above, the possession of the subject unit was offered to the complainants on 05.09.2017 after obtaining occupation certificate on 29.08.2016 i.e. before coming into force of the Act. Thereafter, the conveyance deed of the unit was executed between the parties on 01.02.2018 and the present complaint was filed on 22.04.2022. There has been complete inaction on the part of the complainants for a period of more than four years till the present complaint was filed in April 2022. The complainants remained dormant of their rights for more than 4 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. Also, it is pertinent to note that the complainants have availed certain benefits from the respondent prior to the execution of conveyance deed on 01.02.2018. The respondent, at the request of the complainants, had already provided compensation of Rs.7,99,907/- and had waived off interest amounting to



Rs.1,08,398/- charged for delay in making payments. Moreover, the respondent has also waived off 6 months maintenance charges and water charges for the months April 2018 to September 2018. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainants allottees have already availed aforesaid benefits before execution of conveyance deed.

17. One such principle is that delay and latches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
18. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.



19. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.
20. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.12.2022

V.I - 3
(Vijay Kumar Goyal)

Member