

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

Date of decision: 06.02.2023

Name of the Builder		EMAAR MGF LAND LIMITED	
Project Name		EMERALD HILLS- FLOORS, SECTOR 65	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/3751/2021	Mrs. Anuradha Nidubrolu & Anr. vs. Emaar MGF Land Limited	Shri Varun Chugh Shri Harshit Batra
2.	CR/3752/2021	Swati Vishwakarma & Pramod Kumar Vishwakarma vs. Emaar MGF Land Limited	Shri Varun Chugh Shri Harshit Batra

CORAM:	
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 core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Emerald Hills- Floors (group housing project) being developed by the same respondent/promoter i.e., **Emaar MGF Land Limited**. The terms and conditions of the builder buyer's agreements

fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, to invoke powers of investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the provisions of section 14, thereby imposing penalty in accordance with the provisions of the Act and compensation.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Emerald Hills- Floors							
Possession clause: Clause 13							
Time of handing over the Possession							
<p><i>Subject to terms of this clause and subject to 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 compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the independent floor within 27 months from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 months, for applying and obtaining the occupation certificate in respect of the Independent Floor and/or the Project.</i></p>							
<p>Note:</p> <p>As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the grace period prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter.</p>							
Sr. no.	Complaint no./title/ date of filing complaint	Reply status	Unit No. and area admeasure- -ing	Date of execution of buyers agreement	Due date of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought



1.	CR/3751/20 21 Mrs.Anura dha Nidubrolu & Anr. vs. EmaarMGF Land Limited DOR- 15.09.2021	Reply received on 16.11.20 21	EHF-267- A-GF-062	17.03.201 0 [annexure A, page 21 of complaint]	17.06.201 2 Offer of possession : 11.05.201 9	TSC: Rs. 62,18,583/- /- AP: Rs. 52,04,471/- (As per statement of account dated 11.05.2019 at page 100 of reply	1. DPC. 2.To invoke powers of Investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the section 14, thereby imposing penalty in accordance with the provisions of the Act. 3. To construct the 3 mtr. wide road on the open space, adjacent building no. A- 62, amber block, in accordance with the sanctioned layout plan.
2.	CR/3752/20 21 Swati Vishwakarm a & Pramod Kumar Vishwakarm a V/s Emaar India Ltd. DOR: 15.09.2021	Reply received on 11.10.20 21	EHF-267- A-SF-062, 2nd floor [page 17 of complaint]	26.02.2010 [page 16 of complaint]	26.05.20 12 Offer of possession: 11.05.20 19	TSC: Rs. 50,22,718/- AP: Rs. 50,25,409/- (As per statement of account dated 21.09.2021 at page 235 of reply	1.To invoke powers of investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the section 14, thereby imposing penalty in accordance with the provisions of the Act. 2. To construct the 3 mtr. wide road on the open space, adjacent building no. A- 62, amber block, in accordance with the sanctioned layout plan.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOR- Date of receiving complaint

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for not handing over the possession by the due date, seeking award of delayed possession charges, to invoke powers of investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the provisions of section 14, thereby imposing penalty in accordance with the provisions of the Act and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/3751/2021 Case titled as Mrs. Anuradha Nidubrolu & Vivek Madnani V/s Emaar MGF Land Ltd.** are being taken into consideration for determining the rights of the allottee qua delay possession charges.

A. Project and unit related details

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

CR/3751/2021 Case titled as Mrs. Anuradha Nidubrolu & Vivek Madnani
V/s Emaar MGF Land Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Hills- Floors, Sector 65, Gurugram, Haryana
2.	Unit no.	EHF-267-A-GF-062 [page 22 of complaint]
3.	Provisional allotment letter w.r.t original allottee (Mr. Kalidas Mukherjee)	23.07.2009 [annexure R1, page 26 of reply]
4.	Date of execution of buyer's agreement w.r.t original allottee	17.03.2010 [annexure A, page 21 of complaint]
5.	Nomination letter w.r.t 1 st subsequent allottee (Mr. Vipin Chandra)	16.07.2010 [annexure R2, page 93 of reply]
6.	Nomination letter w.r.t 2 nd subsequent allottees (Mr. Veer Singh Sarna and Ramneek Kaur)	01.09.2017 [annexure R2, page 94 of reply]
7.	Possession clause	<p>13: POSSESSION</p> <p>(a) Time of handing over the possession</p> <p><i>Subject to terms of this clause and subject to 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 compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the independent floor within 27 months from the date of execution of this</i></p>

		<p><i>Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a <u>grace period of 3 months, for applying and obtaining the occupation certificate in respect of the Independent Floor and/or the Project</u></i></p> <p>(Emphasis supplied)</p> <p>[annexure A, page 36 of complaint]</p>
8.	Due date of possession	17.06.2012 [Note: Grace period is not included]
9.	Total consideration as per statement of account dated 11.05.2019 at page 100 of reply	Rs. 62,18,583/-
10.	Total amount paid by the complainants as per statement of account dated 11.05.2019 at page 100 of reply	Rs. 52,04,471/-
11.	Occupation certificate	09.05.2019 [annexure R4, page 167 of reply]
12.	Offer of possession to 2 nd subsequent allottee	11.05.2019 [annexure R2, page 95 of reply]
13.	Conveyance deed w.r.t 2 nd subsequent allottee	24.02.2020 [annexure R2, page 106 of reply]
14.	Sale deed executed between 2 nd subsequent allottee and present allottee i.e., complainants	23.06.2020 [annexure C, page 93 of complaint]

B. Facts of the complaint

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

- i. That, initially, the property in question i.e. floor bearing No. EHF-267-A-GF-062 (ground floor) admeasuring 267 Sq Yards, in the project of the respondent i.e. Emaar India Limited, known as "Emaar Hills Floors" (the "Project") situated at Sector-65, Gurugram, Haryana, was booked by Mr. Kalidas Mukherjee.
- ii. That, thereafter, on 17.03.2010, the above-named person entered into a builder buyer's agreement with the respondent, by virtue of which the respondent allotted a floor bearing No. EHF-267-A-GF-062 (Ground Floor) admeasuring 267 Sq Yards, along-with car parking space in the project known as "Emerald Hills Floors" situated at Sector-65, Gurugram.
- iii. That, subsequent thereto, Mr. Kalidas Mukherjee sold the above said property to Mr. Vipin Chandra, who thereafter sold it to Mr. Veer Singh Sarna and Ms. Ramneek Kaur and on 24.02.2020 the respondent got the conveyance deed of the floor in question executed in favour of the above said persons. That, thereafter, the complainants purchased the property in question from the above named persons and got the sale deed for the said floor executed in their favour, on 23.06.2020. That, prior to the aforesaid purchase, when the complainants visited the property in question, there was an open space adjacent to the property i.e. A-62 and upon enquiring about the same, got to know that the open space is meant for construction of road so as to internally connect that block from the other via the said 3 Mtr. access road and hence is a dedicated space for the proposed road, though temporarily covered with aluminium Sheets, by the respondent.
- iv. That, the complainants independently verified this fact from the respondent, through its customer care team as well as its

dedicated facilities management team and the same very fact was verbally re-affirmed by them too that a 3-Meter-wide road is proposed to be constructed and would be made in another three-four months. That, after visiting the property and satisfying themselves with regard to all the aspects besides considering the factum of open space left adjacent to the building No. A-62, Amber Block, meant for the purpose of construction of 3 Mtr. wide road, the complainants purchased the floor in question.

- v. That, it is pertinent to mention here that even in the schedule I attached to the conveyance deed as well as in the sanctioned layout plan uploaded by the respondent on its website, pertaining to the said licensed project in question, it has been categorically mentioned/shown that there is a 3 Mtr. wide road adjacent to building no. A-62. That, post shifting of the complainants in unit no. EHF-267-A-GF-062 (ground floor), besides other owners on the first and second floor of the same building and because of other residents also moving into the floors constructed in the said block, the issue of shortage of car parking cropped up, since there was hardly any provision for extra car parking for the owners, let alone the issue pertaining to visitors car parking, hence required additional car parking space and so in the month of July-August, 2020 many emails were written to the respondent company bringing this critical issue to light and requested their indulgence for immediate construction of 3 Mtr. wide road adjacent to building no. A-62, so that their vehicles could be parked on the road side, which would resolve their immediate problem for additional car parking space.



- vi. That, thereafter a series of e-mails were written to the respondent, besides personal visits but yielded no results. In fact, the respondent vide its reply through emails dated 03.07.2020 and 15.02.2021, apprised the complainants that the open space adjacent to building no. A-62 does not forms the part of Amber block and since the layout plan has been modified, hence 3 Mtr. wide road cannot be constructed on the same. Relevant emails exchanged between the complainants and the respondent is annexed herewith as **annexure E**. That, after coming to know regarding the respondent's stance with respect to the open space which might be converted into a plot, as told by the respondent's facilities management team, and which was meant for construction of the road, as depicted from the sanctioned layout plan submitted by the respondent as well as the mentioning of the same very fact in the schedule I of the conveyance deed/sale deed, the complainants on 29.06.2021 filed complaints with the STP and DTP office Gurugram, against the respondent, for committing the above mentioned gross illegality, though no action has been taken on the same till date.
- vii. That, after the implementation of the Real Estate (Regulation and Development) Act, 2016, the respondent cannot impose terms, which allows them to alter, revise, and amend the original layout/plans as per their convenience as the helpless Allottees who had invested their funds are left with no other option but to adhere to such one-sided pro-developers' terms and conditions.
- viii. That, the Act further defines the term "Sanctioned Plan" and according to **Section 2 (zq)** of the **RERA Act, 2016**, "**sanctioned plan**" means the site plan, service plan, building plan, parking



and circulation plan, landscape plan, layout plan, zoning plan, and such other plan. It includes structural designs permissions such as environment permission and such other permissions, which is approved by the competent authority before the start of a real estate project.

ix. That, it is imperative on the respondent's part that the project must be in consonance with the sanctioned layout plan and other specifications. The statutory provision under Section 14 of the Real Estate (Regulation and Development) Act states that irrespective of any agreement, contract or legislation, the builder/promoter shall not make any changes or modifications/alterations to the sanctioned plan, except:

- When due to architectural or structural reasons, with due recommendation from an engineer or architect and intimation to the allottees, certain minor modifications can be made to the structural plan.
- With written consent of 2/3rd of the allottees (buyers) agreeing to make alterations or additions to the layout plan under sanctioned project;
- Which consent was never obtained from the complainants, besides other residents of Ground and first floor of building no. A-62, in the present case.

x. That, the phrase 'prior written consent' in Section 14, is of pivotal importance, as it implies that home buyers must be informed of the proposed changes in the project, before they give their consent. The Bombay High Court, in the case of **Madhuvihar**

Cooperative Housing Society and others vs Jayantilal Investments and others, 2010 (6) Bom CR 517, had the opportunity to interpret Section 7 of the Maharashtra Ownership of Flats Act (MOFA), 1963, which is similar to Section 14 of the RERA. It held that the consent of a home buyer must be an 'informed consent', i.e., one which is freely given after the flat purchaser is placed on notice by complete and full disclosure of the project or scheme that the builder plans to implement. Further, the consent must be specific and relatable to a particular project or scheme of the developer which is intended.

- xi. That, since Section 7 of the MOFA is analogous to Section 14 of the RERA, the ruling of the Madhuvihar Cooperative Housing Society case will hold good for all cases that come before the Real Estate Regulatory Authority and the Real Estate Appellate Tribunal. Therefore, should a developer desire to amend the project layout, he must obtain the prior written consent of all the allottees. Such consent should be obtained, after informing them about all the proposed modifications and amendments and the impact it will have on the developer. This will enable the allottees to take an informed decision, keeping in mind their interests.
- xii. That, in the case in hand, no prior intimation was ever given to the complainants or other residents of building no. A-62, thereby inviting objections regarding the change of the sanctioned layout plan, so as to render an opportunity to the residents to submit their concerns with regard to the proposed revision in the layout plan, in gross violations of the provisions of The Haryana Development and Regulation of Urban Areas Act, 1975.
- xiii. That, it is worth mentioning here that conversion of open space meant for construction of 3 Mtr. wide road for any other purpose

either by merging or utilising it otherwise would be detrimental to the rights of the owners of building no. A-62 Amber Block as the same would tantamount to extinguishment of the exclusively of their property having a direct access through the proposed adjacent 3 Mtr. road, purchased by them keeping the same in mind.

- xiv. That, subsequent to purchasing the floor, the complainants time and again via numerous emails, calls and personal visits requested the respondent for construction of 3 Mtr. wide road but the plea was rejected by the company in an arbitrary manner and in gross violations to the principles of equity and good conscience. That, the above stated issue was timely brought to the notice of the concerned officials of the respondent company and was even escalated to the higher management of the company via several mails but they all turned a deaf ear to the genuine grievance of the complainants and never addressed the same. That, the conversion of open space meant for construction of 3 Mtr. wide road by merging it with additional land or utilizing it otherwise for any other purpose can in no eventuality be done by the respondent company, as per its whims and fancies and in an arbitrary manner, violating the rule of law.
- xv. That, the respondent has committed various acts of omission and commission by making incorrect and false statement in the emails, to the complainants as well as by committing other serious acts as mentioned in preceding paragraph. The complainants, therefore, seeks indulgence of this authority to invoke powers of investigation enshrined under Section 35 of the Act, so as to investigate the matter and if in case the authority

arrives at a conclusion that the respondent has violated the letter and spirit of Section 14, may kindly impose penalty amounting to five per cent of the cost of the project, and; to further pass directions u/s 36 of the Act to restrain the respondent from converting the open space meant for proposed 3 Mtr. wide road by merging into another plot or utilizing it for any other purpose as an interim measure, till the pendency of the present complaint.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):

- (i) Direct the respondent to pay interest for every month of delay at prevailing rate of interest.
 - (ii) To invoke powers of investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the provisions of section 14, thereby imposing penalty in accordance with the provisions of the Act.
 - (iii) To pass interim directions u/s 36 of the Act to restrain the respondent from converting the open space meant for proposed 3 mtr. wide road by merging into another plot or utilizing it for any other purpose as an interim measure, till the pendency of the present complaint.
 - (iv) To direct the respondent to construct the 3 mtr. wide road on the open space, adjacent building no. A-62, amber block, emerald hills floors, sector 65, Gurugram, Haryana, in accordance with the sanctioned layout plan.
10. 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

11. The respondent has contested the complaint on the following grounds.

- i. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- ii. That the complainants have not approached the court with clean hands as have nowhere divulged the authority with the fact that they have been in constant defaults in making good on their part of the obligations.
- iii. That the original allottee, Mr. Kalidas Mukherjee being interested in the real estate development of the respondent, known under the name and style of "Emerald Hills-Floors" at Sector 65, Gurugram, Haryana tentatively applied for provisional allotment of the unit vide application dated 23.07.2009, who was allotted unit no. EHF-267-A-GF-062 on ground floor, having a super area of 1380 sq. ft. vide provisional allotment letter dated 23.07.2009 and consequently through the buyer's agreement dated 17.03.2010. The provisional allotment letter dated 23.07.2009, schedule of payment and the buyer's agreement dated 17.03.2010.
- iv. That subsequently the unit was transferred to Mr. Vipin Chandra vide nomination confirmation letter dated 16.07.2010, who thereafter transferred it further to Mr. Veer Singh and Ms. Ramneek Kaur vide nomination confirmation letter dated 01.09.2017, who was offered the possession of the Unit on

11.05.2019 and handed over the possession on 03.02.2020 vide the Unit Handover letter and consequently executed the conveyance deed dated 24.02.2020 was executed. The nomination confirmation letters dated 16.07.2010 and 01.09.2017, letter of offer of possession dated 11.05.2019, unit handover letter dated 03.02.2020 and the conveyance deed dated 24.02.2020 are marked and annexed herewith as annexure R2.

- v. That it must be noted that upon execution of conveyance deed, the absolute and complete title in the Unit was transferred to Mr. Veer Singh and Ms. Ramneek Kaur, upon which, all the rights and obligations have ended. That thereafter, after the end of relationship between the respondent and Mr. Veer Singh and Ms. Ramneek Kaur, i.e., when in the absence of any subsisting relationship between the respondent and Mr. Veer Singh and Ms. Ramneek Kaur, the present complainants bought the Unit from Mr. Veer Singh and Ms. Ramneek Kaur.
- vi. That the present complaint is not maintainable for reasons stated hereunder and liable to be dismissed. That the complainant purchased the property from the erstwhile allottees, Mr. Veer Singh and Ms. Ramneek Kaur. That it should be categorically noted that there does not exist any agreement whatsoever between the complainants and the respondent and consequently, no contractual obligations follow. It is submitted that the respondent has no obligation whatsoever towards the complainants. That the jurisdiction of this authority is derived on the basis of agreement between the parties as is reflected from the provision of the Real Estate (Regulation and Development) Act, 2016 ("Act") reflected hereinbelow:

"S.2(c) "agreement for sale" means an agreement entered into between the promoter and the allottee;"

That in the absence of any agreement, there does not exist any contractual obligation between the parties and hence, the authority has no power and/or jurisdiction to adjudicate any claim.

- vii. That, moreover, the authority has no jurisdiction to entertain the present complaint with respect to the present unit as the complainant does not fall in the category of "allottee" as per the provision of the act as there is no agreement between the respondent and the complainant with regard to the present unit. Further it is pertinent to mention here that no endorsement has been made in the name of the complainants. That the Act recognized three stakeholders of the real estate sector, namely the allottee, the developer and the real estate agent; the complainants fall in neither of the said categories and hence, cannot rightly approach the authority. Hence, the authority has no jurisdiction to entertain the present case and grant reliefs sought whatsoever.
- viii. That the complainants purchased the unit in question from Mr. Veer Singh and Ms. Ramneek Kaur, after the absolute title and right over the unit was already transferred to the Veer Singh and Ms. Ramneek Kaur vide the conveyance deed dated 24.02.2020. That the sale deed executed was not with the respondent, thus there exists no privity of contract between the parties and hence, there flows no contractual obligation from the respondent towards the complainants.



- ix. That it must be additionally noted that the sale of unit to the complainants was without prior consent of the respondent and beyond the respondent's control. That it must be categorically noted that the present case is not one of subsequent allottees which would involve the respondent in the transfer/assignment. That as per the clause 24 of the buyer's agreement, the prior consent of the respondent was required to be taken for any sale, transfer, lease etc. which in the present scenario with respect to the complainant has not been taken. The clause has been reiterated hereinbelow:

"24. ASSIGNMENT

This Agreement or any interest of Allottee(s) in this Agreement shall not be assigned by the Allottee(s) without the prior consent of the Company in its sole discretion and shall be subject to all applicable laws and notifications or any government directions as may be in force and further shall be subject to this Agreement and the terms, conditions and charges as the Company may impose. The Allottee(s) shall be solely responsible and liable for all the legal, monetary or any other consequences that may arise from such assignments and the Company shall have no direct or indirect involvement in any manner whatsoever. Any purported assignment by the Allottee(s) in violation of this Agreement shall be a default on the part of Allottee(s) entitling the Company to cancel this Agreement and to avail of remedies as set forth in clause 19 of this Agreement."

- x. That the respondent applied for the occupancy certificate (OC) on 04.04.2019 vide the application for occupation certificate and subsequently received the OC on 09.05.2019. That the development of the project is as per the sanctioned plans. That it is important to note that in 2017, the project was proposed to be revised and accordingly, the respondent intimated the then allottee, Mr. Vipin Chandra vide a letter dated 13.08.2017. Mr. Vipin Chandra was asked for objections and suggestions in lieu of the same, however, none were given. It is submitted that the letter

for objections regarding change in layout plan was sent to Mr. Vipin Chandra whereby no objection raised by him and the subsequent allottees, Mr. Veer Singh and Ms. Ramneek Kaur during purchasing the unit were well versed regarding change in layout plan and also did not raise any objection to change in layout plan after purchasing the unit and execution of conveyance deed. Thereafter, in furtherance to the revised plan, the construction of the project was done. That at the time of buying the unit, the unit was already transferred to the Mr. Veer Singh and Ms. Ramneek Kaur. The complainants are having the knowledge of such revision, in any circumstance whatsoever, the said revision has been made available to the public and is accessible either in developer office or STC/STP office. Moreover, the time at which the complainants bought the unit, the possession being already offered and was a 'ready to move in property' and the possession was taken by the erstwhile owner/allottee namely Mr. Veer Singh and Ms. Ramneek Kaur. That the principle of *caveat emptor* rightly applies and hence, the complainant, upon their own fault and lack of diligence, cannot be rightly allowed to take advantage and press the present claim. The letter dated 13.08.2017 inviting objection/suggestions of the allottees.

- xi. It needs to be categorically noted that the present complaint revolves around the frivolous alleged grievances of the complainants with respect to the development not being in accordance with the approved plans. However, is completely outrageous as the respondent is in receipt of the occupancy

certificate, which mentions no deviations, whatsoever, from the sanctioned and approved plans.

- xii. Additionally, it must also be noted that the Mr. Veer Singh and Ms. Ramneek Kaur executed an indemnity cum undertaking on 15.11.2019, according to clause 4 of which, any increase and decrease in area of the said unit was agreed to. The clause has been reiterated hereafter:

"4. I/we understand that there has been an increase/decrease in area of the said Unit and I/we do not have any objection to the same and undertake to pay the charges for the increased area as and when demanded by the Company."

- xiii. That the complainants alleged that the respondent has merged open space meant for constructing 3-meter-wide road into another plot/has been utilising it for any other purpose. It is submitted that the construction of the road on the open space is in accordance with the revised site/layout plan after the intimation of the same to the complainants and has also received the occupancy certificate.
- xiv. That the respondent has adhered to the revised sanctioned plan and project specifications by the promoter and hence did not violate the section 14 of the Act. The changes made by respondent were necessary and moreover, approved by the competent authority. Additionally, the modifications made to the sanction plan were in consensus with the clause 5 of the agreement. the project, as is developed, is in complete accordance with the sanctioned plans. The complainant mutually agreed to it with the respondent as per the clause 5 of the agreement, which is reiterated herein below:

"5. ALTERATIONS/MODIFICATIONS IN THE LAYOUT PLANS AND DESIGNS

(a) *The Company shall have the right to effect and/or carry out such additions, alterations, deletions and modifications, as the Company may, at its sole option and discretion, consider necessary or as directed by any competent authority and/or the architect at any time even after the building plans for the floors are sanctioned and till the grant of an occupation certificate, to which the Allottee(s) hereby consents and shall raise no objection. Such changes may include but shall not be limited to change in the building plan(s) of the Buildings/Floors, floor plans, location, preferential location, number, increase or decrease in number of floors, block or Super area of the Floor, designs and specifications annexed in Annexure-VII, however, this shall be without prejudice to any rights of the Company under clause 5(c) hereunder to construct additional floors/additional spaces as sanctioned and approved by the competent authority.*

(d) *In case of any alteration/modification resulting in less than 10% increase in Super Area, then in such an event, the Company shall not be obliged to take any consent from the Allottee(s). The Allottee(s) agrees and acknowledges that he/she/they/it shall be obliged to make payments for such increase in area within thirty (30) days on the date dispatch of such notice by the Company.*

(e) *In case of any alteration/modification resulting in less than 10% decrease in Super Area, then in such an event, the Company shall not be obliged to take any consent from the Allottee(s). The excess amount towards the Total Consideration shall be adjusted by the Company at the time of final accounting before giving possession to Allottee(s). The Allottee(s) agrees and acknowledges that the Company shall not be obliged to pay any interest in this regard.*

(f) *The Company shall have right, without approval of any Allottee(s) in the Project to make any alteration, additions, improvements or repairs whether structural or non-structural, interior or exterior, ordinary or extraordinary in relation to any unsold floor within the Project and the Allottee(s) agrees not to raise objections or make any claims on this Account.*

...

Section 14. Adherence to sanctioned plans and project specifications by the promoter.-

(1) *The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities*

(2) ...

(i) *...Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an*

authorized Architect or Engineer after proper declaration and intimation to the allottee."

- xv. That the respondent has adhered to the sanctioned plan and project specifications by the promoter and hence did not violate the section 14 of the Act. That the office order dated 25.01.2021 issued by Principal Secretary, Town and Country Planning, Chandigarh resolved the conflict of RERA Act, Haryana Development and Regulation of Urban Areas Act, 1975 and Haryana Apartment Ownership Act in terms of the procedure to be followed while altering the sanctioned plans, layout plans, building plans. This office order clarified the procedure laid down in Section 14(2) of the RERA Act. The respondent has complied with the due process and procedure enumerated in this office order dated 25.01.2021 and the same was even complied with in 2017. The office order dated 25.01.2021 is annexed hereto as Annexure R10. By virtue of this direction the respondent has published the amendment on the site plan in 3 national newspapers and public notice inviting their objections against the said amendment.
- xvi. That it is a matter of fact that in the approved layout plan of 2011, there was a 3m wide road shown on west side of plot no. A-62. However, the respondent had started the process of revision of the plan as early as in 2014 and accordingly the layout plan was revised on 30.05.2017.
- xvii. That the said 3 mtr. road opens up to private land which is not a part of the licensed land and the villagers residing in the said land breeds cattle in it other than residing in a part of it. In the amended plan, the respondent considering all the future security

threats of Amber block, the said 3m wide road was repositioned in order to avoid any unwanted nuisance from the adjacent landowner not being part of the project/ licensed land. Also, the landowner of the adjoining land was demanding access to his land through the said 3.0mtrs. road. Pursuant to the revision in the layout plan /demarcation plan on 30.05.2017, the public notices were issued on 11.08.2017. The Public notices and newspaper publications dated 11.08.2017 are annexed hereto as annexure R7(Colly.). That on 14.10.2020 final approval of revised layout plan was received.

xviii. The layout plan was further revised on 21.06.2021, pursuant to which the public notice was issued on 28.06.2021, whereby the officer of the DTCP has required seeking objections/ suggestions from the allottees against the revision of the layout plan/ demarcation plan within a period of 30 days of publication of this notice. The public notice dated 28.06.2021 and the newspaper publications are annexed hereto as annexure R11(Colly). Pursuant to which, the complainants filed two separate complaints one before the STP, Gurugram and the other before DTP, Gurugram. True copies of the complaints dated 28.06.2021 are attached herewith and marked as annexure R12 and annexure R13 respectively. That after receipt of the complaint in DTP and STP offices in Gurugram, respondents responded and responded to the complaints with supporting documents and the DTP and STP offices did not find any anomalies/ defects in the approved site plan.

xix. That after the complainant did not receive any results before the DTP, Gurugram and STP, Gurugram, the complaints approached

Ld. HRERA Gurugram with similar grievances as a counterblast/ after-thought for their illegal gains. The major grievance raised by the complaint is rotating and revolving against one agenda i.e. additional parking space and the present complaint is only to get a direction for that.

- xx. That it is submitted that the complaints are agitating their similar grievances at two different forums at the same time, thereby qualifying to be a best case of forum shopping. It is submitted that the present complaint is not maintainable being sub judice before DTP, Gurugram and STP, Gurugram and should be dismissed on this ground alone. That in addition to that, it is important to note that objections from the 752 allottees were sought by the STP, Gurugram against the revised layout plan and proceedings were held vide virtual hearings. It is pertinent to mention that the complainants have not raised any objection pertaining to the 3 metre wide road and their objections were recorded in minutes of the meeting dated 14.10.2021 of proceedings of the virtual hearing.
- xxi. That the present complaint is a frivolous attempt of the complainants to extract monies out of the respondent. That there exists no cause of action for the complainants to file the present complaint. That the respondent has made good on all parts of his responsibilities and obligations under the agreement under the law, rules and regulations. That for the reason of non-existence of an existing cause of action and Coram non judice, this complaint is liable to dismissed.
- xxii. That the present complaint has been filed by contending a violation of section 14 of the Act, which has not occurred, in any

manner whatsoever. That there exists no relationship between the parties, contractual or otherwise, and the complainants bought the unit with open eyes and hence cannot bring the present claim hence, this complaint is bound to be dismissed with costs in favour of the respondent.

E. Jurisdiction of the authority

12. 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

13. 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

14. 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.

15. 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 relief sought by the complainants:

16. The common issues with regard to delayed possession charges & other charges are involved in all these cases.

F.I Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

The subject unit in the said project was originally allotted to Mr. Kalidas Mukherjee vide provisional allotment letter dated 23.07.2009 then the unit was subsequently transferred to Mr. Vipin Chandra (1st subsequent allottee) vide nomination letter dated 16.07.2010 who further transferred the unit to Mr. Veersingh Sarna and Ramneek Kaur (2nd subsequent allottees) vide nomination letter dated 01.09.2017, who was offered the possession on 11.05.2019 and the possession was subsequently handed over to them vide unit hand over letter dated 03.02.2020 and consequently a conveyance deed was executed on 24.02.2020. After this, Mr. Veersingh Sarna and Ramneek Kaur transferred the ownership rights to Mr. Vivek Madhani & Mrs. Anuradha Nidubrolu (complainants) vide sale deed dated 23.06.2020.



Considering the above-mentioned facts, the authority is of the view that the complainants herein are 3rd subsequent allottees who had purchased the apartment from the 2nd subsequent allottee after such time when the occupation certificate dated 09.05.2019 for the subject unit was obtained by the respondent promoter. Moreover, the offer of possession was also made to the 2nd subsequent allottee and thereafter conveyance deed with respect to the subject unit was also executed by the 2nd subsequent allottee and the respondent. It can be inferred that the complainants were well aware about the status of construction of the project at the time when they chose to purchase their rights from the previous allottee from the secondary market, and therefore, allegations qua delay in handing over the possession cannot be raised by the complainants at this stage. Hence, in such eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainants as there is no infringement of any right of the complainants by the respondent promoter.

F.II To invoke powers of investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the provisions of section 14, thereby imposing penalty in accordance with the provisions of the Act.

The complainants in the present matter submitted that the respondent have made alterations in the building plans attached at schedule I of the conveyance deed and a complaint regarding the same have also been filed by the complainants before STP & CTP office, Gurugram on 29.06.2021. Accordingly, this act of the respondent is in violation of section 14 of the Act.

On the contrary, the respondent has contented in its reply that the respondent has adhered to the sanctioned plan and project

specifications. It is asserted by the respondent that as per the approved layout plan of 2011, there was a 3 mtrs. road shown on west side of plot no. A-62. However, the respondent started the process of revision of the plan in 2014 and the layout plan were revised on 30.05.2017. Pursuant to the revision in layout plan/demarcation plan, the public notices were issued on 11.08.2017 and the final approval was received on 14.10.2020. Furthermore, the layout plans were again revised on 21.06.2021 pursuant to which public notice was again issued on 28.06.2021 for seeking any objection from the existing allottees. The complainants then filed two separate complaints before STP & CTP Haryana but did not receive any results and therefore, the complainants approached HARERA, Gurugram. The respondent also submitted that since this issue /matter is sub judice before DTP, Gurugram, the present complaint should be dismissed.

The authority thinks it appropriate to narrate the order dated 25.01.2021 issued by Principal Secretary, Town & country planning, Chandigarh regarding the procedure to be followed while altering the sanctioned plans, layout plans, building plans. The relevant part of the said order is reproduced herein below: -

"

A. Procedure for addition/alteration in sanctioned plans, viz., layout plans, building plans etc: The following procedure shall be adopted for the purpose of considering objections / suggestions of the allottees, in fulfilment of the provisions of Section 14(2) of the RERA Act, 2016 as well as the requirements, if any, under the Act of 1975:

- i. The revised layout/building plan is approved in-principle with the following conditions:**
 - i. That the colonizer shall invite objections from each existing allottee regarding the said amendment in the layout/ building plan through an advertisement to be issued at least in three National newspapers widely circulated in District, of which one should be in Hindi Language, within a period of 10 days from the issuance of approval.**



ii. Each existing allottee shall also be informed about the proposed revision through registered post with a copy endorsed to the Senior Town Planner, Circle office in case of layout/building plan within two days from the advertisement as per (a) above clearly indicating the last date for submission of objection. A certified list of all existing allottees shall also be submitted to the Senior Town Planner, Circle office....."

After expansively referring to the facts and documents placed on record, the authority observes that the respondent has very well proceeded according to the order mentioned above for revision of the layout plans. Hence, there is no violation of provisions of section 14 of the Act by the respondent company.

F.III To pass interim directions u/s 36 of the Act to restrain the respondent from converting the open space meant for proposed 3 mtr. wide road by merging into another plot or utilizing it for any other purpose as an interim measure, till the pendency of the present complaint.

F.IV To direct the respondent to construct the 3 mtr. wide road on the open space, adjacent building no. A-62, amber block, emerald hills floors, sector 65, Gurugram, Haryana, in accordance with the sanctioned layout plan.

As far as the above two reliefs are concerned, since the matter is already sub judice before DTP, Gurugram and moreover, the approval of building plan and any objection with regard to the revision for the same are purely the subject matter to be dealt by DTP, Gurugram. The authority hereby directs the complainants to put the above-mentioned issues before the complaint already going on before DTP, Gurugram.

H. Directions of the authority

17. 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. Delay possession charges cannot be granted to the complainants as there is no infringement of any right of the complainants by the respondent.
18. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
 19. File be consigned to registry.


Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram


Ashok Sangwan
Member

Dated: 06.02.2023