



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

Complaint no. : 4397 of 2020
Complaint filed on : 09.12.2020
First date of hearing : 07.01.2021
Order reserved on : 12.07.2023
Order pronounced on : 19.07.2023

Kiran Chandok
R/o: D 103, Panchsheel Enclave, New Delhi - 110017.

Complainants

Versus

M/s Emaar India Ltd.
(Formerly known as Emaar MGF Land Ltd.)
Address: Emaar MGF Business Park,
M.G. Road, Sikandarpur Chowk,
Sector-28, Gurugram-122102, Haryana.

Respondent

Coram:

Shri Ashok Sangwan

Member

Appearance:

Shri Animesh Goyal

Shri J.K. Dang

Shri Chetan Parkash Gaur

Advocate for the complainant

Advocate for the respondent

Advocate for the applicants

ORDER

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Floors Premier at Emerald Estate, Sector 65, Gurugram, Haryana
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008
	License valid till	16.01.2025
	Licensee name	Active Promoters Pvt. Ltd. and others C/o Emaar MGF Land Ltd.
	Area for which license was granted	25.499
5.	HRERA registered/ not registered	Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
	HRERA registration valid up to	23.08.2022
6.	Unit no.	EFP-II-50-0301, 3 rd floor, tower no. 50 measuring 1600 sq. ft. [annexure C2, page 34 of complaint]



7.	Provisional allotment letter issued in favour of M/s Anjni Casting Pvt. Ltd. and ors. (Original allottees) on	08.06.2010 [annexure R2, page 41 of reply]
8.	Date of execution of buyer's agreement between original allottees and the respondent	20.09.2010 [annexure C2, page 32 of complaint]
9.	Possession clause	<p>11. 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 Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of Buyers Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(emphasis supplied)</p>
10.	Due date of possession	20.09.2013 [Note: Grace period is not included]
11.	The complainant is a subsequent allottee	The respondent acknowledged the complainant as allottee vide nomination letter dated 16.09.2015



		(annexure C5, page 74 of complaint).
12.	Total consideration as per statement of account dated 19.12.2020 at page 45 of reply	Rs. 86,31,602/-
13.	Total amount paid by the complainants as per statement of account dated 19.12.2020 at page 46 of reply	Rs.81,41,075/-
14.	Occupation certificate	11.11.2020 [annexure R16, page 156 of reply]
15.	Offer of possession to the complainant on	17.11.2020 [annexure R17, page 159 of reply]
16.	The complainant has further sold the subject in favour of Mr. Charanjeet and Ms. Preeti (subsequent allottees/ present owners)	The agreement to sell was executed between the complainant and Mr. Charanjeet & Ms. Preeti on 13.03.2021. Thereafter, the sale deed was executed on 23.04.2021.

B. Facts of the complaint

3. The complainant made following submissions in the complaint:

- i. That M/s Anjni Casting Pvt. Ltd. & others were approached by the respondent in relation of booking of flat/unit bearing no. EFP-II-50-0301, in its project 'Emerald Floors Premier-II', Golf Course Extension Road, Sector 65, Gurgaon, Haryana. In pursuance of the same, the said firm signed the booking form and deposited an amount of Rs.5,00,000/- in favour of respondent. On 20.09.2010, buyer's agreement with the respondent was executed between them. As per annexure-3 of agreement dated 20.09.2010, the total



- sale consideration price was Rs.79,57,000/-, which included basic price, IDC and EDC.
- ii. That as per clause 11(a) of the buyer's agreement, the respondent was bound to hand over the possession of the said unit within 36 months from the date of execution of this agreement. In case the respondent was capable to deliver the possession of the unit near about the above period, in that event, they were entitled to a grace period of three months for applying and obtaining the completion certificate / occupation certificate. Since, the due date for handing over the physical possession of the unit as per buyer's agreement dated 20.09.2010 expired on 20.09.2013, the respondent is not entitled to the grace period of three months in the year 2020. Thus, the cutoff date for handing over the possession for all purposes has to be taken as 20.09.2013.
- iii. That in view of the above, it is submitted that according to the said agreement, the complainants ought to have received the physical possession of the flat / unit within 36 months from the date of execution of builder buyer agreement or within an extended period of 3 months subject to applying and obtaining the occupation certificate in respect of the unit and/or the project but the respondent failed to handover of physical possession of the unit/flat as per builder buyer agreement dated 20.09.2010, booked by the complainants in the project of respondent till October, 2020.



- iv. That on the basis of the documents submitted by Mrs. Usha Loganey (mother of the complainant) and the complainant, the respondent sent a nomination letter dated 16.09.2015, confirming the allotment in favour of the complainant and further stating that the captioned unit stands in the name of Mrs. Kiran Chandok, and acknowledged the receipt of the amount of Rs.57,33,066/-, the builder buyer's agreement was duly endorsed by the respondent in the name of the complainant, and thus the complainant assumed the status of the allottee.
- v. That till October 2020, total amount of Rs. 81,31,618/- was paid by the complainant to the respondent in view of the installments towards the payment of flat and when the demand letter was raised by the respondent herein. It is pertinent to mention here that only the complainant has been in compliance with the terms of the builder buyer agreement.
- vi. That as per clause 14.1 of the buyer's agreement, the delay compensation payable by the respondent is at the rate of Rs.5/- per sq. ft. per month of the super area till the date of possession, is very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided and unilateral. It has been observed in para 181 of Neelkamal Realtors Pvt. Ltd., Vs. U.O.I. and ors. (W.P. 2737 of 2017), wherein the Bombay High Court Bench held that:-



"..Agreements entered into with individual purchasers were invariably one sides, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delay delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one sides agreements".

- vii. That the respondent having failed to fulfill its obligation under section 11(4)(a), therefore, the promoter is liable under section 18(1) proviso read with rule 15 of the rules, to pay interest at the prescribed rate to the complainant for every month of delay till the handing over of possession.
- viii. That even after the issue of letter of offer of possession the complainant requested for allowing her to visit to her unit no.301, in Tower 50, to see the actual status of the unit, whether fit for possession or a fake letter has been issued. The unit appears to be in a sorry state of affair and nowhere near completion with all the facilities as promised. There are multiple finishing job, and there are various other things that demanded attention, and that is the reason that the respondent is denying the complainant a visit to the unit on the lame excuse of Covid-19. The complainant has every right to visit the unit, which has been denied to her on false excuses. There do not seem to be any approach road to the unit of the complainant. Instead of honestly allowing the complainant to visit and see the unit, the respondent has called upon the complainant to first deposit the amount demanded and then complete the documents formalities



and have the key to the unit. The complainant apprehends the genuineness of the letter of offer of possession dated 17.11.2020.

- ix. That the acts of the respondent here in have caused severe harassment both physically and mentally and that respondent has duped the complainants of the hard earned money invested by the complainant herein by its act of not handing over the physical possession of the flat to the complainants. Thus it is further prayed that till the decision of the present petition, holding over charges claimed vide clause 14.1(a) of buyer's agreement, at the rate of Rs.50/- per month per sq. ft., totally exorbitant, arbitrary, and unjust and maintenance charges, be held in abeyance. This hon'ble authority be pleased to quash the illegal demand of respondent on account of interest free maintenance security, as the respondent is already charging maintenance charges in advance for 12 months.
- x. That since the unit in question is situate within the territorial jurisdiction of district Gurugram, hence this forum has the got the jurisdiction to entertain and try the present petition. That the complaint filed by the complainant herein is within the limitation period and the complainant has paid the fee as required under law.

C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following reliefs:

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- i. Direct the respondent to make payment of the amount of interest on the total amount of Rs.81,31,618/- as per the Act from the due date of possession till the date of actual physical possession, and adjust the last demand amount raised vide letter of possession dated 17.11.2020 and make payment of the balance amount, and continue paying the interest till the realization, according to section 18(1) the Act read with rule 15 & 16 of the rules.
 - ii. Direct the respondent to kindly handover the possession of the unit after completing the unit in all aspect to the complainant and not to force to deliver an incomplete unit.
 - iii. Direct the respondent to provide the exact layout plan of the said unit.
 - iv. Refrain the respondent from charging holding charges.
 - v. Quash the illegal demand on account of advance maintenance charges and interest free maintenance security as the respondent is already charging maintenance charges for 12 months.
 - vi. Pass such order or further order(s) as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.



D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the complainant has filed the present complaint seeking possession and interest for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to penalty, compensation and interest are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone. Moreover, it is respectfully submitted that the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.
- ii. That the complainant had booked the apartment in question as a speculative investment. The complainant never intended to reside in the apartment in question and had booked the same with a view to earn a huge profit from resale of the same. The complainant has not been able to execute the contemplated transaction and therefore has preferred the instant complaint in order to evade her obligations under the buyer's agreement. Thus, the complaint has been filed, not by an "allottee" under the Act but an investor and thus the present complaint is not maintainable for this reason as well.



- iii. That the original allottee (M/s Anjni Casting Pvt. Ltd.) had approached the respondent sometime in the year 2010 for purchase of an independent unit in its upcoming residential project "Emerald Estate" situated in Sector 65, Gurgaon. That the original allottee prior to approaching the respondent, 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 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.
- iv. That thereafter the original allottee vide application form dated 15.05.2010 applied to the respondent for provisional allotment of a unit in the project. The original allottee, in pursuance of the aforesaid application form, was allotted unit bearing no. EFP-II-50-0301, located on the 3rd floor, in the project vide provisional allotment letter dated 08.06.2010. The original allottee consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottee shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bona fide of the original



- allottee at the relevant time. The original allottee further undertook to be bound by the terms and conditions of the application form.
- v. That the original allottee was irregular regarding the remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the original allottee to make payment of outstanding amounts due and payable by it under the payment plan/instalment plan opted by him. However, the original allottee miserably failed to adhere to the timelines intimated through the aforesaid letters. Statement of account dated 19.12.2020 maintained by the respondent in due course of its business reflects the delays in remittance of various amounts on the part of the original allottee. The original allottee has wilfully and consciously defaulted in remittance of the instalments enumerated in the schedule of payment.
- vi. That buyer's agreement dated 20.09.2010 was executed between the original allottee and the respondent. Clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no



compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the original allottee, having defaulted in payment of instalment, was thus not entitled to any compensation or penalty or any amount towards interest under the buyer's agreement.

- vii. That thereafter Mrs. Usha Loganey (hereinafter "the subsequent allottee") approached the original allottee for purchasing its rights and title in the unit in question. The original allottee acceded to the request of the subsequent allottee and agreed to transfer and convey its rights, entitlement and title in the unit in question to the subsequent allottee for a valuable sale consideration of Rs. 1,19,37,000/-. Agreement to sell dated 25.03.2013 executed between the original allottee and the subsequent allottee is appended with the replay as Annexure R7. At the relevant time, the subsequent allottee was specifically informed that, on account of defaults of terms and conditions incorporated in the buyer's agreement by the original allottee, she would not be entitled to any compensation for delay, if any, in delivery of possession of the unit in question and the said fact was duly accepted by the subsequent allottee without raising any objection in this regard. The subsequent allottee had further executed an affidavit dated 25.03.2013 and an indemnity cum undertaking dated 25.03.2013 whereby the subsequent allottee 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.
- viii. That the subsequent allottee, too, was irregular regarding the remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the subsequent allottee to make payment of outstanding amounts due and payable by her under the payment plan/instalment plan opted by her. Statement of account dated 19.12.2020 as maintained by the respondent in due course of its business reflects the delays in remittance of various amounts on the part of the subsequent allottee. Thereafter, the allotment of the unit in question was transferred by the subsequent allottee to the complainant at the request of the complainant.
- ix. That the respondent had intimated the complainant regarding the affidavit and indemnity-cum-undertaking dated 25.03.2013 and affidavit dated 25.03.2013, referred to above, duly executed by the subsequent allottee. The complainant was categorically informed that no compensation or interest or any other amount would be liable to be paid to her on account of delay, if any, in delivery of possession of the unit in question. The complainant had assured the respondent that she would not stake any claim in respect of delay, if any, in delivery of possession of the unit in question. The respondent, relying upon the deliberate representations of the



complainant, proceeded to endorse the unit in question in her favor. The complainant has intentionally distorted the real and true facts and has filed the present complaint in order to harass the respondent 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.

- x. That the complainant had stepped into the shoes of the subsequent allottee and therefore, all the rights and liabilities of the subsequent allottee were transferred to her. As has been delineated hereinabove, the original allottee as well as the subsequent allottee were not entitled to any compensation or any interest for delay, if any, in offering possession of the unit in terms of the buyer's agreement on account of default of terms and conditions thereof by the original allottee. Thus, the complainant is estopped from advancing claims in contradiction and derogation of the rights and liabilities transferred to her from the subsequent allottee.
- xi. That the rights and obligations of complainant and the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 11 of the buyer's agreement dated 20.09.2010, the time period for delivery of possession was 36 months alongwith grace period of 3 months from the date of execution of the buyer's



agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. The complainant has completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, it was categorically provided in the agreement that the time period for delivery of project shall also stand extended on occurrence of facts and circumstances which are beyond the power and control of the respondent. Since, the erstwhile allottees as well as the complainant have defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainant.

xii. That the complainant had an amount of Rs. 5,80,855/- due and payable by her on 19.12.2020. It is submitted that the complainant



does not have adequate funds to remit to the respondent and has preferred the instant complaint with an intent to evade her obligations under the buyer's agreement. The complainant has concealed this fact from this hon'ble authority. Therefore, there is no equity in favor of the complainant.

- xiii. 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. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid, in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- xiv. That the delay, if any, in the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent and hence the respondent cannot be held responsible for the same.

Firstly, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and above), irrespective of area of



each floor, are now required to have two staircases. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the respondent had taken a decision to go ahead and construct the second staircase. In fact, the respondent has completed the construction thereof and has, further, obtained occupation certificate in respect of the project. Moreover, possession of the unit in question has been offered to the complainant. However, the complainant has consciously refrained from obtaining possession of the unit in question. It is submitted that no default or lapse in delivery of possession of the unit in question can be imputed to the respondent in light of the aforesaid facts.

Secondly, the defaults on the part of the contractor M/s B L Kashyap and Sons (BLK/Contractor). The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several



requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill. The arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated. Hon'ble arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

- xv. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 21.07.2020. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-441-Vol- II/AD(RA)/2020/20094 dated 11.11.2020. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in



the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

xvi. That the complainant was offered possession of the unit in question through letter of offer of possession dated 17.11.2020. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement and her earlier representations. The respondent explained to the complainant that she is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments by her as well as erstwhile allottees. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and



threatened the respondent with institution of unwarranted litigation.

- xvii. That it is submitted that the complainant does 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 complainant has preferred the instant complaint. The complainant is needlessly avoiding 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 complainant.
- xviii. That several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Thus, it is most respectfully submitted that



the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

7. 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

8. 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 office situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) of the Act 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings of the authority

11. The complainant has brought new facts on record vide application dated 12.10.2021 wherein it is stated that due to the spread of corona virus, the complainant's family has been facing financial crisis and consequently, has to sell the subject unit. Vide agreement to sell dated 13.03.2021, the complainant has agreed to sell the subject unit to Mr. Charanjeet and Ms. Preeti (hereinafter referred to as 'subsequent allottees'). Thereafter, the sale deed was executed on 23.04.2021. A copy of agreement to sell dated 13.03.2021 and the sale deed dated 23.04.2021 has been placed on record.
12. Vide application dated 08.09.2022, the applicants (Mr. Charanjeet and Ms. Preeti) have moved an application under Order I rule 10 under Civil Procedure Code, 1908 for impleading them as necessary parties. It is stated that in view of sale deed dated 23.04.2021, the applicants are the



legal, joint and beneficial owners of the subject unit and are fully competent to enjoy the same. After having purchased the unit, the applicants went to the office of the builder requesting it to make endorsement in their favour and further to allow them to move into the said unit as they are staying in a rental house with their family. However, the respondent has refused to accede to their request on the pretext that *'they will not allow the applicants to enter into the unit till the time the previous owner/complainant does not withdraw the present complaint.'* Thereafter, the applicants have approached the complainant with the request to complete the transfer formalities with the builder in their favour. Both the respondent and complainant are creating a lot of impediments for the applicants by resisting their entry to the unit. Further, besides loan installment, the applicants are also burdened with the payment of rent. In view of the above, the applicants prayed that they be impleaded as necessary party to the present complaint in the interest of justice.

13. The respondent has filed reply to the aforesaid application on 08.12.2022 wherein it is stated that in the entire application, the applicants have failed to disclose as to whether they should be impleaded as applicants or respondents. The presence of applicants is not at all required for just, proper or effective adjudication of the real question in controversy. The impleading of applicants as parties shall needlessly broaden the scope of controversy. The applicants wish to seek fresh reliefs which are not in



consonance with the lis already pending before this Hon'ble Authority. In the misconceived and factually and legally unsustainable application under reply, false, frivolous and vexatious accusations have been levelled against both the applicants as well as respondents. Therefore, even as per the frivolous version of the applicants they cannot be impleaded as applicants or for that matter as respondents. Cumulatively considering the facts and circumstances of the present case it is evident that the application under reply is bereft of logic and devoid of any merit and the same deserves to be dismissed.

14. The complainant has filed reply to the aforesaid application dated 08.09.2022 stating that the complainant had completed all the formalities of the transfer of the flat in favour of the applicants and have nothing to do with the dispute pending before this authority. The act and conduct of the respondent, if any, as claimed by the applicants is an afterthought but does not allow the applicants to move such an application.
15. The authority observes that it is a matter of fact that the complainant herein purchased the subject unit on 19.06.2015 and was an allottee as per the provisions of the Act of 2016 till the date of filing of the present complaint. Thereafter, the complainant had agreed to sell the unit in question to the subsequent allottees vide agreement to sell dated 13.03.2021 and thereafter, the sale deed was executed on 23.04.2021. Now, the important question which needs to be determined by this authority is whether the complainant herein is entitled to the



abovementioned reliefs as are sought by her in the present complaint or not. In simple words, she ceased to be an allottee on 23.04.2021 so, whether she is entitled to the reliefs as are sought by her under the present complaint.

16. It is of utmost importance to go through the definition of the term "allottee" as defined under section 2(d) of the Act and the same is reproduced as under for ready reference:

"2 In this Act, unless the context otherwise requires-

(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".

(Emphasis supplied)

Accordingly, following are allottees as per this definition:

- (a) **Original allottee:** A 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.
- (b) **Allottees after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

17. In the present complaint, the complainant is not allottee under the Act as the complainant does not fall under any of the two categories stated above reason being that the complainant has already transferred the



subject unit in favour of Mr. Charanjeet and Ms. Preeti (subsequent allottees/present owners) vide sale deed dated 23.04.2021. Had the intention of the legislature was to cover such allottee-complainant, then the stress would be on the terms "who **had been** allotted" the unit. Also, as per the recitals of sale deed dated 23.04.2021, it is amply clear that the respondent had already executed conveyance deed in favour of the complainant on 26.03.2021 and thereafter, the complainant had executed sale deed in favour of Mr. Charanjeet and Ms. Preeti. Moreover, after transferring the unit in question, the complainant does not have any right, title or interest in the said property. It is very evident from the bare perusal of the complaint that the complainant herein remained to be an allottee under section 2(d) of the Act till 23.04.2021 i.e., when she sold the subject unit to the subsequent allottees. She ceased to be an allottee under the ambit of section 2(d) of the Act on 23.04.2021 so she is not entitled to any relief as sought by her by way of the present complaint.

18. In view of the above, the complainant has no locus standi to claim delay possession charges under section 18 of the Act as she does not fall under the term allottee of the Act. Consequently, the relief claimed by the complainant can't be granted to her as she is not an allottee within the meaning of section 2(za) of the Act and only an allottee can file a complaint seeking relief under section 18 of the Act. Thus, the present complaint is not maintainable.



19. In view of the above, the application dated 08.09.2022 moved by the applicants under Order I rule 10, Civil Procedure Code, 1908 is also infructuous. However, if the applicants are aggrieved with respect to the respondent, then they are at liberty to approach the authority by filing a fresh complaint.
20. Complaint stands dismissed.
21. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.07.2023