



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

**Complaint no** : 13 of 2022  
**Order reserved on** : 03.05.2023  
**Order pronounced on** : 09.08.2023

1. Vibha Choudhry
2. Vinod Choudhry

**Address:** 1108, Jumeirah Bay X3, Cluster X, JLT, Dubai.

**Complainants**

Versus

M/s Emaar India Ltd.

**Address:** Emaar MFG Business Park,  
M.G. Road, Sector 28, Sikandarpur Chowk,  
Sector 28, Gurugram, Haryana.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Varun Chugh  
Shri Dhruv Rohatgi

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 06.01.2022 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 complainants, 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- II at Emerald Estate, Sector 65, Gurugram, Haryana
2.	Area of the project	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
	Area for which license was granted	25.499 acres
5.	HRERA registered/not	<b>Registered</b> vide no. 104 of 2017 dated 24.08.2018 [For 82768 sq. mtrs.]
	Validity of registration	23.08.2022
6.	Provisional allotment letter dated	16.07.2010 [annexure A, page 15 of complaint]
7.	Unit no.	EFP-II-56-0002, ground floor (1975 sq. ft.) [page 21 of complaint]
8.	Date of execution of buyer's agreement	16.08.2010 [annexure A, page 19 of compliant]
9.	Possession clause	<b>11. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <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</i>



		<p><i>Company proposes to hand over the possession of the Unit within <b>36 months from the date of execution of Buyer's Agreement</b>. The Allottee(s) agrees and understands that the Company shall be entitled to a <b><u>grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</u></b></i></p> <p>(Emphasis supplied) [page 34 of complaint]</p>
10.	Due date of possession	16.08.2013 [Note: Grace period is not included]
11.	Sale consideration as per payment schedule annexed with the buyer's agreement	Rs.1,17,20,750/- [Page no. 136 of reply]
12.	Total consideration as per statement of account dated 24.01.2022 on page no. 169 of reply	Rs. 1,28,48,969/-
13.	Total amount paid by the complainants as per statement of account dated 24.01.2022 on page no. 170 of reply	Rs. 1,30,85,640/-
14.	Occupation certificate	11.11.2020 [annexure R7, page 155 of reply]
15.	Offer of possession	19.11.2020 [annexure R8, page 158 of complaint]
16.	Unit handover letter dated	08.04.2021 [annexure R11, page 172 of reply]
17.	Conveyance deed executed on	02.12.2021 [annexure R12, page 173 of reply]
18.	Settlement agreement executed between the	April 2021 [annexure R2, page 76 of reply]



complainants and the  
respondent on

**B. Facts of the complaint**

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

- i. That the complainants have preferred the present complaint against the respondent constrained by the malafide and deceitful acts and malpractices being followed by the respondent to dupe and cheat its innocent and bonafide buyers, by grossly violating the terms and conditions set forth in the buyer's agreement and layout plans and in blatant disregard to the provisions enshrined in Act.
- ii. That the property in question i.e., floor bearing no. EFP-II-56-0002 (ground floor) admeasuring 1975 sq. ft., along-with servant quarter and a car parking space in the project known as "Emerald Floors Premier, Phase - II" situated at Sector-65, Gurugram, Haryana was booked by the complainant and her husband as co-applicant, in the year 2010.
- iii. That ground leading to the filing of the present complaint is that at the time of booking the property in question, the complainants were misrepresented by the respondent to the effect that the property comprises of a servant quarter to be built on the terrace of the said plot wherein the complainants were allotted the above mentioned floor, however the said commitment was found to be false and misleading on the face of it when the possession of the property/floor was offered to the complainants.
- iv. That at the time of offering of the possession, there was no mention of the servant quarters whereas the same was the part of the buyer's agreement entered into between the complainants and the



- respondent, more particularly shown in the layout plan annexed with the buyer's agreement, in accordance with which, the respondent ought to have provided the complainants with the servant quarter, however, the same was not built by the respondent, despite taking the entire cost towards the property, from the complainants.
- v. That the total cost of the floor was Rs. 1,28,48,969/- only which was all inclusive and included the cost of servant quarter as well, however, despite charging the entire amount towards the cost of the property, the promised amenities were not provided to the complainants, which tantamount to cheating and makes the respondent criminally liable, for duping the innocent buyers by portraying a rosy picture of their project, to usurp the hard-earned money of buyers.
- vi. That the complainants had already made the entire payment towards the cost of the unit and got the conveyance deed registered in their favour on 02.12.2021. The physical possession of the floor was handed over by the respondent on 08.04.2021 and even prior to the receipt thereof, the complainants wrote several emails to ascertain the actual status of the servant quarter but never received any response from the respondent on that count.
- vii. That the respondent has duped and misled the complainants by charging a hefty sum of Rs.19,75,000/- towards preferential location charges @ Rs. 1000/- per sq. ft. whereas in accordance with clause 1.2 (a) (e) of the builder buyer's agreement, PLC for ground floor has been mentioned @ Rs. 600/- per sq. ft. as is clearly spelled out in the builder buyer's agreement and should have been Rs. 11,85,000/-





- and hence an excess of Rs. 7,90,000/- was charged from the complainants towards preferential location charges.
- viii. That the complainants brought these facts to the notice of the respondent via telephonic calls at the customer care number of the respondent and registered their protest regarding the defective possession, in the absence of any provision for servant quarter, which was very much the part of property in question and requested them to rectify the defects at first besides refunding the excess PLC amount charged from the complainants, but to no avail and the respondent showed reluctance on their part to resolve the issue in hand.
- ix. That as per the layout of the property, which was a part of the buyer's agreement (the "Agreement"), the respondent had categorically mentioned that the floor comprises of a servant quarter on the terrace and hence was induced by the representations of the respondent/promoter and thereby purchased the property in question.
- x. That no heed was paid to the request of the complainants for redressal of their genuine grievances by curing the defects so that the complainants may fulfil their obligations of making the payments as demanded by the respondent but yielded no results as the respondent opted not to respond to the emails of the complainants and left them in the middle of nowhere.
- xi. That there are several major deviations from the initial representations as stated in the specifications annexed along with the buyer's agreement wherein it was shown that at the entrance gate of the floor, a double wooden door would be installed, however



- in gross violation of the said agreement, the respondent has in fact installed a single wooden door, in order to save costs, which came to the knowledge of the complainants at the time of home orientation and hence the respondent offered a completely defective project, despite charging huge costs towards the floor, from the complainants.
- xii. That the complainants had purchased this property keeping in mind the said additional facilities which was promised to be delivered by the respondent and for which additional facilities the respondent had charged cumulatively towards the cost of the property, however, at the time of offering the possession, the said promised amenities i.e. the servant quarter, etc. was missing which has defeated the very purpose of the complainants to buy the property in question and has resulted into substantial value erosion of the property of the complainants in terms of price as well as rent thereby causing them huge financial loss as in the absence of the servant quarter, the complainants will have to utilize their study room as a servant quarter.
- xiii. That more so, utilization of study room into servant quarter would also pose a security threat to the complainants and their family members besides compromising their privacy in the absence of a dedicated servant quarter on the terrace, as shown in the layout plan of the buyer's agreement, entered into between the complainants and the respondent.
- xiv. That the floors were sold by misrepresenting the complainants and all such misrepresentations have been made in order to lure



- complainants to purchase the floor at extremely high prices. There are various deviations from the initial representations.
- xv. That the respondent has breached the fundamental term of the contract by not offering the promised amenities as stated in the buyer's agreement and the layout plan. The complainants were made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site. The respondent has not acknowledged the requests of the complainants. The promised amenities are missing. The complainants were made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site.
- xvi. That with respect to the said property, the complainants had already filed a complaint before this Hon'ble Authority seeking delayed interest as the respondent has miserably failed to handover the possession of the floor, on time however, the matter got settled between the parties with respect to the issue pertaining to the delay possession interest.
- xvii. That the respondent had committed gross violation of the provisions of section 14 of the Act by not giving the promised amenities as offered in the buyer's agreement. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The respondent has resorted to misrepresentation. The complainants, therefore, seek direction to the respondent to construct the servant quarter at the terrace of the property in





question, in a time bound manner, or in the alternative, provide adequate compensation for non-construction of the servant quarter, which commensurate with the losses occasioned by the acts of the respondent.

**C. Relief sought by the complainants**

4. The complainants have filed the present compliant for seeking following relief:

- i. Direct the respondent to construct the servant quarter at the terrace of the property/plot in which the complainants own a floor and install double door at the entrance of the floor in a time bound manner.
- ii. Direct the respondent to pay penalty, towards non construction of the servant quarter and non-installation of double door at the entrance of the floor as per provisions of the Act.
- iii. Direct the respondent to pay the excess of Rs. 7,90,000/- charged from the complainants towards preferential location charges.
- iv. Direct the respondent to pay a sum of Rs. 50,000/- to the complainants towards the cost of the litigation.

**D. Reply by the respondent/promoter**

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

- i. That present complaint pertains to the alleged amount charged for the preferential location charges (PLC) for which the complainants have filed the present complaint, before the hon'ble authority, inter-alia seeking refund of the amount paid by the complainants for PLC as well as the construction of the servant quarter in regard to the



said unit in question. Pursuant to the filing of the present complaint, the respondent received a notice from this hon'ble authority.

- ii That the present complaint is further not maintainable for the reason that the same is barred by the principles of res judicata. It is submitted that the complainant had earlier approached this hon'ble authority under complaint no. 3169 of 2020, claiming the relief of delayed interest, possession of the unit in question and refund of PLC. The complainants had, during the pendency of the said proceedings, entered into a Settlement Agreement dated April 2021, whereby all disputes and differences stood settled in terms of the said settlement agreement. The hon'ble authority, vide its order dated 08.09.2021 has already disposed of the said complaint in terms of the said settlement agreement. In view thereof, the complainant is estopped from approaching the Hon'ble Authority since, it has already settled all disputes and differences with the respondent in respect of the unit in question, which is also a subject matter of the dispute herein. It is relevant to mention herein that in lieu of full and final settlement of all disputes and differences in relation to the unit in question, the respondent has already paid a huge sum of Rs. 31,00,000/- to the complainants. In addition thereto, the respondent has even waived off a sum of Rs. 4,00,000/- due and payable by the complainants towards the delayed payment charges against the said unit and has further allotted an additional car parking space to the complainants. The complainants, in terms of clause 1(iv) of the said Settlement Agreement dated April 2021, had categorically consented and undertaken that in view of the advantages/ benefits received by them under the Settlement



Agreement, they are left with no further claims, demands, benefits, compensation etc., of any nature and extent whatsoever regarding in relation to the said unit, the project, the respondent and/ or otherwise regarding and interests of the complainants. It was further categorically undertaken that the complainants shall not raise any other claim, demand, benefits, compensation etc., of any nature whatsoever and extent before any forum legal or otherwise and that the said settlement was full and final settlement, which was binding on both the parties. The complainants herein are therefore, estopped from pursuing the present complaint and the same is liable to be dismissed at the threshold.

- iii. That the complainants have not approached this hon'ble authority with clean hands and as such not entitled to any relief whatsoever. The complainants willfully tried to conceal from this hon'ble authority the facts pertaining to the earlier complaint filed by them in respect of the same subject matter, i.e. the unit in question.
- iv. That the complainants vide application form applied to the respondent for provisional allotment of the unit in the said project developed by the respondent. The said booking application contained detailed terms and conditions and was subject to unit buyer's agreement to be executed later. Pursuant thereto, the complainants were allotted a unit bearing no **EFP-II-56-0002**, in the project vide provisional allotment letter dated 16.07.2010. Vide the said letter, the construction linked installment payment plan opted by the complainants.
- v. That subsequently, buyer's agreement dated 16.08.2010 was executed between the complainants and the respondent. The



complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the installments which was an essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes enormous business losses to the respondent. The complainants chose to ignore all these aspects and willfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

- vi. That the respondent on receipt of the occupation certificate dated 11.11.2020, offered possession of the said unit to the complainants vide offer of possession letter dated 19.11.2020 subject to making payments and submission of necessary documents. The complainants, despite being in default of timely remittance of payment and consequently being disentitled to any compensation in terms of the buyer's agreement, were credited an amount of Rs. 1,44,133/- as benefit on account of Anti-Profiting. Moreover, due to the good reputation and a goodwill of the respondent in the real estate sector, the respondent even credited an amount to the tune of Rs. 4,598/- as EPR to the complainants. Additionally, the respondent has paid a huge sum of Rs. 31,00,000/- to the complainants in terms





of the Settlement dated April 2021. In addition thereto, the respondent has even waived off a sum of Rs. 4,00,000/- due and payable by the complainants towards the delayed payment charges against the said unit and has further allotted an additional car parking space to the complainants. It is submitted that after the possession of the unit as offered to the complainants, an indemnity cum undertaking for possession dated 29.11.2020 was executed by the complainants.

- vii. That after completion of formalities as envisaged in the buyer's agreement and the offer of possession, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 08.04.2021 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- viii. That after execution of the unit handover letter dated 08.04.2021 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. The respondent has further executed a conveyance deed dated 02.12.2021 in favour of the complainants, in respect of the unit in





- question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. It is pertinent to take into reckoning that the complainants have obtained possession of the unit in question and have executed conveyance deed in respect thereof, after receipt of the amount credited by the respondent. The instant complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.
- ix. That after the enforcement of the Act, each developer was required to register its project if the same was an "ongoing project" and give the date of completion of the said ongoing project in terms of section 4(2)(I)(C) of the Act. Accordingly, the respondent had duly registered the said project, in which the said unit in question is situated having registration no. 104 of 2017 dated 24.08.2017. The registration of the project is valid till 23.08.2022 and the respondent has already offered possession of the unit in question within the period of registration and the same has been duly accepted by the complainants which makes the transaction conclusive in nature and therefore no cause of action can be construed to have arisen in favour of the complainants to file a complaint for seeking any refund of amount paid as alleged by the complainants.
- x. That after the execution of the conveyance deed, the complainants cannot now retract from the binding contract, which was entered into by them with open eyes. Clearly the complainants are now becoming greedy and trying to extort excessive amounts from the respondent. The complainants have neither challenged nor obtained



any decree against the said buyer's agreement, schedule of payments and conveyance deed before any court of law and hence, the same is valid and binding on the complainants.

- xi. That the complaint is also liable to be dismissed for the reason that for the unit in question, the agreement was executed on 16.07.2010 i.e. prior to coming into effect of the Act and the Rules. As such, the terms and conditions of the agreement executed prior to the applicability of the Act and the Rules, would prevail and shall be binding between the parties. In view thereof, the Hon'ble Authority has no jurisdiction to entertain the present complaint as the complainants has no cause of action to file the present complaint under the Act/Rules. The Act and Rules are not retrospective in nature. Therefore, the application of the sections/rules of the Act/Rules relating to interest /compensation, cannot be made retrospectively. As such, the complainant is not entitled to any relief whatsoever.
- xii. That the complainants at the time of booking of the unit were apprised of the description of the unit, its tentative specifications and the price being charged for the unit in question along with the PLC charges applicable. The said fact is evident from the copy of the application form dated 17.05.2010. Subsequently, the respondent had also issued a provisional allotment letter dated 16.07.2010, whereby, the payment plan and the applicable charges including that of PLC was categorically mentioned. It is relevant to submit that the complainants have mischievously and intentionally not filed the complete copy of the provisional allotment letter along with their complaint, so as to mislead this hon'ble authority. The schedule of



payments, which forms an integral part of the provisional allotment letter categorically mentions the Preferential Location Charges (PLC), of Rs. 19,75,000/-, applicable on the unit in question. Even the provisional allotment letter categorically mentions the amount of Rs. 19,75,000/- applicable as PLC for the unit in question. Further, the buyer's agreement was executed by the complainants on 16.08.2010 after having satisfied themselves with all the contents of the document. It is relevant to submit that Annexure-3, that forms part of the buyer's agreement also mentions the PLC charge of Rs. 19,75,000/-, applicable to the unit in question. However, cunningly, the complainants have again concealed the Annexure-3 from their copy of the buyer's agreement filed by them, with sole intention to mislead this hon'ble authority. Thus, from a perusal of the said documents, it is evident that the complainants were all throughout aware about the applicable PLC of Rs. 19,75,000/- on the unit in question. However, the complainants, very cunningly are trying to take advantage of a clerical, typographical error, that has crept in clause 1.2 of the buyer's agreement. It is pertinent to mention that the buyer's agreement at that point in time was a standard buyer's agreement, which was got signed from the allottees, with minor changes as per the change in specifics of the respective allottees and their respective units. The said error is a bonafide, unintentional error and the complainants cannot be allowed to take advantage of the same. More so, the fact that the said typographical error is a clerical mistake is borne out from the very fact that all throughout, the complainants were well informed about the applicable PLC of Rs. 19,75,000/- to the unit in question, as is contained in the provisional



allotment letter and its schedule of payments as well as the Annexure-3 of the buyer's agreement. Further, the said grievances are also not liable to be adjudicated in view of the Settlement Agreement dated April 2021, whereby all disputes and grievances of the complainants stand settled in lieu of the compensation already credited by the respondent to the complainants. The said settlement was duly filed with this hon'ble authority in complaint case bearing no. 3169 of 2020, titled Vibha Choudhary & Anr. Vs Emaar MGF Land Limited, disposed of in terms of the said settlement on 08.09.2021.

- xii. That grievance of the complainants in respect of the construction of servant quarter is misplaced and misconceived. It is relevant to submit that the servant quarter did not form part of the unit allotted to the complainants. The complainants had not booked for allotment of a servant quarter, nor was the same represented to the complainants. As already stated above, the builder buyer's agreement, at that point in time was a standard buyer's agreement got executed by the allottees with minor changes as per the respective allottees and their units. Further, the layout plan relied upon by the complainants is only a tentative layout plan and not final and binding. It is relevant to mention that the respondent has not even charged any amount to the complainants against the allotment of any alleged servant quarter, as can be ascertained from the schedule of payments and as such the question of refund of penalizing the respondent qua the same does not arise. Further, the clause 1.1 (a) in the buyer's agreement, pertaining to the **"Description of the Unit"** also does not have any mention of the servant quarter. Even otherwise, the complainants at the time of the





booking of the said unit had satisfied themselves with all the sanctioned building plans and approvals. The respondent herein has completed the construction of the project and the buildings as per the sanctioned building plans and approvals from the competent authority, which has issued the occupation certificate dated 11.11.2020, only after satisfying itself that the construction has been done as per the sanctioned plans and approvals and as per applicable laws. The complainants are only trying to earn a quick buck here on the basis of such false, mischievous, misconceived and misrepresented allegation.

- xiv. That the complainants were aware of the applicable PLC charges at the time of issuance of the provisional allotment letter dated 16.07.2010 and at the time of execution of buyer's agreement dated 16.08.2010. The entire basis of the complainants allegations is a typographical error in clause 1.2 of the buyer's agreement dated 16.08.2010. Thus, cause of action, if any, had arisen on 16.08.2010. Thus, the present complaint being filed in 2021 is grossly barred by limitation and liable to be dismissed. Moreover, the complainants have already taken the possession of the unit in question and the conveyance deed also stands executed. The complainants never raised any grievance as all throughout they were well aware that the allegations contain no iota of truth and are meritless. The complainants are estopped from raising such ill-founded grievances.
- xv. That terms and conditions as set out in the agreement as well as the schedule of payments were accepted by the complainants and the complainants agreed and undertook to scrupulously comply with the same. The said agreement was followed by conveyance deed





dated 02.12.2021, which has been executed and accepted by the parties which makes the transaction conclusive in nature and afterwards the complainants are not entitled to any refund of the amount as all the demands were raised by the terms and conditions agreed between the parties and the complainants cannot take any undue advantage of a clerical mistake. It is submitted that if the complainants had an issue with the PLC charges, then they must have raised that issue at the time of execution of the allotment letter and the conveyance deed. Moreover, even at the time of execution the conveyance deed, the complainants had not raised any issue in regard to the PLC charges which clearly shows that this complaint is totally baseless and is filed in order to harass the respondent and to extort money. Therefore, they are now barred by estoppel in raising any grievance qua the same. It does not now lie in the mouth of the complainants to allege default on part of the respondent.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**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 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**

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) 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 filed the present complaint for seeking construction of servant quarters at the terrace of the property, installation of double door at the entrance of the property and to return the excess of Rs.7,90,000/- charged from the complainants towards PLC.
12. The complainant contended that the complainants had purchased the subject property keeping in mind the additional facilities which were



promised to be delivered by the respondent and for which additional facilities, the respondent had charged cumulatively towards the cost of the property, however at the time of offering possession, the said amenities i.e., servant quarter is missing, which has defeated the very purpose of the buying the subject property.

13. The counsel for the respondent submitted that in view of recital E of the settlement agreement dated April 2021, the complainants cannot raise issue regarding the same unit again. It was specifically stated in the above clause that *the parties have agreed not to proceed further with and pursue the disputes and/or any type of legal proceedings and/or other proceedings against the company, the said project and/or in relation to the said unit before any forum, authority/court.....* The counsel for the respondent also points out that the issue regarding PLC was also part of the earlier complaint which was resolved to the settlement agreement.
14. The authority observes that vide allotment letter dated 16.07.2010, the complainants were allotted unit bearing no. EFP-II-56-0002, ground floor, tower 56 admeasuring 1975 sq. ft. (super area). Thereafter a buyer's agreement was executed inter se parties on 16.08.2010. As per clause 11(a) of the buyer's agreement, promoter has proposed to hand over the possession of the said unit within 36 months from the date of execution of agreement and it is further provided in the agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit/project. The construction commenced on 14.06.2013 as per the statement of account dated 29.06.2022. The period of 36 months expired on 14.06.2016. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation



certificate within the time limit 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. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 16.08.2013. It is matter of fact that the respondent has failed to offer possession of the subject unit on or before 16.08.2013.

15. As the promoter failed to offer possession of the subject unit to the complainant as per the terms of the buyer's agreement executed inter se parties and being aggrieved by the same, the complainants herein instituted a complaint before the authority bearing no. 3169 of 2020 on 08.10.2020 for seeking relief of possession of the subject unit, delay possession interest in terms of section 18 of the Act and refund of PLC. During the pendency of the aforesaid complaint, the possession of the subject unit was offered by the respondent to the complainants vide letter dated 19.11.2020 after receipt of the occupation certificate by the competent authority on 11.11.2020. In the meanwhile, the parties herein executed a settlement agreement in April 2021. The said settlement was placed before the authority and the complaint bearing no. CR/3169/2020 was disposed of by the authority on 08.09.2021 in terms of the settlement so arrived at between the parties. Also, the possession was taken by the complainants on 08.04.2021 and thereafter, the conveyance deed was executed in favour of the complainants on 02.12.2021.
16. It is not disputed that prior to filing of the present complaint before the authority on 06.01.2021, the complainants had already filed a complaint before this Authority bearing no. CR/3169/2020 in respect to the subject property seeking possession of the subject property along with delay





possession interest for delay in handing over possession and refund of PLC. To settle the said complaint, the parties entered into a settlement in April 2021 and reduced the same into writing which led to the said complaint being disposed of on 08.09.2021 in the terms of the settlement. *Firstly*, it is also not disputed that in pursuance of the settlement agreement, the complainants have received a total lump sum compensation amounting to Rs.31,00,000/- as full and final settlement of all other claims, demands, grievances, disputes, differences, mental agony and harassment etc. with regard to the said unit. Also, the respondent had waived and refunded the delayed payment charges amounting to Rs.4,00,000/- and also agreed to waive proportionate charges if any till the date of handover of possession of the said unit. Besides that, the respondent has also agreed to provide an additional car parking space to the complainants. The respondent has also acted upon the said settlement agreement as the amount agreed to be payable as per the settlement agreement has also been paid to the complainants as is evident from the statement of account dated 24.01.2022. It is also a matter of record that after settlement in April 2021, the complainants did not file any civil or criminal case against the respondent-builder challenging the terms and conditions of that settlement before any authority. Furthermore, neither the complainants have challenged the terms of that settlement in the present complaint, nor the case of the complainant is that the settlement was executed with misrepresentation, undue influence, duress, coercion, etc. If there has been any coercion or duress of any kind on the complainants, then they should have approached some competent authority for redressal of their grievances. But they kept mum and filed the present complaint only on 06.01.2021.





Secondly, a reference in this regard may be made to the principles of waiver and estoppel and the same applies when a party knows the material facts and is cognizant of the legal rights in that matter and yet for some consideration consciously abandons the existing legal rights, advantage, benefit, claim or privilege. The waiver can be contractual as in the present case or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct like by wanting to take a change of a favourable decision. The fact that the other side had acted on it is sufficient consideration. The waiver being an intentional relinquishment is not to be inferred by mere failure to take action. These observations were made by the Hon'ble Apex Court of the land in case *Arce Polymers Private Limited Vs. Alphine Pharmaceuticals Private Limited and Ors. MANU/SC/1184/2021*. Earlier, the same view was taken by the Hon'ble Apex Court of land in cases of *Jayesh H. Pandya and Ors. Versus Subhtex India Ltd. and Ors. MANU/SC/1162/2019* and *Kalpraj Dharamshi and Ors. Versus Kotak Investment Advisors Ltd. and Ors. MANU/SC/0174/2021* and wherein it was observed that "*the essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. That apart, the doctrine of "waiver" or "deemed waiver" or "estoppel" is always based on facts and circumstances of each case, conduct of the parties in each case and as per the agreement entered into between the parties and this*



*exposition has been affirmed by this Court in NBCC Ltd. versus J. G. Engineering Private Limited MANU/SC/0013/2010.*

17. *Thirdly*, it is to be noted that only after the offer of possession on 19.11.2020, the parties have settled the dispute inter se vide settlement agreement in April 2021. It is not the case of complainants that the cause of action to file the present complaint arose after the decision of the complaint bearing no. CR/3169/2020 on 08.09.2021 by the Authority. Even the complainants did not take any permission to omit the reliefs now being claimed in the present complaint or sought liberty to sue afterwards in respect of portion so omitted or relinquished. In this way. The present complaint is barred by Order II rule 2 of the Civil Procedure Code, 1908 (hereinafter, in short 'CPC').
18. *Lastly*, the purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all. Rule 3A of Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The aim and objective behind the provision is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. Thus, creation of further litigation should never be the basis of a compromise between the parties. The settlement agreement executed in April 2021 was placed on record before the authority and in terms of the same, the complaint bearing no. CR/3169/2021 was disposed of by the authority on 08.09.2021. Order 23 rule 3A expressly bars instituting a fresh suit for which a compromise decree is passed and Order 23 rule 3A is reproduced hereinbelow for ready reference:



*"3A. Bar to suit- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

19. In the light of the above-mentioned reasoning and provisions, the reliefs for which the present complaint has been filed by the complainant is hereby declined being not maintainable.
20. Complaint stands disposed of. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2023

