BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of filling:	**17.10.2022**
Date of Decision:	**11.10.2023**

NAME OF THE BUILDER		Emaar MGF Land Limited	
PROJECT NAME		"Gurgaon Greens ", Sector 102, Gurugram.	
S. No.	**Case No.**	**Case title**	**Appearance**
1	CR/6657/2022	Vandana Aggarwal vs. Emaar MGF Land Ltd.	Complainant in person Shri Harshit Batra (Advocate)
2	CR/6658/2022	Rajneesh Aggarwal vs. Emaar MGF Land Ltd.	Vandana Aggarwal (Advocate) Shri Harshit Batra (Advocate)

CORAM:

Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority 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, "Gurgaon Greens", Sector 102, Gurugram, being developed by the same respondent/promoter i.e., Emaar MGF Land Limited. Out of the above-mentioned case, the particulars of ***complaint case bearing no. 6657 of 2022 case titled as Vandana Aggarwal vs. Emaar MGF Land Ltd.*** is being taken as a lead case.

A. Facts of the complaint

3. The complainants made following submissions in the complaint:

i. That the Respondents no.1 is engaged in business of developing of land and construction activities. Besides developing of lands, it undertakes large projects of housing/flat/floors etc. which includes the construction and allotment of individuals flats etc.

ii. That the Complainant has been charged three PLCs, one for 3rd floor, one for corner and 3rd for the green facing.

- **3rd Floor PLC-**_PLC of Rs. 82,500/- has been charged from complainant for unit being on the 3rd floor as complainant failed to understand why and how the 3rdfloor falls under preferential location as lift is available for all floors and there is no preference given for units up to 3rd floor.
- **Corner PLC-** PLC of Rs. 1,65,000/- has been charged from complainant being the corner unit but apartment of complainant is two side open only just like each and every other apartment. That on the 3rd side, small window has been given and there is no balcony and no door giving access to come out of the apartment and which can qualify the apartment as corner as no

exit to balcony is permissible from the corner side and thus does not meet the three corner apartment criteria.

- **Green Facing-** PLC of Rs. 2,47,500/- has been charged from the complainant. In front of my apartment, there is small open corner where no construction activity could have been carried out (Approx. 1000 Square feet), and respondent has planted grass there and is used primarily for parking only. Further there is no Fencing/Gates/Swings where kids can play safely or adults and Senior Citizens can walk, thus this small open corner cannot be qualified as preferential location charges.

iii. Vide order pronounced dated 12th August 2021 against Complaint No. 4031/2019 and others, Authority gives direction Number xvi, clearly stating where the apartment /unit is ceased to be preferentially located, amount of PLC along with interest needs to be refunded to complainant and extract of the order is given below :-

- **Extract of the order is as given below:**

Preferential Location Charges (PLC): It is held that the amount levied towards the preferential location charges is justified as per the contractual obligations contained in the builder buyer's agreement. The authority further observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be **refunded to the allottee along with interest** at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

- **Charging of Other Charges:**

Complainant has been charged of other charges amounting to Rs.1,22,662/- on account of other charges without giving any details and may be on account of Electrification, Electric, Water and Sewerage charges which respondent can charge on pro rata basis the actual charges paid to department for which no details have been furnished by the respondent.

- **Extract of the order is as given below:**

Electrification charges: The promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

Electric, water and sewerage connection charges: The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

- **Charging of Value Added Tax (VAT):**

That the Complainant has paid the HVAT under Amnesty scheme amounting to Rs. 39,398/- up to 31st March 2014 as per letter received from the respondent. Vide order from the Hon'ble Authority, VAT is not applicable on the complainant effective 1st April 2014 onwards. Respondent has unlawfully bound the complainant to issue a Fixed Deposit for Rs. 2, 26,188/- @7% and marking the lien favouring respondent. Thus, lien marked on Fixed Deposit favouring respondent should be cancelled.

- **Extract of the order is as given below:**

Charging of Value Added Tax (VAT): The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be

borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

- **Goods and Service Tax:**

That the complainant has entered into an agreement with respondent on 2nd May 2013 and possession period was 36 Months plus 5 Months grace period and thus possession due date comes into effect by 2nd October 2016 which is much before the GST date coming into force which is 1st July 2017. Thus, GST is not applicable on the complainant and amount charged should be refunded to complainant which is Rs.5, 05,811/-.

- **Extract of the order is as given below:**

GST: For the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant(s)/allottee(s) as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreements. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory benefits of that input tax credit to the allottee(s) within a reasonable period.

- **Car Parking:**

That the Complainant has been charged Rs 3,00,000/- (Three Lacs only}towards covered Car Parking but does not confirm in writing if this is part of super area or not. If covered car parking is part of the super area, car parking charges of Rs. 3,00,000/- (Three Lacs only} should be refunded along with interest. Moreover, Car parking allotment process has been biased towards the influential allottees as allotment to them has been done in the podium area or stilt parking and to rest of the allottees, it has been done at Mulli Level parking that is too stinky and no person can stand there even for a minute.

- **Extract of the Order as given below:**

Car parking: It is held that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act of 2016 since it is the part of basic sale price charged against the unit in question as a part of common areas. However as far as the issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force of the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area. Accordingly, in the complaints where the builder has charged for covered car parking, it is justified in doing the same only when the allotted parking area is not included in super area. However, after coming into force of the Act, now the parking in basement cannot be sold and it is part of common areas to be managed by the association of apartment owners.

iv. That the respondent has claimed the Common Area Maintenance and Common Area Electricity charges from the data of Intimation of Possession (18th December 2018) and not from the actual date of possession which was taken on 30th January 2020. The possession was delayed due to non- adherence of the clause 15 of the RERA Act towards the delayed possession charges which was later settled with the respondent.

B. Relief sought by the complainant.

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

i. Direct the respondent to refund the Preferential Location Charges of Rs. 4,95,000/- along with interest as ceased to be preferentially located.

ii. Direct the respondent to refund the other charges of Rs. 1,22,662/-along with interest as these are not applicable to the complainant.

iii. Direct the respondent to cancel the lien marked on Fixed Deposit of Rs 2,26,188/- in favour of Emaar MGF Land Limited on account of VAT as complainant has no liability as per order of Hon'ble Authority.

iv. Direct the respondent to refund the GST amount of Rs.5,05,811/- along with interest as GST is applicable on the apartments whose possession is due 1st July 2017 onwards but in this complaint possession was due on 2nd October 2016.

v. Direct the respondent to refund the parking charges along with interest if the parking area is included in the super area.

vi. Direct the respondent to refund the extra amount charged on account of CAM and CAE from the date of Intimation of possession till actual date of possession.

C. Reply by the respondent.

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

i. That the Complainant is estopped by her acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.

ii. That the Complainant has got no *locus standi* or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Buyer's

Agreement dated 02.05.2013 as shall be evident from the submissions made in the following paragraphs of the present reply.

iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the Adjudicating Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone. That the Complainant have not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.

iv. That the Complainant is not an "Allottee" but an Investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the Complainant as a speculative investment and not for the purpose of self-use as her residence. Therefore, no equity lies in favor of the Complainant.

v. That the Complainant approached the Respondent and expressed interest in the booking of an apartment in the residential group housing colony developed by the Respondent known as "Gurgaon Greens" situated in Sector 102, Gurgaon, Haryana. Prior to the booking, the Complainant conducted extensive and independent enquiries with regard to the Project, only after being fully satisfied

on all aspects, that she took an independent and informed decision, uninfluenced in any manner by the Respondent, to book the unit in question.

vi. That thereafter the Complainant, vide an application form dated 25.01.2012 applied to the Respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no GGN-18-0302, located on the Third Floor, Tower-18 admeasuring 1650 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 25.01.2013. The Complainant consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the Respondent that she shall remit every installment on time as per the payment schedule. The Respondent had no reason to suspect the *bonafide* of the Complainant and proceeded to allot the unit in question in her favor.

vii. Thereafter, a Buyer's Agreement dated 02.05.2013 was executed between the Complainant and the Respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the Parties.

viii. That as per clause 14(a) of the Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement

which continues to be binding upon the parties thereto with full force and effect.

ix. That it is submitted that the Complainant herself chose to book the unit which was preferentially located knowing fully well about the extra charges for the preferentially located unit. That the price to be charged for PLC was agreed in the Agreement executed between the parties, willingly and voluntarily, without any demur whatsoever. Moreover, the amount towards PLC charged from the Complainant has been clearly mentioned in the Allotment letter as well as the Buyer's Agreement and the said position was duly accepted by the Complainant. That as per clause 1.2(a)(i) and 1.2(e) of the Buyer's Agreement, the Complainant voluntarily chose to book the preferential located unit and now cannot act with blind eyes. That the relevant clause of the Buyer's Agreement is reproduced herein below for ready reference

1.2(e)(i) The proportionate amount of the preferential location charges (PLC) for certain units in the Project which inter alia would be charged for Greens for Rs.247500/-, Corner for Rs.165000/-, Third Floor for Rs.82500/- and if the Allottee opts for any such Unit, the PLC for the same shall be included in the Total Consideration payable by the Allottee as set out in clause 1.2 (a)(i) above for the said Unit.

1.2(e)(ii) The Allottee understands that if due to change in layout plan, the location of any Unit, whether preferentially located or otherwise is changed to any other preferential location, where the PLC are higher than the rate as mentioned hereinabove, then in such a case the Allottee shall be liable to pay the PLC as per the revised PLC decided by the Company within thirty (30) days of any such communication received by the Allottee in this regard. However, if due to the change

in the layout plan the Unit ceases to be preferentially located, then in such an event the Company shall be liable to refund only the amount of PLC paid by the Allottee without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the following installment for the unit.

x. That additionally, it is submitted that the charges against which the Complainant seeks refund, were also levied as per the agreed terms and conditions of the Buyer's Agreement, and the same were paid by the Complainant without any demur whatsoever. That the present Complaint is nothing but an attempt on part of the Complainant to seek wrongful gains over the wrongful loss of the Respondent.

xi. It is submitted that the remittance of all amounts due and payable by the Complainant under the agreement as per the schedule of payment incorporated in the Agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the Respondent. It is pertinent to mention that it was categorically provided in clause 14(b)(iv) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the 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. Since the Complainant has defaulted in timely remittance of payments as per the 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. At this stage, it is categorical to note that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, the Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar

Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the Respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Complainant and demanding the prices only as and when the construction was being done.

xiii. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the Respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the Project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the Agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble

Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the Respondent builder.

xiv. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the Respondent builder. That it must also be noted that the Respondent had the right to suspend the construction of the Project upon happening of circumstances beyond the control of the Complainant as per Clause 14(b)(i), however, despite all the hardships faced by the Respondent, the Respondent did not suspend the construction and managed to keep the Project afloat through all the adversities. The Hon'ble Supreme Court noted in the case Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 held that the payments are to be paid by the purchaser in a time-bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

xv. It is further submitted that despite there being a number of defaulters in the project, the Respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by the Hon'ble Authority that despite the default caused, the Respondent applied for an Occupation Certificate in respect of the said unit on 13.04.2018 and the same was thereafter issued vide memo bearing no. 33193 dated 05.12.2018. 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, 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 utilized by the statutory authority to grant occupation certificate to the Respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

xvi. That thereafter, the Complainant was offered possession of the unit in question through letter of offer of possession dated 12.12.2018. Moreover, multiple possession reminders were sent to the Complainant for taking over the possession of the said unit but the Complainant delayed in taking the possession of the said unit for the reasons best known to them. 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. It is submitted that the Complainant delayed the procedure of taking the possession of the said unit on their own account.

xvii. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the Respondent, the Respondent has credited an amount of Rs.

56,474/- towards Anti-Profiting and an amount of Rs. 12,57,288/- as compensation to the Complainant on account of the delay caused due to the default of the Complainant in timely remittance of instalments and due to the reasons beyond the control of the Respondent. That the Respondent has always adhered to the terms and conditions of the Buyer's Agreement. The allegations put forth by the Complainant qua the Respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

xviii. That the Respondent earnestly requested the Complainant to obtain possession of the unit in question but despite taking possession of the said unit, the Complainant filed a complaint bearing number HRR/GGM/CRN/870/2019 ON 24.02.2019 before the Hon'ble Authority issuing the claims as raised in the present complaint. That both the parties during the pendency of the previous complaint agreed to settle all their disputes amicably. That a Settlement Agreement dated 24.12.2019 was executed between both the parties wherein it was specifically agreed by the Complainant that all grievances, concerns stand redressed to entire satisfaction of the Complainant and nothing stands pending against the Respondent. However, in order to generate unwarranted litigation against the Respondent, the Complainant has filed another complaint before the Hon'ble Authority. That the relevant clauses of the Settlement Agreement are penned down herein below for ready reference:

E. That the Allottee had prayed for delayed possession compensation of Rs 900000 along with interest at 24% per annum from the date of deposit till its actual realization. However, after various rounds of meetings, the Parties have now agreed to settle all disputes. The Company has agreed to withdraw the Complaint filed before HRERA.

3. That on the execution of this Agreement, the Allottee/ or any other authorized person of Allottee shall completely release and forever discharge the Company and all its officers, employees, agents, etc., of and from all claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation, if any, claimed under the said Complaint. That all concerns, claims and grievances raised by the Allottee against the Company and/or any of its officers, employees, agents, etc., stand redressed to entire satisfaction of the Allottees and nothing stands pending against the Company and/or any of its officers, employees, agents, etc., in any manner whatsoever.

xix. That after a full and final settlement between the parties, no cause of action exists. That no claim lies against the Respondent at this point in time. That the full and final satisfaction of the Complainant has also been recorded in the order dated 04.02.2020 of the Ld. Authority in HRR/GGM/CRN/870/2019. That in light of the full and final settlement between the parties, the Parties are bound by the terms of the bargain and hence, devoid of merits. Reference can be laid to the following pronouncements.

- **Arifur Rahman Khan and Ors. Vs. DLF Southern Homes Pvt. Ltd. and Ors.** Civil Appeal Nos. 6239 and 6303 of 2019 Decided on 24.08.2020:

  "37. However, the cases of the eleven purchasers who entered into specific settlement deeds with the developers have to be segregated. In the case of these eleven persons, we are of the

view that it would be appropriate if their cases are excluded from the purview of the present order. These eleven flat purchasers having entered into specific deeds of settlement, it would be only appropriate and proper if they are held down to the terms of the bargain. We are not inclined to accept the contention of the learned Counsel of the Appellants, Mr. Prashant Bhushan that the settlement deeds were executed under coercion or undue influence since no specific material has been produced on record to demonstrate the same."

- **Ajit Singh and Ors. Vs. ATS Infrabuilt Pvt. Ltd. Punjab RERA** MANU/RR/0076/2021 decided on 28.07.2021: *"We are therefore of the view that the complainant(s) once having signed mutual understanding deed by way of an affidavit are now bound by the terms of the bargain. The complaint is accordingly dismissed being devoid of merits."*
- **P.K. Uberoi and Ors. Vs. Vigneshwara Developwell Pvt. Ltd. and Ors. Delhi HC** in Co. A. No. 509/2018 in Co. PET. 885/2015 = MANU/DE/0257/2020; Decided on 27.01.2020: *33. Another aspect is the objections filed by Vigneshwara Victims Welfare Association. The said Association has about 300 allottees. Most of these allottees have entered into a settlement with the promoters of the respondent company before the Delhi High Court Mediation and Conciliation Centre. Now, having entered into a settlement, at this stage, in my opinion, the said Association cannot be allowed to resile from their settlement agreement especially as nothing has changed since signing of the Settlement Agreement. The members of the Associations cannot be permitted walk out from the settlements entered into before the Delhi High Court Mediation and Conciliation Centre without any rhyme or reason.*

xx. Moreover, the said complaint is liable to be dismissed as per Section 11 of the Civil Procedure Code, 1908. That as per Section 11 of CPC, when a matter in issue which has already been decided by the Hon'ble Court, then the trial between the same parties in respect of the same matter shall not be allowed. That the rule of res judicata is based on the principle that no person should be vexed

twice for the same cause of action. That the doctrine of res judicata is based on the maxim of *"Interest reipublicae ut sit finis litium"* which means that it is in the interest of the state that there should be an end to a litigation.

xxi. That pursuant to the execution of the Settlement Agreement, 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 after completing all the formalities regarding delivery of possession. However, the Complainant again did not pay any heed to the legitimate, just and fair requests of the Respondent and threatened the Respondent with institution of unwarranted litigation. That thereafter, an indemnity cum undertaking for possession dated 27.12.2019 of the said unit was executed between the Complainant and the Respondent for use and occupation of the said unit whereby the Complainant have declared and acknowledged that she has no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. The instant complaint is preferred in complete contravention of their earlier representations and documents executed. The present frivolous complaint has been filed with the *mala fide* intention to mount undue pressure upon Respondent thereby compelling it to succumb to their unjust and illegitimate demands.

xxii. That it is pertinent to mention that the Complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and

consequently in order to needlessly linger on the matter, the Complainant refrained from obtaining possession of the unit in question. The Complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the Buyer's Agreement. Therefore, there is no equity in favor of the Complainant. The Complainant have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the Complainant are liable for the consequences including holding charges, as enumerated in the Buyer's Agreement, for not obtaining possession. The Complainant finally took the possession of the Unit on 29.01.2020 and consequently, the conveyance deed was executed on 17.03.2020. It was specifically and expressly agreed that the liabilities and obligations of the Respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied. The Complainant 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 favor of the Complainant to institute or prosecute the instant complaint. The Complainant have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the Respondent.

xxiii. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after 3 years from the execution of the settlement agreement and execution of conveyance deed. That

moreover, after the execution of the Conveyance deed, the contractual relationship between the Parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the Complainant with respect to the Agreement or any obligation of the parties thereunder. That after the execution of the conveyance deed, the Parties are estopped from making any claims at this instance. This Hon'ble Authority in CR/2031/2022 Case titled as Madan Lal Khurana and Sudha Khurana Vs Emaar MGF Land limited dismissed a case vide order dated 08.09.2022 where the allottee approached the Authority years after the conveyance deed had been executed. This Authority disposed the matter noting it to be barred by limitation.

xxiv. That in light of the *bona fide* conduct of the Respondent, all demands made as per the Buyer's Agreement executed between the parties, the peaceful possession having been taken by the Complainant, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the Complainant, this Complaint is bound be dismissed with costs in favor 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.

D. Jurisdiction of the authority

7. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observes that it has territorial as well as subject

matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

D.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.

E. Findings on the maintainability of the complaint

11. The complainant states that settlement agreement was signed between the complainant and the respondent but certain issues which were not part of the settlement deed are being raised in the present complaint like PLC, GST and VAT.

12. The counsel for the respondent states that the matter has already been settled to the full satisfaction of the parties as per clause 3 of the settlement agreement and the complainant is barred from raising any further issues subsequent to the settlement agreement. The conveyance deed in the matter has already been executed on 17.03.2020. Clause 3 of the settlement deed is reproduced hereunder:

> *That on the execution of this Agreement, the Allottee / or any other authorized person of Allottee shall completely release and forever discharge the Company and all its officers, employees, agents, etc., of and from all claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation, if any, claimed under the said Complaint. That all concerns, claims and grievances raised by the Allottee against the Company and/or any of its officers, employees, agents, etc., stand redressed to entire satisfaction of the Allottees and nothing stands pending against the Company and/or any of its officers, employees, agents, etc., in any manner whatsoever.*

13. The authority observed that the present matter has already been adjudicated in CR No. 870/2019 vide order dated 04.12.2020 which state as under "*reply filed by the respondent, copy suppled taken on record. Parties have arrived at an amicable settlement and a copy of settlement deed to this effect has been placed on record. In view of settlement arrived at between the parties to their full satisfaction the matter stands dismissed as withdrawn. File be consigned to the registry*".

14. Further, after receiving occupation certificate, the possession of the allotted unit was offered to complainant on 12.12.2018. Also, it is to be noted that only after the offer of possession on 12.12.2018, the parties have settled the dispute inter se vide settlement agreement dated 24.12.2019. But the complainant did not take any permission to omit the reliefs now being claimed in the present complaint and sought liberty to sue afterwards in respect of portion so omitted or relinquished. Thus, the present complaint is barred by order II rule 2 of the Civil Procedure Code,1908. The relevant provisions are reproduced below:

> ***ORDER II***
>
> ***1. Frame of suit.*** *—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.*
>
> ***2. Suit to include the whole claim.*** —
>
> (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff *may relinquish* any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> (2) Relinquishment of part of claim. —Where a plaintiff *omits to sue* in respect of, or ***intentionally*** *relinquishes*, any portion of his claim, *he shall not afterwards sue in respect of the portion so omitted or relinquished*.
>
> *(3) Omission to sue for one of several reliefs. —A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits,* except with the leave of the Court, *to sue for all such reliefs, he shall not afterwards* sue *for any relief so omitted.*

15. In the light of the above-mentioned reasoning and provisions, it is to be noted that the reliefs for which the present complaint has been filed ought to be taken in the earlier complaint as order II rule 2 provides for the suit to include whole claim. Therefore, the present complaint is not maintainable and is hereby dismissed as such.
16. Complaint stands disposed of.
17. File be consigned to registry.

(Ashok Sangwan)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.10.2023