

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

Complaint no. :	5752 of 2022
Date of complaint :	14.09.2022
Order pronounced on:	19.09.2023

Gopal Krishan Arora Sunita Arora Both RR/o: - C-1/17, Rana Pratap Bagh, Malka Ganj, Delhi-110007.	<b>Complainant</b>
Versus	
M/s Tata Housing Development Co. Ltd. <b>Regd. Office at:</b> - Tower 12 <sup>th</sup> floor, Kamala Mills Compound Senapati Bapat Marg Lower Parel West Mumbai-400013.	
M/s Gurgaon Infratech Pvt. Ltd. M/s Ardent Properties Pvt. Ltd. M/s Landscape Structure Pvt. Ltd. <b>All are RR/o:</b> - Tower-1, 10 <sup>th</sup> floor, 124, Connaught Place, New Delhi-110001	<b>Respondents</b>

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Dhruv Lamba (Advocate)  
Shri Pawan Bhardwaj proxy (Advocate)

Complainants  
Respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S.N.	Particulars	Details
1.	Name of the project	"Primanti", Sector 72, Gurugram
2.	Nature of project	Residential group Housing Complex
3.	RERA Registered/ Not Registered	98 of 2017 dated 28.08.2017 valid upto 30.06.2020
4.	<b>DTPC License no.</b>	155 of 2008 dated 14.08.2008 valid upto 13.08.2018 200 of 2008 dated 08.12.2008 valid upto 07.12.2018
5.	Unit no.	T4, 304, 3 <sup>rd</sup> floor, tower 4 [page no. 25 of complaint]
6.	Unit measuring	202.99 sq. meters (Page no. 26 of complaint)
	Date of booking	23.03.2011 (page 24 of complaint)
7.	Date of allotment	25.11.2011 (Page no, 20 of complaint)
8.	Date of execution of agreement to sell	16.01.2012. (Page no. 22 of complaint)
9.	Possession clause	<b>4.2 Possession, Time and Compensation</b> (a)THDCL, shall endeavor to give possession of the said unit to the purchase(s) on or before <b>16.12.2014</b> and after providing necessary infrastructure in the

		sector by the Govt but subject to force majeure circumstances and reasons beyond the control of THDCL.
10.	Due date of possession	16.12.2014
11.	Total sale consideration	Rs. 1,48,43,250/- (As per payment plan, page no. 54 of complaint)
12.	Total amount paid by the complainant	Rs. 1,44,69,517/- (As per statement of account dated 04.04.2017, page 81 of complaint) Rs. 1,53,10,830/- (As alleged by the complainant, page 17 of complaint)
14.	Occupation certificate dated	24.08.2016 (As per page no. 106 of reply)
15.	Offer of possession	26.12.2016 (As per page no. 77 of the complaint)
16.	Possession letter	05.04.2017 (Page no. 80 of the complaint)
17.	Conveyance deed	30.03.2018

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -
  1. That the respondent has seized and possessed of and otherwise well and sufficiently entitled to the property situated at Village Fazalpur Jharsa, Tehsil and District Gurgaon admeasuring about 36.25 acres. The DTCP, Chandigarh, Haryana has issued group housing license bearing no. 155 of 2008 dated 14.08.2008 in favour of M/s Gurgaon Infratech Pvt. Ltd. i.e., respondent no. 2 and license bearing no. 200 of 2008 dated 08.12.2008 in favour of M/s Landscape structures Pvt. Ltd and M/s Ardent Properties Pvt. For development of the said project.

- II. That the respondent no. 2,3 & 4 and respondent no.1 have entered into a joint development agreement dated 24th February 2011 for jointly developing the said property. M/s. Gurgaon Infratech Pvt. Ltd., M/s Landscape Structures Private Limited, M/s Ardent Properties Private Limited (respondent no. 2,3 &4 respectively) have executed a power of attorney in favour of M/s Tata Housing Development Co. Ltd. i.e., respondent no.1 on 03.09.2010.
- III. That the respondents have jointly developed a residential group housing colony known as "Primanti" consisting of high-rise residential buildings executive floors, Villas, convenient shopping, apartments for economically weaker section, nursery/primary school and one club house in accordance with the plans, elevations, sections and other details as duly approved by DTCP vide sanction no./memo no: ZP. 540/JD(BS)2011/2963 dated 10th March 2011 and other authorities concerned.
- IV. That the respondent's company issued an advertisement w.r.t launching of a group housing project namely "Primanti" situated at Sector - 72, Village Fazalpur Jharsa, Gurugram and thereby invited applications from prospective buyers for the purchase of units in the said project. Relying on the assurances and promises of the respondent, on 01.11.2010, the complainants had made a payment of Rs.14,00,000/- vide cheque in lieu of allotment of a unit in the subject project of the respondents. The same is also acknowledged by the respondent vide receipt bearing no.261 dated 23.11.2010.
- V. That on 25.03.2011, an allotment letter was issued by the respondent's company in the name of the present complainants vide which a

residential unit bearing no. 304 on 3rd floor in tower no. 4 having a saleable area of 2185 sq. ft. was allotted to the complainants.

- VI. That on 16.01.2012, an apartment buyer's agreement was executed between M/s Tata Housing Co. Ltd., M/s Gurgaon Infratech Pvt. Ltd. M/s Ardent Properties Pvt. Ltd. and M/s Landscape Structures Pvt. And Mr. Gopal Krishan Arora and Mrs. Sunita Arora on 16.01.2012 wherein an apartment bearing no. 304 on 3<sup>rd</sup> floor in tower no. 4 having a super are of 2185 sq.ft. was allotted to the complainants.
- VII. That as per the clause 4.2 of the apartment buyer's agreement dated 16.01.2012, executed inter se both the parties, the respondent has proposed to handover the possession of the subject apartment on or before 16.12.2014. Therefore, the due date of possession comes out to be 16.12.2014.
- VIII. That vide clause 3.6 of the said agreement, the respondents have to charge interest on delayed payment from the buyer @ 18 % P.A on the delayed payment for the period of delay. However, if there is any delay in offer of possession i.e., delay on the part of the respondent, the company vide clause 4.2 of the said agreement is liable to pay a compensation of Rs. 5/- per sq. ft. per month of the saleable built-up area for the entire period of such delay which is totally one-sided, illegal, arbitrary and unilateral as there is no parity between the two parties. A meagre amount of Rs. 2,09,542/- was paid to the complainants in lieu of the delay possession charges. This is just to bring to the notice of the Authority that how the builders are misusing their dominant position and harassing the poor allottees.

- IX. That on 26.12.2016, an offer of possession letter was sent by the respondent's company to the complainant and on 05.04.2017, the complainant taken the possession of the subject unit.
- X. That the complainants had made all the payments to the tune of Rs.1,53,10,830/- well on time as and when demanded by the respondent/builder. There are no pending dues and the complainants had paid the entire sale consideration w.r.t the subject unit till 09.02.2017.
- XI. That it is of grave importance to mention over here that the complainants were in constant touch with the employees of the respondent company w.r.t the insufficient payment of the delay possession charges. A meagre amount of Rs.2,09,542/- was paid to the complainants in lieu of the delay possession charges. Furthermore, the complainants even at the time of offer of possession raised their concern about the payment of the delay possession charges which were remaining on the respondent's side but the same was not redressed by the respondent builders. Moreover, the complainants took the handover of the subject apartment like a law-abiding citizen without prejudice to the objections raised and the same is evident from the possession letter dated 05.04.2017.
- XII. That due to the acts of the respondents and the deceitful intent as evident from the facts outlined above, the complainants have been unnecessarily harassed mentally as well as financially, and therefore the respondent is liable to compensate the complainants on account of the aforesaid unfair trade practice. Without prejudice to the above, the complainants reserves the right to file a complaint before the Hon'ble adjudicating officer for compensation.

XIII. That the respondents were liable to hand over the possession of a subject apartment on or before the due date of possession as per the clause 4.2 of the said agreement which comes out to be 16.12.2014 but the same was not done. So, the respondent is liable to pay the delay possession charges @ the prescribed rate from the due date of possession i.e., 16.12.2014 till actual handing over of possession. The grievance of the complainant has not been done by the respondents and thus, the complainants are left with no other option but to approach the Authority for the payment of delay possession charges at the prescribed rate.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  1. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession i.e., 16.12.2014 till actual handing over of possession.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent/builder no. 1.**

6. The respondent has contested the complaint by filing reply on the following grounds: -
  - i. That reply and written statement is submitted by answering respondent i.e., respondent no. 1 - Tata Housing Development Company Limited, on behalf of all the respondents. Respondent no. 2 to 4 have amalgamated and merged with respondent no. 1 vide order passed by the Hon'ble High Court of Bombay in company scheme petition no. 95 of 2016 connected with company summons for



directions no. 887 of 2015 therefore respondent no. 1 is the only effective answering respondent in the instant case and the instant reply is being filed on behalf of all the respondents by respondent No. 1. The complainants have filed the captioned complaint replete with misleading statements, false and concocted averments, and submissions with a clear intent to abuse the process of law and exploit the benevolence of the Authority by dragging the respondents before present forum without any just cause of action or right. Nevertheless, the instant written statement, to avoid any liability, is being filed as an abundant precaution on behalf of respondent no. 1 through its duly authorized representative even though the complainants have no right against the respondents.

- ii. That at the outset, the complaint filed by the complainants is not maintainable, wholly misconceived, erroneous, unjustified, devoid of merit, untenable in law, and suffers from the concealment of facts, besides being extraneous and irrelevant having regard to the facts and circumstances of the case under reference and is thus, liable to be dismissed at the very threshold.
- iii. That the complaint filed by the complainants is liable to be dismissed as this complaint is well beyond the period of limitation of 3 years. Without prejudice and admitting the complaint and its cause, the alleged cause of action of the complainants first arose on 26.12.2016 when possession of the apartment was offered to the complainants, and thereafter it arose on 05.04.2017 when the possession of the apartment was taken by the complainants, therefore, it has been more than 5 years since then that the complainants have been sitting on their alleged cause and has not given any reason for the said delay in



their entire complaint. Therefore, the complaint is not maintainable and is liable to be dismissed in limine. There is not an iota of evidence on record, which shows that the alleged cause of action is continuing in nature. Hence the captioned complaint has been filed by the complainants to harass the respondent and extort monetary benefits whereas there is no cause of action in favour of the complainants.

- iv. That the complainants have booked apartment no. T-4- 304 in the project "Primanti" vide booking application dated 21.03.2011 and accordingly apartment buyers' agreement was executed between the parties on 16.01.2012. As per the terms of the agreement, the respondent was liable to hand over possession of the apartment on or before 16.12.2014, subject to force majeure circumstances and reasons. Further, as per clause 4.2, it was categorically agreed between the parties that in case parties fail to fulfil their respective obligations they would be liable to compensate the other party.
- v. Further, it is pertinent to highlight here that as per the possession clause the respondent was liable to hand over possession of the apartment on or before 16.12.2014, subject to force majeure events. Having regard to the same, the respondent had put in its best efforts to complete the project. However, on account of the following reasons which were beyond the control of the respondent and has serious implications on project deliverables, the extension available to the respondent was utilized and availed:
- a. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the 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

the development of the said Project became scarce in the NCR as well as areas around it. Further, the developer was faced with certain other force majeure events including but not limited to the non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NC 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 has stayed on the Yamuna River bed. These orders 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 materials difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed above 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.

- b. That on 19th February 2013 the office of the executive engineer, HUDA Division No. II, Gurgaon vide Memo No. 3008-3181 had issued the instruction to all developers to lift tertiary treated effluent for construction purposes for Sewerage Treatment plant Behrampur. Due to this instruction, the respondent faced the problem of water supply for a period of several months as adequate treated water was not available at Behrampur.
- c. Orders passed by the Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed the use of only treated water from available sewerage treatment plants. However, there was a lack of number of sewage treatment plants which led to scarcity of water and further delayed the project. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water as the water from the S.T.P's of the State/Corporations had not undergone proper tertiary treatment as per prescribed norms.
- d. Further, No-Construction notice was issued by the Hon'ble National Green Tribunal for the period of several weeks resulting in a cascading effect. That in the years 2016 and 2017 there was a blanket ban on construction and allied activities during the months of October and November, which caused a massive interruption in construction work. There being a shutdown of construction for at least a few months approximately each year. Thus since 2016, the Promoter has suffered months of stoppage of construction work till 2017.
- e. That due to the above-mentioned factors stoppage of construction work done by the Judicial/Quasi-Judicial Authorities played havoc with the pace of construction as once the construction in a large- scale project is stalled it takes months after it is permitted to start for mobilizing the materials, machinery,



and labour. Once the construction is stopped the labour becomes free and after some time when the construction is re-started it is a tough task to mobilize labour again as by that time, they either shift to other places/cities or leave for their hometown and the labour shortage occurs. That after the blanket ban on construction was lifted; the cold climatic conditions in the month of December to February have also been a major contributing factor in shortage of labour, consequently hindering the construction of the project. That cold weather impacts workers/labourers beyond normal conditions and results in the absenteeism of labour from work. This is entirely beyond the control of the project developers as many or most of the labourers refuse to work in extreme cold weather conditions. It is submitted that, in current scenario where innumerable projects are under construction all the developers in the NC region including the Respondent/Promoter suffer from the shortage of labour due to cold weather conditions. That the projects of not only the Complainant Developer but also of all the other Developers/Builders have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers. That in addition it is stated that all this further resulted in increasing the cost of construction to a considerable extent. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for laborers at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects. That the said fact of labour shortage shall be substantiated (at the time of Agreements) by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NC. That this was certainly never foreseen or imagined by the Respondent while scheduling the construction activities. It is submitted that even today, in current scenario where innumerable projects are under construction all the developers in the NCR region including the respondent are suffering from the after-effects of labour shortage.

- f. That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions as per directions passed by the Hon'ble Supreme Court/Hon'ble High Courts and Hon'ble National Green Tribunal, which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for the manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.
- g. That shortage of bricks in region has been continuing ever since and the respondent/developer had to wait for several months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project. Apart from this, Brick Klins remained closed for a considerable period of time because of change in technology in firing to Zig Zag method etc., which again restricted the supply of bricks.
- h. That crusher which is used as a mixture along with cement for casting pillars and beams was also not available in the adequate quantity as is required since

mining Department imposed serious restrictions against crusher from the stone of Aravali region. That this acute shortage of crusher not only delayed the project of the respondent/developer but also shoot up the prices of crusher by more than hundred percent causing huge losses to the respondent/developer. Further due to heavy rainfall and waterlogging the construction work at the project was severally affected from 29.07.2016 to 01.09.2016.

- i. That in addition, the current Govt. on 8th Nov. 2016 had declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued. That in addition to the above, demonetization affected the buyer's in arranging/ managing funds, which resulted in delayed payments/ defaults on the part of the Buyers. That due to lack/ delayed payments, the project was also affected since it was difficult for the Respondent also to arrange funds for payment of workforces, vendors, and contractors at the site during the stress in the market during the said demonetization period. Thereafter work was greatly impacted for few months on account of the implementation of Goods and Services Tax (GST) across India since 01.07.2017.
- j. That in addition to the above all the projects in the Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delays in the projects. That such stay orders are passed every year either by the Hon'ble Supreme Court, NGT, or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affects the project. That to name, the order dated 10.11.2016 passed by the Hon'ble National Green Tribunal, affected the construction activity.
- k. That it is all-important to bring out and highlight here that on account of non-payment of installments/dues (along with agreed amount of interest on such delayed payments) by several allottee(s) the overall project was gravely jeopardized. It appears that it has become a trend amongst the allottees nowadays to first not to pay of the installments due or considerably delay the payment of the same and later on knock on the doors of the various Courts seeking refund of the amount along with compensation or delayed possession compensation, thus taking advantage of their own wrongs, whereas the Developer comes under severe resource crunch leading to delays in construction or/and increase in the cost of construction thereof putting the entire project in jeopardy. By failing to deposit the installments on time the Respondents have violated their contractual commitment and are estopped from raising any plea of delay in construction. RERA having been enacted by the legislature with the motive of balancing the rights and liabilities of both the developer as well as the allottees, the captioned complaint is liable to be dismissed as prayed for by respondent herein That despite the aforementioned circumstances, the respondent/developer completed the construction of the project diligently, without imposing any cost implications

of the aforementioned circumstances on the Allottee(s). However, despite the failure to make the timely payment by several allottee(s), the respondent/developer has constructed the said flat/project. Upon completion of the construction, the respondent/developer applied for the grant of an occupation certificate and received the same on 24.08.2016.

- vi. That it is most respectfully submitted here that the complainants have approached the Hon'ble Forum with unclean hands and have tried to mislead the Hon'ble Forum by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, are guilty of "suppression very and suggestio falsi". The complainants have suppressed and/or misstated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be rejected/dismissed.
- vii. That it is imperative to highlight here that occupation certificate for the tower was received on 24.08.2016, therefore booking, allotment, and possession of the apartment has taken place before the coming into force of the RER Act. Despite the non-implementation of the Act the respondent has acted within the parameters of the RER Act and as per law fulfilled all its obligations and handed over the possession of the apartment to the complainants. However, the complainants out of greed and to extort undue benefits approached the Hon'ble Authority after a lapse of almost 5 years of possession seeking more monetary benefits under the garb of delayed compensation charges. There is no cogent reason and ground for an unaccountable delay of almost five years in approaching the Hon'ble Authority after taking possession when the respondent has categorically denied any further compensation vide various email communications. Given the

materialistic approach of the complainants, the complaint is liable to be dismissed on this ground alone.

- viii. That the complainants have inter alia raised various issues at the time of taking possession of the said apartment as is duly reflected in the email dated 12.02.2017. However, thereafter the complainants executed the conveyance deed on 30.03.2018 for the said apartment after the resolution of all their concerns to their satisfaction. The complainants have arisen from deed slumber with malafide intention to harass the respondent for extortion of money. Hence the instant complaint is just an afterthought to extort more money from the respondent and is liable to be dismissed.
- ix. That the complainants are distorting and misinterpreting facts to cause prejudice against the respondent. After the offer of possession the complainants delayed in making full and final payments and accordingly the possession of the apartment was handed over to the complainants on 05.04.2017 whereas the offer of possession was made on 26.12.2016. Hence the complainants are estopped by their conduct to approbate and reprobate at their whims and fancies.
- x. That the complaint is motivated and has been filed by the complainants to evade the payments of CAM charges outstanding to the tune of Rs. 19,039/- and other dues viz. electricity charges amounting to Rs.21,004/- and DG charges to the tune of Rs. 1,560/- etc, which are outstanding till date. Prima facie it is apparent that the complainants have filed the complaint to extort more money from the respondent. The complainants are approbating and reprobating at their whims and fancies and there is no cause of action in favour of the complainants.

xi. That the purported complaint is nothing but a tool to harass the respondent. The issue at hand has already attained finality when the respondent has adjusted compensation for delay at the time of offer of possession and the complainants have already taken possession and executed the conveyance deed.

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

**E. Jurisdiction of the authority**

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, 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, 2016 provides that the promoter shall be responsible to the allottees 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the to pay the delay possession charges along with prescribed rate of interest.**

11. Some of the admitted facts of the case that by the name of Primanti, a residential group housing situated in Sector 72, Gurgaon, Haryana was being developed by the respondent on the basis of DTCP license no. 155 of 2008 dated 14.08.2008 & 200 of 2008 dated 08.12.2008. The complainant coming to know about the same booked for a unit in it vide booking form dated 23.11.2010. He was allotted a unit detailed above by the respondent for sale consideration of Rs. 1,48,43,250/-. It led to execution of buyer's agreement dated 16.01.2012 between the parties setting out the terms and conditions of allotment, the price of the unit, its dimension, the payment plan, the due date of possession and other details. In pursuant to that document, the complainant started making payments against the allotted unit and paid a total sum of Rs. 1,44,69,517/- as evident from statement of account dated 04.04.2017. It is the version of complaint that on 26.12.2016, an offer of possession



letter was sent by the respondent and the same had taken the possession of the unit on 05.04.2017 and made all the payment on time as and when demanded by the respondent/builder. But the version of respondent is otherwise and who took a plea that the complainant has raised various issues at the time of taking possession of the said unit as is duly reflected in the email dated 12.02.2017. However, thereafter the complainant executed the conveyance deed on 30.03.2018 for the said unit after resolution of all their concerns to their satisfaction.

12. The respondent vide reply submitted that the complaint is time barred by limitation as conveyance deed has been executed way back on 30.03.2018 and possession has been taken by the complainants without any protest or demur. Further, the respondent submitted that the issued has already attained finality when the respondent has adjusted compensation for delay at the time of offer of possession and the complainants have already taken possession and executed the conveyance deed.
13. Though the respondent through their respective counsel advanced submissions with regard to the maintainability of the compliant on the ground of the limitation but in view of settled proposition of law, the present complaint of complainants is barred by limitation. As discussed earlier, after the unit was allotted a buyer's agreement was executed in this regard on 16.01.2012. Though the possession of the unit was to be offered on or before 16.12.2014 after completion of the project but the same was offered only on 26.12.2016 and ultimately leading to execution of conveyance deed of the same on 30.03.2018. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 26.12.2016 and not from 30.03.2018. The present complaint filed on

14.09.2022 and seeking delay possession charges which is beyond three years w.e.f. 26.12.2016. With respect to entitlement of delay possession charges after the execution of conveyance deed, the authority is of the view that the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged <sup>or</sup> its liabilities as per the builder buyer's agreement. The same view has also been upheld by the Hon'ble Supreme Court in case titled as ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020.***


14. As noted above, the possession of the subject unit was offered to the complainants on 26.12.2016 after obtaining occupation certificate on 24.08.2016 i.e., before coming into force of the Act. Thereafter, the conveyance deed of the unit was executed between the parties on 30.03.2018 and the present complaint was filed on 14.09.2022. There has been complete inaction on the part of the complainants for a period of more than five years till the present complaint was filed in September 2022.
15. The complainants remained dormant of their rights for more than 5 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.
16. One such principle is that delay, and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section

37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

17. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]***, the Hon'ble Supreme Court held that "*Law assists those who are vigilant and not those who sleep over their rights.*" Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.
18. In the light of the above stated facts and applying aforesaid principles authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable

period of time without any just cause. In light of the above, the complaint stands dismissed.

19. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated 19.09.2023



**HARERA**  
**GURUGRAM**