

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

Complaint no. :	545 of 2023
Date of filing complaint:	10.02.2023
Date of decision	02.04.2024

Raj Kumar Madaan R/O: 14182, Street No. 5a, Ganesh Basti, Bathinda	<b>Complainant</b>
Versus	
M/S Emaar India Ltd. Regd. Office: Emaar Business Park, Sikanderpur Sector- 28, Gurugram, Haryana 122001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh.Geetansh Nagpal (Advocate)	Complainant
Sh. Dhruv Rohatgi (Advocate)	Respondent

**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 29 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Palm Drive, Sector 66, Gurugram, Haryana
2.	Total area of the project	37.708 acres
3.	Nature of the project	Group housing colony
4.	DTCP License no. & validity status	1. 93 of 2008 dated 12.05.2008. Valid/renewed up to 11.05.2020. 2. 50 of 2010 dated 24.06.2010. Valid/renewed up to 23.06.2020.
5.	RERA Registered / not registered	Registered vide no. 24 of 2020 dated 10.09.2020
6.	RERA registration valid up to	08.08.2021
7.	Unit no.	TPD-SA-F08-07 [page no. 56 of complaint]
8.	Provisional allotment letter issued in favour of original allottee (Sunil Kumar)	09.08.2009 [annexure C2, page 41 of complaint]
9.	Date of execution of buyer's agreement between the original allottee and Respondent	25.05.2010 [page 52-111 of complaint]
10.	Original allottee sold the subject unit to First subsequent allottee (Ajay Singh Shorren) and the same was acknowledged by the respondent vide nomination letter	02.12.2010  121 of reply
11.	First subsequent allottee sold the subject unit to the complainant herein (Raj Kumar Madden) and the same was acknowledged by the	12.04.2011  133 Reply



	respondent vide nomination letter	
12.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><i>(a) Time of handing over the Possession Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities; documentation etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the Unit within 30 months from the date of allotment. The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of ninety (90) days, for applying and obtaining the occupation certificate in respect of the Complex.</i></p> <p>(page no. 72 of complaint)</p>
13.	Due date of possession	<p>09.05.2012</p> <p>(Calculated from the date of allotment i.e., 09.08.2009 plus grace period)</p>
14.	Total consideration as per statement of account dated 19.06.2023 at page 188 of reply	Rs.58,23,597/-
15.	Total amount paid by the complainant as per statement of account dated 19.06.2023 at page 188 of reply	Rs.62,18,697/-
16.	Occupation certificate	<p>13.02.2017</p> <p>[annexure R9, page 141-143 of reply]</p>
17.	Offer of possession	<p>11.04.2017</p> <p>[annexure R10, page 144-151 of reply]</p>
18.	Unit handover letter	<p>14.11.2017</p> <p>[Page 156 of reply]</p>

19.	Conveyance deed executed on	22.12.2017 [Page 157-187 of reply]
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**B. Facts of the complaint:**

3. That around year 2007-2008, the respondent company issued an advertisement announcing a group housing project called 'palm drive' in at Sector 66, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of units in the said project. The original allottee booked unit no.. TPD-SA-FO8-07 in the project of the respondent called "Palm Studio at the Palm Drive". The original allottee made a payment of Rs. 10,00,000/- towards the booking amount. The respondents, upon such confirmation of booking application, allotted the said unit to the original allottee admeasuring 1200 sq. ft. along with the allotment letter dated 09.08.2009.
4. That a buyer's agreement was executed between the original allottee and the respondent on 25.05.2010. As per clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit within a period of 30 months from the date of allotment i.e., 09.08.2009, which comes out to be 09.02.2012 and along with a grace period of 90 days, i.e. by 09.05.2012. The original allottee subsequently transferred/endorsed the property in favour of a first subsequent allottee on 02.12.2010 and who thereafter endorsed the property in favour of the complainant on 12.04.2011.
5. That after a long delay of more than 5 years, the complainant was sent a letter for offer of possession of the above said unit on 11.04.2017. It is pertinent to mention herein that the respondent, malafidely, offered the



possession of the unit to the complainant on 11.04.2017, but the respondent received their occupation certificate on 25.01.2018 whereas the promoter cannot offer the possession of the unit without obtaining occupancy certificate from the concerned authorities. It is further pertinent to mention that the respondent without any prior intimation to the complainant, increased the area of the unit from 1200 sq. ft. to 1287.88 sq. ft. which led to an increase in the price of the unit as well. Along with the letter of offer of possession, demand of Rs. 17,48,433/- was made which included several illegal demands on account of the following which are actually not payable as per the builder buyer agreement:

- A. Club membership charges of Rs. 2,01,250/-.
- B. Electrification Charges of Rs. 52,785 /-.
- C. Water Connection charges of Rs. 1,111/-
- D. GAS charges of Rs. 19,505/-.

6. That as per the above said statement, the offer of possession that the respondent offered to the complainant comes out to be an invalid offer of possession as it was offered prior to obtaining the occupation certificate from the concerned authorities and the said offer contained various invalid and illegal demands which the complainant paid to the respondent without any questions to them in a bonafide need. The respondent, after many requests and reminders, handed over the possession of the unit in favour of the complainant vide unit handover letter dated 14.11.2017. After a long delay of 5 years, the respondent got the conveyance deed executed dated 22.12.2017 in favour of the complainant. While this sale deed acknowledges that the complainant has paid the total consideration towards full and final

consideration of the said apartment and applicable taxes etc., it makes no provision for compensating the complainants for the huge delay in handing over the flat. The complainant was not given any opportunity to negotiate the terms of the said conveyance deed

7. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the delay compensation. Although the conveyance deed dated 22.12.2017 acknowledges that the complainant has paid the total consideration towards full and final consideration of the said apartment and applicable taxes etc., it makes no provision for compensating the complainant for the huge delay in handing over the flat
8. That it is also important to note that the mere execution of the sale deed will not deprive the complainant of his rights to seek compensation. While the conveyance deed acknowledges that the complainant has paid the total consideration towards full and final consideration of the said unit and applicable taxes etc, it makes no provision for compensating the complainant for the huge delay in handing over the unit. It is pertinent to note that no negotiations were permitted in relation to the buyer's agreement dated 25.05.2010. The complainant was told that the conveyance deed will encompass all the relevant issues at hand.
9. That the buyer's agreement in clause 16 stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The so called compensation payable as per the said agreement is



Rs. 5/- per sq. ft. per month. It is respectfully submitted that the said amount is atrociously low and unfair. No compensation was provided to the complainant till date. Moreover, the said clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 itself which has clarified the position that the interest payable by the Promoter in case of default shall be the same as the interest payable by the Allottees in case of any default made by them. It is also pertinent to mention here that the Respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15% as per clause 13 whereas under clause 16, the compensation for delay stipulated for the buyers is merely Rs. 5/- per sq. ft.

10. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

11. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. That as per the

averments made by the counsel for the respondent on the last date of hearing vide order dated 21.11.2023, that the present complaint is barred by limitation as the offer of possession was made on 27.12.2018 and the conveyance deed was executed on 05.02.2019. That the said averments made by the respondent are totally false, frivolous, baseless and illegal as such averments are neither supported by any legal provisions nor any other rulings provided under law. It is submitted that Limitation Act applies to only courts and does not apply to quasi-judicial bodies/proceedings/authorities/tribunals. Moreover, the RERA Act 2016 is a complete Code in itself and no limitation has been prescribed there under, for filing a complaint with the Authority or the Adjudicating Officer under Section 31. In this situation, such a claim cannot be thrown out by applying the provisions of the Limitation Act. Thus, no period of limitation would apply if the RERA Act 2016 is otherwise applicable. The delay possession charges is a right of the allottee as per section 18 of the act.

12. That as per Section 18(1) of the Real Estate (Regulations and Developments) Act, 2016. It is further submitted that such right of claiming interest by the allottee/complainant has been granted by the Act itself from the promoter/respondent in delaying the possession of the project/unit in question. It is further submitted that mere execution of conveyance deed does not precludes the allottee for claiming delay possession charges from the promoter/respondent in present facts and circumstances of the case.

13. Hence, the complainant is entitled for delay possession charges from the due date of possession till the actual handing over of possession.



14. That the complainant has filed the written submission. The same has been taken on record and perused further.

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

15. The complainant has sought following relief(s):

- i. Direct the respondent to pay the delay possession charges on the total amount paid by the complainant at the prescribed rate of interest from the due date till the date of actual physical possession.
- ii. Direct the respondent to pay balance amount due to the complainant from the respondent on account of interest.
- iii. Direct the respondent to not to ask for any charges which the complainant is not legally bound to pay.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions: -

16. That the complainant has been enjoying the said unit without any demur/protest. That the possession was offered to the complainant on 11.04.2017 and the unit was handed over on 14.11.2017 and thereafter, executed a conveyance deed dated 22.12.2017. The lack of bonafide of the complainant is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent, they chose to remain silent for such a long period and has approached this authority to extort money. The complainant chose never to raise any claim towards delay possession charges. Hence, it is clear from the lack of any documentary proof, whereby the complainant may have raised any such additional claim or if he may have raised any claim for

compensation. Thus, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion. The present complaint is not maintainable in view of the fact that the conveyance deed has already been executed and the respondent is absolved of all or any liability towards Delay Possession Charges, even in terms of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016

17. That the complaint is admittedly belated and barred by limitation period of 3 years. Admittedly, the conveyance deed of the unit in question was executed on 22.12.2017, while the present complaint has been filed on 10.02.2023. The limitation for filing the present complaint expired on 22.12.2020. Even after taking shelter of Supreme Court order on Suo-Moto Limitation Extension, the complainant, on 15.03.2020 had only 9 months and 7 days limitation period available after 28.02.2022. Thus, the said period of 9 months and 7 days from 28.02.2022 expired on 07.12.2022, while the present complaint has been filed on 10.02.2023, which is beyond the limitation period. Reliance is placed on the Judgments/ Orders passed by this Hon'ble Authority in case titled Ram Sarup Khurana &Anr. Vs Emaar MGF Land Limited, bearing Complaint No. 2030 of 2022, Order dated 08.09.2022 and case titled Madan Lal Khurana &Anr. Vs Emaar MGF Land Limited bearing Complaint No. 2031 of 2022, Order dated 08.09.2022, wherein *The matter was barred by limitation and disposed off. File be consigned to registry.*"

18. That the complainant is not "Allottee" but 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 their residence. Therefore, no equity lies in favour of the complainant

19. That That the original allottee had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number TPD-SA-F08-07, eighth floor, admeasuring 1200 sq. ft. (tentative area) situated in the project developed by the respondent, known as "Palm Studios at Palm Drive" at Sector 66, Gurugram, Haryana. That thereafter the original allottee vide application form dated 22.07.2009 applied to the respondent for provisional allotment of a unit bearing number TPD-SA-F03-07 in the project. The original allottee consciously and wilfully opted for an instalment payment/subvention plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect bonafide of the original allottee. That the respondent issued the provisional allotment letter dated 09.08.2009 to the original allottee.

20. That subsequently, the respondent sent the buyer's agreement to the original allottee, which was executed between the parties on 04.08.2008. Pursuant thereto, the original allottee entered into an agreement to sell with one Mr. Ajay Singh Sheoran on 30.07.2010 and transferred his allotment to Mr. Ajay Singh Sheoran ("subsequent allottee"). The subsequent allottee

thereafter transferred the unit in question in favour of the complainant. The unit in question was thereafter transferred in favour of the complainant vide nomination letter dated 12.04.2011.

21. Thus, it is relevant to submit that the complainant at the time of the said transfer in his favour, was fully aware of the status of the project and the delays so occasioned in its completion. The complainant being fully aware of the facts and circumstances, still chose to purchase the said unit and hence, it is submitted that he is not entitled to any benefits for delay in completion of the project. The complainant out of his own free will and volition, without any inducement, force, misrepresentation or coercion of the respondent purchased the said unit from the erstwhile allottee, with open eyes and hence, cannot claim any compensation from the respondent. Furthermore, the respondent, at the time of endorsement of the unit in question in their favour, had specifically indicated to complainant that the original allottee had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disintitiled himself for any compensation/interest. The respondent had conveyed to complainant that on account of the defaults of the original allottee, complainants would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by complainant. The complainant is conscious and aware of the fact that he is not entitled to any right or claim against respondent. The complainant has intentionally distorted the real and true facts and has filed the present complaint in order to harass the respondent



and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

22. That in the manner as aforesaid, the complainant stepped into the shoes of the original allottee. Since the original allottee, subsequent allottee as well as the complainant were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters requesting them to make payment of demanded amounts. Payment request letters, reminders etc. The payments request letter and reminders thereof were sent to the complainant by the respondent clearly mentioning the outstanding amount and the due date for remittance of the respective amounts as per the schedule of payments, requesting him to timely discharge his outstanding financial liability but to no avail.

23. That clause 14 of the buyer's agreement provides that subject to the Allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, the respondent shall handover the possession within 30 months from the date of allotment. Furthermore, the respondent is entitled for a grace period of 90 days. It is submitted that the grace period of 3 months cannot be excluded. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent.

24. That the clause 16 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the buyer's

agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the buyer's agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The complainant having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards interest under the buyer's agreement. It is submitted that the complainant by way of instant complaint is demanding interest for alleged delay in delivery of possession.

25. That the respondent applied for occupation certificate on 04.06.2015 and the same was thereafter issued vide memo bearing no. ZP-308/SD(BS)/2017/2699 dated 13.02.2017. The construction of the project/allotted unit in question already stands completed. It is submitted that on receipt of the occupation certificate, the respondent issued an intimation of possession letter dated 11.04.2017 intimating the complainant about the procedure of handing over the possession of the said unit. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments



as per schedule of payment incorporated in the buyer's 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 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 13.10.2017 of the said unit was executed by the complainant in favour of the respondent for use and occupation of the said unit whereby the complainant has declared and acknowledged that he has no ownership right, title or interest in any other part of the project except in the unit area of the unit in question.

26. That subsequently, the complainant approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 14.11.2017 was executed by the complainant, 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. It is pertinent to mention that after execution of the unit handover letter dated 14.11.2017 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further executed a conveyance deed dated 22.12.2017 in respect of the unit in question. The transaction between the complainant and the respondent

stands concluded and no right or liability can be asserted by the respondent or the complainant against the other.

27. That it is submitted that the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent developer. 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 Riverbed. These orders infact 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.

28. That the respondent has filed the written submission. The same has been taken on record and perused further.

29. All other averments made in the complaint were denied in toto.

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

#### **E. Jurisdiction of the authority:**

31. 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**

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**

32. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

33. 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 complainants at a later stage.

## **F. Objections raised by the respondent:-**

### **F.I Objection regarding maintainability of complaint on account of complainant being investor.**

34. The respondent took a stand that the complainant is investor and not



consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and he has paid a total price of Rs.62,18,697/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

35. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

**F.II Whether the complainant can claim delayed possession charges after execution of conveyance deed**

36. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than May 2012 and therefore cause of action, if any, accrued in favour of the complainants in 2012. The counsel for the respondent also stated at bar that the conveyance deed of the unit has already been executed in favour of the complainant on 22.12.2017. The transaction between the parties stands concluded upon the execution of conveyance deed.
37. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
38. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property.
39. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies



that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

40. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

41. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down 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***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the

*flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*

*35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

42. The authority has already taken a view in in **Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

#### **G. Relief sought by the complainant:**

**G.1 Direct the respondent to pay the delay possession charges on the total amount paid by the complainant at the prescribed rate of interest from the due date till the date of actual physical possession.**



**G.II Direct the respondent to pay balance amount due to the complainant from the respondent on account of interest.**

43. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 09.08.2009 and thereafter the original allottee sold the subject unit to the first subsequent allottee on 02.12.2010 following which the first subsequent allottee sold the subject unit to the complainant herein being the second subsequent allottee and the same was acknowledged by the respondent vide nomination letter dated 12.04.2011. Therefore, the complainant stepped into the shoes of original allottee on 12.04.2011.

44. As decided in *complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited*, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

45. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act of 2016.

46. The buyer's agreement was executed between the original allottee and the respondent on 02.12.2010 and as per clause 14 of the agreement the respondent was directed to handover the possession of the unit within 30 months from the date of allotment and a grace period of 90 days for applying and obtaining the occupation certificate in respect of the complex. The due date of possession is to be calculated from the date of allotment i.e.,

09.08.2009 and the said time period of three months is allowed as per the order of the Hon'ble Tribunal in appeal no. 433 of 2022 stating and the same is quoted above:-

*"It is also well known that it takes time to apply and obtain occupation certificate from the concerned Authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate"*

47. Thus the due date of possession comes out to be 09.05.2012. The occupation certificate for the subject unit has been obtained by the respondent promoter on 13.02.2017 and the possession has been offered on 11.04.2017. The unit handover letter was issued on 14.11.2017 and conveyance deed was executed between the parties on 22.12.2017.

48. The complainant is seeking delayed possession charges from the respondent while the respondent on the other hand is pleading that the present complaint is barred by limitation as the complainant has got the



offer of possession on 11.04.2017 and his conveyance deed executed on 22.12.2017, the transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed and the complainant has filed the present complaint after a long delay on 10.02.2023.

49. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, after the unit was allotted to the original complainant on 09.08.2009, a buyer's agreement in this regard was executed on 25.05.2010. Though the possession of the unit was to be offered on or before 09.05.2012 after completion of the project but the same was offered only on 11.04.2017 after receipt of occupation certificate on 13.02.2017 and ultimately leading to execution of conveyance deed of the same on 22.12.2017. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 11.04.2017 and not from 22.12.2017. The present complaint seeking delay possession charges and other reliefs was filed on 10.02.2023 i.e., beyond three years w.e.f. 11.04.2017. But in view of authoritative pronouncement of the hon'ble apex court in suo moto proceedings vide order dated 10.01.2022, the period in between 15.03.2020 till 28.02.2022 would stand excluded while calculating the period of limitation.

50. 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 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.**

51. As noted above, the possession of the subject unit was offered to the complainant on 11.04.2017 after obtaining occupation certificate on 13.02.2017. Thereafter, the conveyance deed of the unit was executed between the parties on 22.12.2017 and the present complaint was filed on 10.02.2023. There has been complete inaction on the part of the complainant for a period of more than five years till the present complaint was filed in February 2023. The complainant remained dormant of his rights for more than 5 years and they didn't approach any forum to avail his 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 stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainants allottees have already availed aforesaid benefits before execution of conveyance deed.

52. 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.

53. 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.

54. In the light of the above stated facts and applying aforesaid principles, the 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 even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. 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 is not maintainable and the same is declined.

**G.III Direct the respondent to not to ask for any charges which the complainant is not legally bound to pay.**


55. The respondent shall not charge anything from the complainant which he is not legally bound to pay as per the agreement.

**H. Directions of the Authority:**

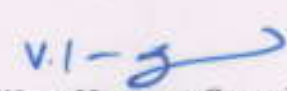
56. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondent is not maintainable and the same is declined.

57. Complaint stands disposed of.

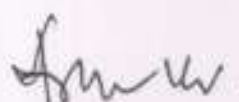
58. File be consigned to the registry.



(Sanjeev Kumar Arora)  
Member



(Vijay Kumar Goyal)  
Member



(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated:02.04.2024**