

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

Complaint no. :	2042 of 2021
Date of filing complaint:	20.04.2021
Date of decision	02.04.2024

1. Rajan Gupta 2. Alka Gupta R/O: C-4, F-89, Janak Puri, New Delhi	<b>Complainants</b>
Versus	
M/s Emaar MGF Land Ltd. Regd. Office: ECE House, 28 Kasturba, Gandhi Marg, New Delhi-110001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>

<b>APPEARANCE:</b>	
Sh. Sukhbir Yadav (Advocate)	Complainant
Sh. J.K Dang (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 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 provision of the Act or the rules and regulations made thereunder 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	Emerald Estate Apartments, Sector 65, Gurugram, Haryana
2.	Total area of the project	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP License no. & validity status	06 of 2008 dated 17.01.2008 valid till 16.01.2025
5.	RERA Registered / not registered	Registered vide no. 104 of 2017 dated 24.08.2017
6.	RERA registration valid up to	23.08.2022
7.	Unit no.	EEA-J-F02-04, 2 <sup>nd</sup> floor, tower J [annexure 2, page 66 of complaint]
8.	Provisional allotment letter dated	08.04.2010 [annexure R2, page 63 of reply]
9.	Date of execution of buyer's agreement	24.04.2010 [annexure R4, page 71 of reply]
10.	Possession clause	<p><b>11. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of commencement of construction and</i></p>

		<p><b>development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</b></p> <p>[annexure R4, page 86 of reply]</p>
11.	Date of commencement of construction as per statement of account dated 13.07.2021 at page 153 of reply	26.08.2010
12.	Due date of possession	26.02.2014 (Including the grace period)
13.	Total consideration as per statement of account dated 13.07.2021 at page 153 of reply	Rs. 59,21,814/-
14.	Total amount paid by the complainants as per statement of account dated 13.07.2021 at page 154 of reply	Rs.59,21,816/-
15.	Settlement agreement entered into between parties	24.04.2018 [annexure R8, page 159 of reply] The respondent has credited an amount of Rs. 15,93,794/-
16.	Occupation certificate	11.11.2020 [annexure R11, page 176 of reply]
17.	Offer of possession	26.11.2020 [annexure R12, page 179 of reply]
18.	Unit handover letter signed by the complainants on	22.01.2021 [annexure R13, page 187 of reply]
19.	Conveyance deed executed by the complainants on	21.05.2021 [annexure R14, page 192 of reply]

**B. Facts of the complaint:**

3. That in the year 2009, the respondent company issued an advertisement announcing a group housing colony project called 'Emerald Estate Apartments' situated at Sector 65, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of allotments in the said project. The respondent confirmed that the project had got building plan approval from the authority.
4. That the complainants were caught in the web of false promises of the agents of the respondent company, and executed the buyer's agreement on 24.04.2010. The complainants paid an initial amount of Rs. 5,00,000/- vide cheque 26.10.2009 and was acknowledged by the respondent vide statement of account dated 17.12.2020 and accordingly filled the application form for one flat/unit and opted for construction linked payment plan. The complainants were allotted one unit being EEA-J-F02-04 in the above said project.
5. That the complainants made various payments raised by the respondent and the same were acknowledged by the respondent-builder on various dates. The complainants entered into a settlement agreement dated 24.04.2018 with the respondent towards the complaint filed by the complainant in the NCDRC on the ground of delay in handing over possession of the unit for a lump sum compensation amount of Rs. 10,71,819/-.
6. That the respondent in total credited an amount of Rs. 15,93,794 for compensation on account of IOP and settlement agreement executed between respondent and complainant dated 24.04.2018 which was acknowledged by respondent by the statement of account dated 17.12.2020. The respondent issued the letter of offer of possession dated 26.11.2020 in

which they have annexed a list of additional payments to be made before taking delivery of the unit.

7. That the respondent being very well aware of the guidelines laid in the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and the interest the complainants is entitled for as well as being aware of more than 200 judgments issued by the Haryana Real Estate Regulatory Authority, Gurugram has not given the complainants the interest that they are eligible for in the letter of possession dated 26.11.2020 and have rather decided the delayed compensation based on the BBA which has been ruled by all the courts in the country as being too low and the term in the agreement being one sided.
8. That from the language of the letter it is very clear that no offer of possession has been made in the letter of possession dated 26.11.2020, which is in the nature of a notice informing the complainants that all the steps so mentioned in the letter have to be completed within a period of 60 days of this letter and further stating that adhering to the timelines is very important.
9. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. HVAT was never, as per the Act, payable by the complainants and hence the offer of possession is not a valid offer of possession.
10. That the respondent is insisting advance monthly maintenance charges for a period of 12 months which was never a part of the BBA and hence this demand is illegal and therefore for this reason as well the letter of offer of possession is an invalid offer.

11. That the respondent asking for interest free maintenance security as the maintenance security is also illegal and amounts to unjust enrichment depriving the complainants of a huge loss of interest on a sum of Rs. 70,755/- which condition was never a part of the BBA and hence for this reason as well the intimation of possession is not a valid offer of possession.
12. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent individually as well as through our association called Emerald Estate Apartments Owners Welfare Association, office bearers of which, were chasing the respondent for construction on very regular basis. The respondent was never able to give any satisfactory response to the complainants or the governing body of the association regarding the status of the construction and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent as to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of some dispute with the land owners and shortage of labour etc.
13. 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 floors and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from the consumers 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 consumers, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. The respondent not only failed to adhere to the terms and conditions of buyer's agreement dated 24.04.2010 but also illegally

extracted money from the complainants by stating false promises and statements.

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

14. 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 the balance amount due to the complainants from the respondent on account of the interest as per the Act before signing the sale deed together with the unambiguous intimation/offer of possession.
- iii. Direct the respondent to refund Rs. 3,08,000/- paid by the complainants against PLC along with interest.
- iv. Direct the respondent to kindly handover the entire possession of the unit to the complainant.
- v. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties, like asking for fixed deposit of HVAT, which is not payable by the complainants.
- vi. Direct the respondent not to ask advance monthly maintenance charges for a period of 12 months.
- vii. Direct the respondent not to ask interest free maintenance security as the maintenance security should be interest bearing.
- viii. To get an order in their favour by restraining the respondent party from charging GST and other alleged illegal charges and directing the respondent to refund such charges to the complainant along with interest.

- ix. Direct the respondent not to ask for any charges which is not as per the buyer's agreement.

**D. Reply by respondent:**

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

15. That the complainants had approached the respondent through their property dealer, and expressed an interest in booking a unit in the residential group housing colony developed by the respondent known as "Emerald Estate Apartments" situated in Emerald Estate, Sector 65, Gurgaon. Prior to make the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants were fully satisfied about all aspects of the project that the complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question. It is pertinent to mention herein that at the time of application, the building plans of the project had not yet been approved by the competent authority and this fact was clearly and transparently disclosed to the complainants at the time of booking itself and clearly mentioned in the application form. The complainants were conscious and aware that the construction would commence only after approval of building plans and as such were fully conscious and aware that time was not the essence of the contract when it came to delivery of possession.
16. That the complainants had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainants consciously defaulted in payments on several occasions. Consequently, the respondent was constrained to issue notices and reminders for payment to the complainants.



17. That the statement of account dated 13.07.2021 reflects the payments made by the complainants and the accrued delayed payment interest thereon as on 13.07.2021. The project has been registered under the Act and the registration of the project is valid till 23.08.2022.
18. That the complainants had filed a false and frivolous complaint before the Hon'ble NCDRC being complaint no. 2346/2017 against the respondent and had also lodged an FIR bearing no. 158 dated 08.06.2016 at the Police Station, DLF Phase 1, Gurgaon. However, during the pendency of the aforesaid matters, the complainants and the respondent arrived at a settlement. The complainants and the respondent executed a settlement agreement dated 24.04.2018 (Annexure R8) in terms of which, inter alia, the complainants had received a lump sum credit of Rs. 10,71,819/-. In lieu thereof, the complainants agreed and undertook to withdraw the complaint filed before the NCDRC and FIR filed in DLF Phase-1, Gurgaon Police Station and further undertook not to institute any claim against the respondent of any nature whatsoever. Thus, the present complaint has been filed in violation of the terms and conditions of the settlement agreement referred to above. It is pertinent to mention that the respondent has paid Rs. 15,93,794/- as delay compensation in accordance with the buyer's agreement read with the settlement agreement dated 24.04.2018, executed between the original allottees and the respondent. Rs. 10,71,819/- has been paid to the complainants under the settlement agreement referred to above and additional compensation amounting to Rs. 5,21,975/- was paid at the time of offer of possession'.
19. That it is submitted that by their failure to repudiate the contract even after the so called due date of possession and payment of amounts to the respondent even after such date, and by execution of the settlement agreement specifically agreeing to extension of time lines for delivery of

possession, the complainants have waived the time lines for delivery of possession as per the buyer's agreement. This is without prejudice to the submission of the respondent that time is not the essence of the contract when it comes to delivering possession for the reason that there is no express stipulation in the buyer's agreement to this effect. Furthermore, the timelines for delivery of possession are contingent upon various factors such as time taken by the statutory/competent authority in according approvals, permissions, sanctions, including but not limited to the issuance of the occupation certificate/competition certificate, timely payment of instalments by the allottees and other factors which are beyond the power and control of the respondent.

20. That a contract dated 01.11.2010 was executed between the respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the contractor was to construct residential projects being developed by the respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier", including civil, structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26.07.2010 and the scheduled date of completion of the project was 25.07.2013. The contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. In this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill.

21. That in the aforesaid circumstances, the respondent was constrained to issue notice of termination dated 16.01.2015, terminating the contract and calling upon the contractor to remove itself from the project site without removal/ damage to the materials, equipment, tools, plant & machinery, and to hand over the contract documents.
22. That the respondent apprehended that the contractor would remove from the project site, material, tools, plant & machinery which would then not be available to the respondent for use for completion of the project in terms of clause 95.1 (GCC) of the Contract. Therefore, the respondent filed a petition bearing no. O.M.P. No. 100 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble High Court seeking urgent reliefs in the nature of restraining the contractor from interfering with the business activities of the petitioner at the project site, removing any material, equipment, tools, plant & machinery from the project site and appointing a local commissioner to inspect the project site and prepare an inventory of material, equipment, tools, plant & machinery. However, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline. This was considered to be in the interest of the project as well as to mitigate losses, since considerable time would have been spent in re-tendering of the works. Further, the contractor had also undertaken to complete the project within the agreed timelines i.e. within eighteen (18) months. In spite of the aforementioned settlement between the respondent and the contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines for completion of the project.

23. That in view of the above, the respondent was constrained to terminate the contract with the contractor vide termination notice dated 30.08.2018. After termination of the contract, the respondent filed a petition against the contractor before the Hon'ble Delhi High Court seeking interim protection against the contractor so that the contractor does not, inter alia, disturb the possession and work at the site. Similar petition was also filed by the contractor against the respondent.
24. That the respondent completed construction of the apartment/building and applied for the issuance of the occupation certificate on 17.03.2020. The occupation certificate has been issued by the competent authority on 11.11.2020. Therefore, time period utilised by the concerned statutory authority in granting the occupation certificate to the respondent is necessarily required to be excluded from computation of time period utilized for implementation of the project.
25. That it is pertinent to take into reckoning that the complainants were offered possession of the unit in question through letter of offer of possession dated 26.11.2020. The complainants were 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 them. However, the complainants consciously refrained from obtaining possession of the unit in question for reasons best known to them. The complainants had defaulted in their obligations and duties prescribed under the buyer's agreement as well as the Act. Therefore, there is no equity in favour of the complainants.
26. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondents, it is submitted that the alleged interest frivolously and falsely sought by the complainants was

to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

27. That after needlessly delaying the matter, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 22.01.2021 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.
28. It needs to be highlighted that the complainants have further executed a conveyance deed bearing vasika no. 1100 on 21.05.2021 in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. In addition thereto, it is respectfully submitted that the complainant has executed an indemnity cum undertaking dated 05.12.2020 whereby the complainants had declared and acknowledged that they have no ownership right, title or interest in any

other part of the project except in the unit area of the unit in question. Moreover, the complainants have admitted his obligation to discharge their HVAT liability thereunder. The complainants have preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainants have filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to his unjust and illegitimate demands.

29. That it is submitted that the respondent has duly fulfilled its obligations under the buyer's agreement by completing construction and delivering possession in accordance with the buyer's agreement, as amended by the settlement agreement executed by the parties within the period of validity of registration of the project under the Act, i.e., before 23.08.2022. Thus, there is no default or lapse on the part of the respondent.
30. Copies of all the relevant documents have been filed and placed on record. The written submission filed by the complainant and the respondent has been perused and taken 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**

32. 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**

33. 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.*

34. 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. Relief sought by the complainant:**

**F.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.**

**F.II Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest as per the Act before signing the sale deed together with the unambiguous intimation/offer of possession.**

**F. III. Direct the respondent to kindly handover the entire possession of the unit to the complainant.**

35. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

**“Section 18: - Return of amount and compensation**

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”*

36. Clause 11 of the buyer’s agreement provides the time period of handing over possession and the same is reproduced below:

“Clause 11 (a) Time of handing over the possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer’s Agreement, and not being in default under any of the provisions of this Buyer’s Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 months from the date of execution of buyer’s agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.”*

37. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of commencement of construction and development of the unit. The date of commencement of construction is 26.08.2010. Further, it was provided in the buyer’s agreement that company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The same is being allowed as per the orders of Hon’ble Tribunal in appeal no. 433 of 2022 stating and the same is quoted below:-



*"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."*

Therefore, the due date of possession comes out to be 26.02.2014.

38. The counsel for the complainants argued that initially, the due date for handing over of possession was 26.08.2013 (without grace period). However, the complainants approached the NCDRC in CC No.2346 of 2017 and thereafter a settlement agreement was executed between the parties on 24.04.2018. In the settlement agreement, an amount of Rs.10,71,819/- was assured to be paid by the respondent to the complainants to compensate them for delay in handing over of possession which has been credited to the account of the complainants. In the said settlement agreement, the revised date of possession was agreed as 31.05.2018. The counsel for the complainants' states that the offer of possession was actually made on 26.11.2020 in contravention of the said settlement agreement which has become null and void due to the above breach of terms.
39. The counsel for the respondent states that the complainants have already derived pecuniary advantage from the respondent by filing not only a case in NCDRC but also a criminal case against the respondent. Further, the complainants have nowhere in their pleadings repudiated the duly signed settlement agreement dated 24.04.2018 which has finally settled the dispute between the parties. He further points out that the complainants have failed to state that in the clause of the settlement agreement where the revised intimation of possession has been taken as 31.05.2018, it has also been

provided that in case the date is changed, the delay possession amount shall be automatically adjusted on pro-rata basis. He further points out that in the statement of account accompanied with the offer of possession dated 26.11.2020 Annexure -1, the delayed compensation amounting to Rs.15,93,794/- has been adjusted against the current demand w.r.t the account of the allottee. Therefore, there are no ground on which the complainants can call the said settlement agreement void on breach of terms. The counsel for the respondent has referred to numerous citations of the Hon'ble Courts w.r.t settlement agreements in favour of his arguments.

40. The authority observes that it is not disputed that prior to filing of the complaint before this authority on 20.04.2021, the complainants had already approached the local police for registration of a criminal case against the respondent-builder which led to registration of FIR No.158 dated 08.06.2016. Secondly, the complainants had already filed a complaint with regard to subject-matter before the National Consumer Dispute Redressal Commission. So, to settle both the aforesaid cases, the parties entered into a settlement on 24.04.2018 reduced the same into writing and which also led to withdrawal of both the cases detailed above against the respondent-builder. In the said settlement agreement, the revised date of possession was agreed as 31.05.2018 as per clause no. 1. The same is reproduced as below:

*"The Allottee has agreed to the revised intimation of possession date of **31.05.2018** given by the Company. The Allottee further agrees that in case the date of hand over is changed whether prior to the mentioned date or post the same, the amount of compensation shall be **increased/decreased on pro-rata basis**. In case the date is preponed then the Allottee undertakes to remit the differential amount back to the Company at the time of hand over. In respect of the said new timelines of handing over possession and delay compensation, the Parties have agreed that the Buyer's Agreement shall also be treated as amended accordingly."*

41. As evident from the aforesaid clause, the date of intimation of possession was revised and it was also agreed that in case the date of handover is changed, the amount of compensation shall be increased/decreased on pro-

rata basis. It is also not disputed that in pursuant to the settlement agreement, the complainants received a sum of Rs. 15,93,794/- as compensation. It is also a fact that after settlement on 24.04.2018, the complainants did not file any civil or criminal case against the respondent-builder challenging the terms and conditions of that settlement before any authority except the present complaint on 20.04.2021 before this authority. So, taking into consideration all these facts, it is to be seen as to whether the settlement agreement entered into between the parties on 24.04.2018 was result of coercion or duress.

42. It is contended on behalf of the complainants that since the settlement agreement dated 24.04.2018 was not adhere to by the respondent-builder i.e., with regard to handing over possession by 31.05.2018 and the respondent has breached the terms of the settlement agreement by offering possession only on 26.11.2020, so that settlement agreement is not binding on the complainants and be declared null and void. Secondly, it was also provided under clause 6 of that agreement that the parties will have the right to take any legal course of action if the agreement was not fulfilled as per agreed terms therein. But both the pleas advanced in this regard are devoid of merit. First of all, it is provided under clause 1 of that agreement that the allottee agrees that in case the date was changed whether prior to the mentioned date or post the same, the amount of compensation shall be increased or decreased accordingly. Even it is also provided that in case the date was preponed, then the allottee undertakes to remit the differential amount back to the company at the time of hand over. As per the settlement agreement, the respondent agreed to pay a sum of Rs.10,71,819/- as compensation and the same was to be credited in the statement of account at the time of final instalment on possession. Though that schedule could not be adhered to due to one reason or the other, the respondent-builder is

under an obligation to increase that compensation accordingly and in terms of the same, the respondent has credited increased compensation amounting to Rs.15,93,794/- in the statement of account. In short, the respondent has fulfilled its commitments in terms of the settlement agreement dated 24.04.2018. Secondly, it is not the case of complainants that before entering into settlement, they were not aware of their legal rights with regard to compensation. They have already filed two complaints against the respondent-builder before Hon'ble NCDRC and the local police which were withdrawn on the basis of settlement. It is not their case that they were under any threat or coercion either to enter into settlement with the respondent-builder and to withdraw the two complaints detailed above. Admittedly, after withdrawal of those cases against the respondent-builder and settlement, they did not approach any civil or police authorities for initiating action against the respondent with a plea that the settlement was a result of coercion or undue influence and the same was one sided detrimental to their interest. No doubt, the parties were given liberty to take any legal course of action on the ground of non-fulfilling agreed terms but the same cannot be re-agitated and re-opened before this authority by way of present complaint. A reference in this regard may be made to the principles of waiver and estoppel and the same applies when a party knows the material facts and is cognizant of the legal rights in that matter and yet for some consideration consciously abandons the existing legal rights, advantage, benefit, claim or privilege. The waiver can be contractual as in the present case or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct like by wanting to take a change of a favorable decision. The fact that the other side had acted on it is sufficient consideration. The waiver being an intentional relinquishment is not to be inferred by mere failure to take action and these observations were made by the Hon'ble Apex Court of the land in case *Arce*

***Polymers Private Limited Vs. Alphine Pharmaceuticals Private Limited and Ors. MANU/SC/1184/2021.*** Earlier, the same view was taken by the Hon'ble Apex Court of law in cases of ***Jayesh H. Pandya and Ors. Versus Subhtex India Ltd. and Ors. MANU/SC/1162/2019*** and ***Kalpraj Dharamshi and Ors. Versus Kotak Investment Advisors Ltd. and Ors. MANU/SC/0174/2021*** wherein it was observed that "*the essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. That apart, the doctrine of "waiver" or "deemed waiver" or "estoppel" is always based on facts and circumstances of each case, conduct of the parties in each case and as per the agreement entered into between the parties and this exposition has been affirmed by this Court in NBCC Ltd. versus J. G. Engineering Private Limited MANU/SC/0013/2010.*

43. So, keeping in view the factual as well as legal position as detailed above, it cannot be said that the settlement agreement entered into between the parties was result of coercion or duress and the same was not acted upon by either of the party. Though the due date of handing over possession was not adhered to by the respondent/builder but the allottees agreed for increase/decrease in the amount of compensation on that account and the same was also paid by the respondent. Thus, in such a situation, the complainants are not entitled to delay possession charges as provided in the Act and no relief can be granted w.r.t to the same.

**F.IV Direct the respondent to refund Rs. 3,08,000/- paid by the complainants against PLC along with interest.**

**F.V Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties, like asking for fixed deposit of HVAT, which is not payable by the complainants.**

**F.VI Direct the respondent not to ask advance monthly maintenance charges for a period of 12 months.**

**F.VII Direct the respondent not to ask interest free maintenance security as the maintenance security should be interest bearing.**

**F.VIII To get an order in their favour by restraining the respondent party from charging GST and other alleged illegal charges and directing the respondent to refund such charges to the complainant along with interest.**

**F.IX Direct the respondent not to ask for any charges which are not as per the buyer's agreement.**

44. The above mentioned reliefs no. F.IV to F.IX as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
45. The counsel for the complainant pleaded that PLC was charged from the complainants on account of green facing as well as pool facing apartment but as per the LC report dated 10.10.2022, the apartment is not green facing and the amount charged against PLC should be refunded.
46. The counsel for the respondent submitted that so far as PLC is concerned, it is stated that in addition to the settlement agreement, the conveyance deed has also been executed between the parties on 21.05.2021 and as per order of this Authority itself, no such claims lie after the execution of conveyance deed where all the dues have been duly settled between the parties. He further refers to section 11(4)(a) and section 14 of the Act, 2016 wherein the obligations of the promoter are limited to the extent as specified therein.
47. It is important to note that the conveyance deed was executed between the parties on 21.05.2021. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the

completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein.

48. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also it is a matter of record that no allegation has been levelled by the complainant that conveyance deed has been got executed under coercion or by any unfair means.


49. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

**G. Directions of the Authority:**


50. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking certain reliefs against the respondent is dismissed on merits and the same is hereby rejected.

51. Complaint stands disposed of.


52. File be consigned to the registry.



(Ashok Sangwan)  
Member



(Vijay Kumar Goyal)  
Member



(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 02.04.2024**