

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

<b>Complaint no.</b>	:	<b>3050 of 2020</b>
<b>Date of filing complaint:</b>		<b>13.10.2020</b>
<b>Date of decision</b>		<b>09.04.2024</b>

Mr Satyanand Shukla MRs. Jaya Shukla R/O: Amber 53 Ff, Emaar Emerald Hills, Sector-65 Gurugram	<b>Complainants</b>
VeRs.us	
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 Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh.K.K Kohli (Advocate)	Complainants
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 (ins 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 unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars.	Details
1.	Name of the project	Emerald Floors at Emerald Hills, Sector 65, Gurugram, Haryana
2.	DTCP License no. and validity	10 of 2009 dated 21.05.2009 valid up to 20.05.2019
3.	RERA Registered / Not Registered	162 of 2017 dated 29.08.2017 valid up to 28.02.2022
4.	Unit no.	EHF-267-A-FF-053, first floor [page 51 of complaint]
5.	Provisional allotment letter issued in favor of first allottees Mr. Lokesh Nigam and Ila Nigam	08.07.2009 [annexure R2, page 58 of reply]
6.	Date of execution of buyer's agreement between the respondent and the first allottees Mr. Lokesh Nigam and Ila Nigam	17.03.2010 [page 63 of reply]
7.	Possession clause	<b>13: POSSESSION</b> <b>(a) Time of handing over the possession</b> <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and</i>



		<p><i>not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the independent floor within <b>27 months from the date of execution of this Agreement.</b> The Allottee(s) agrees and understands that the Company shall be entitled to a <b><u>grace period of six months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.</u></b></i></p> <p>(Emphasis supplied) [page 64 of complaint]</p>
8.	Due date of possession	May 2019 ( As per the affidavit at Annexure R12D at page 168 of reply filed by the respondent)
9.	Total consideration as per statement of account dated 14.12.2020 at page 146-147 of reply	Rs. 54,57,578/-
10.	Total amount paid by the complainant as per statement of account dated 14.12.2020 at page 146-147 of reply	Rs. 55,23,052/-
11.	Occupation certificate	09.05.2019 [annexure R9, page 151 of reply]
12.	Offer of possession to second allottees namely, Rajesh Banerjee and Shomita Banerjee	11.05.2019 [annexure R10, page 152 of reply]

13.	The complainants are subsequent allottees	The respondent acknowledged the complainant as allottee vide nomination letter dated <b>03.09.2019</b> (annexure C5, page 112 of the complaint ) in purs.uance of agreement to sell executed between the complainant and the second allottees (Rajeshwar Banerjee and Shomita Banerjee).
14.	Unit handover letter signed by complainants to 2 <sup>nd</sup> subsequent allottees i.e . Mr. Satyanand Shukla and jaya shukla	03.10.2019 [annexure R14, page 191 of reply]
15.	Date of conveyance deed executed by the complainants on	07.11.2019 [annexure R15, page 195 of reply]

### B. Facts of the complaint

The complainants have submitted as under:

3. That the respondent company issued an advertisement announcing a residential group housing project called 'emerald hills - floors.' situated at Sector 65, Gurugram, Haryana and thereby invited applications from prospective buyers. for the purchase of floors. in the said project. On 10.06.2009, the original allottee, who was caught in the web of false promises of the agents of the respondent company, paid an initial booking amount of Rs. 1,50,000.00 and Rs. 3,50,000.00 vide cheque no. 614201 dated 10.06.2009 and cheque no. 614202 dated 12.06.2009 drawn on HDFC Bank Ltd. and the same was acknowledged by the respondent.
4. That the original allottees made the second payment against installment no. 02 for an amount of Rs. 4,68,000.00 vide Cheque no. 614205 dated 14.08.2009 drawn on HDFC Bank Ltd and he same was acknowledged

by the respondent vide receipt no. 614205, both dated 14.08.2009 and they made the third payment against installment no. 03 for an amount of Rs. 3,34,000.00 vide cheque no. 006256 dated 15.09.2009 drawn on ICICI Bank Ltd. and Rs. 1,50,000.00 vide Cheque No. 000001 dated 15.09.2009 drawn on Kotak JMD Regent Gurgaon and the same was acknowledged by the respondent vide receipt nos. 006256 and 000001, both dated 22.09.2009.

5. That the respondent company issued a provisional allotment letter allotting a unit bearing no. EHF-267-A-FF-053 measuring 267 Sq. Yards (super built up area). The respondent company sent one detailed buyer's agreement to the original allottee and requested for signing the agreement which was signed on 17.03.2010 and returned to the respondent, wherein as per the clause 1.2 (a), page no. 5 of the buyer's agreement, the total sale price payable by the allottee to the respondent was Rs. 48,40,000.00. According to clause 13 of the buyers agreement the possession of the captioned unit should have been delivered within 27 months from the date of execution of the agreement plus a grace period of six months i.e. by 2013. On 01.05.2013, the original allottee paid delayed payment charges amounting to Rs. 2,546.00/- to the respondent for delay in payment of Rs. 4,84,000/- to be made within 90 Days of the execution of the buyer's agreement to the respondent vide cheque no. 122137 dated 01.05.2013 and the same was acknowledged by the respondents.
6. That on 10.05.2013, an endorsement was made by the first allottees in the name of second allottees, which was acknowledged by the respondent company in the buyer's agreement. The second allottee contacted the respondent for an update on the expected delivery of possession of their unit but were unable to catch hold of the

representatives of the respondent company. The second allottees visited the site of their unit and were disappointed to witness that the construction on site was not at par with the payments that were being demanded by the respondent company. The second allottees tried contacting the representatives of the respondent again but could not receive a concrete answer as to when the possession of their unit would be ready. The second allottees made many calls to the representatives of the respondent about the same but to no avail. The respondent gave false assurances to the second allottees that they would hand over the possession of the unit to them in the next year. The second allottees visited the site of the unit again and were surprised to find out that the unit was nowhere close to being ready for completion and requested the respondent to speed up the construction of the unit as the second allottees were stuck between a rock and a hard place and were forced to pay rent at their then current accommodation even after making diligent payments to the respondent.

7. That the second allottees tried contacting the respondent several times but were unable to get a hold of them. On 22.03.2018, the second allottee made a payment of Rs. 5,39,200.00 vide cheque no. 698614 drawn on axis bank and Rs. 15,246.00 vide cheque no. 698615 drawn on axis bank to the respondent company and the same was acknowledged by the respondent and on 10.09.2018, the second allottee made a payment of Rs. 5,27,476.00 to the respondent company and the same was acknowledged by the respondents vide receipt no. 777008 and on 24.09.2018 and further made a payment of Rs. 5,39,200.00 vide cheque no. 010867 drawn on yes bank and Rs. 496.00 vide cheque no. 260858 and was acknowledged by the respondent. On 18.12.2018, the second allottee made a payment of Rs. 82,489.00 to the respondent company



and the same was acknowledged by the respondents vide receipt no. 810309 and on 19.03.2019, they made a payment of Rs. 4,04,400.00 vide cheque no. 038930 drawn on yes bank to the respondent company and the same was acknowledged by the respondents vide receipt no. 704724/20190325163742988.

8. That on 11.05.2019 the respondent sent an offer of possession after a delay of six years, along with the details of charges due. That on 10.06.2019, the second allottee sent a request to the respondent company to transfer / nominate the allotment of the said unit in the favor of the complainants. The respondent company acknowledged the request in their letter reference no. CS/EHF-267-A-ff-053 dated 10.06.2019. On 15.07.2019, second allottee deposited TDS amounting to Rs. 10,248 and subsequently after generation of TDS certificate 'XEZYMOA' shared a copy of while submitting documents for unit transfer in name of complainant. In September 2019 at the time of unit handover, respondents first told that final paint will be done before final handover (which off course include entire unit area including staircase and façade area) but have not completed till now on false reasons.
9. That on 03.09.2019, an endorsement was made by the second allottees in the name of complainants, which was acknowledged by the respondent company in the buyer's agreement. (This was a simple Endorsement where in all the rights and liabilities of the second allottees were transferred in favour of complainants).
10. That on 03.09.2019, the respondent company confirmed the nomination of the complainants vide their nomination letter reference no. tl/eh/704724/20190903150336127 dated 03.09.2019 and the same was reflected on buyer's agreement.

11. That despite submitting all the documents for property transfer (including application for providing NOC for Loan), no information was ever shared at the mentioned email or postal address of the complainant till the time of getting the indemnity bond signed (at the time of visiting the respondent's office). By that time, the Complainant has paid about Rs. 1 Crore (Housing Loan from HDFC Ltd.) as Loan and about Rs. 25 lakhs to the second allottee from whom he purchased the unit, thus there was no option left with the complainant but to sign the indemnity bond. The respondent company issued a unit handover letter dated 03.10.2019 to the complainant. In September 2019 at the time of unit handover, respondents first told that final paint will be done before final handover (which off course include entire unit area including staircase and façade area) but have not completed till now on false reasons. On 07.11.2019, a conveyance deed was executed between the complainant and the respondent company.
12. That the complainant signed all the documents issued by the respondent company in order to get possession of the flat. They have availed a bank loan for Rs. 1,00,00,000/- and have to regularly pay a significant amount as Equated Monthly Installment (EMI), which put tremendous financial pressure on the complainants. The complainants accepted all the conditions put forward by the respondent company as they were trying to relieve the financial burden, however, the respondent took advantage of the vulnerable position of the complainants and offered no relief for the delay caused by them.
13. That the respondent is well aware that the project has been delayed for more than 7 years. and hence the complainant(s) is entitled to interest as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real





Estate (Regulation and Development) Rules, 2017 but unfortunately the same has not been paid, as can be ascertained from the offer of possession letter dated 09.07.2020. The act of the respondent of handing over the possession of the property through a hand over letter or through a sale deed cannot at best be termed as the respondent having discharged its liabilities and obligations as enumerated in the agreement. The said delay amounts to a deficiency in the services offered by the respondent to the complainants. The right to seek interest for the deficiency in services offered by the respondent was never provided to the complainants. The complainants are therefore entitled for interest as per the HRERA Act/ Rules and Regulations for the delayed period till the actual proper handover of the unit together with all the amenities.

14. That the possession of the property may kindly be provided to the complainants as per the assurance given in the brochure at the time of offering the property for sale. Occupation certificate is one approval which the respondent has to obtain before handing over the possession but the respondent also has to deliver all other amenities and facilities assured at the time of selling the property and the handover would be termed as complete only when the entire amenities and facilities are provided and then only the handover is considered to be complete. The complainants had bought a unit in a complex and not in a standalone building and the amenities and facilities assured at the time of selling as listed below are also required to be provided at the time of the handover:

- a. Swimming Pool
- b. Gym

- c. Convenient shopping center
- d. Milk Booth
- e. ATM
- f. Play area for kids
- g. Walk way, Jogging and walk paths
- h. Club
- i. Children's park
- j. Comfortable seating areas

15. It is, therefore, prayed that the handover of the unit should be considered complete only when all the above important amenities and facilities are also provided together with the Unit and the interest on the period of delay should be paid till the proper possession is given as elaborated above. All these facilities are not available in complex even today and even after repeated follow ups with the respondent, no dates have been shared by the respondent by which these basic infrastructure facilities will be made available to complainants for which they have paid money almost seven years back.
16. That annexure-c of the offer of possession Letter dated 09.07.2020 is an indemnity-cum-undertaking for the issuance of NOC for fit out/registration of sale deed of the floor of the complainants. In order for an offer of possession to be valid, it must be unconditional. The indemnity-cum-undertaking under annexure-c of the oop imposes unjust and arbitrary conditions upon the complainants and as such is one-sided and unfair. The following clauses render annexure-c and by association, the offer of possession letter, dated 09.07.2020, conditional and invalid:

1. Clause 6
  2. Clause 8
  3. Clause 11
  4. Clause 13
  5. Clause 14
17. That as per agreement between the parties, the IFMS was payable on the offer of possession. No valid and legal offer of possession has been made in the letter dated 11.05.2020 which actually and factually is in the nature of a notice/final demand letter informing the allottees. The final demand notice cannot be considered to be a valid offer of possession and the IFMS shall not be charged as it was payable on the valid offer of possession. Since the Offer of Possession is not valid, hence the demand of IFMS contained in the so-called offer of possession letter would also be illegal and unjustified.
18. That in the present case asking for a huge amount towards annual common area maintenance charges in advance is illegal as well as the allottees are not contractually bound to pay this. Hence the offer of possession is not a valid offer of possession, even though the possession has been taken by many of the members. The respondent demand for annual common area maintenance charges is also illegal and amounts to unjust enrichment depriving the complainant of interest, which condition was never a part of the FBA and hence, for this reason as well, the offer of possession is not a valid offer of possession.
19. That losing all hope from the respondent in terms of getting the interest on the delay in delivery period, having failed to get any positive response and in order to not loose significant amount rightly due to the



complainants, the complainants are constrained to approach this Hon'ble tribunal for redressal of his grievance.

20. That there is no valid settlement -cum-agreement between the parties as the same has not been signed by the respondent. There has to exist an agreement between the parties which is required to be signed by both the parties and in respect of the companies, it has to be signed by an authorized representative duly authorized by the board of directors through a board resolution. In the present matter it would be noticed from the settlement-cum-amendment-agreement submitted by the respondent that it has not been signed by both the parties at all. Hence no settlement-cum-amendment- agreement ever existed between the parties as is being claimed by the respondent.
21. The background of hurriedly signed settlement-cum-amendment - agreement by the complainants which do not have the signatures of the respondent is explained. The respondent through the Emerald Hills Owners Association, an Association which was looking after the interest of the buyers had sent a request to all the allottees of emerald projects to come for a meeting to discuss the delivery dates of their flats / plots and to discuss the enhancement of compensation, for the delay. The complainants being one of the allottees also got this message through some whatsapp group and attended the meeting. During the meeting, which had taken place in an open ground, hundreds of allottees had gathered, wherein it was announced in open that the units of the allottees are ready for occupation or will be ready for occupation shortly. It was repeatedly emphasized that either the units are ready for possession or would be ready for possession shortly. It was also announced by the respondent in the open that that the respondent would pay an additional amount of Rs. 5 per sq. ft per month over and

above the rate specified in the buyer's agreement commencing from the due date of possession till the offer of possession to the allottees.

22. There is no legally binding settlement cum amendment agreement between the parties. The complainants being one of the 500 complainants being present in the ground, where the meeting was called of the allottees by the respondent, wherein the allottees were asked to sign a settlement-cum- amendment-agreement, without giving them the permission to read and without even providing them a copy of the same and the complainants being one of the allottees signed a settlement-cum-amendment- agreement in February 2018, though the same was never signed by the respondent in the presence of the complainants.
23. There were no witnesses to the settlement agreement. Though the respondent did send a settlement-cum-amendment- agreement back to the complainant but the same was not signed by any authorized representative of the company and there was no stamp of the company. One Mr. Parminder K Oberoi (as the complainant could read) had signed the agreement but the signatures were subsequently cut and returned to the complainant. This would be evident from Page No. 104 of the complaint. Hence there were no signatures on the settlement-cum-amendment-agreement which was returned to the complainant.
24. Written submission submitted by the complainants have been taken on record and perused further.

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

25. The complainants have sought following relief(s):

- i. Direct the respondent to pay the entire amount of interest due to the complainants from the committed date of possession as per the buyer's agreement to the actual delivery of possession.
- ii. Direct the respondent to ensure no further demand is raised on the complainants till the time the entire interest due to the complainants has been adjusted against additional demand.
- iii. Direct the respondent to not to ask for anything which has not been agreed between the parties.
- iv. Direct the respondent to not to charge the advance monthly maintenance charges.

26. On the date of hearing, the authority explained to the respondents/promoters, 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**

**The respondents have contested the complaint on the following grounds:**

27. That Mr. Lokesh Nigam and Ila Nigam (hereinafter "the original allottees") had approached the respondent sometime in the year 2009 for purchase of an independent unit in its upcoming residential project "Emerald Floors at Emerald Hills" situated in Sector 65, Gurgaon. Thereafter the original allottees vide application form dated 10.06.2009 applied to the respondent for provisional allotment of a unit in the project. The original allottees, in pursuance of the aforesaid application form, were allotted an independent unit bearing no ehf-267-a-ff-053, located on the 1st floor, in the project vide provisional allotment letter dated 08.07.2009. The original allottees consciously and willfully opted

for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottees shall remit every installment on time as per the payment schedule. The respondent did not have any reason to suspect the bonafide of the original allottees. The original allottees further undertook to be bound by the terms and conditions of the application form. The buyer's agreement was executed between the respondent and the original allottees on 17.03.2010.

28. That the original allottees transferred the allotment in favour of Rajeshwar Banerji and Shomita Banerjee, hereinafter referred to as the second allottees. The transfer in favour of the second allottees was confirmed vide letter dated 16.05.2013. The second allottees were extremely irregular in payment of installments and consequently became disentitled to any compensation under the buyer's agreement. The second allottees and the respondent mutually agreed to extend the time period for delivery of possession by execution of a settlement cum amendment agreement. The second allottees admitted that they had defaulted in timely payment of sale consideration according to the payment plan. The second allottees agreed to extension of time in delivering possession and undertook to make all future payments in a timely manner and in lieu thereof, the respondent agreed to pay compensation to the second allottees in accordance with the buyer's agreement. It is pertinent to mention herein that the terms and conditions of the buyer's agreement in so far as the time lines for delivery of possession, stand amended by the settlement agreement referred to above.

29. That despite the promises and assurances by the second allottees to make all future payments in a timely manner and in accordance with

the buyer's agreement, the second allottees continued to default in making payments and consequently became disentitled to any compensation under the buyer's agreement. Vide letter dated 11.05.2019, possession was allotted to the second allottees and the second allottees were called upon to make payment of balance amounts and complete the necessary formalities/documentation so as to enable the respondent to hand over possession of the floor to the second allottees.

30. That the second allottees approached the respondent and requested that the unit/floor in question be transferred in favour of the complainants herein. The transfer documents were executed by the second allottees and the complainants herein, on the basis of which the unit in question was transferred in favour of the complainants on 03.09.2019. The possession of the unit was handed over to the complainants on 03.11.2019 and the conveyance deed has also been registered in favour of the Complainants on 07.11.2019. Indemnity cum Undertaking for possession was also executed by the complainants.
31. That Clause 13 of the buyer's agreement provided for delivery of possession within 27 months from the date of execution of the buyer's agreement subject to force majeure conditions, events beyond the control of the respondent and timely compliance by the allottee(s) of all the terms and conditions of the buyer's agreement and not being in default of any provision thereof, including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. A grace period of 6 months was provided for applying and obtaining the occupation certificate. At the time of transfer of allotment in favour of



the complainants and co allottee, the period of 27 months referred to in Clause 13 of the buyer's agreement dated 17.03.2010 was already over.

32. That without prejudice to the submissions made hereinabove, it is submitted that it is submitted that the original allottees as well as the second allottees have been irregular regarding the remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the original allottees/Second Allottees to make payment of outstanding amounts payable by them under the payment plan/instalment plan opted by them. Moreover, the second allottees have also executed transfer documents acknowledging that they shall not be entitled to any compensation for delay and furthermore, the time lines for delivery of possession have also been extended by the settlement agreement dated 11.04.2018.
33. That it is pertinent to mention that clause 15 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 agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the 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. Moreover, the respondent has credited Rs. 1,98,090/- on account of anti-profiting and Rs. 154/- towards EPR (Early Payment Rebate). The complainant has also made a payment towards DPC of Rs. 154/.
34. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants has 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 May, 2012. Therefore, the complaint seeking compensation and interest as a form of indemnification for the alleged delay is barred by limitation.

35. That the present complaint is bad for non-joinder of HDFC Ltd. The complainants have availed a housing loan from HDFC Ltd by mortgaging the unit in question. Letter dated 05.09.2019 from HDFC Ltd is annexure R-16 hereto.
36. That the transfer documents executed by the second allottees and the complainants are at annexure R-12A to R12 H including the affidavit and indemnity cum undertaking executed by the complainants affirming and acknowledging, inter alia that they shall not be entitled to any compensation or interest for any delay in offering possession and agreeing and confirming that the time lines for offering possession of the unit in question is May 2019 and that the buyer agreement stands modified to that extent.
37. That in the present case, there was no such assumption of any extended time line for delivery of possession as possession had already been offered to the Second Allottees even before the complainants came into the picture. It is for this reason that the complainants have confirmed that the time line for offering possession shall be May 2019. The complainants never waited for possession and are hence not entitled to any compensation for alleged delay in offering possession.
38. That in so far as the complainants are concerned, the validity or otherwise of the settlement agreement executed between the previous allottees and the respondent, whereby the date for delivering possession was extended upon fulfillment of certain terms and conditions by the Previous (second) allottees, is immaterial in view of

the fact that at the time of purchase of the unit in resale, the date of possession was known and confirmed by the complainants to be May 2019 and offer of possession dated 11.05.2019 had already been received by the second allottees.

39. That the second allottees were extremely irregular in payment of installments and consequently became disentitled to any compensation under the buyer's agreement in terms of Clause 15(c) of the Buyer's Agreement. The second allottees and the respondent mutually agreed to extend the time period for delivery of possession by execution of a settlement cum amendment agreement. The Second Allottees admitted that they had defaulted in timely payment of sale consideration according to the payment plan. The Second Allottees agreed to extension of time in delivering possession and undertook to make all future payments in a timely manner and in lieu thereof, the respondent agreed to pay compensation to the Second Allottees in accordance with the buyer's agreement. It is pertinent to mention herein that the terms and conditions of the buyer's agreement in so far as the time lines for delivery of possession, stand amended by the settlement agreement referred to above. However, despite the promises and assurances by the second allottees to make all future payments in a timely manner and in accordance with the buyer's agreement, the second allottees continued to default in making payments and consequently became disentitled to any compensation under the buyer's agreement. The statement of account reflecting the payments made by the second allottees as well as the delayed payment interest accrued thereon, is annexure r7 at Page 146.
40. That with regard to the execution/validity of the settlement agreement, the following submissions assume significance:

- The settlement agreement has not been challenged by the complainants in any proceedings. In fact, the complainants have no knowledge of the facts and circumstances surrounding the execution of the settlement agreement and have no locus to challenge the same.
  - The Complainants have not denied execution of the Settlement Agreement but are seeking to indirectly challenge the same by raising frivolous grounds, that too by way of written arguments and not through pleadings or substantive proceedings challenging the same.
  - The only person(s) who could challenge the settlement agreement are the parties thereto (1) the Respondent or (2) the Second Allottees.
  - Neither the respondent nor the second allottees have denied execution of the settlement agreement. The settlement agreement, unless set aside by a competent court, continues to be valid and binding.
41. Written submissions submitted by the respondent have been taken on record and perused further.
42. All other averments made in the complaints were denied in toto.
43. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those 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**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

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)(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.

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. Findings on the relief sought by the complainants.**

**F.I Direct the respondent to pay the entire amount of interest due to the complainants from the committed date of possession as per the buyer's agreement to the actual delivery of possession.**

**F.II Direct the respondent to ensure no further demand is raised on the complainants till the time the entire interest due to the complainants has been adjusted against additional demand.**

44. The above mentioned reliefs no. F.I and F.II as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
45. Briefly, the facts of the case are that the unit bearing no. EHF-267-AFF-053, first floor was allotted in favour of Mr. Lokesh Nigam and Ila Nigam (hereinafter in short referred as 'Original allottees') by the respondent vide allotment letter dated 08.07.2009 and thereafter the buyer's agreement was executed between the original allottees and the respondent on 17.03.2010. Subsequently, the subject unit was transferred in favour of Rajesh Banerjee and Shomita Banerjee (hereinafter in short referred as "1<sup>st</sup> subsequent allottee") vide nomination letter dated 16.05.2013. The 1<sup>st</sup> subsequent allottee entered into a settlement agreement with the respondent on 11.04.2018 whereby the parties thereto agreed to extend the time period for handover of possession of the subject unit as per the schedule of possession shared by the respondent company and in lieu thereof, the respondent company agreed to give the allottee compensation at the rate prescribed in the buyer's agreement. Thereafter, the possession of the subject unit was offered to the 1<sup>st</sup> subsequent allottee on 11.05.2019 after receipt of occupation certificated by the competent authority on 09.05.2019. After that, the subject unit was transferred in the name of the complainants herein vide nomination letter dated 03.09.2019. Thus, the complainants herein are 2<sup>nd</sup> subsequent allottees.
46. The complainant in its written submission has challenged the execution of settlement agreement by stating that there are no witnesses to the signatures of the complainant and as per the settlement agreement, the possession would be delivered 'shortly' was so vague and uncertain that

it is not possible to ascertain the definite time period within which the possession would be delivered. Thus, the said settlement agreement cannot be considered as legal and shall be declared null and void. On the contrary, the respondent in its written submission has submitted that with regard to the execution/validity of settlement agreement, the complainants have no knowledge of the facts and circumstances surrounding the execution of the settlement agreement and thus, have no locus to challenge the same. Moreover, the complainants have not denied the execution of the said agreement but are indirectly challenging the same by raising frivolous grounds. Now, the question posed before the authority is that whether the said settlement agreement is valid and binding on the complainants. **Firstly**, the Authority observes that pursuant to the issuance of the nomination letter dated 03.09.2019 in favour of the complainants herein, the respondent company has endorsed the builder buyer agreement in favour of the complainants on 03.09.2019, however there is no document on record vide which the said settlement agreement was also endorsed in favour of the complainants. **Secondly**, in terms of clause 1 of the said settlement agreement, the allottees had agreed to extend the time period for handover of possession of the subject unit as per the schedule of possession shared by the respondent company and in lieu thereof, the respondent company agreed to give the allottee compensation at the rate prescribed in the buyer's agreement. The Authority observes that the respondent has failed to disclose the timeline or place on record the schedule of possession shared by the respondent company and the respondent cannot extend the time period for handing over possession to uncertainty and the allottee cannot be expected to wait endlessly for taking possession of the unit. Also, it is

pertinent to note here that vide settlement agreement, the respondent has agreed to pay compensation at the rate prescribed in the buyer's agreement. As per clause 15 of the buyer's agreement, the allottee(s) shall be entitled to payment of compensation for delay at the rate of Rs.10/- per sq. ft. per month of the super area till the date of notice of possession. The promoter cannot take advantage of its dominant position as it extended timeline of handing over possession but in lieu of that it failed to give adequate advantage to the allottee. It is observed that as per the settlement agreement, the respondent is still giving compensation as per the buyer's agreement i.e., @ Rs.10/- per sq. ft. per month of super area and is still very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Hon'ble Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

47. Hon'ble Supreme Court and various High Courts in a plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** (decided on 02.04.2019) as well as by the Hon'ble Bombay High Court in the **Neelkamal Realtors Suburban Pvt. Ltd.** (supra). A similar view has



also been taken by the Apex court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.** (Civil appeal no. 5785 of 2019 dated 11.01.2021) as under:

*".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.*

*In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."*

48. In light of the aforesaid reasons, the authority is of the view that it cannot take into consideration such settlement agreement, the terms of which are not kept by the one who has made it and is also in a dominant position. Further, also such agreement cannot take the statutory rights of the one who is in recessive position. In the interest of natural justice, such settlement agreement cannot be taken into consideration by this authority while adjudicating on statutory rights of the complainants.
49. However, there is an affidavit on record [Annexure R12D at page 168 of reply filed by the respondent] whereby the complainants have agreed and confirmed that the timelines for offering possession of the unit in question is May 2019 and that the buyer's agreement stands modified to that extent and the said affidavit is duly signed by the complainants herein. Thus, the authority cannot ignore the fact that the complainants herein have themselves agreed to extend the time line for handing over possession and now cannot retract from the same. Keeping the view the occupation certificate was obtained on 09.05.2019 and the offer of possession was offered to the 1st subsequent allottee on 11.05.2019.

The due date was May 2019 as per the affidavit, there is no delay in offering the possession of the unit.

50. Even otherwise, the complainants herein are 2<sup>nd</sup> subsequent allottees who had purchased the subject unit from the 1<sup>st</sup> subsequent allottee and the same was acknowledged by the respondent vide nomination letter dated 03.09.2019 i.e., at such a time when the possession of the subject unit has already been offered to the 1<sup>st</sup> subsequent allottee. The occupation certificate in respect of the subject unit was obtained by the respondent promoter on 09.05.2019 and the possession of the subject unit was offered on 11.05.2019 to the 1<sup>st</sup> subsequent allottee i.e., Rajesh Banerjee and Shomita Banerjee. It simply means that the complainants were well aware about the fact that the construction of the subject project and the subject unit has already been completed and the possession of the same stands offered to 1<sup>st</sup> subsequent allottees. Moreover, the complainants herein have not suffered any delay as they came into the picture on 03.09.2019 after offer of possession which was made on 11.05.2019 to the 1<sup>st</sup> subsequent allottee. In the light of the facts mentioned above, the complainants who have become subsequent allottees at such a later stage are not entitled to any delayed possession charges as they have not suffered any delay in the handing over of possession. The authority is of view that the present complainants have never suffered any delay and also the respondent builder had neither sent any payment demands to the complainants nor the complainants have paid any payment to the respondent prior to offer of possession. So, keeping in view all the facts, the complainants are not entitled for delay possession charges and other reliefs as sought by them in the present complaint. Hence, the complaint filed by the complainants is not admissible.

**F.III Direct the respondent to not to ask for anything which has not been agreed between the parties.**

51. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

**F.IV Direct the respondent to not to charge the advance monthly maintenance charges.**

52. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 20 of the buyer agreement provides the clause for maintenance charges and the complainant allottee is required to pay the maintenance charges to the respondent in terms of obligation of complainant allottee under section 19(6) of the Act of 2016 and the same is reproduced below:

**19(6) Rights and duties of allottee**

*Every allottee , who has entered into an agreement or sale to take an apartment , plot or building as the case may be , under section 13 , shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place , the share of the registration charges , municipal taxes , water and electricity charges , maintenance charges , ground rent , and other charges ,, if any.*

53. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

**G. Directions of the authority**

54. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. In view of the factual as well as legal positions detailed above, the complaint filed by the complainants seeking relief of delayed possession interest against the respondent is not admissible and the same is hereby ordered to be rejected.
- ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

55. Complaint stands disposed of.

56. Files be consigned to registry.



(Sanjeev Kumar Arora)  
Member



(Vijay Kumar Goyal)  
Member



(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 09.04.2024**