



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

Complaint no. :	6124 of 2022
Date of filing complaint:	15.09.2022
Date of decision	16.04.2024

Shwetabh Goel Mrs Priya Goel R/O: Flat No. 302, Emerald Estate, Sector 65, Gurugram, Haryana 122018	<b>Complainants</b>
Versus	
M/S Emaar India 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>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Jagdeep Kumar (Advocate)	Complainants
Sh. Harshit Batra (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 Estate Apartments at Emerald Estate" in Sector 65, Gurugram, Haryana.
2.	Nature of the project	Group housing colony
3.	DTCP License no. and validity	06 of 2008 dated 17.01.2008 and valid upto 16.01.2025
4.	RERA Registered / Not Registered	Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs. Valid upto 23.08.2022
5.	Provisional allotment letter in the name of original allottee i.e. Praveen Kumar Singh	31.12.2009 [annexure R2, page 44 of reply]
6.	Unit no.	EEA-B-F03-02, 3 <sup>rd</sup> floor, block B. [Annexure R2, page 54 of reply]
7.	Unit measuring	1020 sq. ft.



		[Annexure R2, page 54 of reply]
8.	Date of execution of buyer's agreement with original allottees (Praveen Kumar Singh and Komal Singh)	05.02.2010 [Annexure R2, page 52 of reply]
9.	Agreement to sell between the original allottee and the complainants i.e. (Shwetabh Goel & Priya Goel.)	02.04.2018 [Annexure P2, page 80 of complaint]
10.	Possession clause	<b>11. 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 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 <b>within 36 months from the date of commencement of construction</b> and development of the Unit. The Allottee(s) agrees and understands that the Company shall be entitled to a <b>grace period of six months, for applying and obtaining the completion certificate/ occupation certificate in</b></i>



		<b>respect of the Unit and/or the Project.</b> <i>[Emphasis supplied]</i> [Page 67 of reply]	
11.	Date of commencement of construction as per statement of account dated 31.08.2022 at page 90 of complaint	26.08.2010	
12.	Due date of delivery of possession as per clause 11(a) of the said agreement	26.02.2014	
13.	Total consideration	As per payment plan annexed with the agreement, page 63 of complaint Rs.41,43,880/-	As per statement of account dated 31.08.2022 at page 90 of complaint Rs.44,53,642/-
14.	Total amount paid by the complainant as per statement of account dated 31.08.2022 at page 91 of complaint	Rs.44,96,948/-	
15.	Occupation certificate granted on	08.01.2018 [Annexure R6, page 146 of reply]	
16.	Offer of possession in the name of original allottees i.e. Praveen Kumar Singh & Komal Singh	23.04.2018 [Annexure P4, page 85 of complaint]	

17.	Unit transfer vide nomination letter from original allottees to complainants	15.06.2018 [Annexure P3, page 84 of complaint]
18.	Unit handover advice letter issued in favour of the complainant on	09.07.2018 [Annexure P6, page 93 of complaint]
19.	Conveyance deed executed between the complainant and the respondent on	11.10.2018 [Annexure R11, page 164 of reply]

### **B. Facts of the complaint**

The complainants have submitted as under:

3. That Mr. Praveen Kumar Singh & Mrs Komal Singh was the original allottee who was allotted the unit no. EEA-B-F03-02 at Emerald Estate Apartments, Sector 65, Gurugram , Haryana, having super built up area admeasuring 1020 Sq ft. in the project. The said unit was booked by original allottee on 16.08.2009 by paying an amount of Rs 5,00,000/- through cheque No 221237 dt 16.08.2009. The original allottee and respondent entered into a builder buyer's agreement on 05.02.2010 and subsequently the original allottee transfer the said flat in the name of Mr. Shwetabh Goel & Mrs. Priya Goel and buyer's agreement was endorsed in favor of Mr. Shwetabh Goel & Mrs. Priya Goel on 22.05.2018. The respondent confirmed nomination of the Mr. Shwetabh Goel & Mrs. Priya Goel for the said unit through nomination letter dated 15.06.2018.
4. That the complainants purchased the said unit in the project from Praveen Kumar Singh & Mrs Komal Singh on 02.04.2018 through

executing agreement to sell and endorsement on the buyers agreement was subsequently made by the respondent on 22.05.2018, thus stepping into the shoes of the original allottee.

5. That the unit was offered to the original allottee for a total sale consideration of Rs. 41,43,880/- (which includes the charges towards the basic price- Rs. 32,62,980/-, exclusive/dedicated covered car parking Rs 2,50,000/-, EDC&idc Rs 2,75,400/-, club membership Rs 75000, plc for park facing Rs 204000/- and plc for corner Rs. 76500/-).
6. That the respondent confirmed nomination of the complainants for the said unit through nomination letter dated 15.06.2018 and endorsement on the buyer's agreement on 22.05.2018.
7. That on 15.06.2018 the respondent issued a nomination letter in which respondent confirms that the nomination formalities having completed and accordingly now the captioned property stands in the name of complainants' and the respondent handover payment receipts and "buyer's agreement" along with "nomination letter" to the complainants. The complainants found buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost him forfeiting of 15% of total consideration value of unit. When the complainants opposed the unfair trade practices of respondent about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs 7.5 per sq ft per month in case of delay in possession of flat by company. The complainants opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other

option left with complainants because if complainants stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainants.

8. That after the endorsement was made on the buyers agreement in favour of the complainants, the complainants with bona-fide intentions continued to make payments on the basis of the demand raised by the respondent. During the period starting from 22.05.2018, the date of endorsement on the buyer's agreement, the respondent raised demands of payments vide various demand letter which were positively and duly paid by complainants. a total of more than Rs. 44,96,948/- was paid. Thus, showing complete sincerity and interest in project and the said unit.
9. That as per the Clause - 11(a) of the said flat buyer's agreement dated 05.02.2010, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a period of 6 months grace period thereon from the date of start of construction. However the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 26.08.2013.
10. That as per Annexure-III (schedule of payments) of buyer's agreement the sales consideration for said unit was Rs. 41,43,880/- but later at the time of possession the respondent added Rs 83200/- in sale consideration and increase Sale consideration to Rs. 4227080/- without any reason for the same and respondent also charge ifms Rs 51000/- separately, whereas ifms charges were not included in sale consideration. The respondent increased the sale consideration

without any reason, which is a illegal, arbitrary, unilateral and unfair trade practice. The complainants opposed the increase in sales consideration at time of possession but respondent did not pay any heed to issue raised by complainants.

11. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent. As per the statement dated 31.08.2022, issued by the respondent, upon the request of the complainant, the complainant have already paid rs. 44,96,948/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time and now nothing is pending to be paid on the part of complainants. Although the respondent charges Rs. 83200/- extra from complainants.
12. That on 05.04.2018 the complainant and original buyer placed the agreement to sell before the respondent for transferring the flat in name of complainant, but before transferring flat in name of complainant on 05.04.2022 respondent asked indemnity bond from complainant and original buyer, which was opposed by the complainant. That on 23.04.2018 respondent issued offer of possession in name of original buyer through "intimation of possession" was not a valid offer of possession because respondent offered the possession on dated 23.04.2018 with stringent condition to pay certain amounts which are never be a part of agreement. As on 23.04.2018 the project was delayed approx Four and Half Years. At the time of offer of possession builder did not adjusted the penalty for delay possession as per RERA Act 2016. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession builder promise to gave Rs. 5/- sq ft but in respondent not even fulfill the promise made in buyers agreement to pay Rs 5/- per sq ft per month, this is illegal , arbitrary, unilateral and



discriminatory. The respondent also demanded an indemnity-cum-undertaking along with final payment, which is illegal and unilateral demand. The respondent did not even allow complainants to visit the property at "Emerald Estate Apartments" before clearing the final demand raised by respondent along with the offer of possession. The respondent also demanded one year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 31903/- on the pretext of future liability against hvat for the period of (01-April-2014 to 30-June-2017) which is also a unfair trade practice. The complainant informed the respondent about his unfair calculation of delay possession penalty and also enquires the construction status of rest of project through telephonically but nothing changed and respondent does not want answer any enquiry before getting complete payment against his final demand. The respondent left no other option to complainant, but to pay the payment of one year maintenance charges rs. 45,135/- and submit a fixed deposit of rs. 31903/- , with a lien marked in favour of Emaar MGF Land Limited and payment towards e-stamp duty of above said unit no. 0302, Tower B, Emerald Estate Apartments in addition to final demand raised by respondent along with the offer of possession.

13. That the respondent give physical handover of aforesaid property on date 09.07.2018. After taking possession of flat the complainants also identify that some major structural changes were done by respondent in project "Emerald Estate" in comparison to features of project narrated in brochure of Project. Most of the amenities are no where exist in project whereas it was highlight at the time of booking of flat. The respondent did many structural changes and cut down on the

internal features of project , based on which respondent sold this flat to complainants and gain exception amount of profit on the cost of complainants. The construction of club house is also not yet completed by the respondent, whereas the 100% payment for club house was taken by respondent in year 2013 itself. The respondent did not even confirm or revised the exact amount of EDC and idc after considering the structural changes neither they provide the receipts or documentary records showing the exact amount of EDC and idc paid to government and respondent did not even adjust the surplus amount of EDC and idc charged from complainants and other buyers.

14. The respondent did not provide the final measurement of above said unit. The respondent charge all idc, EDC and maintenance as per area of unit as 1020 sq ft but there is no architect confirmation provided by respondent about the final unit area which respondent was going to handover to complainant.
15. That the GST tax which has come into force on 01.07.2017, it is a fresh tax. The possession of the apartment was supposed to be delivered to complainant on 26.08.2013, therefore, the tax which has come into existence after the due date of possession of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if respondent had offer the possession of flat within the time stipulated in the builder buyer agreement.
16. That on 09.07.2018 complainant inform respondent telephonically that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in RERA Act 2016. The complainant makes it clear to respondent that, if respondent not compensates the complainant for delay possession interest then complainant will approach the appropriate forum to get redressal.

17. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said unit which amounts to unfair trade practice which is unfair as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.
18. That the respondent got the conveyance deed executed on 11.10.2018 and the present complaint was filed on 15.09.2022.
19. That the complainants have filed the written submissions and the same is taken on record and perused further.

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

20. 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 complainant's bank to remove the <sup>lien</sup> ~~lien~~ marked over fixed deposit of Rs. 31,903/- in favour of respondent on the pretext of future payment of hvat for the period of 01.04.2014 to 30.06.2017 and also direct the respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.

- iii. Direct the respondent to return Rs. 83200/- amount unreasonably charged by increasing the sale price after execution of buyer's agreement between the parties.
- iv. Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 19.05.2018.
- v. Direct the respondent to pay interest on payment made towards club house as the respondent did not completed the amenities as promised under the buyer's agreement.
- vi. Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as cost of the present litigation.

21. 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:**

22. That Mr. Praveen Kumar Singh and Ms. Komal Singh the original allottees had booked the unit in question, bearing number EEA-B-F03-02, admeasuring 1020 sq. ft. situated in the project developed by the respondent, known as "Emerald Estate" at Emerald Estate, Sector 65, Gurugram, Haryana vide application form dated 16.08.2009 and requested for provisional allotment of the unit . Consequently, the respondent issued the provisional allotment letter dated 31.12.2009 to the original allottees.
23. That subsequently, the respondent sent the buyer's agreement to the original allottees, which was executed between the parties on

05.02.2010. As per clause 11(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of start of construction (26.08.2010) and a grace period of 6 months, i.e., 26.02.2014. Since the complainant has defaulted in timely remittance of payments as per the schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants. The respondent has gone over and beyond in issuing payment request letters and reminders in the first and second instances as noted below:

S. No.	PARTICULAR	DATE
1.	Notice	27.03.2018
2.	Payment Request Reminder 2	13.01.2018
3.	Payment Request Reminder 1	10.10.2017
4.	Payment Request Letter	03.05.2017
5.	HVAT Payment Request Letter	30.03.2017
6.	Payment Request Letter	08.05.2014
7.	Payment Request Letter	27.12.2011
8.	Payment Request Letter	01.11.2011
9.	Reminder 1	18.10.2011
10.	Reminder 1	17.08.2011
11.	Payment Request Letter	22.07.2011
12.	Reminder 1	21.06.2011
13.	Payment Request Letter	26.05.2011
14.	Payment Request Letter	17.03.2011
15.	Payment Request Letter	11.01.2011
16.	Payment Request Letter	22.10.2009

24. That at this stage, it is categorical to note that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities

of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, the Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken

to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

25. That the project was also delayed on account of the following reason which was /is beyond the power and control of the Respondent and hence the respondent cannot be held responsible for the same:

Defaults of Contractor:

In light of bringing all the material facts before the Hon'ble Authority, the defaults caused by the contractor need to be categorically highlighted:

- a. 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 26.08.2010 and the scheduled date of completion of the project was 25.07.2013.
- b. That 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.

- c. 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's, tools, plant & machinery, and to hand over the contract documents.
- d. 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.
- e. 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 18 months.

- f. That 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.
- g. 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. That the aforesaid two petitions, along with two other petitions pertaining to a different contract came up for hearing on 06.09.2018. The Hon'ble High Court vide its Order dated 06.09.2018 disposed of the said cases and issued several directions. The Hon'ble High Court appointed Justice A.P. Shah (Retd.) as the Sole Arbitrator for adjudication of disputes between the respondent and the contractor. Furthermore, RITES Ltd. (a Government Undertaking) was appointed as the Local Commissioner to inter alia, inspect and take joint measurement of work done and balance to be done and file its report before the Sole Arbitrator. The High Court gave liberty to the respondent to award the contract to new

agency(ies) for completing the remaining work. However, it was directed that the project site shall be handed over to such new agency(ies) with the permission of the Sole Arbitrator. The arbitration proceedings titled as B.L. Kashyap and Sons Vs Emaar MGF Land Ltd. (arbitration case number 1 of 2018) before Justice A.P. Shah (Retd.), Sole Arbitrator have been initiated.

h. The Hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

26. That it is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old

		years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.			which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19 <sup>th</sup> July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 <sup>th</sup> Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.

		one week from the date of order.			
4.	7 <sup>th</sup> Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 <sup>th</sup> Nov 2017 till further notice.	<b>Till date the order has not been vacated</b>	<b>90 days</b>	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 <sup>st</sup> Dec, 19 and 30 <sup>th</sup> Jan, 20.

5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 <sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
			<b>Total days</b>	<b>166 days</b>	

27. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement. All these circumstances come within the purview of the

force majeure clause and hence allow a reasonable time to the respondent builder.

28. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application dated 29.06.2017 before the competent Authority and successfully attained the occupation certificate dated 08.01.2018. The offer of possession was also issued to the Original Allottees vide letter dated 23.04.2018. Thereafter, after the offer of possession was made to the original allottees, the unit was transferred to the complainants by the original allottees upon the execution of the affidavit dated 22.05.2018 and indemnity cum undertaking dated 22.05.2018 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 15.06.2018.
29. That it is a matter of fact and record that when the complainant bought the unit after the receipt of occupancy certificate, the unit was ready and was purchased by the complainant without any delay, the complainant bought the unit with open eyes after having inspected the unit and the entire project. It needs to be categorically noted that in the present case, since the subsequent allottee entered into an agreement for sale with the erstwhile allottees without making the respondent builder a confirming party and since the nomination was made after the offer of possession was already made to the erstwhile allottee, there is no delay that the complainants had suffered. Furthermore, it is pertinent to note that the possession of the unit was handed over to the complainants on 18.07.2018 and subsequently, the conveyance deed was executed on 11.10.2018. that the present claim is barred by limitation. After the

execution of the Conveyance Deed, the Parties are estopped from making any claims at this instance. It is a settled matter of law that:

30. That an amount of Rs. 83,200/- that has been charged from the complainant in terms of the buyer's agreement which includes electrification charges, water connection charges, sewerage connection charges, electric meter charges, storm water connection charges, piped gas connection charges etc., Registration charges and administrative charges. With regard to this it is submitted that above said charges have been charged as per Clause 1.2(a)(i) of the Buyer's agreement. Additionally, a benefit of reverse EDC has also been given to the complainant, of Rs. 9,211. Furthermore, above said charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee.
31. Therefore, it cannot be concluded that the respondent was wrong in demanding the above said charges from the complainant. The charges/enhanced price has been charged in accordance with the terms of the buyer's agreement. For the convenience of the Ld. Authority, a bifurcation of these charges are explained as under:

Amount of Rs. 83,200		
HEAD	GROSS AMOUNT	CLAUSE
Electric Meter Charges	Rs. 7,715	Clause <b>1.2(a)(i)</b> – ...the <i>Total Consideration does not include any other charges, as reserved in this</i>
Gas Connection Charges	Rs. 14,587	
Electricity Connection Charges	Rs. 24,378	

Electrification charges	Rs. 15,739	<p><i>Agreement and the Allottee shall be under an obligation to pay such additional cost as may be intimated to him by the Company, from time to time.</i></p> <p><i>Clause 2 -- "allottee agrees to pay all additional amounts including but not limited to ...as demanded by the Company ...."</i></p>
Registration Charges	Rs. 17,501	
Water connection charges	Rs. 490	
Administrative charges	Rs. 12,000	<p>As per above and as per <b>Varun v Emaar</b>, maximum Rs. 15,000 can be charged for administrative/registration charges.</p>
Deduction for reverse EDC	- Rs. 9,211	<p>Clause 1.2(f) - Proportionate amount of EDC is exclusive of total consideration. This reduction was notified at</p>



		the time of offer of possession.
<b>Total: Rs. 83,200</b>		

32. That as noted above there is no bar in charging the VAT from the allottees between the period of 01.04.2014 – 30.06.2017 as the respondent had not opted for scheme/ composition scheme. therefore, the hvat shall be charged as per assessment as mentioned in letter dated 30.03.2017 issued by the respondent to the complainant. Hence, the allottee had the obligation to pay the hvat and GST as per terms and the relief in this regard should be dismissed.
33. Written submission have been filed by the respondent. The same have been taken on record and perused further.
34. All other averments made in the complaints were denied in toto.
35. 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.

## **E. Objection raised by the respondent**

### **E.I Objection regarding force majeure**

36. The respondent is claiming that there was delay in constructing the project due to construction bans, due to various order of the Authorities and covid.

37. All the pleas advanced in this regard are devoid of merit. First of all, the unit in question was allotted in the year 2009 .The respondent is given leniency of 6 months for applying and obtaining occupation / completion certificate as per the possession clause 11 in the buyer's agreement dated E05.02.2010 .Even the respondent himself stated that in spite of non-payment of dues by the other buyers like the complainant and stay of construction by the National Green Tribunal at several instances, the construction work of the said project is complete and also these bans were there after the due date of possession . Hence the promoter respondent cannot be given any leniency on base of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong and the plea raised in this regard is devoid of merit.

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

**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.**

38. The present complainant is a 1<sup>st</sup> subsequent allottee who has purchased the subject unit from the original allottee on 15.06.2018 i.e., at such a time when the possession of the subject unit has already been offered to the original allottee.

39. As per clause 11 of the buyer's agreement, the possession was to be given within 36 months from the date of commencement of construction i.e 26.08.2010 so the due date comes out to be 26.08.2013. Further, it was provided in the buyer's agreement that promoter shall be entitled to a grace period of six months, for applying an obtaining the occupation certificate in respect of the floor and or the project.

40. The Authority put reliance on the judgement of the **Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari**, wherein it has been held that 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. The relevant para is reproduced below:

*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*

41. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus the due date of handing over of possession comes out to be 26.02.2014.
42. The occupation certificate for the subject unit has been obtained by the respondent promoter on 08.01.2018 and the possession has been offered on 23.04.2018 to the original allottee i.e Mr. Praveen Kumar Singh and Komal Singh. The present complainant is a 1<sup>st</sup> subsequent allottee who has purchased the subject unit from the original allottee

15.06.2018 i.e., at such a time when the possession of the subject unit has already been offered to the original allottee. It simply means that the present complainant was well aware about the fact that the construction of the subject project and unit has already been completed and the possession of the same has been handed over. Moreover, he has not suffered any delay as the subsequent allottee comes only picture on 15.06.2018 after offer of possession which was made on 23.04.2018 to the original allottee. In the light of the facts mentioned above the present complainant who has become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as he has not suffered any delay in the handing over of possession.

43. The authority is of view that the present allottee never suffered any delay and also respondent builder had neither sent any payment demands to the complainant nor complainant paid any payment to the respondent. So, keeping in view all the facts, the complainant is not entitled for delay possession charges and other reliefs. Hence, the complaint filed by the complainant is not admissible.

**F.II Direct the complainant's bank to remove the lian marked over fixed deposit of Rs. 31,903/- in favour of respondent on the pretext of future payment of hvat for the period of 01.04.2014 to 30.06.2017 and also direct the respondent to assist the process of removing lian from complainant's bank by providing NOC for the same.**

**F.III Direct the respondent to return Rs. 83,200/- amount unreasonably charged by increasing the sale price after execution of buyer's agreement between the parties.**

**F.IV Direct the respondent to return entire amount paid as GST tax by complainant between 01.07.2017 to 19.05.2018.**

**F.V Direct the respondent to pay interest on payment made**

**towards club house as the respondent did not completed the amenities as promised under the buyer's agreement.**

44. The above mentioned reliefs no. F.II, III, IV and V 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. It is important to note that the conveyance deed was executed between the parties on 11.10.2018. 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 etc., therein.

46. 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.
47. 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.

**F.VI Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as cost of the present litigation.**

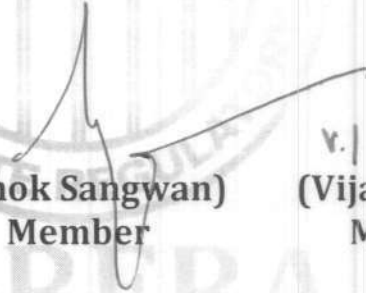
48. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled *as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section

19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**G. Directions of the authority**

49. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking reliefs against the respondent is not admissible and the same is hereby rejected.
50. Complaint stands disposed of.
51. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 16.04.2024**