

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

Complaint no. :	5198 of 2021
Date of filing complaint:	17.01.2022
Date of decision :	23.04.2024

Aditya Jerath R/O: Flat No. 104/1, Silver Oaks Apartments, Dlf-1, Gurgaon (Hr) - 122002	Complainant
Versus	
Emaar Mgf Land Ltd. Regd. Office: Emaar Mgf Land Ltd. Ece House, 28 Kasturba Gandhi Marg, New Delhi I 10001	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Jagdeep Kumar (Advocate)	Complainant
Sh. Dhruv Rohatgi (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities

and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Total area of the project	13.531 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	75of 2012 dated 31.07.2012
	License valid till	30.07.2020
	Licensee name	Kamdhenu Projects Pvt. Ltd. & anr.
5.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Provisional allotment letter issued in favour of the original allottee i.e., Mrs. Swaroop Rani Gupta and Mr. Ramesh Chandra Gupta	25.01.2013 [annexure R2, page 52 of reply]



7.	Unit no.	GGN-21-1001, 10 th floor, building no. 21 [annexure R4, page 68 of reply]
8.	Unit measuring (super area)	1650 sq. ft.
9.	Date of execution of buyer's agreement between the original allottees and the respondent	10.05.2013 [annexure R4, page 65 of reply]
10.	Complainant is a subsequent allottee	The original allottees has entered into agreement to sell with the complainant on 10.02.2014 (Page 131 of reply) and in pursuance of the same, the respondent acknowledged the complainant as allottee vide nomination letter dated 20.02.2014 (page 149 of reply).
11.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within <u>36 (Thirty Six) months from the date of start of construction</u>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation</u></i>

		<u>certificate in respect of the Unit and/or the Project.</u> (emphasis supplied) [annexure R4, page 81 of reply]	
12.	Date of start of construction as per statement of account dated 26.06.2019 at page 86 of complaint	18.06.2013	
13.	Due date of possession	18.06.2016 [Note: Grace period is not included]	
14.	Total consideration	As per statement of account dated 26.06.2019 at page 86 of complaint Rs. 99,31,575/-	As per payment plan annexed with the buyer's agreement Rs. 95,74,798/-
15.	Total amount paid by the complainant as per statement of account dated 26.06.2019 at page 86 of complaint	Rs.99,31,576/-	
16.	Occupation certificate granted on	30.05.2019 [annexure R10, page 151 of reply]	
17.	Offer of possession to the complainant	01.06.2019 [annexure R13, page 158 of reply]	
18.	Unit handover letter signed by the complainant on	08.07.2019 [annexure R15, page 166 of reply]	
19.	Conveyance deed executed between the complainant and the respondent on	15.07.2019 [annexure R16, page 167 of reply]	
20.	The complainant has sold the subject unit to third party (Mr. Sumit Pahwa and Geetanjali Pahwa) on	16.04.2021 [annexure R17, page 192 of reply]	

B. Facts of the complaint

3. The complainant made following submissions in the complaint:

- i. That Mrs Swaroop Rani Gupta W/o Mr. Ramesh Chandra Gupta and Mr. Ramesh Chandra Gupta S/o Mr. Suder Lal Gupta, was the original allottee who was allotted the unit no. GGN-21-1001 at Gurgaon Greens , Sector 102, Gurugram , Haryana, having super built up area admeasuring 1650 Sq ft. in the project of the respondent.
- ii. That the original allottee and respondent entered into a builder buyer's agreement on 10.05.2013 and subsequently the buyer's agreement was endorsed in favour of the complainant on 10.02.2014 thus stepping into the shoes of the original allottee.
- iii. That the unit was offered to the original allottee for a total sale consideration exclusive of taxes is Rs. 92,58,383/- (Which includes the charges towards the basic price- Rs. 77,59,983/- ,exclusive/dedicated covered car parking Rs 3,00,000, edc&idc Rs 5,70,900, club membership Rs 50000, IFMS Rs 82500, and plc central greens 4,95,000/-) .The complainant made payment of the amount of Rs. 31,33,919/- to original allottee as paid by him to respondent and the rest amount was paid to the respondent as and when demanded. The respondent confirmed nomination of the complainant for the said unit through nomination letter dated 20.02.2014 and endorsement on the buyer's agreement on 10.02.2014.

iv. That on 20.02.2014 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 complainant and respondent also confirm having received a total sum of Rs 31,33,919/- which is in line with agreement to sell executed between complainant and original allottee. The respondent handover payment receipts and "buyer's agreement" along with nomination letter to complainant. He 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 complainant, will cost him forfeiting of 15% of total consideration value of unit. When he 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 complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with him because if he stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by him . The complainant with bona-fide intentions continued to make payments on the basis of the demand raised by the respondent. During the

period starting from 10.02.2014, 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 complainant. A total of more than Rs. 99,31,923/- was paid.

- v. That later at the time of possession the respondent add Rs 30076/- in sale consideration and increase it to Rs. 92,88,459/- without any reason for the same, and respondent also charge IFMS Rs 82500/- separately, whereas IFMS charges already included in sale consideration and that way respondent charge IFMS twice from complainant. In total respondent increased the sale consideration by Rs. 1,12,576/- (Rs 30076 + Rs 82500) without any reason which is a illegal , arbitrary unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainant.
- vi. That as per the Clause - 14 of the said flat buyer's agreement dated 10.05.2013, 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 Five (5) months grace period thereon from the date of start of construction (date of start of Construction is 18.06.2013) . 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 18.06.2016.

- vii. That the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to him about the completion and delivery said unit. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- viii. That the conduct on part of respondent regarding delay in delivery of possession of the said unit has clearly manifested that respondent never ever had any intention to deliver the said unit on time as agreed.
- ix. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent offered the possession on dated 01.06.2019 with stringent condition to pay certain amounts which are never be a part of agreement and respondent did not received the completion certificate of various other towers of the project and as on 01.06.2019 project was delayed approx three years. At the time of offer of possession builder did not adjusted the penalty for delay possession. The respondent did not even allow complainant to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the offer of possession. The respondent demanded two year advance maintenance charges from complainant which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 252929/- in

pretext of future liability against HVAT which are also a unfair trade practice. The respondent left no other option to the complainant, but to pay the payment of two year maintenance charges Rs. 1,44,540/- and fixed deposit of Rs. 252929/- with a lien marked in favour of Emaar MGF Land Limited, Rs. 4,27,750/- towards e-Stamp duty and Rs. 45000 towards registration charges of above said unit no. 1001, Tower 21, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. The respondent give physical handover of aforesaid property on date on 08.07.2019 after receiving all payments on 12.06.2019 from complainant.

- x. That after taking possession of flat on 08.07.2019 the complainant also Identify that some major structural changes were done by respondent in project "Gurgaon Greens" in comparison to features of project narrated to complainant on 10th Feb 2014 at the office of respondent , Central Park's layout was shown to complainant at the time of booking as an area of prime attraction for which respondent charge PLC of Rs 495000/- in pretext of complainant flat facing central green and area of central park was told 8 acre but in reality it is very small as compare to 8 acre and respondent also build car parking underneath 'central park'. The respondent did not even confirm or revised the exact amount of EDC, IDC and PLC after considering the structural changes and increased number of flats in project Gurgaon Greens, neither they provide the receipts or documentary records showing the exact amount of EDC, IDC and

PLC paid to government and Respondent did not even adjust the surplus amount of EDC, IDC and PLC charged from complainants and other buyers. The respondent charge exceptionally high PLC from complainant without even transferring the ownership rights of amenities to him on the common area of project. The respondent compelled almost every flat owner (Total 672) through unilateral buyer's agreement to pay PLC of Rs. 4,95,000/- for central park whereas respondent sell car parking of Rs 3,00,000/- each underneath Central Park, this way respondent sell same area twice to residents and collect exceptionally high and unilateral and unjustified PLC from complainant. The respondent only spread grass on roof of covered parking area and sell it as "Central Green" at exceptionally high rate of Rs 4,95,000/- each. The respondent did not provide the final measurement of above said unit no. 1001, tower no. 21, "Gurgaon Greens". The respondent charge all IDC, EDC and PLC and maintenance as per area of unit as 1650 sq ft but there is no architect confirmation provided by respondent about the final unit area which respondent will going to handover to complainant. The respondent charge PLC of Rs. 495000/- in pretext of 8 Acres of Central Park but the actual size of central green is below 2 acres of land.

- xi. 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 18.06.2016, therefore, the tax which has

come into existence after the due date of possession (18 June 2016) 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 unit within the time stipulated in the builder buyer agreement.

- xii. Written submissions haven been taken on record and perused further.

C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following reliefs:

- i. Direct the respondent to pay interest @ 18% on account of delay in offering possession.
- ii. Direct the respondent to return Rs. 1,12,576/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the parties.
- iii. Direct the respondent to return entire amount paid as gst tax by complainant between 01.07.2017 to 24.07.2019.
- iv. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That Mrs. Swaroop Rani Gupta and Mr. Ramesh Chandra Gupta (hereinafter "original allottees") had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurgaon.
- ii. That thereafter the original allottees vide an application form 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 GGN-21-1001, tower 21, 10th floor, admeasuring 1650 sq. ft., in the project vide provisional allotment letter dated 25.01.2013. 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 they shall remit every installment on time as per the payment schedule.
- iii. That thereafter, buyer's agreement dated 10.05.2013 was executed between the original allottees and the respondent. The original allottees were irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the original allottees requesting them to make payment of demanded amounts. Payment request letters, reminders etc, had been got sent to the

original allottees by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the original allottees to timely discharge his outstanding financial liability but to no avail.

- iv. That thereafter, the original allottees executed an agreement to sell dated 10.02.2014 in favour of the complainant for transferring and conveying rights, entitlement and title of the subsequent allottee in the unit in question to the complainant. The complainant further executed an affidavit dated 10.02.2014 and an indemnity cum undertaking dated 10.02.2014 whereby he had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees. It was further declared by him that having been substituted in the place of the original allottees, he is not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Similarly, the original allottees had also executed an affidavit and indemnity cum undertaking on the same lines. Further, the respondent issued the nomination letter dated 20.02.2014 in favour of the complainant. Furthermore, the respondent, at the time of endorsement of the unit in question in his favour, had specifically

indicated to the complainant that the original allottees had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disentitled himself for any compensation/interest. The respondent had conveyed to the complainant that on account of the defaults of the original allottee, the complainant would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by the complainant. The complainant is conscious and aware of the fact that he is not entitled to any right or claim against respondent.

- v. That the complainant is not an "allottee" but a investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self use as his residence. Therefore, no equity lies in favour of the complainant.
- vi. That clause 14 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the Agreement, and not being in default of the same, possession of the unit would be handed over within 36 months plus grace period of 5 months, from the date of start of construction. Clause 16 of the Buyer's Agreement further 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.

- vii. That the respondent had applied for occupation certificate on 31.12.2018. The occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-835/AD(RA)/2018/13010 dated 30.05.2019 .It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same.
- viii. That in fact, the last payment was received from the complainant in July, 2019. The construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant. Furthermore, the project of the respondent has been registered under RERA Act, 2016 and HRERA Rules, 2017. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-139/2017/2294 dated 05.12.2017. The respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019. However, since the respondent has delivered possession of the units comprised in the relevant part of the project, the registration of the same has not been extended thereafter.
- ix. That the complainant was offered possession of the unit in question through letter of offer of possession dated 01.06.2019. An indemnity

cum undertaking for possession dated 18.06.2019 was also executed by the complainant. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. The respondent in order to settle the unwarranted controversy needlessly instigated by the complainant proceeded to credit an amount of Rs. 57,400/- as benefit on account of anti-profiting. Moreover, due to the good reputation and a goodwill of the respondent in the real estate sector, the respondent even credited an amount to the tune of Rs. 16,503/- as EPR in full and final satisfaction of his alleged grievances.

- x. That after receipt of the aforesaid amount, the complainant approached the respondent requesting it to deliver the possession of

the unit in question. A unit handover letter dated 08.07.2019 was executed by the complainant, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied.

- xi. That it is pertinent to mention that after execution of the unit handover letter dated 08.07.2019 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the Respondent. The complainant has further executed a conveyance deed dated 15.07.2019 in respect of the unit in question. In addition thereto, the complainant has admitted his obligation to discharge his HVAT liability there under. It is pertinent to take into reckoning that the complainant has obtained possession of the unit in question and has executed conveyance deed in respect thereof, after receipt of the amount of compensation for Delay in possession from the respondent.
- xii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that after the execution of the conveyance deed dated 15.07.2019 in favour of the complainant, the complainant on his own will opted to transfer his rights, title and interest in the said unit in question to Mr. Sumit Pahwa and Mrs. Geetanjali Pahwa. It is noteworthy to

mention that a sale deed dated 16.04.2021 was executed between the complainant and Mr. Sumit Pahwa and Mrs. Geetanjali Pahwa for transferring and conveying rights, entitlement and title of the complainant in the unit in question to Mr. Sumit Pahwa. It is submitted that the complainant after executing the sale deed in favour of Mr. Sumit Pahwa automatically, dissolved his rights of ownership in the said unit in question. Thus, once the complainant has transferred all his rights, title or interest in the unit in question, he has no locus to file the present complaint, in relation to the unit in question. It is submitted that the present complaint is being filed only to harass the respondent and to embezzle the hard earned money of the respondent.

- xiii. That pursuant to the execution of the sale deed in favour of Mr. Sumit Pahwa by the complainant, an indemnity bond dated 16.04.2021 was executed by Mr. Sumit Pahwa, whereby he had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment in favour of the complainant. An affidavit dated 16.04.2021 was also executed by the complainant declaring the transfer of all rights, interests, title of the said unit in question in favour of Mr. Sumit Pahwa vide Sale deed vasika no. 538 dated 16.04.2021. It is

noteworthy to mention that the complainant had entrusted all his rights to Mr. Sumit Pahwa and now is the owner of the said unit in question. Hence, the present complaint is filed with malafide intention and moreover, the true facts of the case are not manifested through the present complaint. It is further submitted that transfer ownership letter dated 06.07.2021 was issued by the respondent to Mr. Sumit Pahwa and Mrs. Geetanjali Pahwa declaring that the said unit in question now stands in their name.

- xiv. Written submissions have been taken on record and pursued further.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with office situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11

....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Objections regarding maintainability of complaint on account of complainant being investor.

11. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the

complainant is buyer, and he has paid a total price of Rs.99,31,576/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

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

G. Objections raised by the respondent:-

G.I Whether the complainant is entitled for delayed possession charges after the execution of conveyance deed.

13. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant

against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.

14. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

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

16. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes*

the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

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

H. Findings on the relief sought by the complainant

H.I Direct the respondent to pay interest @ 18% on account of delay in offering possession.

H.II Direct the respondent to return Rs. 1,12,576/- amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between the parties.

H.III Direct the respondent to return entire amount paid as gst tax by complainant between 01.07.2017 to 24.07.2019.

H.IV Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

18. The above mentioned reliefs no. H.I to H.IV 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.

19. The present complainant is a 1st subsequent allottee who has purchased the subject unit from the original allottee on 20.02.2014 and has stepped into the shoes of an original allottee on this date.
20. The 1st subsequent allottee has got the offer of possession on 01.06.2019 and the unit was handed over to him on 08.07.2019 following which a conveyance deed was executed between the parties on 15.07.2019. Later on the 1st subsequent allottee sold the subject unit to a third party (Mr. Sumit Pahwa and Geetanjali Pahwa) on 16.04.2021.
21. Vide application dated 14.11.2023, the applicants (Mr. Aditya Jerath) has moved an application under Order I rule 10 under Civil Procedure Code, 1908 for impleading them as necessary parties. It is stated that in view of sale deed dated 16.04.2021, the applicants are the legal, joint and beneficial owners of the subject unit and are fully competent to enjoy the same.
22. In view of the above, the applicants prayed that they be impleaded as as respondent no. 2 to the present complaint in the interest of justice. Filing of the application at this stage is not relevant as the complainant has already sold out his unit to a third party on 16.04.2021 after getting conveyance deed on 15.07.2019.
23. The authority observes that it is a matter of fact that the complainant herein purchased the subject unit on 20.02.2014 and was an allottee as per the provisions of the Act of 2016. Thereafter, the complainant had agreed to sell the unit in question to the subsequent allottees wherein the sale deed was executed on 16.04.2021. It is further submitted that transfer ownership letter dated 06.07.2021 was issued by the respondent to Mr.

Sumit Pahwa and Mrs. Geetanjali Pahwa declaring that the said unit in question now stands in their name. Now, the important question which needs to be determined by this authority is whether the complainant herein is entitled to the abovementioned reliefs as are sought by him in the present complaint or not. In simple words, he ceased to be an allottee on 16.04.2021 so, whether she is entitled to the reliefs as are sought by him under the present complaint.

24. It is of utmost importance to go through the definition of the term "allottee" as defined under section 2(d) of the Act and the same is reproduced as under for ready reference:

"2 In this Act, unless the context otherwise requires-

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

(Emphasis supplied)

Accordingly, following are allottees as per this definition:

- (a) Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.
- (b) Allottees after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

25. In the present complaint, the complainant is not allottee under the Act as the complainant does not fall under any of the two categories stated above

reason being that the complainant has already transferred the subject unit in favour of Mr. Sumit Pahwa and Ms. Getanjali Pahwa (subsequent allottees/present owners) vide sale deed dated 16.04.2021. Had the intention of the legislature was to cover such allottee-complainant, then the stress would be on the terms "who *had been* allotted" the unit. Also, it is amply clear that the respondent had already executed conveyance deed in favour of the complainant on 15.07.2019 and thereafter, the complainant had executed sale deed in favour of Mr. Sumit Pahwa and Ms. Getanjali Pahwa. Moreover, after transferring the unit in question, the complainant does not have any right, title or interest in the said property. It is very evident from the bare perusal of the complaint that the complainant herein remained to be an allottee under section 2(d) of the Act till 15.07.2019 i.e., when she sold the subject unit to the subsequent allottees. She ceased to be an allottee under the ambit of section 2(d) of the Act on 16.04.2021 so she is not entitled to any relief as sought by her by way of the present complaint.

26. In view of the above, the complainant has no locus standi to claim delay possession charges under section 18 of the Act as she does not fall under the term allottee of the Act. Consequently, the relief claimed by the complainant can't be granted to her as she is not an allottee within the meaning of section 2(za) of the Act and only an allottee can file a complaint seeking relief under section 18 of the Act. Thus, the present complaint is not maintainable.


27. In view of the above, the application dated 14.11.2023 moved by the applicants for impleading Mr. Sumit Pahwa and Mrs. Geetanjali Pahwa as respondent no. 2 is not relevant as the complainant has already sold out his unit to a third party on 16.04.2021 after getting conveyance deed on 15.07.2019. Hence this application is infructuous. However, if the subsequent and the present allottees are aggrieved with respect to the respondent, then they are at liberty to approach the authority by filing a fresh complaint.

I. Directions of the Authority:

28. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking above reliefs against the respondent is dismissed.

29. Complaint stands dismissed.

30. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2024