

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

Date of decision: 16.08.2024

NAME OF THE BUILDER		EMAAR INDIA LIMITED (Formerly known as Emaar MGF Land Ltd.)	
PROJECT NAME		"EMERALD HILLS"	
S.NO.	Case No.	Case Title	Appearance
1.	CR/3904/2023	Tarun Aggarwal Projects LLP & Prajakta Colonizers Pvt. Ltd. V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	Sh. Satyender Kr. Goyal Sh. J.K. Dang & Dhruv Rohtagi
2.	CR/3893/2023	Tarun Aggarwal Projects LLP & Prajakta Colonizers Pvt. Ltd. V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	Sh. Satyender Kr. Goyal Sh. J.K. Dang & Dhruv Rohtagi
3.	CR/3902/2023	Tarun Aggarwal Projects LLP & Prajakta Colonizers Pvt. Ltd. V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	Sh. Satyender Kr. Goyal Sh. J.K. Dang & Dhruv Rohtagi
4.	CR/3903/2023	Tarun Aggarwal Projects LLP & Prajakta Colonizers Pvt. Ltd. V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	Sh. Satyender Kr. Goyal Sh. J.K. Dang & Dhruv Rohtagi
5.	CR/3894/2023	Tarun Aggarwal Projects LLP & Prajakta Colonizers Pvt. Ltd. V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	Sh. Satyender Kr. Goyal Sh. J.K. Dang & Dhruv Rohtagi

**CORAM:**

Shri Sanjeev Kumar Arora

**Member****ORDER**

1. This order shall dispose of all the five (5) complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read





with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Emerald Hills" being developed by the same respondent/promoter i.e., M/S Emaar India Ltd. The terms and conditions of the application form fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name &amp; Location</b>	<b>"Emerald Hills" Situated at sector 62 &amp; 65, Gurugram</b>	
<b>Complaint No.</b>	<b>Unit No.</b>	<b>Allotment Letter</b>
CR/3904/2023	A-84 admeasuring 442 sq. yrds.	19.04.2011
CR/3893/2023	A-85 admeasuring 442 sq. yrds.	19.04.2011
CR/3902/2023	A-98 admeasuring 400 sq. yrds.	19.04.2011
CR/3903/2023	I-166A admeasuring 400 sq. yrds.	19.04.2011
CR/3894/2023	C-63 admeasuring 500 sq. yrds.	19.04.2011



4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case CR/3904/2023 Tarun Aggarwal Projects LLP & Prajakta Colonizers Pvt. Ltd. V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.) are being taken into consideration for determining the rights of the allottee(s).

**A. Facts of the complaint**

6. The complainants have made the following submissions in the complaint:
  - a. That complainant no. 1 is a limited liability partnership duly constituted and registered under the provisions of Limited Liability Partnership Act, 2008. The complainant no. 1 was formerly known as M/s Tarun Aggarwal Projects Pvt. Ltd., a company incorporated under the Companies Act 1956. The complainant no. 2 M/s. Prajakta Colonizers Pvt. Ltd. is a company incorporated under the provisions of Companies Act 1956 / 2013. That the complainants vide their respective resolutions both dated 17.08.2023 have duly authorized Mr. Navneet Kumar, who is well conversant with the facts and circumstances of the present case, to file the present complaint, to engage counsel, to sign and

verify pleadings and to do all such acts, deeds and things as may be necessary in this behalf.

- b. That the complainant no. 1 is an allottee of Plot No. C-63 admeasuring 500 Sq. yds. situated in residential colony named as 'Emerald Hills, Sector-65 Gurugram vide allotment letter dated 19.04.2011 duly issued by the respondent. That said plot along with four plots was allotted by the respondent in terms of collaboration agreement dated 2009 and addendum agreement dated 19.04.2011. That the complainants are/were owners in possession of the land admeasuring 6.06875 acre comprised in Rect. No. 14 Killa No. 4/4 (1-7), Rect. No. 15 Killa Nos.13 (8-0), 14 (8-0), 4/1 (4-0), situated within the Revenue Estates of Village Nangli Umarpur, and Rect. No. 5 Killa No. 25 min (3-18), Rect. No.16 Killa No. 2 min (0-9), 3 min (3-5), 4 min (6-8), 5 (8-0), 6/1 (0-18), Rect. No. 17 Killa No. 1 (4-6) situated within the Revenue Estates of Village Badshahpur, Tehsil & District Gurgaon (Haryana) (hereinafter collectively referred to as "**Said Land**").
- c. That a collaboration agreement dated 07.05.2009 was executed between the complainants as 'Owner' being party of first part and respondent as 'Developer' being party of second part, for development of said land by the respondent as a part of residential plotted colony being developed by it in Sector-62 & 65, Gurugram by obtaining additional license from the competent authority. The said land was located adjacent to the colony being developed by the respondent and part of the said land was in joint ownership with the respondent.





- d. That as per the collaboration agreement dated 07.05.2009, respondent was required to complete necessary development works on the said land within 36 months from the date of obtaining possession of the said land from complainants. The possession of said land was to be handed over by the complainants to the respondent after obtaining all necessary approvals, sanctions and licenses agreed to be obtained & facilitated by the respondent. The term for completion of development work was subject to extension in terms of mutual agreement between the parties to the collaboration agreement.
- e. That as per the collaboration agreement dated 07.05.2009, the costs for implementation of development work were to be borne by the respondent whereas the costs of obtaining sanction(s) / approval(s) and license were to be borne by complainants. That as per the collaboration agreement dated 07.05.2009, after completion of development work by the respondent, complainants were to be allotted 2662 sq. yd. per acre of the developed plots of the said land agreed to be developed by the respondent or anywhere else in the residential colony being developed by the respondent.
- f. That, part of said land comprised in Rectangle no. 15, Killa no. 4 (8-0), 7 (8-0) & 8 (8-0) was joint with the respondent. The complainant no. 1 had 1/6<sup>th</sup> share in the same. The respondent by deceitful means obtained ex-parte partition order of said land vide Orders dated 03.08.2009, 06.08.2009 & 29.12.2008 passed by Assistant Collector, First Grade, Gurgaon (Haryana). Besides said land, other land parcels were also in joint ownership with the



respondent. In respect of those parcels of land too, the respondent obtained ex-parte order of partition. There was a total of 04 such cases. That, on the basis of orders of partition, the respondent applied license for development of residential plotted colony over the land admeasuring 95.29505 acre (42.94405 + 52.351) for being developed as part of the residential plotted colony being developed over land measuring 102.7412 acre regarding which land license had already been granted on 21.05.2009. In the applications, the respondent included the land which had fallen to its share in partition but did not include the said land or the land which had fallen to the share of the complainants on partition.

- g. That when the complainants came to know about the orders of partition and the fact that the respondent had applied for license over 95.29505 acre land and in the applications, the respondent had not included the said land or the land which had fallen to the share of the complainants on partition, the complainants filed civil suits bearing Civil Suit No. 114, 115 and 116 of 2010 seeking a decree for perpetual injunction to restrain the respondent from disposing them from the joint land on the basis of ex-parte orders of partition. That along with the civil suits, the complainants challenged all the ex-parte orders of partition before the Collector, Gurgaon, by filing Appeal No. 73, 74, 75 and 04 of 2010 respectively. That when the ex-parte orders of partition passed by the Assistant Collector, First Grade, were not stayed by the Collector in appeals, the complainants filed the Revision Petitions before the Financial Commissioner, Haryana, Chandigarh, bearing Revision Petition No. 230, 231, 232 and 307 of 2011, seeking stay

on ex-parte orders of partition. In those revision petitions, the ex-parte orders of partition passed by Assistant Collector, First Grade, were stayed by the Financial Commissioner vide Orders dated 18.01.2011 & 28.02.2011.

- h. That Ld. counsel for the complainants wrote a letter dated 20.01.2011 to the Director General, Town & Country Planning, Haryana (hereinafter referred to as "DGTCP"), to reject the applications moved by the respondent for grant of additional license over the joint land comprised in Khewat no. 32, 33, 38 & 37, submitting that the land was still joint as the ex-parte orders of partition had been stayed by the Financial Commissioner. It is pertinent to mention that these khewats were part of the applications moved by the respondent to obtain additional license over 95.29505-acre land.
- i. That in the wake of above circumstances and apprehending that the applications for license applied by the respondent were in peril, the respondent induced complainants to enter into an addendum to collaboration agreement by assuring and representing that the respondent shall fulfill all the terms and conditions and to win the faith of complainants, offered to irrevocably allot 05 plots of total area measuring 2160 sq. yd. approx. as non-refundable security/consideration for due performance of all of their obligations. That, accordingly, an addendum agreement dated 19.04.2011 was duly executed between the complainants and respondent. That in pursuance of addendum agreement, the respondent allotted 05 plots by way of five separate allotment letters all dated 19.04.2011 viz. (i) Plot No.



A-84 admeasuring 442 sq. yd. (said plot), (ii) A-85 admeasuring 442 sq. yd., (iii) A-98 admeasuring 400 sq. yd., (iv) I-166A admeasuring 400 sq. yd., and (v) C-63 admeasuring 500 sq. yd., having total area admeasuring 2160 sq. yd., all situated in Emerald Hills, Sector-65, Gurugram (Haryana). That the complainants kept on complying with their obligations under the addendum agreement and vide application dated 27.04.2011 applied for additional license and deposited Rs.24,25,100/- as license fee and Rs.2,53,000/- as scrutiny fee for the grant of additional license qua said land.

- j. That while processing the application moved by the complainants for additional license, DGTCP wrote a letter dated 17.07.2012 to the respondent stating that application for grant of additional license over said land admeasuring 6.06875 acre had been examined and ownership of an area admeasuring 5.66875 acre had been verified out of total area of 6.06875 acre. It was further stated in the letter that an amount of Rs.22.33 crore was outstanding on account of External Development Charges (EDC) against the Additional License No. 113 of 2011 and an amount of Rs.427.14 lac was outstanding against the original License No. 10 of 2009 and further an amount of Rs.967.69 lac was outstanding on account of Infrastructure Development Charges (IDC) against License no. 113 of 2011 and accordingly the respondent was requested to deposit the said outstanding amount so that request for grant of additional license over 5.66875 acre land could be considered. Some other documents pertaining to the financial capacity indicating the paid-up capital of the company and copies





of Form-2 & 5 issued by MCA, Government of India, were sought. However, despite receiving the said letter by the respondent, the respondent failed to make the requisite payments to DGTCP, which resulted in non-grant of additional license for said land in terms of addendum agreement dated 19.04.2011. That the DGTCP wrote another letter dated 29.03.2013 granting 30 days' time to the respondent to clear the aforesaid outstanding amount and rectify the deficiencies as pointed out in said letter and in the earlier letter dated 17.07.2012. But again, the respondent failed to make the payment.

- k. That, facing with the above situation, the complainants vide their letter dated 26.04.2013 requested the respondent to clear the outstanding dues and to take up the matter with the competent authority to resolve the issue either by making payment or if there is any ambiguity therein for reconciliation thereof, so that the additional license on the said land could be granted. The complainants in said letter showed their readiness & willingness to perform their remaining part of obligations, if any, as detailed in the addendum agreement. The respondent neither replied to the letter nor cleared the outstanding dues. That the information, which was to be supplied by the complainants, was furnished to DGTCP vide letters dated 29.07.2013 & 02.08.2013. That the complainants also wrote a letter dated 14.10.2013 to the DGTCP requesting for grant of license over said land measuring 5.66875 acre submitting that in the capacity of landowner they had made all compliances and had provided information required by the department. It was further stated in the letter that the



complainants, as a landowner, were ready to pay the license fee, conversion charges, EDC, IDC, bank guarantee and other charges, as required under the Haryana Development & Regulations of Urban Areas Act 1975 and Rules framed thereunder. It shows that the complainants had discharged part of their obligations under the addendum agreement and were ready to discharge all other obligations pursuant to the grant of LOI/License.

1. That vide letter dated 12.05.2014, DGTCP granted last opportunity to the respondent to clear the outstanding dues pertaining to the various licenses granted to the respondent making it clear that if the dues were not cleared, the application for additional license over said land admeasuring 5.66875 acre would be rejected. But despite last opportunity, the respondent did not clear its outstanding dues and it showed that the respondent was not interested in getting additional license for said land and that the purpose of executing the addendum agreement was to deceive the complainants. The motive of the respondent was only to get rid of the civil suits / petitions filed by the complainants and induced them to withdraw the same, so that the respondent could get the license for development of its land, which it got. That, realizing the fact that the complainants have been cheated and the respondent had no inclination to clear the outstanding dues, the complainants were left with no other option but to withdraw the application for additional license and seek refund of the license fee paid with the application. Consequently, an application dated 16.05.2014 was moved by the complainants to withdraw the application for additional license.

- m. That vide letter dated 04.06.2014, the request of the complainants was accepted, and the application moved by the complainants for additional license was rejected as withdrawn by the DGTCP and the security amount of Rs.2,50,514/- paid by the complainants was forfeited. That since the respondent had committed the breach of the terms & conditions of the collaboration agreement and addendum agreement, the complainants in terms of "termination clause" of the addendum agreement terminated the collaboration agreement and addendum agreement and the respondent was intimated about the same vide letter dated 30.04.2015. That the complaints vide its letter dated 17.05.2017 had also requested the respondent to execute and register a formal cancellation deed for cancellation of collaboration agreement but to no avail.
- n. That the complainants served the respondent with a Legal Notice dated 27.06.2019 seeking Rs.10 crore as damages for committing breach of terms & conditions of the collaboration agreement and addendum agreement. But the respondent again did not reply to the said notice. In fact, the respondent did not reply to even a single letter sent to them by the complainants. In other words, there was no communication from the respondent throughout. There were 02 clauses in the addendum agreement regarding "dispute resolution and jurisdiction", Clause-36 & 37. Clause-36 provided the aggrieved party with a remedy through the appropriate court of law in case of any conflict or difference inter-alia as mentioned in Clause-3, 6 & 9 of the addendum agreement. Clause-37 provided for arbitration for remaining disputes.

- o. That the complainants invoked Clause-37 of the addendum agreement vide notice dated 20.11.2019 and called upon the respondent either to:

*"Handover physical possession of 05 plots measuring 2160 sq.yd. and further reimburse a sum of Rs.10 crore for the losses suffered by the complainants as one time settlement within 30 days from the date of issuance of notice claiming that the complainants had acquired title over those 05 plots" OR*

*Appoint an Arbitrator as provided in collaboration agreement / addendum agreement within 07 days from the date of receipt of the notice and to proceed to resolve the dispute in accordance with arbitration clause of collaboration agreement / addendum agreement."*

- p. That it was for the first time, the respondent replied said notice vide letter dated 24.12.2019. In the reply, the respondent inter-alia pleaded that the dispute raised in the notice would fall under Clause-36 of the addendum agreement and was thus not arbitrable. That the complainants filed an Arbitration Petition bearing No. 637 of 2021 before the Hon'ble Delhi High Court under Section-11(5) & 6 of the Arbitration & Conciliation Act 1996 for appointment of Arbitrator. The Hon'ble High Court, after hearing the parties allowed the application vide Order dated 24.12.2021.
- q. That the respondent challenged the order passed by the Hon'ble Delhi High Court before the Hon'ble Supreme Court of India by filing Civil Appeal No. 6774 of 2022 (Special Leave Petition (Civil) No. 3575 of 2022) inter-alia on the ground that the dispute raised by the complainants was with respect to Clause-3, 6 & 9 of the addendum agreement and would thus fall within the ambit of Clause-36 of the collaboration agreement and not Clause-37 and was thus not arbitrable. The Hon'ble Supreme Court vide Order





dated 30.09.2022 set-aside the order passed by the Hon'ble High Court and remitted the matter to the Hon'ble High Court to decide the application afresh and to pass an appropriate order after holding a preliminary inquiry / review on whether the dispute is arbitrable or not and / or whether the dispute falls within Clause-36 of the addendum agreement or not.

- r. That the Hon'ble High Court while hearing the matter on 09.02.2023 noted that there were 02 claims of the complainants (petitioners therein), one was for possession of 05 plots admeasuring 2160 sq. yd. and another was for damages to the tune of Rs.10 crore. The Hon'ble High Court further noted that according to the respondent, the claim for possession of 05 plots would fall under Clauses-3, 6 & 9 of the collaboration agreement and was thus not arbitrable. At this, the complainants stated that the claim for possession of 05 plots was not being pressed in the proceeding before the Hon'ble High Court. The Hon'ble Court further noted that the respondent had also raised the issue of limitation on the ground that addendum agreement was stated to have been terminated on 30.04.2015 and as per contention of the respondent, even if it were assumed that the **second claim** is outside the scope of Clauses-3, 6 & 9, that would be clearly barred by limitation in view of the fact that the arbitration was invoked by way of notice dated 20.11.2019. That keeping in view the observations made by the Hon'ble High Court in the aforesaid order dated 09.02.2023 and the contention of the respondent that the claim of the complainants regarding damages was barred by limitation, the complainants on the next date of hearing i.e. on



20.04.2023 submitted before the Hon'ble High Court that the claim in respect of 05 plots admeasuring 2160 sq.yd. was not being pressed subject to the right of the complainants being reserved to approach the appropriate forum and as permissible in law and the second claim was also not being pressed in the light of the objection which was taken that the addendum agreement itself had been terminated on 30.04.2015 and thus the claim of the complainants for damages was barred by limitation. The submission of the complainants was recorded & accepted.

- s. That, aforesaid 05 plots admeasuring 2160 sq. yd., including said plot, were allotted by the respondent to the complainants as a non-refundable security / consideration for due performance of all their obligations contained in the addendum agreement with clear stipulation that with the allotment the respondent shall be left with no right, title or interest whatsoever kind or nature in 2160 sq. yd. plots and their ownership shall vest with the complainants absolutely & forever.
- t. That the perusal of the aforesaid clauses would show that the allotment of 05 plots admeasuring 2160 sq. yd., including said plot, by the respondent was as a non-refundable security / consideration for due performance of all the obligations by the complainants and with the allotment, the respondent was left with no right, title or interest in those plots and the ownership of those plots vested with the complainants absolutely & forever. It is further borne out from the aforesaid clauses that one of the considerations for allotment of plots was withdrawal of litigations by the complainants and resolving of pending litigations amicably.



It is not in dispute that all the cases / litigation were withdrawn by the complainants immediately on execution of addendum agreement and accordingly the complainants performed their part of all the obligations. That the facts & circumstances of the case leaves no doubt that it is the respondent who failed to discharge its obligations under the collaboration agreement and addendum agreement. Had the respondent cleared the dues as demanded by the DGTCP to grant license for the said land of the complainants, the license to develop the said land as part of the residential plotted colony being developed by the respondent would have been granted.

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

7. The complainants have sought following relief:
  - a. Direct the respondent to handover the vacant possession of the said plot and execute and get registered the conveyance deed of the said plot in favor of the complainants.
8. On the date of hearing, the authority explained to the respondent/promoter 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.

**C. Reply by the respondent.**

9. The respondent has contested the complaint on the following grounds:
  - a. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Rera Act,2016 and the rules made thereunder as well as an incorrect understanding of the terms and conditions of the collaboration

agreement dated 07.05.2009 as well as its addendum to collaboration agreement dated 07.05.2009 dated 19.04.2011, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Hon'ble Authority to refer and rely upon the terms and conditions set out in the addendum agreement in detail at the time of hearing of the present complaint, so as to bring out mutual obligations and responsibilities of the Respondent as well as the complainants.

- b. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants have themselves failed to perform their part of the obligations under the collaboration agreement dated 07.05.2009 as well as the addendum agreement dated 19.04.2011. Further, the complainants had themselves terminated the addendum agreement dated 19.04.2011, and as such now do not have any locus standi to seek enforcement of the terms and conditions of the agreement which already stands terminated as per the own submissions of the complainants. **The complainants herein are no longer an Allottee, as defined under the RERA Act and the allotment letters filed by the complainant are null and void and vest no right or entitlement to the complainants. Complainants cannot seek part performance of an agreement, wherein they are recusing themselves of performance of their own obligations, while are seeking enforcement of the performance by the respondent herein. It is also submitted that this authority is not the appropriate forum for seeking part performance of any collaboration agreement and**





addendum agreement. In the absence of the status of an "Allottee" under the Act, the present complaint is not maintainable before this Hon'ble Authority and liable to be dismissed.

- c. That a bare perusal of the documents attached by the complainant with the present complaint, specifically the notice dated 20.11.2019 and the reply dated 24.12.2019, preferred by the respondent to the said Notice, would satisfy this Hon'ble Authority that the claim made by the complainant being in the nature of specific performance/ allotment of the plots by virtue of the addendum agreement dated 19.04.2011, has been made after a gap of 12 years, and are thus neither enforceable, nor maintainable before any Court or Authority.
- d. That the Claim of the Complainant, seeking allotment of plot by virtue of the Terminated Collaboration Agreement dated 07.05.2009 and Terminated Addendum Agreement dated 19.04.2011 are not only not maintainable by virtue of their termination, but are also barred by limitation. It is alternatively submitted that the alleged right to allotment arose to the Complainant in 2011, with Clause 6 of the Addendum Agreement specifying 18 months from the date of grant of licence, for handing over the plot. It is also a matter of record and admitted by the Complainants that they withdrew the application for grant of licence on 16.05.2014 and further terminated the said Addendum Agreement on 30.04.2015. Thus, neither the right to claim reciprocal performance of the Addendum Agreement survived, nor any action to claim the plot was undertaken within the limitation period. It is hereby submitted that the claims raised by

Complainant have since long been a dead and stale claim and are highly time barred, as such there cannot be any adjudication of the same as per the Law.

- e. That the present Complaint is nothing but only an attempt of forum hunting by the Complainants. The Complainants admittedly have been venturing out to all forums and not having received any respite from any forum, the Complainants have knocked the doors of this Hon'ble Authority. The Complainants had also invoked Arbitration proceedings seeking claim of damages of Rs. 10 Crores and for possession of the plots under the Terminated Addendum Agreement. It is also a matter of record that the said invocation was challenged upto the Hon'ble Supreme Court, whereby, the Hon'ble Supreme Court vide its Order dated 30.09.2022 had quashed and set aside the Order of the High Court, of appointing the Arbitrator. It is further a matter of record that the Complainant itself had given a statement before the Hon'ble High Court of Delhi on 20.04.2023 for not pressing its claims in light of the objections raised by the Respondent with respect to the claims being barred by limitation. It is also brought to the notice of this Hon'ble Authority that the Complainants also filed multiple complaints with Police and ultimately an application u/s 156(3) of CrPC,1973 was filed by the Complainants, the request of which was declined by the Learned Court vide Order dated 05.07.2019 which Order has been challenged by the Complainant in Criminal Revision. The said matter is pending as on date. As the Complainant was unable to get any favourable order from any Court/ Tribunal, the





Complainant has now resorted to the present proceedings. Thus, it is evident that the Complainants are forum shopping.

- f. That the Complainants are not entitled to any relief whatsoever, much less the stay/ injunction, as sought in the interim application for the reason that neither is there any legal right in favour of the Complainants, by virtue of the fact that the Complainants have themselves failed to perform their obligations under the Collaboration Agreement dated 07.05.2009 or the Addendum Agreement dated 19.04.2011. Moreover, the Complainants had themselves withdrawn the application for grant of licence and even terminated the Collaboration and Addendum Agreements. The Complainants are left with no right to seek any interim or final relief. The Claims of the Complainants are prima facie and ex-facie neither maintainable nor bear any merits and as such no injunction ought to be granted in favour of the Complainants, more so, when they are themselves grossly delayed by 12 years in approaching this forum.
- g. That contrary to the allegations made in the Complaint, in fact, it is the Complainants themselves who, despite specifically agreeing to the terms of the Contract have not abided by the Contract. Besides agreeing to bear all the charges towards application for License and any other fee/charge as per Clause 2, including the charges and fees of the architect(s), preparation of plans as also all other statutory fees and charges incidentals including security fees, license fees, conversion charges, internal/ external development charges, infrastructure development charges etc. (as per clause 7), the Complainants had specifically promised in the



Addendum Agreement dated 19.04.2011, vide Termination

**Clause 33**, which is as under:

*"That it is agreed between the parties that in the event, the land is compulsorily acquired and even though this Agreement would be terminated, notwithstanding anything else contained in this Agreement, the Owner shall be entitled to retain the allotment of the plotted area of 2160 sq. yards subject to payment of EDC and IDC by the OWNER to the DEVELOPER for the said 2160 sq. yards plotted area and in lieu thereof the DEVELOPER shall be entitled to the title, rights, interest including the right to compensation in land bearing Khewat No. 99, Rectangle No. 6 Revenue No. 12/2(5-7), 13(8-0) to the extent of 1/5 share and Khewat No. 38, Rectangle No. 13, Revenue No. 20(7-2), 21/1(6-0), 22/1(6-2) to the extent of 90/384 share thus total land measuring 0.9 acres falling in the revenue estate of village Nangli, Tehsil & District Gurugram (herein after referred to as the said 0.9 acres) and have agreed to execute an irrevocable General Power of Attorney in favour of the DEVELOPER/ its authorized representative(s) to do all acts, deeds and things which the DEVELOPER in its prudence might deem appropriate to sell, market, convey and receive consideration in its own favour, claim compensation from the Government etc. with regard to the said 0.9 acres and further undertakes to get the same duly registered with the Registering authorities."*

- h. The Respondent had undisputedly allotted plots to the Complainants, which was subject to due performance of all the obligations contained in the agreement including the grant of License of collaborated area of 6.06875 acres. Further, the Complainants failed to execute the said GPA (as mentioned in Clause 33 of the Addendum Agreement) in favour of the Respondent Company or its nominees. Moreover, the Complainants have not disclosed the fact that out of the 0.98 acres land, promised by them, 0.44 acres stands acquired by the Government against which, the Complainants have appropriated the compensation amount also and the remaining land

admeasuring .054375 acres have been sold by the Complainants to third party which is evident from the mutation no. 726 (bearing Vasika No. 21726/1 dated 11.11.2016) and Sale Deed bearing Vasika No. 731, which are annexed herewith as **Annexure R-2(colly)**. The Complainants have concealed this material fact from the Hon'ble Authority and as such they have created a situation or are left with the situation where they have themselves become incapable of performance of their part of the obligations under the Agreements. Further, it is the own admitted case of the Complainants that they have withdrawn the License application vide letter dated 16.05.2014 (*Annexure 36 - Page 244 of the Complaint*) and terminated the Agreements. Thus, as on date, nothing survives in favour of the Complainants to come before this Hon'ble Authority and claim the reliefs as prayed for.

- i. The Complainants have moulded the true and correct facts, to suit their malafide needs and misleading this Hon'ble Authority. The respondent herein below shall narrate the true facts on record for the ease and convenience, which shall make it evident that the Complainants are not entitled to any relief whatsoever.
- j. That a collaboration agreement dated 07.05.2009 (registered on 22.04.2011) had been executed between Complainants and the Respondent for development of land with area approximately 6.06875 (hereinafter referred to as the "said land") owned by the complainants at Village Nangli and Badshahpur, Tehsil & District Gurugram, Haryana into a residential plotted colony namely "Emerald Hills" for the land admeasuring 102.741 acres located in Sector 62 & 65, Gurgaon, being developed by the Company under



the License No.10 of 2009 (LC-1058). The contents thereof, be read as a part and parcel, which are not being repeated herein for the sake of brevity.

- k. That during the pendency of the aforesaid collaboration agreement, Complainant Companies got entangled into certain litigations with the group companies of the Respondent respect of some land adjacent to the collaborated land and the residential colony being developed by the Respondent.
- l. That on 19.04.2011, the parties agreeing to end all the litigation and disputes amongst themselves, executed an addendum to Collaboration Agreement dated 19.04.2011 with mutual understanding that the said land was still capable of being licensed into a residential plotted colony subject to after being released from ongoing acquisition proceedings.
- m. That as per the Addendum Agreement, wherein as per Clause 2, it was agreed between the parties that the parties would endeavour to file an application for grant of license with respect to the collaborated land and the owner was supposed to bear all the charges. That the Complainants, further vide Addendum agreement agreed to bear all the charges towards application for License and any other fee/charges (as per **Clause 2**) including the charges and fees of the architect(s), preparation of plans as also all other statutory fees and charges incidentals including security fees, license fees, conversion charges, internal/external development charges etc. (as per **Clause 7**).
- n. That it was further agreed under **Clause 2**, that only after the said land got released from acquisition proceedings and the same



got/gets licensed, the development work on the same shall be carried out by the Respondent; however, the cost and expenses for carrying out development work was supposed to be borne by the Complainants. The Complainants had agreed to pay Rs. 40 Lacs per acres to the Respondent for carrying out development work and for providing all kinds of amenities, facilities, utilities, basic infrastructure facilities which includes lighting etc.

- o. That it was also agreed between the parties that the Complainants, on their own shall pursue the license application for additional license to the Respondent's aforesaid License No. 10 of 2009.
- p. That as per the **Clause 3** of the said Addendum agreement, it was agreed that the Respondent shall irrevocably allot 5 plots (i.e., of total area measuring 2160 Sq. yards) to Complainant as a non-refundable security/consideration for the due performance of all its obligation contained herein or imposed by DTCP/other competent authority in development of township upon the said land. The Respondent allotted the following plots to the Complainant in discharge of its obligations under the Addendum Agreement.
- q. That it was also agreed between the parties that the Complainants were entitled to allotment of 2662 Sq. yards of plotted area per acres of the licensed land. It was agreed that within a period of 60 days from the date of grant of license, the Complainant would be allotted their share of the developed plots in the said land or anywhere else in the residential colony being developed by the Respondent after proportionately adjusting the 2160 Sq. yards of developed plots already allotted to them (i.e., adjusting the 2160



Sq. yards in the proportion of the area on which license was to be received out of the total area 6.06875).

- r. That it was agreed between the parties that in the event, the land was compulsorily acquired and even though the said agreement would be terminated, notwithstanding anything contained in this agreement, the Complainant would be entitled to retain the allotment of the plotted area of 2160 sq. yards **subject to the payment of EDC and IDC** by the Complainant to the Respondent for the said 2160 sq. yards plotted area and in lieu thereof, the Respondent shall be entitled to the title, rights interests including the right to compensation in land bearing Khewat no. 99 Rectangle no. 6 Revenue no. 12/2(5-7), 13(8-0) to the extent of 1/5 share and Khewat no.38 Rectangle no.13 revenue no. 20(7-2), 21/1(6-0), 22/1(6-2) to the extent of 90/384 share thus total land measuring 0.9 acres falling in the revenue estate of village Nangli Umarpur, Tehsil & District Gurugram (hereinafter referred to as the said 0.9 acres) and the **Complainant had agreed to execute an irrevocable General Power of Attorney in favour of the Respondent**. The Complainant had entirely failed to fulfil their part of obligations contained in the **Clause 33**. Neither the complainant had paid the EDC and IDC, nor executed this General Power of Attorney.
- s. That as agreed, the Complainants themselves applied for additional license to the Respondent's License No. 10 OF 2009 vide license application LC-1058L for setting up a residential colony on the collaborated land and deposited the requisite fee along with the said application. The Complainants were under the



obligation to pursue their license application and follow up with the DTCP. They were also under the obligation to provide all the relevant documents pertaining to the collaborated land with the DTCP as and when demanded. However, it appears that despite knowing the deficiency in the license application LC-1058L, the Complainants did not remove the deficiency and failed to provide the requisite documents to DTCP, as asked for by DTCP. Furthermore, The Complainants have themselves alleged that they later on withdrew the license application from DTCP. The Complainant could not have withdrawn the application without the consent of the Respondent. It is also a matter of record that they had applied for the agreed 6.06875 acres whereas the DTCP has examined and verified the ownership of only 5.66875 acres land.

- t. That the Complainants, till date have not paid any amount in respect to EDC and IDC and also failed to execute the said GPA in favor of the Respondent or its nominees. Moreover, the Complainants have not disclosed the fact that out of the 0.98 acres land promised by them, **0.44 acres stand acquired by the Government against which the Complainant have appropriated the compensation** and the remaining land admeasuring .054375 acres have been sold by the Complainants to third party which is evident from the mutation no. 726 (bearing Vasika No. 21726/1 dated 11.11.2016). **The Complainants are not left with any land out of 0.9 acres as promised and as such they have themselves created a situation or left with the situation where they have become incapable of performing**

**their part of obligations.** Thus, the Collaboration Agreement and the Addendum Agreement is incapable of performance and any right, being claimed thereto, by the Complainants, is unenforceable.

- u. That the Complainants have themselves failed to honour their own obligations as envisaged under the Collaboration Agreement as well as the Addendum Agreement. Admittedly, the allotment of the Complainants was contingent upon the Complainants, honouring and complying with their reciprocal obligations and not by merely signing the Addendum Agreement. It is an admitted matter of record that the Complainants neither pursued the License Application, nor cleared the deficiencies as raised by the DTCP in the License Application, nor borne all charges and expenses, nor paid cost of EDC/ IDC, nor paid the compensation against land acquisition to the Respondent nor fulfilled any other obligation that was cast upon them under the Addendum Agreement.
- v. That the allotment to the Complainants was contingent upon the grant of license as is evident from **Clause 32** of the Addendum Agreement, where it was also clearly agreed that the complainant will not hold respondent liable in any manner whatsoever for non-receipt/refusal of permission Further, upon the land not being released from acquisition, the Addendum Agreement was deemed to be automatically terminated and therefore, any rights or entitlement, including the allotment would also stand extinguished. It is also a matter of record that not only did the Complainants not pursue the application for grant of additional



Licences, as was obligated on them under the Addendum Agreement, they are also themselves cancelled/terminated the Addendum Agreement, vide their letter dated 30.04.2015.

- w. The Complainants are attempting to take advantage of their own wrong. It is shocking to see the conduct of the Complainants, who entered into the Addendum Agreement, wherein they have failed to justify their lapse, non-performance of their obligations and at the same time, as a matter of invisible, vanished and extinguished rights claiming the allotment of plots, more so, when the Agreement has itself been cancelled by the Complainants. Moreover, the land under the Addendum Agreement has not only not been released from the acquisition, but a part of the balance available land out of 0.9 acre has also been sold by the Complainants to third parties clearly in contravention to the Addendum Agreement. Further, it is a matter of record that the claim of the Complainants is grossly time barred and incapable of any performance, which infact is also evident from the Order of the Hon'ble High Court of Delhi dated 20.04.2023, in Arb P. No. 637 of 2021, wherein the Complainants have themselves withdrawn their claims on the objection of the Respondent. It is also noteworthy that the Complainants have not been granted any relief whatsoever, despite having approached several forums, including the filing of several criminal Complaints. The present proceedings are also a futile, misleading attempt of the Complainants to mislead this Hon'ble Authority into granting some relief to the Complainants.

10. Written submissions have been filed by both the parties and the same have been taken on record and perused further.
11. Copies of all the relevant documents have been filed placed on 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.

**D. Jurisdiction of the authority**

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

**D.I Territorial jurisdiction**

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

**D.II Subject matter jurisdiction**

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

*Section 11*

.....  
(4) 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.*

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

**E.I. Direct the respondent to handover the vacant possession of the said plot and execute and get registered the conveyance deed of the said plot in favor of the complainants.**

16. In the present matter the complainant no. 1 i.e., Tarun Aggarwal Projects Pvt. Ltd. jointly with complainant no. 2 i.e., Prajakta Colonizers Pvt. Ltd. entered into a registered collaboration agreement with the respondent company i.e., Emaar India Ltd. (formerly known as Emaar MGF Land Ltd.) on 07.05.2009. As per the terms of the collaboration agreement the complainants were the landowner of 6.06875 acres of land situated in revenue estate of village Nangli & Badshahpur, Gurugram. Further, it was agreed that the complainants-owner shall get all necessary approvals/sanctions from the competent authority required for obtaining the license and all costs/expenses towards the license fees, scrutiny fee, EDC, IDC and all incidental charges shall also be borne by the owner itself. Also, after obtaining all necessary approvals/sanctions the complainants/owner shall handover the vacant physical possession of the licensed land to the developer/respondent for carrying out necessary development work



as per the specifications agreed between the parties or permitted by the competent authorities. As per clause 4 of the collaboration agreement the developer/respondent was obligated to complete the development works on licensed land of the owner within a period of 36 months from the date of obtaining possession of the licensed land from the owner. Furthermore, the owner/complainants were obligated to keep all the necessary approvals/sanctions valid during the period of 36 months or the extended term being mutually agreed between the parties. As per clause 13 of the said collaboration agreement the owner/complainants, shall be entitled for the allotment of 2662 sq. yards. per acre of the developed plots in the said land or anywhere else in the residential colony being the developer. Thereafter, the other landowners of the adjoining land got the ex-parte partition order against the complainants by the Assistant collector on 03.08.2009, 06.08.2009 & 29.12.2008 and on basis of those ex-parte partition orders applied for the license of the said land. The complainants then filed civil suits seeking decree for perpetual injunction to restrain the respondent from disposing them from the joint land on basis of ex-parte orders. Also, the complainants challenged the said ex-parte partition orders before, collector in 2010 and then filed revision petition before financial commissioner in 2011 seeking stay on ex-parte partition orders. The said ex-parte partition orders were stayed by the financial commission, Gurugram vide order dated 18.01.2011 & 28.02.2011.

17. Amid, the above said disputes, the respondent and complainants again entered into an addendum agreement dated 19.04.2011 wherein the parties mutually negotiated and agreed to resolve the disputes and as



per clause 3 of the addendum agreement the developer/respondent shall irrevocably allot 5 plots i.e., of total area admeasuring 2160 sq. yards. approx.) to the complainants/owner as non-refundable security/consideration for due performance of all its obligations contained in the addendum or imposed by competent authorities upon the said land. Also, it was further agreed that this 2160 sq. yards. of developed plots already allotted shall be adjusted in the 2662 sq. yards of developed area per acre of the licensed area. In lieu of the said addendum agreement the complainant no. 1 vide 5 different allotment letters dated 19.04.2011 was allotted 5 plots bearing no. A-84 admeasuring 442 sq. yards., A-85 admeasuring 442 sq. yards., A-98 admeasuring 400 sq. yards., 1-166A admeasuring 400 sq. yards. & C-63 admeasuring 500 sq. yards whereas the total area being allotted to the complainant no. 1 as per allotment letter is 2184 sq. yards instead of 2160 sq. yards. Further as per clause 13 of the addendum agreement the owner shall have absolute right over the above said plots admeasuring 2160 sq. yards. upon withdrawal of litigation by the owner and subject to the terms of clause 33 & 34 of the addendum agreement.

18. Thereafter, the complainants applied for additional license with the competent authority on 27.04.2011 and then on 16.05.2014 the complainants withdraw the application submitted for grant of license and terminated the said collaboration agreement and the addendum agreement vide letter dated 30.04.2015. Thereafter, the complainants served the respondent with the Legal Notice dated 27.06.2019 seeking damages amounting to Rs. 10 Crores for commission of breach of the terms and conditions of Collaboration Agreement dated 07.05.2009



and Addendum Agreement dated 19.04.2011 by the respondent. The complainants have also mentioned in the complaint that they had dispatched Notice dated 20.11.2019 to the respondent which had been replied to by the respondent through letter dated 24.12.2019 in which the respondent had stated that the dispute raised by the complainant was not arbitrable. Also, the complainants filed petition for appointment of arbitrator before the Hon'ble Delhi High Court which was allowed vide order dated 24.12.2021. The same was challenged by the respondent before Hon'ble Supreme Court of India and was set aside vide order dated 30.09.2022 wherein the matter was returned back to the Hon'ble Delhi High Court for deciding the application for appointment of arbitrator afresh. Further, on 09.02.2023 it was held by the Hon'ble Delhi High Court that the claim of complainants for possession of 05 plots was not arbitrable and therefore the complainants had not pressed the said claim for arbitration and had reserved their right to approach the appropriate forum. The complainants further decided not to press their claim for damages before Hon'ble Delhi High Court.

19. Before dwelling into the merits of the case, the incidental issues which are also to be taken into consideration by the authority are:
- Whether the complainants are covered under the definition of allottee ?
  - Whether the unit was allotted to the complainants and an allotment letter/BBA was signed/issued ?
  - Whether amount of Rs. 1/- has been paid by the complainant ?
  - Whether the possession of the subject plot to the complainant vide letter dated 19.04.2011 can be enforced even when the



collaboration agreement and the addendum agreement have already been terminated by the complainants itself vide letter dated 30.04.2015?

**F. Findings of the authority on issues framed:**

- a. **Whether the complainants are covered under the definition of allottee?**
  - b. **Whether the unit was allotted to the complainants and an allotment letter/BBA was signed/issued?**
20. The authority is of the view that the plea of the respondent that the complainants do not qualify to be an allottee as per the Act is partly maintainable. The authority observes that the term "allottee" has been defined under section 2(d) of the Act and the same is reproduced as under:

*"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)*

21. From a bare perusal of the definition, it becomes evidently clear that the person to whom an apartment, plot or building, as the case may be, has been allotted, sold or otherwise transfer is an allottee and this issue has been comprehensively dealt with by the authority in complaint bearing no. 4031 of 2019 titled as **Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)**.
22. From a bare perusal of the definition of the term 'allottee', it becomes evidently clear that the complainant no. 1 very well falls within the definition of the term "allottee" as defined in section 2(d) of the Act.



The authority observes that although the collaboration agreement dated 07.05.2009 and the addendum agreement dated 19.04.2011 were executed between complainants and the respondent whereas, the plot in question was allotted to the complainant no. 1 only vide allotment letter dated 19.04.2011. Therefore, the opines that since no allotment letter has ever been issued by the respondent in favour of complainant no. 2 i.e., Prajakta Colonizers Pvt. Ltd. therefore, it can be said that complainant no. 2 is not an allottee as per section 2(d) of the Act and accordingly, the claims sought by complainant no. 2 stands redundant.

**c. Whether amount of Rs. 1/- has been paid by the complainant no. 1 as per the allotment letter dated 19.04.2011?**

23. The authority has observed that no doubt an allotment letter dated 19.04.2011 has been issued in favour of complainant no. 1 by the respondent company but the said allotment of plot was against the consideration of ₹ 1/-. The complainants in their complaint have nowhere annexed the proof of having paid ₹ 1/- against each plot.

**d. Whether the possession of the subject plot to the complainant vide letter dated 19.04.2011 can be enforced even when the collaboration agreement and the addendum agreement have already been terminated by the complainants itself vide letter dated 30.04.2015?**

24. The authority after consideration of the documents placed on record, written submissions filed, and the plea advanced by both the parties observes that the allotment of 5 plots vide addendum agreement was subject to the terms of clause 33 & 34 of the addendum agreement.

Clauses 33 & 34 are produced below for the ready reference:

*"33. That it is agreed between the parties that in the event, the land is compulsorily acquired and even though this Agreement would be terminated, notwithstanding anything else contained in this Agreement, the Owner*

*shall be entitled to retain the allotment of the plotted area of 2160 sq. yards subject to payment of EDC and IDC by the OWNER to the DEVELOPER for the said 2160 sq. yards plotted area and in lieu thereof the DEVELOPER shall be entitled to the title, rights, interest including the right to compensation in land bearing Khewat No. 99, Rectangle No. 6 Revenue No. 12/2(5-7), 13(8-0) to the extent of 1/5 share and Khewat No. 38, Rectangle No. 13, Revenue No. 20(7-2), 21/1(6-0), 22/1(6-2) to the extent of 90/384 share thus total land measuring 0.9 acres falling in the revenue estate of village Nangli, Tehsil & District Gurugram (herein after referred to as the said 0.9 acres) and have agreed to execute an irrevocable General Power of Attorney in favour of the DEVELOPER/ its authorized representatives) to do all acts, deeds and things which the DEVELOPER in its prudence might deem appropriate to sell, market, convey and receive consideration in its own favour, claim compensation from the Government etc. with regard to the said 0.9 acres and further undertakes to get the same duly registered with the Registering authorities*

*34. In the event of the licence being granted for a part of the said Land, the OWNER shall be entitled to the allotment of the developed area after proportionately adjusting the 2160 sq. yards of developed plots already allotted to them (i.e. adjusting the 2160 sq. yards in proportion of the area on which license will be received out of the total area of 6.06875 acres) as stipulated in clause 4 above and notwithstanding anything else contained in this Agreement, the OWNER shall also be entitled to retain the balance of the 2160 sq. yards plotted area subject to payment of EDC and IDC by the OWNER to the DEVELOPER for the balance of the 2160 sq. yards plotted area and in lieu thereof the DEVELOPER shall be entitled to the title, rights, interest including the right to compensation in proportionate part of the said 0.9 acres and the OWNER have agreed to execute an irrevocable General Power of Attorney in favour of the DEVELOPER/its authorized representatives) to do all acts, deeds and things which the DEVELOPER in its prudence might deem appropriate to sell, market, convey and receive consideration in its own favour, claim compensation from the Government etc. with regard to the proportionate part of the said 0.9 acres and further undertakes to get the same duly registered with the Registering authorities"*





25. Clause 33 of Addendum Agreement dated 19.04.2011 provides that upon acquisition of land of the aforesaid agreement, the respondent would realize compensation in respect of land measuring 0.9 acres. Significantly, clause 34 of the Addendum Agreement provides that the area to the extent of which licence would be granted by Town and Country Planning Department would be adjusted in proportion out of plotted area measuring 2160 square yards which was agreed to be allocated to the complainants. Furthermore, importantly Clause 32 of aforesaid Addendum Agreement also provides that the allotment of developed area would be subject to receipt of license and approval from the concerned authority.
26. Moreover, since as of date the said collaboration and the addendum agreement has been terminated by the complainants itself and the possibility of termination and consequence of termination of Addendum Agreement dated 19.04.2011 had been provided in clause 35 of the aforesaid agreement. It was provided in this clause of aforesaid Addendum Agreement that upon its termination the developer (respondent) would be entitled to make any representation before any authority or person on behalf of the complainants and would be bound to return the original power of attorney which would remain revoked. It was further provided in this clause that upon termination, the respondent, its employees, contractors, subcontractors, architects, agents etc. would not be entitled to enter the land mentioned in aforesaid Addendum Agreement.
27. In case the complainants and the respondent had intended that even if Collaboration Agreement dated 07.05.2009 and Addendum Agreement dated 19.04.2011 were cancelled the complainants would still be



allotted plots measuring 2160 square yards, the same would have been specifically mentioned in clause number 35 of Addendum Agreement dated 19.04.2011. Once parties enter into an agreement the terms mentioned in the agreement decide their rights and obligations. No party to an agreement can set up a right different from the terms mentioned in the agreement and seek enforcement of the agreement in the manner perceived by such party as is being done by the complainants. Also, the allotment letter dated 19.04.2011 gives reference of both the Collaboration Agreement dated 07.05.2009 and Addendum Agreement dated 19.04.2011 but does not mention that the allotment of plot mentioned therein was to be irrevocably done in favour of the complainants as non-refundable security/consideration. It is apparent that Flat Buyer's Agreement was to be executed after license. The complainants themselves addressed application dated 16.05.2014 to Town and Country Planning Department requesting for return of application regarding the grant of license. Thus, the complainants themselves wanted to put an end to Collaboration Agreement dated 07.05.2009 and Addendum Agreement dated 19.04.2011. The counsel for respondent has referred to clause 29 of Addendum Agreement dated 19.04.2011 and has submitted that the aforesaid Addendum Agreement could only be cancelled by mutual consent of parties and the complainants were not entitled to unilaterally terminate the same. This letter resulted in rejection of application for license by Town and Country Planning Department. The letter dated 30.04.2015 was sent by the complainants to the respondent intimating the respondent that the complainants had withdrawn the application for license and further that the



complainants had suffered huge losses and expenses. Furthermore, in the aforesaid letter of termination, it was not stated by the complainants that notwithstanding termination of Collaboration Agreement dated 07.05.2009 and Addendum Agreement dated 19.04.2011, the complainants were still entitled to allotment of plots especially when Clause 35 of Addendum Agreement dated 19.04.2011 did not provide the allotment of any plotted area despite termination of the aforesaid agreement. It is also a matter of record that complainants had dispatched letter dated 17.05.2017 whereby the complainants had communicated to the respondent that the Buyer's Agreement for the 5 plots had not been received by the complainants from the respondent. Through this letter the complainants never called upon the respondent to dispatch Buyer's Agreements in respect of 5 plots. The complainants only called upon the respondent to execute and register the Cancellation Deed for confirmation of cancellation of registered Collaboration Agreement dated 07.05.2009. At this stage the complainants were fully aware that the respondent had not even sent Buyer's Agreements and had failed to deliver physical possession of the plots and yet the complainants chose not to press their claim which is now being belatedly done.

28. It is also a matter of record the complainants had got dispatched another notice dated 20.11.2019 wherein the complainants had claimed that physical possession of 5 plots having plotted area measuring 2160 square yards be handed over to them and further an amount of Rs.10 crores be paid to them towards losses and damages. Therefore, the complainants for the first time made the request for delivery of physical possession of 5 plots through aforesaid notice



dated 20.11.2019 after more than four years from the termination of the contracts made by none other than the complainants themselves. No explanation for this long delay has been given by the complainants. All these facts and circumstances as well as documents clearly establish that the complainants have miserably failed to prove that they are entitled to allotment, delivery of possession and transfer of title in respect of 5 plots having plotted area measuring 2160 square yards. There is also a mismatch in the area set up by the complainants in the 5 complaints and documents produced by complainants themselves on case file.

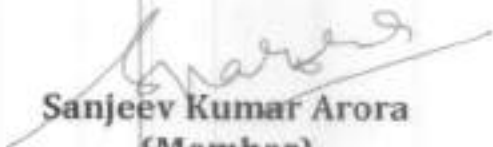
29. Accordingly, the authority observed that the present compliant filed by the complainant is not maintainable for two-fold reasons. Firstly, the complainant no. 2 is not an allottee and complainant no. 1 has not made the payment of ₹ 1/- w.r.t. each plot as there is no document placed on record. Secondly, the allotment of the said plots was subject to terms contained in clause 33 & 34 of the addendum and the complainants on one hand failed to comply by the terms of the addendum agreement executed between the parties and on the other hand the addendum w.r.t. which the plots were allotted to complainant no. 1 has already been terminated by the complainants itself vide letter dated 30.04.2015.
30. In light of the above-mentioned findings of the authority, the complainants are not entitled to any relief and the present complaints stand dismissed on merits accordingly.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order. True certified copy of this order shall be placed in the case file of each matter.



**HARERA**  
**GURUGRAM**

Complaint No. 3904  
of 2023 & 4 others

32. Files be consigned to registry.

  
**Sanjeev Kumar Arora**  
**(Member)**

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated: 16.08.2024



**HARERA**  
**GURUGRAM**