

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

Complaint no. : 6461 of 2022
Order reserved on : 30.04.2024
Order pronounced on: 24.09.2024

Mrs. Shakuntala Devi
W/o Sh. Harveer Singh
R/o: House No. 205, Lajpat Nagar, Gun House, Hisar-
125001, Haryana

Complainant

Versus

M/s Emaar India Limited.
(Formerly Known as Emaar MGF Land Limited)
Registered office at: Emaar MGF Business Park, 2nd
Floor, Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector- 28, Gurugram – 122002, Haryana.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Kuldeep Kumar Kohil alongwith
Kanish Bangia
Shri Harshit Batra

Advocates for the complainant
Advocate for the respondent

HARERA
ORDER
GURUGRAM

1. The present complaint has been filed by the complainant/allottee 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 and location of the project	"Emerald Hills" at sector 65, Urban Estate, Gurgaon, Haryana
2.	Nature of the project	Commercial Complex
3.	Project area	102.741 acres
4.	DTCP license no.	10 of 2012 dated 21.05.2019
5.	Name of licensee	M/s Logical Developers Pvt. Ltd. and 15 others
6.	RERA Registered/ not registered	Registered vide no. 162 of 2017 dated 29.08.2017 up to 28.08.2022
7.	Apartment no.	EHF-267-J-FE-053, 1 st floor (Page no. 71 of the complaint)
8.	Unit area admeasuring	267 sq. Yds. (Page no. 71 of the complaint)
9.	Date of provisional Allotment letter (In favour of the original allottee Ms. Chetna Khullar)	16.02.2010 (As on page no. 65 of complaint)
10.	Date of execution of buyer's agreement	17.03.2010 (As on page no. 70 of complaint)
11.	Possession clause	13. POSSESSION (i)Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and 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</i>



		<p><i>possession of the Floor within 27 months from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of six months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.</i></p> <p><i>[Emphasis Supplied]</i></p> <p>(Page no. 82 of complaint)</p>
12.	Due date of possession	17.12.2012 [Note:- calculated from the date of start of execution of buyer's agreement i.e., 17.03.2010 + 6 months grace period]
13.	Total sales consideration	Rs.45,13,615/- (As per the allotment letter on page no. 65 of complaint)
14.	Amount paid by the complainant	Rs.53,63,615 (as alleged by the complainant)
15.	Nomination letter in the name of the complainant herein	28.06.2012 (As on page no. 130 of complaint)
16.	Agreement to sell wherein second allottee transferred the unit in the name of the complainant [Between Mr. Abhinav Balyan (second allottee) and Shakuntla Devi (complainant herein)]	20.06.2012 (As on page no. 127 of reply)
17.	Occupation certificate	09.06.2016 (Page no. 145 of reply)
18.	Offer of possession	23.01.2017 (Page no. 146 of reply)
19.	Unit handover on	06.04.2018 (Page no. 131 of complaint)
20.	Conveyance deed executed on	28.12.2020 (Page no. 136 of complaint)
21.	Settlement agreement	14.03.2018 (Page no. 163 of reply)

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:



- i. That in the year 2008, the respondent company issued an advertisement announcing a Group Housing Colony Project called 'Emerald Hills - Floors' in a land parcel admeasuring a total area of approximately 102.74 acres, situated at Sector 65, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of units in the said project. Respondent confirmed that the project had got building plan approval from the Authority.
- ii. That the complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent company for buying a house in their project namely "Emerald Hills - Floors". The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.
- iii. That relying on various representations and assurances given by the respondent company and on belief of such assurances, Ms. Chetna Khuller, i.e., original allottee booked a floor in the project by paying an amount of Rs.5,00,000/- dated 12.06.2009, towards the booking of the said floor bearing no. Unit EHF-267-J-FF-053 in Sector 65, admeasuring 267 sq. yd. to the respondent and the same was acknowledged by the respondent.
- iv. That the respondent confirmed the booking of the floor to the original allottee vide allotment letter dated 16.02.2010, providing



the details of the project, confirming the booking of the floor dated 12.06.2009, allotting a floor no. EHF-267-J-FF-053, admeasuring 267 sq. yd. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.45,13,615/-, which includes basic price, Plus EDC and IDC, PLC and additional charges of the allotted floor and providing the time frame within which the next instalment was to be paid. Thereafter, a buyer's agreement was executed between the original allottee and respondent on 17.03.2010. It is pertinent to mention here that the same was endorsed in favour of the second allottee namely Mr. Abhinav Balyan vide endorsement dated 12.05.2011, who further endorsed the said plot in favour of the complainant Smt. Shakuntala Devi vide endorsement dated 12.05.2011.

- v. That as per clause 13(i) of the buyer's agreement, respondent had to deliver the possession of the plot within period of 27 months from the date of execution of the agreement. Therefore, the due date of possession comes out to be 17.06.2012. That the second allottee subsequently transferred/endorsed the property in favour of the Complainant vide agreement to sell dated 20.06.2012. The second allottee executed an "Agreement to Sell" in favour of the complainant herein for a total consideration of Rs.53,63,615/-. The balance amount for obtaining the property which was still under construction was paid by the complainant according to the demands raised by the respondent. The respondent/promoter, vide their nomination letter dated 28.06.2012 recorded their consent to the transfer by stating: "Accordingly, now the captioned property stands in the name of the complainant."

- vi. Further, the complainant having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before June, 2012. The complainant was also handed over the detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondent. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.53,63,615/- towards the said unit against total sale consideration of Rs.45,13,615/-.
- vii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment /demands/etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing /facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- viii. That during the period the complainant went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approach road. The complainant even after paying

amounts still received nothing in return but only loss of the time and money invested by them.

- ix. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.
- x. That the respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees. The respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, buyer's agreement and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of Act, 2016 and the Rules, 2017.
- xi. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. It has not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.



- xii. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the physical handover of the unit. Further, respondent issued handover advice letter. Thereafter, respondent issued handover letter on account of handing over the physical possession of the unit. Thereafter, on 06.04.2018, respondent handed over the physical possession of the unit.
- xiii. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 28.12.2020. It is pertinent to mention here that the complainant, in order to execute the conveyance deed has paid an amount of Rs.66,200/- on 27.05.2019 as stamp duty but the actual execution of the conveyance deed occurred on 28.12.2020 with a stamp duty of Rs.4,55,420/-. While this sale deed acknowledges that the complainant has paid the total consideration towards full and final consideration of the said apartment and applicable taxes etc., it makes no provision for compensating the complainant for the huge delay in handing over the flat and project. She was not given any opportunity to negotiate the terms of the said sale deed.
- xiv. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the Rules, 2017. The complainant has suffered on account of deficiency in service by the Respondents and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the Rules, 2017.

xv. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allotted point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. She has invested their life savings in the said project and are dreaming of a home for themselves and the respondents have not only cheated and betrayed them but also used their hard earned money for their enjoyment.

xvi. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application /payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Authority. Thus, the present complaint filed by the complainant.

C. Relief sought by the complainant

4. The complainant is seeking the following relief:

- i. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the Act of 2016 from due date of possession i.e., 17.06.2012 till date of actual physical possession i.e., 06.04.2018.
- ii. Direct the respondent to not to charge anything which is not a part of builder buyer's agreement.

iii. Direct the respondent to pay the excess amount charged against the stamp duty while executing the conveyance deed.

D. Reply filed by the respondent

5. The respondent has contested the complaint on the following grounds:

- I. That the complainant have got no *locus standi* or cause of action to file the present complaint. It is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.03.2010 as shall be evident from the submissions made in the following paragraphs of the present reply.
- II. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the Adjudicating Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
- III. That the complainant has not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply. That the complainant is vehemently and most humbly stated that bring out the true and correct facts and circumstances is subject to the contention of the respondent that the Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable for reasons stated in the present reply.
- IV. That the complainant is not an "Allottee" an but 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 her residence. Therefore, no equity lies in favor of the complainant.
- V. That the original allottee (Ms. Chetna Khuller) approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Emerald Floors at Emerald Hills" situated in Sector 62 & 65, Urban Estate Gurgaon, Haryana. Prior to the booking, the original allottee conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that she took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- VI. That thereafter the original allottee, vide an application form dated 11.06.2009 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no EHF-267-J-FF-053, located on the First Floor, admeasuring 267 sq. yards (tentative area) was allotted vide provisional allotment letter dated 16.02.2010. The original allottee consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that she shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottee and proceeded to allot the unit in question in her favor.
- VII. Thereafter, a buyer's agreement dated 17.03.2010 was executed between the original allottee and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same



are binding on the parties. As per clause 13(i) of the agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect.

- VIII. That the remittance of all amounts due and payable by the original allottee under the agreement as per the schedule of payment incorporated in the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts /reasons beyond the power and control of the respondent. It is pertinent to mention that it was categorically provided in clause 13(v) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the Agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.
- IX. That the unit was transferred to the subsequent allottee (Mr. Abhinav Balyan) by the original allottee upon the execution of the affidavits and indemnity cum undertakings by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 23.05.2011. Thereafter, the subsequent allottee approached the respondent in lieu of transferring the rights, title, and interest of the said property to the complainant. That pursuant thereto, an agreement to sell dated 20.06.2012 was executed between the



subsequent allottee and the complainant for transferring rights, title, interest of the said unit. Thus, unit was transferred to the complainant by the subsequent allottee upon the execution of the affidavit dated 20.06.2012 and indemnity cum undertaking dated 20.06.2012 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 28.06.2012.

- X. That further, an endorsement was also made in the name of the complainant. That it is a matter of fact and record that the complainant bought the unit after fully knowing the fact that there is a legitimate delay on account of the reasons beyond the control of the respondent and was purchased by the complainant without any delay or demur. That the complainant bought the unit with open eyes after having inspected the unit and the entire project.
- XI. That at this instance, it is submitted that the complainant being subsequent buyer, has no right to seek delay possession charges. That at the time of nomination of the complainant, the project was already delayed due to reasons beyond the control of the company. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the complainant willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. That such prior knowledge, willing and self-initiated endorsement of the complainant, without any protest, amounts to acceptance of the existing circumstances and the complainant cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainant.



- XII. It is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the Project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 as has been provided in the agreement.
- XIII. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent builder. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 13(ii), however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.
- XIV. Despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by this Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said unit and the same was thereafter issued vide memo bearing no. 2115 dated 09.06.2016. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory

authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the Respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- XV. That thereafter, the complainant was offered possession of the unit in question through letter of offer of possession dated 23.01.2017. 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. Multiple possession reminders were sent to the complainant in regard to handing over the possession of the said unit but all requests, reminders fell on deaf ears of the complainant. It is submitted that the complainant delayed the procedure of taking the possession of the said unit on her own account.
- XVI. That 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. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. Thereafter, an indemnity cum undertaking for possession dated 21.12.2017 of the said unit was executed between the complainant and the respondent for use



and occupation of the said unit whereby the complainant have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. The instant complaint is preferred in complete contravention of their earlier representations and documents executed. The present frivolous complaint has been filed with the mala fide intention to mount undue pressure upon respondent thereby compelling it to succumb to their unjust and illegitimate demands.

- XVII. That the complainant is a defaulting party who has delayed in remitting the timely instalments. The complainant having some grievances approached the respondent for their redressal. That a settlement agreement dated 14.03.2018 was executed between both the parties according to which the respondent in good faith and as a goodwill gesture agreed to compensate the complainant after adjustment of all dues payable by the complainant. That the said agreement was executed as a full and final settlement of all claims, contentions of the complainant. That as per clause 1 of the settlement agreement dated 14.03.2018, the respondent paid an amount of Rs.3,50,000/- to the complainant as compensation. Despite being compensated by the respondent, the complainant with malafide intention approached this Authority only to fulfill her greediness. That as per clause 5 of the agreement, the complainant even indemnified the respondent against any claims in future.
- XVIII. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principal amount of the unit in question and not on any amount credited



by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments, etc.

XIX. That in light of the bona fide conduct of the respondent, no delay for the complainant, the peaceful possession having been taken by the complainant, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondent.

6. The respondent has filed the written submissions on 02.09.2022, respectively which are taken on record. No additional facts apart from the complaint or reply have been stated in the written submissions.

E. Jurisdiction of the authority

7. The authority observed 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 purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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) 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. Findings on the objections raised by the respondent.

F.I Objection regarding maintainability of complaint on account of complainant being investor.

11. The respondent took a stand that the complainant is investor and not consumer and therefore, she 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's, and they have paid total price of Rs.53,63,615/- to the promoter towards purchase of 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 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 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 promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

13. The respondent submitted that the complainant had executed the conveyance deed on 28.12.2020 and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case.
14. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been

upheld by the Hon'ble Supreme Court 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."*

Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the Hon'ble Apex Court in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant cannot be precluded



from his right to seek delay possession charges from the respondent-promoter.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay delayed possession interest @ 18% on account of delay in offering possession on the amount paid by the complainant of Rs.1,01,86,322/- against the sale consideration of the said flat from the date of payment till the date of delivery of possession.

15. The original allottee i.e., Chetna Khullar was allotted a unit bearing no. EHF-267-J-FF-053, 1st floor, admeasuring 267 sq. yds. on first floor, in project of the respondent named "Emerald Hills- Floors" at Sector-65, Gurugram vide provisional allotment letter dated 16.02.2010 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 17.03.2010. Thereafter, the original allottee i.e., Chetna Khullar sold her unit to the first subsequent allottee namely Abhinav Balyan vide nomination letter dated 23.05.2011. Thereafter, the first subsequent allottee requested the respondent to transfer/sell the said unit to the complainant vide agreement to sell dated 20.06.2012. Accordingly, the respondent vide nomination letter dated 28.06.2012, confirming substitution of name in the aforementioned apartment and the said apartment was transferred /endorsed in the name of the complainant herein. Therefore, the complainant stepped into the shoes of original allottee on 28.06.2012. As decided in **complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited**, the authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges can be considered w.e.f. due date of handing over possession.



16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act of 2016. The buyer's agreement was executed between the original allottee and the respondent on 17.03.2010 and as per clause 13(i) of the agreement the respondent was directed to handover the possession of the unit within 27 months from the date of execution of buyer's agreement and a grace period of 6 months for applying and obtaining the occupation certificate in respect of the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion



of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

17. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 17.12.2012 including grace period of six months.
18. In the present complaint, the occupation certificate was received from the competent authority on 09.06.2016 and possession of the unit was offered to the first complainant herein vide offer of possession letter dated 23.01.2017. Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 06.04.2018. Also, the conveyance deed bearing vasika no. 5101 dated 28.12.2020 was also executed by it in favour of the complainants in respect of the said unit. The complainant has filed the present complaint after a long delay on 04.10.2022.
19. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, after the unit was allotted to the original complainant on 16.02.2010, a buyer's agreement in this regard was executed on 17.03.2010. Though the possession of the unit was to be offered on or before 17.12.2012 after completion of the project but the same was offered only on 23.01.2017 after receipt of occupation certificate on 09.06.2016 and ultimately leading to execution of conveyance deed of the same on 28.12.2020. So, limitation if any, for a




cause of action would accrue to the complainant w.e.f. 23.01.2017 and not from 28.12.2020. Therefore, the limitation period of three years was expired on 23.01.2020 and accordingly, the period between 15.03.2020 till 28.02.2022 as excluded by the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 shall not be excluded while calculating the period of limitation as the limitation expired prior to the beginning of the said period. The present complaint seeking delay possession charges and other reliefs was filed on 04.10.2022 i.e., beyond three years w.e.f. 23.01.2017.

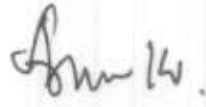
20. As noted above, the possession of the subject unit was offered to the complainant on 23.01.2017 after obtaining occupation certificate on 09.06.2016. Thereafter, the conveyance deed of the unit was executed between the parties on 28.12.2020 and the present complaint was filed on 04.10.2022. There has been complete inaction on the part of the complainant for a period of more than five years from the offer of possession till the present complaint was filed in October 2022. The complainant remained dormant of his rights for more than 5 years and they didn't approach any forum to avail his rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.
21. One such principle is that delay and latches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section

37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

22. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.
23. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable and the same is declined.

24. In the present case, the Authority (Shri. Arun Kumar, Hon'ble Chairperson, Shri. Vijay Kumar Goyal, Member & Shri. Sanjeev Kumar Arora, Member) heard the complaint and reserved the order on 30.04.2024, the same was fixed for pronouncement of order on 16.07.2024. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora got retired and has been discharged from his duties from the Authority. Hence, rest of the presiding officers of the Authority have pronounced the said order.
25. Hence, no case for DPC is made out.
26. Complaint as well as applications, if any, stands dismissed being not maintainable. The case stands disposed off accordingly.
27. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.09.2024

HARERA
GURUGRAM