

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

Complaint no. : 7809 of 2022
Date of order : 09.10.2024

1. Vinita Kedia
2. Avinash Agarwal
Both R/o: H.no.-130, Virat Nagar, Phase-2,
Model Town, Panipat, Haryana-132103.

Complainants

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Sh. Gaurav Rawat (Advocate)
Sh. Dhruv Rohatgi (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

1.	Name of the project	"Premier Terraces at the Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing
3.	DTCP License no.	DS-2007/24799 of 2007 Dated- 27.09.2007
4.	RERA registered	Not registered
5.	Unit no.	PTT-08-1002, Tower no.-08, Floor-10 th (As on page no. 60 of reply)
6.	Unit area	2100 sq.ft [Super-Area] (As on page no. 57 of reply)
7.	Provisional allotment letter	05.05.2010 (As on page no. 57 of reply)
8.	Date of execution of agreement between allottees and respondent	14.07.2010 (As on page no. 60 of reply)
9.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and 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</i>



		<p><i>Agreement and upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the unit(which falls within ground plus four floors tower/building) within a period of thirty(30) months from the date of commencement of construction, and for the Unit(which falls within ground plus thirteen floors tower/building) within a period of thirty six(36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the project.</i></p> <p>(Emphasis supplied) (As on page no. 75 of complaint)</p>
10.	Due date of possession	24.06.2014 [Calculated 36 months from date of start of construction i.e., 24.06.2011]
11.	Total sales consideration	Rs.1,22,73,351/- (As per S.O.A dated 12.05.2023 on page no. 118 of reply)
12.	Amount paid by the complainant	Rs.1,22,73,351/- (As per S.O.A dated 12.05.2023 on page no. 118 of reply)
13.	Offer of possession made to original allottees	14.08.2019 (As on page no. 41 of complaint)
14.	Sale deed between original allottee	02.11.2021

	and complainant	(As on page no. 80 of complaint)
15.	Conveyance deed between original allottees and respondent	06.07.2021 (As on page no. 53 of complaint)
16.	Indemnity cum undertaking of original allottees	23.01.2021 (As on page no. 152 of reply)
17.	Settlement agreement [Note:- Between the original allottees and the respondent]	11.05.2020 (As on page no. 146 of reply)
18.	Unit handover letter (original allottee)	20.06.2021 (As on page no. 155 of reply)
19.	Occupation certificate	08.08.2019 (As on page no. 121 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. This is with reference to the group housing colony project "Palm Terraces At Palm Drive" at Sector - 66, Gurugram. The complainants are law-abiding citizen and the respondent is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- II. The respondent advertised about the project on the 45.48 acres of land, in Sector 66 of the Gurugram. In 2007, the respondent issued an advertisement announcing a Group Housing colony project. The complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a unit in their project namely palm drive.

- III. The respondent issued vital brochures containing detailed specifications of the project. Apart from specifications relating to the flats, the brochures boasted the complex to be a community designed for contemporary living in a green sanctuary, setting a modern life style in a heaven of peace and tranquillity. It also indicated the arrangements of the different towers, parking space, an exclusive golf driving range, extensive recreation facilities that celebrated the outdoors such as landscaped public areas, jogging trails, walkways, green areas, driveways, swimming pools, gyms, clubhouse, multiple amphitheatres etc.
- IV. Relying on various representations and assurances given by the respondent and on belief of such assurances, complainants booked a unit in the project by paying an amount of Rs.10,00,000/- on 10.04.2010, towards the booking of the said unit bearing no. unit PTT-08-1002 on 10th Floor, in Tower/Block-8 in Sector 66, having super area measuring 2100 sq. ft. to the respondent dated 10.01.2010 and the same was acknowledged by the respondent.
- V. That the respondent confirmed the booking of the unit to the original allottee, allotting a unit admeasuring 2100 sq. ft in the aforesaid project for a total sale consideration of Rs.1,22,73,351/- along with car parking and other specifications.
- VI. That a Buyer's Agreement was executed between the allottees and respondent on 14.07.2010. The complainants were also handed over one detailed payment plan which was construction linked plan. As per

clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit by 24.06.2014 (i.e., 36 months from the commencement of construction dated 24.06.2011) with a grace period of 90 days for applying and obtaining the Occupation Certificate.

VII. As per the demands raised by the respondent, the complainants paid a total sum of Rs.1,24,19,857/- against the total sale consideration of Rs.1,22,73,351/-.

VIII. That the respondent have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the BBA executed with the complainants.

IX. That the complainants after many requests and emails received the offer of possession on 14.08.2019. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the Builder Buyer Agreement.

X. That the complainants sent various reminders to respondents stating and raising various grievances with respect to delayed possession charges, air conditioners, grid power supply, car parking, solar panels, golf range, palm drive condominium association and HVAT. Furthermore, stating that solar panels has been installed in phase-1 of the project not in the tower of the complainants, as per the agreed terms of the booking and name of the project itself indicates that there

will be golf range but till date respondents have failed to provide the same. Thereafter, various reminder emails and letters were sent to the respondents on the above mentioned issues but till date respondent failed to provide any satisfactory response to the complainants.

- XI. The Palm Drive amenities are 24X7 Power Back up, 24X7 Security, Badminton Court, Golf Driving Range, Basketball Court, Broadband Connectivity, Club House, Covered Parking, Creche, Gym, Health Facilities, Intercom Facility, Kids Play Area, Lawn Tennis Court, Maintenance Staff, Open Parking, Recreation Facilities, Religious Place, School, Servant Quarters, Shopping Arcade, Swimming Pool, Visitor Parking.
- XII. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. The complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- XIII. That the complainants have never delayed in making any payment and always made the payment rather much before the construction linked plan attached to the Buyer's Agreement. The BBA is one sided heavily loaded in favour of the respondent and even the Settlement-cum-

Amendment Agreement is also heavily loaded in favour of the respondent.

- XIV. 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 on 06.07.2021. That the complainants are getting depressed because everyone is aware that golf view apartments are premium apartments and the complainants intend to stay within the amid of greens. Their dreams are getting shattered as respondent builder is not giving the Golf course at the specific location which was earmarked for the golf course.
- XV. That in the present project respondent constructed specifically two high rise buildings i.e. S-8 and S-9, with purpose to charge the PLC on account of golf range view and the same has been paid by the complainants in timely manner but till date respondent failed to provide the same to the complainants even after the repeated reminders and requests. Furthermore, all other towers adjacent to S-8 and S-9 are low rise and specifically the rate of the apartments in S-8 and S-9 are very less in comparison to the apartment in S-8 and S-9 due to above mentioned reasons. The location of tower S-8 and S-9 is also very far away from the main entrance so that the complainants can have the view of golf drive range.
- XVI. That the original allottees subsequently transferred/endorsed the property in favour of the complainants for an appropriate

consideration vide agreement to sell dated 06.10.2021. Thereafter, a sale deed was executed between the original allottee and the complainants on 02.11.2021.

XVII. That the complainants believe that completion certificate, grant of which is mandatory for every residential project is yet to be granted to the respondent in respect of the project. This demonstrates that delay is occurring and alive till date for the complainants in the Palm Drive. The construction within the project is still ongoing and the main primary feature still underway. Hence, the present complaint.

C. Relief sought by the complainants:

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

- i. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
- ii. Direct the respondent to deliver the golf driving range at the designated location as promised at the time of booking .
- iii. Direct the respondent to provide the amenities and golf driving range at the designated location as per brochure and layout plan provided at the time of booking.
- iv. Initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016.
- v. Set aside the one sided indemnity bond and settlement agreement that was signed by the complainants under undue influence of the respondent.

5. 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.

D. Reply filed by respondent

6. The respondent has made the following submissions:

- I. That the possession was offered to the original allottees on 14.08.2019 and conveyance deed was executed with them. The complainants being the subsequent allottees purchased the said unit from the original allottees in 2021 fully accepting the current situation of the project. Moreover, the transaction between the original allottees and the respondent stands satisfied and no claim can lie against the respondent. The reliefs sought in the present complaint is false and frivolous and the same is barred by estoppel. It is relevant to submit that the Conveyance Deed of the unit in question had already been executed in favour of the original allottees on 06.07.2021. Thereafter, the unit in question has been purchased by the complainants in resale vide Sale Deed dated 02.11.2021
- II. That the present complaint is barred by limitation. It is also pertinent to mention that the complainants filed the complaint before the Authority after the conveyance deed was executed between the original allottees and the respondent.
- III. That the original allottees (Mr. Parsanna Narayan Borah and Ms. Jimlee Borah) approached the respondent and expressed interest in booking an apartment in the residential group housing colony developed by respondent known as "Premier Terraces at Palm Drive" situated in Sector 66, Urban Estate Gurgaon, Haryana.

- IV. That thereafter unit bearing no PTT-08-1002, located on the 10th Floor in Tower-08 admeasuring 2100 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 05.05.2010. The original allottees consciously and willfully opted for a subvention payment plan for remittance of sale consideration for the unit. Thereafter, a Buyer's Agreement dated 14.07.2010 was executed between the original allottees and the respondent.
- V. That the original allottees had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disentitled themselves for any compensation/interest. The respondent however, as a goodwill gesture credited a sum of Rs.6,47,951/- on 13.08.2019, Rs.8,40,166/- on 15.05.2020, both towards compensation for delay and a sum of Rs.14,924/- towards anti profiting.
- VI. The original allottees had entered into a Settlement Agreement dated 11.05.2020, with the respondent and resolved all their disputes, claims and grievances in lieu of the compensation so received by them. Thus, the original allottees have already drawn the benefits and the complainants are subsequent allottees and thus precluded from raising any fresh claim against the unit in question.
- VII. That since, the original allottees were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the original allottees requesting them to make payment of demanded amounts.
- VIII. That clause 16 of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Agreement. In case of delay caused due to non-

- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees.
- IX. That 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. The respondent applied for the Occupation Certificate on 01.07.2017 and the same was thereafter issued on 25.01.2018.
- X. That the construction of the project/allotted unit already stands completed and the respondent has already offered possession of the unit to the original allottees and the conveyance deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- XI. That the original allottees were offered possession of the unit in question through letter of offer of possession dated 14.08.2019. The original allottees were 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 original allottees. However, they approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the Buyer's Agreement.
- XII. That the original allottees, thereafter filed a complaint before the Authority, bearing complaint no. 4339 of 2019, titled as *Prasanna Narayan Borah &Ors. Vs Emaar MGF Land Limited*, raising their grievances and claims for delay possession charges. It is submitted that during the pendency of the said complaint, all the disputes, grievances and claims of the Original Allottees, in respect of this unit were settled amicably by virtue of a Settlement Agreement dated 11.05.2020.

- XIII. Thereafter, an indemnity cum undertaking for possession dated 23.01.2021 was executed by the original allottees for use and occupation of the said unit whereby the original allottees 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.
- XIV. That subsequently, the original allottees approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 20.06.2021 was executed by the original allottees, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied.
- XV. That it is pertinent to mention that after execution of the unit handover letter and even after obtaining the possession of the unit by the original allottees, the complainants are left with no right, entitlement or claim against the respondent. It needs to be highlighted that the original allottees had further executed a conveyance deed dated 06.07.2021. The transaction between the original allottees and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other.
- XVI. It is pertinent to take into reckoning that despite being aware of the status of construction, amenities and the facilities so available in the project, the complainants have purchased the unit directly from the original allottees without any involvement of the respondent, hence, the complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.

- XVII. That the respondent had credited a sum of Rs.14,924/- as benefit on account of Anti-Profiting. Further, the respondent has credited an amount of Rs.6,47,951/- and further Rs.8,40,166/- as delay compensation as per the terms of the Settlement Agreement dated 11.05.2020. Thus, the complainants, cannot now turn the clock back and claim compensation, which has been credited to the Original Allottees and no protest has ever been raised by the Original Allottees against the duly executed Settlement Agreement. It is submitted that the complainants vide sale deed dated 02.11.2021 have purchased the said unit from the original allottees.
- XVIII. That the complainants are the third party and no claim lie against the respondent. That the respondent was not even made a party to the said sale deed. That the Respondent with utmost sincerity has completed all its obligations as envisaged in the Buyer's Agreement executed with the original allottees. It is submitted that the original allottees have executed all documents with open eyes and under no undue influence and have taken the possession without any objection.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- D. Jurisdiction of the authority**
8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:
- D.1 Territorial jurisdiction**
9. 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

10. 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)(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;

11. 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.

E. Findings on the reliefs sought by the complainants.

- E. I Direct the respondent to pay delayed possession charges along with the prescribed rate of interest.**
- E.II. Direct the respondent to deliver the golf driving range at the designated location as promised at the time of booking .**
- E.III Direct the respondent to provide the amenities and golf driving range at the designated location as per brochure and layout plan provided at the time of booking.**
- E.IV Initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016.**
- E.V Set aside the one sided indemnity bond and settlement agreement thst was signed by the complainants under undue influence of the respondent.**

12. The above mentioned reliefs are inter connected hence, are dealt together. In the present complaint, the buyer's agreement was executed on 14.07.2010. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 36 months from the date of start of construction.
13. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that the Buyer's Agreement between the complainants and the respondent was executed on 14.07.2010. According to the terms of this agreement, possession of the unit was to be offered within 36 months plus an additional 3 months from the date of start of construction. As per the S.O.A dated 12.05.2023 on page no. 118 of reply, the construction was started on 24.06.2011 Therefore, the due date for possession, considering the 3-month grace period was 24.06.2014. An offer of possession was made to the original allottees on 14.08.2019, and the conveyance deed was executed in favour of the original allottees on 06.07.2021.
14. The unit was further sold by the original allottees to the complainants vide Agreement to Sell dated 02.11.2021. It is relevant to note that the complainants have purchased the unit in the year 2021, after the execution of the Conveyance Deed in favour of the Original Allottees. The complainants were fully aware of the status of construction, amenities and the facilities so available in the project. The complainants have done their own due diligence before purchasing the property. The complainants have not faced any delay on the end of the respondent and also they entered into the project knowing the exact facilities and amenities available. The original allottees have already settled their claims against the respondent. Thus, the complaint is not maintainable and is hereby dismissed.

15. Matter stands disposed of.
16. File be consigned to the registry.

Dated: 09.10.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM