

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

Complaint no. : 7811 of 2022
Date of order : 09.10.2024

1. Manish Khandelwal
2. Richa Khandelwal
3. Vinod Khandelwal
4. Vidhya Khandelwal

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.

Versus

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Sh. Gaurav Rawat (Advocate)
Sh. Harshit Batra (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:

S.No.	Particulars	Details
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-08-0501, Floor-5 th , Block-8 (As on page no. 51 of complaint)
6.	Unit area	2100 sq.ft. [Super-Area] (As on page no. 51 of complaint)
7.	Date of execution of buyer's agreement	04.08.2010 (As on page no. 50 of complaint)
8.	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</i>

		<p><i>and not being in default under any of the provisions of this 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 63 of complaint)</p>
9.	Date of start of construction	<p>24.06.2011 <i>(As per S.O.A dated 19.03.2019 on page no. 85 of complaint)</i></p>
10.	Due date of possession	<p>24.09.2014 (calculated 36 months from date of commencement of construction + 3 months)</p>
11.	Total sales consideration	<p>Rs.1,29,55,649/- (As on page 85 of complaint)</p>
13.	Amount paid by the complainant	<p>Rs.121,33,586/- (As per S.O.A 19.03.2019 on page 85 of</p>

		complaint)
14.	Occupation certificate	08.03.2019
15.	Offer of possession	19.08.2019 (As on page 80 of complaint)
16.	Conveyance deed	16.12.2019 (As on page 88 of complaint)

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 09.05.2010, towards the booking of the said unit bearing no. unit PTT-08-0501 on 5th Floor, in Tower/Block-8 in Sector 66, having super area measuring 2100 sq. ft. to the respondent dated 09.05.2010 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.1,24,39,800/- along with car parking and other specifications.
- VI. That a Buyer's Agreement was executed between the allottees and respondent on 04.06.2010. 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.1,29,75,569/- against the total sale consideration of Rs.1,24,39,800/-.
- 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 19.08.2019. 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 16.12.2019. 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 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 complainant:

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4. The complainants have sought following relief(s):
- i. Direct the respondent to deliver the golf driving range at the designated location as promised at the time of booking .
 - ii. 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.
 - iii. Initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016.
 - iv. 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.
6. The respondent has filed an application against maintainability of the complaint on 25.05.2023 citing the following :
- I. That the present complaint is not maintainable in law or on facts. That the complainants had initially filed a complaint for the same unit vide complaint no. 1959 of 2018, titled as "Manish Khandelwal & Others vs. Emaar MGF Land Limited" which was disposed off vide order dated 04.11.2020 which categorically noted that:
*The Complainant has submitted an application for withdrawing the complaint as the matter has been settled amicably with the Respondent.
In view of the settlement agreement arrived between the parties to their full satisfaction, the matter stands dismissed as withdrawn...*
 - II. That the said complaint was also filed in respect to the same unit wherein the complainant had alleged all their grievances which were settled. This complaint is hit by the rule of *Res Judicata* as once a matter is finally

decided by a competent court, no party can be permitted to open it in a subsequent litigation.

- III. That as noted above, the matter has been fully settled vide Settlement Agreement dated 15.10.2019, pursuant to which, a withdrawal application was filed by the complainants in the previous complaint.
- IV. That the Settlement Agreement executed between the complainants and the respondent clearly records that all concerns, claims and grievances between the parties have been fully and finally satisfied. The relevant clauses are as under:

3. That on the execution of this Agreement, the First Party/ or any other authorized person of first Party shall completely release and forever discharge the Company.....

4. That all concerns, claims and grievances raised by the First Party against the Company and/or any of its officers, employees, agents, etc., stand redressed to entire satisfaction of the First Party and nothing stonds pending against the Company and/or any of its officers, employees, agents, etc., In any manner whatsoever.

- V. That after the full and final settlement between the parties, the present case cannot be entertained. That accordingly, the present complaint arising after the full and final settlement of the matter to the complete satisfaction of the complainant, cannot be entertained and should be dismissed.
- VI. Moreover, it further needs to be categorically noted that the complainants have raised alleged issued qua the golf course range, indemnity, brochure, etc at this instance and had not raised any of the same in their previous case or at any point in time before. At this stage, it is pertinent to note that after the settlement between the parties, the physical possession was peacefully taken by the complainants without any demur whatsoever and the Conveyance Deed was executed on 16.12.2019.

- VII. That all of the alleged claims of the complainants could have been raised at the time of/during pendency of the previous complaint which was disposed off on 04.11.2020, however, were not brought before the Authority. That it is evident from the conduct of the complainants that they intent to engage in various frivolous litigation. That this complaint is hit by Order II Rule 2 of the Code of Civil Procedure, 1908.
- VIII. That every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action or it can be stated that all the claims should be asked at once. That upon omitting to include the claims at the first instance, the complainants are barred from bringing the claims again before the Authority.
- IX. That the alleged claims in the present complaint, if arose, could have very well be raised at the time of filing of previous complaint or during adjudication of the previous complaint, however, was not done at any point in time.
- X. That the Conveyance Deed was executed on 16.12.2019 vide vasika number 11854. The notice for the present complaint was issued on 02.01.2023, i.e., after 1113 days of execution of Conveyance Deed. That no cause of action persists after execution of Conveyance Deed and as the Conveyance Deed was executed over 3 years ago, the complaint is barred by limitation.
- XI. That the complainants, after having executed the Conveyance Deed over 3 years ago, taking peaceful possession of the unit, and having enjoyed such possession for such a long period, should not be entitled to file the present frivolous complaint. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of the Conveyance deed and hence the present complaint is liable to be dismissed. That the

complainant has been living in peaceful possession for over 3 years now. And after 3 years, have filed the present case with the sole purpose to harass the respondent.

XII. That it is most humbly submitted that after the execution of the Conveyance Deed, no cause of action pertains. Moreover, the Conveyance Deed was executed more than 3 years ago and hence the present complaint is barred by limitation.

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. I 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 deliver the golf driving range at the designated location as promised at the time of booking .**
- E.II 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.III Initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016.**
- E.IV 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 04.08.2010. 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. The date of execution of Buyer's Agreement is 04.08.2010.

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 04.08.2010. 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 19.08.2019 on page no. 85 of complaint, the construction was started on 24.06.2011 Therefore, the due date for possession, considering the 3-month grace period was 24.09.2014. An offer of possession was made to the complainants on 19.08.2019, and the conveyance deed was executed in favour of the complainants on 16.12.2019.

14. The cause of action for this complaint arose on 19.08.2019, when possession was offered. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Order 2 of the Code of Civil Procedure, 1908, lays down the various principles governing the Frame of the Suit, and the procedure to be followed therein. Thus, once a complaint is filed then the contents of the complaint must contain the whole of the claim, as envisaged under Order 2 Rule 2, and must also be in complete compliance with the provisions of Order 2.

"Order 2 Rule 2 of the code of Civil Procedure, 1908, reads:

2. Suit to include the whole claim. - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs. - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation. - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

15. The provisions of Order 2 Rule 2 indicate that if a plaintiff is entitled to several reliefs against the defendant in respect of the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for

the other. If the cause of action is the same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2 is based on the cardinal principle that the defendant should not be vexed twice for the same cause. One of the objects of Order 2 Rule 2 is also to avoid multiplicity of litigation.

16. The requirement of the rule is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of a cause of action and in the present complaint also, the reliefs that are being sought by the complainants now were existing at the time of filing of the previous complaint. The Supreme Court in ***Alka Gupta v. Narender Kumar Gupta, AIR 2011 SC 860*** has held that:

"8. The object of Order 2 Rule 2 of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action."

17. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience.
18. Also, as per Clause 11 of the conveyance deed dated 16.12.2019, the complainants have confirmed of taking possession of the unit after


satisfying themselves that the construction and the installations have been made in accordance of the specifications as agreed and the complainants are fully satisfied and have no complaint or claim in respect of the same. The relevant portion of the conveyance deed is reproduced below:

" That the actual, physical, vacant possession of the said Apartment has been handed over to the vendee and the Vendee hereby confirms taking over possession of the said Apartment/parking space(s) from the Vendors after satisfying himself/herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein. "

19. As regard the facilities/amenities of the project is concerned, the complainants could have asked for the claim before the execution of the conveyance deed. Therefore, no directions in this regard can be effectuated at this stage. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable.
20. Matter stands disposed of.
21. File be consigned to the registry.

Dated: 09.10.2024

HARERA
GURUGRAM


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