

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

Complaint no. : 7813 of 2022
Date of order : 09.10.2024

1. Nandini Choudhary.
2. WG. Cdr. Amit Chowdhury
Both R/o: Flat no.-TPD-N-GF-05,
Floor-Ground, Tower-N, Premier Terraces At Palm
Drive, Sector-66, Gurugram.

Complainants

Versus

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 Rohtagi (Advocate)

Complainants

Respondent

HARERA
GURUGRAM
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.	N-Gf-05, Tower-N, Floor-Ground (As on page no. 54 of complaint)
6.	Unit area	2125 sq ft. [Super-area] 1793.55 sq.ft. [Carpet Area] (As on page no. 54 of complaint)
7.	Allotment letter	19.01.2010 (As on page 41 of complaint)
8.	Date of execution of buyer's agreement	10.07.2010 (As on page no. 50 of complaint)
9.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and</i>

		<p><i>compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to handover possession of the Apartment/Villa/Penthouse within 24 months from the date of execution of this Buyer's Agreement. The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of ninety (90) days for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 68 of complaint)</i></p>
10.	Due date of possession	10.10.2012 (Calculated 24 months from the date of execution of the agreement)
11.	Total sales consideration	Rs.1,36,47,502 (As per S.o.A dated 29.05.2023 on page no. 171 of reply)
12.	Amount paid by the complainant	Rs.1,36,47,396/- (As per S.O.A dated 29.05.2023 on page no. 171 of reply)
13.	Occupation certificate	01.04.2015 (As on page no. 27 of reply)
14.	Offer of possession	25.05.2015 (As on page44 of complaint)
15.	Conveyance deed	08.12.2015 (As on page 95 of complaint)
16.	Indemnity cum undertaking	Un dated (As on page 136 of reply)
17.	Unit handover letter	17.05.2017 (As on page 86 at annexure-C-3 of complaint)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That in 2007, the respondent issued an advertisement announcing a group housing colony project "Premier terraces At Palm Drive" situated in Sector-66 , Gurugram and thereby invited applications from prospective buyers for the purchase of unit in the said project.
- II. The complainants were lured by such advertisements and booked a unit in the project by paying an amount of Rs.10,00,000/- dated 27.12.2009, towards the booking of the said unit bearing no. unit TPD-N-GF-05 on Ground Floor, Tower/Block-N), in Sector 66, having super area measuring 2125 sq. ft. to the respondent dated 27.12.2009 and the same was acknowledged by the respondent.
- III. That the respondent confirmed the booking of the unit to the original allottee providing the details of the project and confirmed the booking of the unit on 19.01.2010 for the total sale consideration of Rs.1,23,09,897/- along with car parking and other specifications
- IV. That a Buyer's Agreement was executed between the complainants and respondent on 10.07.2010. As per annexure of the buyer's agreement, the sale price of the said apartment was Rs.1,23,09,897/-. As per clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit by 10.07.2012 (i.e., 24 months from the date of agreement i.e. 10.07.2010) with a grace period of 90 days for applying and obtaining the Occupation Certificate. Therefore due date of possession comes out to be 10.07.2012.
- V. The complainants after many requests and emails received the offer of possession on 25.05.2015. 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 were actually not payable as per the Builder Buyer Agreement.

- VI. That the complainants had requested the respondent to show/inspect the unit but the respondent failed to reply. The respondent had asked the complainants to sign the indemnity bond as pre-requisite 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 were paid to the complainants but the respondent instead of paying the delay possession charges clearly refused to handover possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- VII. 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 08.12.2015. While this sale deed acknowledges that the complainants have paid the total consideration towards full and final consideration of the said apartment and applicable taxes etc, it makes no provision for compensating the complainants for the huge delay in handing over the unit and project
- VIII. That the complainants believe that completion certificate, grant of which is mandatory for every residential project is yet to be granted to respondent. in respect of The Palm Drive. This demonstrates that delay is occurring and alive till date for the complainants in the Palm Drive.
- IX. 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 allottee 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.

C. Relief sought by the complainants:

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

- i. Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said unit from the due date of possession till the actual handing over of possession.
- 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 and for not getting the project registered.
- v. Set aside the one-sided indemnity bond and settlement agreement signed by the respondent from the complainants under undue influence.

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 by the respondent.

6. The respondent has contested the complaint on the following grounds: -

- I. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants have been enjoying the unit without any demur/protest. That the possession was offered to the original allottees on 23.04.2015 and the unit was handed over on 10.06.2015 and thereafter, the conveyance deed has been executed on 08.12.2015, whereas the present complaint has been filed on 14.12.2022, i.e. after almost 7 years and 6 days from the date of execution of the conveyance deed.
- II. The complaint is admittedly belated and barred by limitation period of 3 years. In view of the facts as stated above, the present complaint deserves to be dismissed with heavy costs.मेव जयते
- III. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number TPD N-GF-05, Ground Floor, admeasuring 2125 sq. ft. (tentative area)
- IV. That thereafter, the respondent issued the provisional allotment letter on 19.01.2010 to the complainants. Subsequently, the Buyer's Agreement was executed between the parties on 10.07.2010. It is submitted that the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was essential, crucial and an indispensable requirement under the Buyer's Agreement.
- V. As per clause 14 of the Buyer's Agreement the respondent undertook to handover the possession of the unit within 24 months from the date of

execution of the Buyer's Agreement. Furthermore, the Respondent is entitled for a grace period of 90 days.

- VI. That the 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 Buyer's Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Buyer's 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.
- VII. That the complainants having defaulted in payment of instalments, are thus not entitled to any compensation or any amount towards interest under the Buyer's Agreement. It is submitted that the complainants by way of instant complaint are demanding interest for alleged delay in delivery of possession.
- VIII. The respondent applied for Occupation Certificate on 27.06.2013 and obtained the same on 01.04.2015. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by 10.07.2012 are wrong, malafide and result of afterthought in view of the fact that the complainants had made several payments to respondent even after July, 2012. Infact, the last payment was received from the complainants in 2015, if there was infact a delay in delivery of project then the complainants would not have remitted instalments after July, 2012.
- IX. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit to the complainants and the Conveyance Deed has also been executed.

- X. That the complainants were offered possession of the unit in question through letter of offer of possession dated 25.05.2015 That thereafter, an indemnity cum undertaking for possession on 30.04.2015 was executed by the complainants in favour of the whereby the complainants 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.
- XI. That subsequently, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 10.06.2015 was executed by the complainants
- XII. That it is pertinent to mention that after execution of the unit handover letter dated 10.06.2015 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainants have further executed a conveyance deed on 08.12.2015.
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.
- E. Jurisdiction of the authority**
8. The respondent has raised a preliminary objection/submission that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of the complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

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.

E. 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.

F. Findings on the objections raised by the respondent.

F. I Whether the complainant can claim delayed possession charges after execution of the conveyance deed ?

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 08.12.2015 and the transaction between the parties stands concluded upon the execution of conveyance deed.

13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
14. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as *Varun Gupta V/s Emaar MGF Land limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
15. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retains the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

F.II. Whether the complaint is barred by limitation or not?

16. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

17. It is also observed that 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** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
18. In the present matter the cause of action arose on 25.05.2015 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 02.01.2023 which is 7 years 7 months and 9 days from the date of cause of action. The complaint has not been filed within a reasonable period of time nor have the complainants explained any grounds for the delay in filing the same. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.

G. Findings regarding relief sought by the complainant

- G.I Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.**
- G.II Direct the respondent to deliver the Golf Driving Range at the designated location as promised at the time of booking.**
- G.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.**
- G.IV Initiate penal proceedings against the respondent on account of violation of various provisions of the Act,2016 and for not getting the project registered.**

19. In the present complaint, the buyer's agreement was executed on 10.07.2010. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the allottees by 10.10.2012. The


respondent is also entitled to the grace period of 90 days. Thus, the due date comes out to be 10.10.2012.

20. 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 10.07.2010. According to the terms of this agreement, possession of the unit was to be offered within 24 months from the date of execution of the Buyer's Agreement plus an additional 90 days grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the grace period was 10.10.2012. The respondent obtained the occupation certificate for the relevant tower on 01.04.2015. An offer of possession was made to the complainants on 25.05.2015, and the unit was formally handed over on 10.06.2015, as indicated by the handover letter dated 10.06.2015. The conveyance deed was executed in favour of the complainants on 08.12.2015.
21. As per Clause 11 of the Conveyance Deed dated 08.12.2015, the complainants have themselves agreed to have taken possession of the unit after being fully satisfied from the construction, installations, specifications as agreed. The complainants have taken possession of the unit after being completely satisfied with the specifications, facilities, installations of the subject unit and thereafter participated in the execution of the conveyance deed. Further, the Conveyance deed concludes the liabilities of the promoter except the statutory rights provided under the Act, 2016.
22. The cause of action for this complaint arose on 25.05.2015, when possession was offered. The complainants filed the present complaint on 02.01.2023, resulting in a delay of 7 years and 7 months and 9 days from the date the cause of action arose. Consequently, the complaint is dismissed being barred by limitation.

23. Complaint stands disposed of.

24. File be consigned to the registry.

Dated: 09.10.2024


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



HARERA
GURUGRAM