

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

Complaint no. : 3097 of 2021
First date of hearing: 19.10.2021
Order reserved on : 09.01.2024
Order pronounced on: 13.08.2024

Niti Batra

R/o: R-282, Greater Kailash-1, New Delhi-110048

Complainant

Versus

Emaar MGF Land Ltd.

Registered address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi, Delhi 110017

Also, at: ECE, House, 28 Kasturba Gandhi Nagar, New
Delhi - 110001

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Jagdeep Kumar
Shri Dhruv Rohatgi

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 17.08.2021 has been filed by the complainant 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. 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 of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019

7	Unit no.	GGN-16-0302, 3 rd floor, building no. 16 [annexure P3, page 51 of complaint]
8	Provisional allotment letter to the original allottee i.e Mr. Bibek Singh dated	28.01.2013 [annexure P2, page 36 of complaint]
9	Date of execution of buyer's agreement	10.05.2013 [annexure P3, page 48 of complaint]
10	Possession clause	<p>14. POSSESSION</p> <p><i>(a) Time of handing over the Possession</i></p> <p><i>Subject to terms of this clause and barring force majeure conditions, subject to the 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 compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company</i></p>

		<p><i>shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(emphasis supplied)</p> <p>[annexure P3, page 64 of complaint]</p>
11	Date of start of construction as per statement of account dated 20.08.2021 at page 118 of reply dated	14.06.2013
12	Due date of possession	14.11.2016 [Note: Grace period is included]
13	Total consideration as per statement of account dated 20.08.2021 at page 117 of reply	Rs.92,82,341/-
14	Total amount paid by the complainant as per statement of account dated 20.08.2021 at page 119 of reply	Rs.93,12,601/-
15	Occupation certificate	05.12.2018 [annexure R7, page 122 of reply]
16	Offer of possession to the original allottees	14.12.2018 [annexure R9, page 128 of reply]
17	Complainant is subsequent allottee	The respondent acknowledged the complainant as allottee vide nomination letter dated

		16.02.2019 (annexure, P7, page 117 of complaint) in pursuance of agreement to sell dated 10.01.2019 (annexure P5, page 101 of complaint) executed between the complainant and the original allottees (Mr. Bibek Singh and Mr. Pranav Malhotra).
18	Unit handover letter executed by complainant on	13.04.2019 [annexure R10, page 134 of reply]
19	Conveyance deed executed by complainant on	18.04.2019 [annexure R11, page 135 of reply]
20	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 20.08.2021 at page 119 of reply	Rs.3,08,799/-

B. Facts of the complaint

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

- i. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate

authorities for the construction and completion of the real estate project sold by them to the consumers in general.

- ii. That the said flat was purchased under resale by Mr. Y Guglani S/o Mr. G D Guglani (Father of Complainant) , R/o R-76, GK-1, New Delhi 110048 from Mr. Bibek Singh S/o Sabha Narayan Singh and Mr. Pranav Malhotra S/o Ashok Kumar, on 24.01.2013 by executing agreement to sell between Mr. Y Guglani S/o Mr. G D Guglani resident of R/o R-76, GK-1, New Delhi 110048 and Mr. Bibek Singh S/o Sabha Narayan Singh & Mr. Pranav Malhotra S/o Ashok Kumar. After execution of agreement to sell with original buyer, when Mr. Y Guglani S/o Mr G D Guglani approach M/s. Emaar MGF land Ltd for name substitution in favour of complainant in records of M/s. Emaar MGF land Ltd for above said flat, the respondent company demanded indemnity-cum-undertaking from Mr. Y Guglani, stating that complainant will not claim any delay possession charges in the event of any delay in possession of said flat, Mr. Y Guglani found such demand of respondent company unjustified, unilateral and one-sided and due to the unfair trade practice of respondent company & under compulsion of respondent company to furnish indemnity cum undertaking, complainant decided to complete the name substitution formalities after the completion of project because respondent company left no other options to the complainant and complainant start paying all installments to respondent company as per the "agreement of sell" executed with Mr. Bibek Singh S/o Sabha Narayan Singh and Mr. Pranav Malhotra S/o Ashok Kumar, thus stepping into the shoes of the original allottee.

- iii. That the respondent issue provisional allotment letter to original buyers on dt 28.01.2013, original buyer & complainants found provisional allotment letter consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainants, will cost him forfeiting of 15% of total consideration value of unit. When complainants opposed the unfair trade practices of respondent about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of rs 7.5 per sq ft per month in case of delay in possession of flat by company. Complainant along with original buyer opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainants because if complainants stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainants. Thereafter on 10th May 2013 builder buyer agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.
- iv. That the flat was offered to the original allottee for a total sale consideration exclusive of taxes is Rs. 87,69,983/- hereinafter referred to as "sale consideration". The complainant made payment of the amount to original allottee as paid by him to respondent and all the rest of amount was paid to the respondent by complainant only as and when demanded. However, the respondent has

breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 14 June 2016.

- V. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent was offered the possession on dated 14th December 2018 with stringent condition to pay certain amounts which are never be a part of agreement and respondent did not receive the completion certificate of various other towers of the project and as on 14th December 2018 project was delayed approx. two years and six months. At the time of offer of possession builder did not adjust the penalty for delay possession. In case of delay payment, builder charged the penalty @24% per annum and in delay in possession give the Rs. 7.5/- sq ft only, this is illegal, arbitrary, unilateral and discriminatory. Respondent did not even allow complainants to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the offer of possession. Respondent demanded two-year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lean marked FD of Rs. 3,26,605/- in pretext of future liability against HVAT which are also an unfair trade practice. Complainants informed the respondent about his unfair trade practice about delay possession penalty and also enquires the construction status of rest of project through telephonically, but respondent does not

want to answer any enquiry before getting complete payment against his final demand. That the respondent left no other option to complainants, but to pay the payment of two-year maintenance charges Rs. 1,44,540/- and Fixed Deposit of Rs. 3,26,605/- with a lien marked in favour of Emaar MGF Land Limited, and payment towards e-Stamp duty and Rs. 45000 towards registration charges of above said unit no. 0302, Tower 16, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. Respondent give physical handover of aforesaid property on date as 13.04.2019 after receiving all payments on 22.01.2019 from complainants. After announcement of offer of possession by respondent company, Mr. Y Guglani S/o Mr G D Guglani again initiated name substitution process with M/s. Emaar MGF Land Ltd on 10th January 2019 and by the virtue of agreement of sell executed on 24th January 2013 between Mr. Y Guglani S/o Mr G D Guglani and original allottee, Mr. Y Guglani get new agreement to sell executed between original buyer and complainant on demand of respondent and get this flat transferred in the name of complainant Ms Niti Batra D/o Mr. Y Guglani.

- vi. That the respondent confirmed nomination of the complainants for the said flat through nomination letter dt. 16.02.2019 and endorsement on the buyer's agreement on 16.02.2019. That on 16.02.2019 the respondent issued a nomination letter in which respondent confirms that the nomination formalities having completed and accordingly now the captioned property stands in the name of complainants and respondent also confirm having received a total sum of Rs. 92,82,958/-.

VII. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent illegally restrained the complainant from 24th January 2013 to 16th February 2019 to get the flat on her name from original buyer by compelling to furnish indemnity cum undertaking and because of that very illegal demand of respondent, complainant suffers mental harassment of almost 6 years and complainant made all the payments since after 24 January 2013 under a hostile environment created by respondent. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainants to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project. The cause of action is continuing and is still subsisting on day-to-day basis.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

D. Reply filed by the respondent.

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

- I. 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. The present complaint deserves to be dismissed on this ground alone.
- II. That the instant complaint is barred by limitation. The complainant has alleged that the respondent was obligated to offer possession of the unit in question by June, 2016 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favor of the complainant in 2016 and consequently the instant complaint is barred by limitation. It is also pertinent to mention that the complainant filed the complaint before HRERA, Gurugram after the execution of the conveyance deed as all the terms and conditions as per the buyers agreement stands fulfilled in the eyes of law. It is also submitted that the complaint is been filed just to harass everyone.
- III. That the original allottee had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the original allottee

conducted extensive and independent enquiries with regard to the project and it was only after the original allottee was fully satisfied about all aspects of the project, that he took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question. That thereafter the original allottee vide an application form applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no ggn-16-0302, located on the third floor, in the project vide provisional allotment letter dated 28.01.2013. the original allottee consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he 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 their favor. That thereafter, buyer's agreement dated 10.05.2013 was executed between the original allottee and the respondent.

- IV. That it is pertinent to mention that the original allottee as well as the complainant were irregular in payment of instalments. the respondent was constrained to issue reminders and letters to them requesting him to make payment of demanded amounts. Payment request letters, reminders etc, had been got sent to the complainant by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainant to timely discharge his outstanding financial

liability but to no avail. That it is submitted that the original allottee as well as the complainant 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 an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The Complainant chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainant. That clause 16 of the buyer's agreement further 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. complainant, having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards

interest under the buyer's agreement. It is submitted that the Complainant by way of instant complaint is demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. That is further submitted that despite there being a number of defaulters in the project, the Respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 13.04.2018. occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-835/AD(RA)/2018/33193 dated 05.12.2018.

- V. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions

incorporated in the buyer's agreement. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the Complainant that possession was to be delivered by June 2016 are wrong, malafide and result of afterthought in view of the fact that the complainant had made several payments to respondent even after June, 2016. Infact, the last payment was received from the complainant in January 2019. It is submitted that if there was a delay in delivery of project as alleged by the complainant, then the complainant would not have remitted instalments after June 2016. The allegations put forth by the complainant qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case. It is further reiterated that the alleged due date of proposed handover of possession is misconceived. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant. Furthermore, the project of the Respondent has been registered under RERA Act, 2016 and HRERA Rules, 2017. However, since the Respondent has delivered possession of the units comprised in the relevant part of the project, the registration of the same has not been extended thereafter.

- VI. That the complainant was offered possession of the unit in question through letter of offer of possession dated 14.12.2018. 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. However, the complainant

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. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. 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. The respondent in order to settle the unwarranted controversy needlessly instigated by the complainant proceeded to credit an amount of Rs. 3,08,799/- to the account of the Complainant in full and final satisfaction of his alleged grievances. Moreover, it is pertinent to mention that the respondent has also credited a sum of Rs. 12,174/- as benefit on account of Anti-Profiting. 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 principle 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 (DPC) or any taxes/statutory payments etc. That after receipt of the aforesaid amount, the complainant

approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 13.04.2019 was executed by the Complainant, 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. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the Complainant to institute or prosecute the instant complaint. The Complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the Respondent.

- VII. That it is pertinent to mention that after execution of the unit handover letter dated 13.04.2019 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further executed a conveyance deed dated 18.04.2019 in respect of the unit in question. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. It is pertinent to take into reckoning that the complainant has obtained possession of the unit in question and has executed conveyance deed in respect thereof, after receipt of the amount of Rs. 3,08,799/- from the respondent. The instant complaint is a gross misuse of process of law. The contentions advanced by the

Complainant in the false and frivolous complaint are barred by estoppel.

- VIII. That in addition thereto, it is respectfully submitted that the complainant has executed an indemnity cum undertaking dated 01.03.2019 whereby the complainant had 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. Moreover, the Complainant has admitted his obligation to discharge their HVAT liability thereunder. The Complainant has preferred the instant complaint in complete contravention of his earlier representations and documents executed by them. The complainant has filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to his unjust and illegitimate demands.
- IX. It is pertinent to mention that complainant on execution of the agreement to sell in their favour from the erstwhile allottees had approached respondent requesting it to endorse the provisional allotment of the unit in question in her name. The complainant had further executed affidavit and an indemnity cum undertaking whereby complainant had consciously and voluntarily declared and affirmed that she would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by Complainant that having been substituted in the place of the original allottees, they were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from

the respondent. Similarly, the Original Allottee had also executed an affidavit and indemnity cum undertaking on the same lines. Furthermore, the respondent, at the time of endorsement of the unit in question in their favour, had specifically indicated to complainants that the original allottee had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disentitled himself for any compensation/interest. The respondent had conveyed to complainants that on account of the defaults of the original allottee, complainant would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by complainant. The complainant is conscious and aware of the fact that she is not entitled to any right or claim against respondent. The complainant has intentionally distorted the real and true facts and has filed the present complaint in order to harass the respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law. That in the manner as aforesaid, the complainants stepped into the shoes of the original allottee. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

6. 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

7. 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 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

8. 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.

9. 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 jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

10. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the

agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

11. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in

accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

12. The original allottee i.e., Bibek Singh was allotted a unit bearing no. GGN-16-0302, on the 3rd Floor of Building -16, in project of the respondent named "Gurgaon Green" at Sector-102, Gurugram vide provisional allotment letter dated 28.01.2013 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 10.05.2013. The occupation certificate was received from the competent authority on 05.12.2018 and possession of the unit was offered to the original allottee vide offer of possession letter dated 14.12.2018. Thereafter, the original allottee requested the respondent to transfer/sell the said unit to the complainant vide agreement to sell dated 10.01.2019. Accordingly, the respondent vide nomination letter dated 16.02.2019 confirming substitution of name in the aforementioned apartment and the said apartment was transferred/endorsed in the name of the complainant. Further, the possession of the unit was handed over to the complainant

herein vide unit handover letter dated 13.04.2019. Also, the conveyance deed dated 18.04.2019 was also executed by it in favour of the complainant in respect of the said unit.

13. Considering the above-mentioned facts, the authority is of the view that the complainant herein is a subsequent allottee who had purchased the apartment from the original allottee on 10.01.2019 i.e., at such a time when the possession of the subject unit was already offered to the original allottee. It simply means that the ready to move-in property was offered to the complainant and he was well aware about the fact that the construction of the tower where the subject unit is situated has already been completed and the possession of the same has been offered to the original allottee on 14.12.2018 after issuance of the occupation certificate by the concerned authority. Moreover, they have not suffered any delay as the subsequent allottee/complainant herein came into picture only on 16.02.2019 i.e., after offer of possession which was made on 14.12.2018 to the original allottee. So, there is no equity in favour of the complainant. The conveyance deed has already been executed in favour of the complainant herein on 18.04.2019. Hence, in such an eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainant as there is no infringement of any of his right (being subsequent allottee) by the respondent-promoter.

14. In the light of the facts mentioned above, the complainant herein who have become a subsequent allottee at such a later stage is not entitled



to any delayed possession charges as she has not suffered any delay in the handing over of possession. Hence, the claim of the complainant w.r.t. delay possession charges is rejected being devoid of merits.

15. Hence, no case for DPC is made out.
16. Complaint as well as applications, if any, stands dismissed being not maintainable. The case stands disposed off accordingly.
17. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.08.2024