

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

Complaint no. : 3411 of 2021  
Order reserved on : 02.07.2024  
Order pronounced on: 22.10.2024

Harvinder Pal Singh  
R/o: 16/57, West Punjabi Bagh, New Delhi- 110026,  
India.

**Complainant**

Versus

1. M/s Emaar MGF Land Ltd.  
**Registered office at:** 306-308, 3<sup>rd</sup> floor, Square One,  
C-2, District Centre, Saket, New Delhi-110017.
2. Lalit Kumar Tyagi and Mrs. Savita Tyagi  
**Both RR/o:** - House No. 559, Second Floor, Sector-15-  
I, Gurugram

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Jagdeep Kumar  
Shri Dhruv Rohtagi  
Shri Tarun Kumar

Advocate for the complainant  
Advocate for the respondent no. 1  
Advocate for the respondent no. 2

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all

obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

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

S. No.	Heads	Information
1.	Project name and location	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	<b>Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.</b>
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	<b>01 of 2019 dated 02.08.2019</b>
	Extension valid up to	31.12.2019
7.	Occupation certificate granted on	05.12.2018 [annexure R7, page 119 of reply]
8.	Allotment letter dated	27.01.2013 [annexure P1, page 30 of complaint]
9.	Unit no.	GGN-14-0901, 9 <sup>th</sup> floor, building no. 14 [annexure P2, page 52 of complaint]
10.	Unit measuring	1650 sq. ft. [Page 52 of complaint]
11.	Date of execution of buyer's agreement	16.05.2013



		[annexure P2, page 49 of complaint]
12.	Payment plan	Construction linked payment plan [Page 80 of complaint]
13.	Possession Clause	<b>14. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>Subject to terms of this clause and barring force majeure conditions, and 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 <b>Unit within 36 (Thirty Six) months from the date of start of construction</b>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the <b>Company 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.</b></i>
14.	Date of start of construction as per statement of account dated 03.09.2021 at page 116 of reply	14.06.2013
15.	Due date of possession	14.11.2016 [Note: - calculated from the date of start of construction i.e., 14.06.2013 + 5 months grace period]
16.	Total consideration as per statement of account dated 03.09.2021 at page 116 of reply	Rs.95,65,405/-
17.	Total amount paid by the complainant as per statement of account dated 03.09.2021 at page 117 of reply	Rs.95,95,833/-



18.	<b>Date of offer of possession to the complainant herein</b>	12.12.2018 [annexure R9, page 125 of reply]
19.	Unit handover to the complainant herein	05.05.2019 [annexure R10, page 130 of reply]
20.	Conveyance deed executed between the complainant herein and the respondent no. 1	09.05.2019 [annexure R11, page 131 of reply]
21.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 03.09.2021 at page 117 of reply	Rs.3,08,799 /-
22.	Agreement to sell by the complainant herein and the Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi	27.02.2021 (As per impleadment application at page no. 4 of the application)
23.	Sale deed executed between the complainant herein and the Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi	16.08.2021 (As per impleadment application at page no. 10 of the application)

**B. Facts of the complaint**

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

- i. That somewhere in the month of January 2012, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent. On 30.01.2012, the complainant had a meeting with the respondent where the respondent explained the project details and highlighted the amenities of the project like Joggers Park, Joggers Track, rose garden, 2 swimming pool, amphitheater and many more. Relying on these details, the complainant enquired about the availability of flat on 9<sup>th</sup> floor in tower 14 which was a unit consisting area of 1650 sq. ft. It was



assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to him and assured that the allotment letter and builder buyer agreement for the said project would be issued to him within one week of booking. The complainant, relying upon those assurances and believing them to be true, booked a residential flat bearing no. 0901 on 9<sup>th</sup> floor in tower no. 14 in the said project measuring approximately super area of 1650 sq. ft. Accordingly, he paid Rs.7,50,000/- as booking amount on 30.01.2012.

- ii. That on 27.01.2013, approximately after 1 year, the respondent issued a provisional allotment letter containing very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause was drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiture of 15% of total consideration value of unit. Respondent exceptionally increased the net consideration value of flat by adding EDC, IDC and PLC and when complainant opposed the unfair trade practices of respondent, he was informed that EDC, IDC and PLC are just the government levies, and they are as per the



standard rules of government. Further, the delay payment charges will be imposed @ 24% which is standard rule of company and company will also compensate at the rate of Rs.7.50/- per sq. ft. per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but there was no other option left with him because if he stops the further payment of installments then in that case, respondent may forfeit 15% of total consideration value from the total amount paid by the complainant. Thereafter, on 16.05.2013, the buyer's agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.

- iii. That as per the clause 14 of the said buyer's agreement dated 16.05.2013, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period thereon from the date of start of construction. The proposed possession date as per buyer's agreement was due on 14.06.2016. However, the respondent has breached the terms of said buyer's agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the buyer's agreement.
- iv. That from the date of booking 30.01.2012 and till 12.12.2018, the respondent had raised various demands for payment of



installments towards sale consideration of the said flat and the complainant had duly paid and satisfied all those demands as agreed in the flat buyer's agreement without any default or delay on his part and had also otherwise fulfilled his part of obligations as agreed in the flat buyer's agreement. The complainant was and had always been ready and willing to fulfill his part of agreement, if any pending.

- v. That as per the statement dated 12.08.2019, issued by the respondent, the complainant had already paid Rs.92,87,034/- towards total sale consideration and applicable taxes as demanded by the respondent from time to time and now nothing is pending to be paid on the part of complainant. Although, the respondent charged Rs.1,12,576/- extra from the complainant.
- vi. That the possession was offered by respondent through letter "Intimation of Possession" dated 12.12.2018 which was not a valid offer of possession because respondent had offered the possession with stringent condition to pay certain amounts which were never part of agreement. At the time of offer of possession, builder adjusted the delay penalty @ Rs.7.5/- sq. ft. per month (from proposed handing over date 14.06.2016 to actual date of offer of possession i.e., 12.12.2018). Respondent demanded Rs.1,44,540/- towards two-year advance maintenance charges from complainant which was never agreed under the buyer's agreement and respondent also demanded a lien marked FD of Rs. 3,31,327/- on

pretext of future liability against HVAT which are also unfair trade practice. The respondent demanded Rs.4,13,500/- towards e-stamp duty and Rs.45,000/- towards registration charges of above said unit in addition to final demand raised by respondent along with offer of possession. The respondent gave physical handover of aforesaid property on 05.05.2019 only after receiving indemnity-cum-undertaking from the complainant.

vii. That after taking possession of flat on 05.05.2019, the complainant also identified some major structural changes which were done by respondent in project in comparison to features of project narrated to him on 30.01.2012 at the office of respondent. The area of the central park was told 8 acres but in reality, it is very small as compared to 8 acres; respondent-built car parking underneath 'Central Park', respondent charged PLC of Rs.4,95,000/- from the complainant on the pretext of Central Park. Respondent did many structural changes and cut down on the internal features of the project based on which the respondent sold this flat to the complainant and other buyers of this project.

viii. That on 20.01.2019, complainant telephonically informed the respondent that the respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified as per the Act. The complainant made it clear to the respondent that if it does not compensate the



complainant at the same rate of interest then the complainant will approach the appropriate forum to get redressal.

- ix. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat within the agreed timelines as agreed in the buyer's agreement and otherwise. That on 12.12.2018, there has been total delay of 2 years and 6 months. The cause of action accrued in the favour of the complainant and against the respondent on 30.01.2012 when the said flat was booked by the complainant, and it further arose when respondent failed/neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

**C. Relief sought by the complainant**

4. The complainant is seeking the following relief:

- i. Direct the respondent to pay 18% interest 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.
- ii. Any other relief/order or direction which this authority may deems fit and proper considering the facts and circumstances of the present complaint.

**D. Reply filed by the respondents**

5. The respondent no. 1 has contested the complaint on the following grounds:



- i. That present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 16.05.2013. 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. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- ii. That the complainant 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-14-0901, located on the 9<sup>th</sup> floor, in the project vide provisional allotment letter dated 27.01.2013. The complainant 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 complainant and proceeded to allot the unit in question in their favor.

- iii. That thereafter, buyer's agreement dated 16.05.2013 was executed between the complainant and the respondent. The complainant was irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the complainant 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. Statement of account dated 03.09.2021 as maintained by the respondent in due course of its business depicts the delay in remittance of various payments by the complainant.
- iv. That 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.

- v. That clause 14(b)(v) of the buyer's agreement provides that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that the complainant has defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to be determined in the manner sought to be done by the complainant. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- vi. 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. The occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-835/AD(RA)/2018/33193 dated 05.12.2018. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the

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

- vii. 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 the Act and the rules. Registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-139/2017/2294 dated 05.12.2017. 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.
- viii. That the complainant was offered possession of the unit in question through letter of offer of possession dated 12.12.2018. 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.

- ix. That 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.64,284/- 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/complainant 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/complainant towards delayed payment charges or any taxes/statutory payments etc.





- x. 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 05.05.2019 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. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint.
- xi. That after execution of the unit handover letter dated 05.05.2019, 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 09.05.2019 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.
- xii. That several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. 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 whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainant. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

**D.II Reply by the respondent no. 2**

6. The respondent no. 2 has contested the complaint on the following grounds.
  - i. That the "agreement to sell" for flat no. 901, in tower 14, Gurgaon Greens, Sector 102, Gurugram, Haryana was executed on 27.02.2021 between the complainant and respondent no. 2, and the sale deed was executed for the same on 16.08.2021.
  - ii. That as per clause no 3 of "agreement to sell" was executed on 27.02.2021, between the complainant and respondent no. 2, the complainant expressly inform the respondent no. 2 about the claim of delay Possession interest as per RERA Act 2016 was accrued to complainant against the respondent no. 1 due to delay in

providing possession of the said unit. That the complainant and respondent No. 2 are bound with the contractual agreement. Relevant portion of clause no. 3 of "agreement to sell" dated 27.02.2021 is reproduce for ready reference of this Authority.

*"That the First Party assures the Second Party that the aforesaid Property is free from any type of encumbrances, notice, attachments, pre-agreement, lien, mortgage and disputes of any nature. First Party also informed Second Party that, First Party is perusing one claim of Delay Possession Interest as per RERA Laws with Builder (M/s. Emaar MGF Land Ltd), since builder is not resolving the issue amicably, now first party filing a Complaint in Gurugram RERA Authority to claim his Delay Possession Interest, for which cause of action had already accrued to the First Party well before executing Conveyance Deed, due to delay in delivery of Possession and First Party only has the right to claim delay possession interest and Second Party agree to this and the Second Party Undertakes that it shall not raise any similar or identical claim and will not dispute the claims of First pParty against Builder and Second Party will assist First Party in case of any documents required in future while pursuing the Complaint with HRERA and other Courts. First Party also assures the Second Party that claim of Delay Possession interest will not create any encumbrance or dispute on the Property. That in event of refusal or avoidance, by the First Party to complete the transaction as mentioned above in favour of the Second Party or His/Her nominee(s), the Second Party shall have the absolute right to get the said property transfer/registered by a specific performance through the court of Law or in case the Second Party fails to pay the said balance amount before 21" August 2021 than the first party will be authorized to forfeit the said earnest money. In case of any dispute the jurisdiction of Gurugram Courts will only apply."*

- iii. That we do not have any objection and pecuniary interest in the claim raised by the complainant against the respondent no. 1 as the same was accrued to the complainant only at the time of taking possession of the allotted unit from respondent no. 1 while the complainant having the status of allottee of flat.
- iv. That the respondent no. 2 have made the payment of entire sale consideration to complainant herein as mutually agreed between

the complainant and respondent no. 2 in "agreement to sell" executed on 27.02.2021 and now the complainant and respondent no. 2 do not have any claim pending against each other in respect of the allotted unit.

**E. Written submission filed by the complainant as well as respondent no. 1.**

7. The complainant and respondent no. 1 have filed the written submissions on 16.08.2024 and 10.10.2023 respectively which are taken on record. The additional facts apart from the complaint has been stated by the complainant in written submissions are mentioned below:-

- a. That the complainant herein sold the said unit to third party (Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi W/o Lalit Kumar Tyagi) on 16.08.2021 by executing sale deed no. 3242 dated 16.08.2021) after two years of executing conveyance deed (Vasika No. 1562 dated 09.05.2019) between the complainant and respondent no. 1. Now, the owner of said flat by executing sale deed between the complainant and Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi. There is no relationship of buyer's and builder between the Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi and respondent/builder (Emaar India Limited) and with combined reading of section 2(d) and section 11(4)(a) Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi, does not fall under the definition of allottees with respect to buyer's agreement executed on 16.05.2013 as there is no endorsement on buyer's

agreement in favour of Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi and they come into the shoes of owner not in allottee by the virtue of sale deed executed between the complainant and Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi. In no circumstances a third party can raise a claim of delay possession interest against the respondent, contentions raised by learned council of respondent does not have any substance.

- b. That the present complaint was first disposed off by this Authority vide orders date 15.12.2021, with the directions of delayed possession charges from the due date till the offer of possession plus two months. Before the disposal of the complaint the original allottee sold his unit to a subsequent allottee by executing an agreement to sell 27.02.2021 and later executed the sale deed on 16.08.2021. As per the order of Hon'ble Tribunal dated 26.04.2023, the case has been remanded back for fresh decision by impleading the subsequent buyer (Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi). It has been observed that neither the complainant nor the defendant bothered to implead the subsequent purchaser as a party in the proceedings. The complainant has filed an application dated 15.05.2023 through Counsel for impleadment whereas it is stated that after conveyance deed got executed the complainant sold his flat to Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi by executing an agreement to sell on 27.2.2021 and later executed the sale deed on

- 16.08.2021. The said application for impleadment was allowed vide order dated 01.08.2023 by this Authority.
- c. That as per clause 3 of agreement to sell dated 27.02.2021, subsequent allottees were informed that the complainant is perusing one claim of DPC as per RERA laws against the respondent. Further, impleading the respondent no. 2, filed reply on 07.03.2024, and confirm to this Authority that they have no objection and pecuniary interest in the claim raised by the complainants.
- d. That in present matter the complainant only has the right to claim the delay possession charges, because the complainant transfer the property though sale deed after executing conveyance deed with the respondent and there is no buyer's agreement was endorsed in favour of subsequent owner Mr. Lalit Kumar Tyagi & Mrs. Savita Tyagi, and through the virtue of conditions specified in clause 3 of agreement to sell dated 27.02.2021 and the respondent no. 2 also filed reply on 07.03.2024 and confirm to this Authority that they have no objection and pecuniary interest in the claim raised by the complainants.
8. The respondent no. 1 has filed the written submissions on 10.10.2023, which are taken on record. No additional facts apart from the reply has been stated the written submissions.
- F. Jurisdiction of the authority**



9. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I Territorial jurisdiction**

10. 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.

**F.II Subject-matter jurisdiction**

11. 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.*

12. 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.

**G. Findings on the objections raised by the respondent no. 1**

**G.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act and provisions of the Act are not retrospective in nature.**

13. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into force of the Act. 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)* 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."*

14. 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."*

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer 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 buyer's 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 the Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

**G.II Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate.**

16. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 13.04.2018 and thereafter vide memo no. ZP-835-AD(RA)/2018/33193 dated 05.12.2018, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiency in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 05.12.2018 that an incomplete application for grant of OC was applied on 13.04.2018 as fire NOC from the competent authority was granted only on 21.11.2018 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 11.10.2018. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 31.10.2018 and 02.11.2018 respectively. As such, the application

submitted on 13.04.2018 was incomplete and an incomplete application is no application in the eyes of law.

17. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 21.11.2018 and consequently the concerned authority has granted occupation certificate on 05.12.2018. Therefore, in view of the deficiency in the said application dated 13.04.2018 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

**G.III Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.**

18. The respondent contended that at the time of taking possession of the subject flat vide unit hand over letter dated 05.05.2019, the complainant had certified himself to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that he does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the



respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied.

19. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that the unit handover letter and indemnity cum undertaking executed at the time of taking possession, does not preclude the allottees from exercising their right to claim delay possession charges as per the provisions of the Act.
20. In light of the aforesaid order, the complainants are entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.
- H. **Findings on the relief sought by the complainant.**
  - H.I **Direct the respondent to pay 18% interest 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.**
21. That the present complaint was disposed off vide order dated 15.12.2021, *with the directions of delayed possession charges from the due date till the offer of possession plus two months.* Aggrieved with the same, the order was challenged by the respondent no. 1 before the Haryana Real Estate Appellate Tribunal, Chandigarh and the tribunal vide order dated 26.04.2023, set aside the same with a direction to the Authority for fresh decision of the compliant after considering all the issues as highlighted above after affording opportunity of hearing to all the stakeholders. So, in pursuant to those direction, both the parties put



in appearance before the authority. Therefore, the complaint is being dealt by the authority.

22. Before the disposal of the complaint the original allottee sold his unit to a subsequent allottee by executing an agreement to sell dated 27.02.2021 and later executed the sale deed on 16.08.2021. It has been observed that neither the complainant nor the defendant bothered to implead the subsequent purchaser as a party in the proceedings. The complainant has filed an application for impleadment of present allottees of the subject unit i.e., Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi as respondent no. 2 vide application dated 15.05.2023 wherein it is stated that the complainant after execution of conveyance deed with the respondent no. 1, sold the flat to Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi (respondent no. 2) vide agreement to sell dated 27.02.2021 and later executed the sale deed in favour of respondent no. 2 on 16.08.2021. Therefore, in the interest of justice, the name of Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi to be added in array of parties as respondent no. 2.
23. The Authority vide proceeding dated 01.08.2023, allowed the said application for impleadment and directed the registry of the Authority to issue notice to the subsequent purchaser/respondent no. 2 for appearing on the next date of hearing i.e., 10.10.2023.
24. The counsel for the respondent no. 2 appeared on 10.10.2023, and filed memo of appearance and requested for a short adjournment and to file a written statement in respect to the claim of the complainant. The said

request was allowed by the Authority. Accordingly, the respondent no. 2 filed the written statement on 07.03.2024.

25. The counsel for the respondent no. 2 during the course of hearing dated 02.07.2024, stated at bar that they have no objection if the relief of DPC is granted in favour of the complainant herein as per the mutual agreement i.e., 27.02.2021 entered between them at the time of agreement for sale.
26. After considering the above mentioned contention advanced by the parties, two issues arises before the Authority for consideration to arrive at a just conclusion as together
- i. Whether the complainant herein falls within the definition of allottee as per section 2(d) of the Act of 2016 and;
  - ii. Whether at the date of filing of complaint any cause of action to claim with regard to delayed possession charges survived in his favour?
27. First, of all it is admitted case of the complainant that the unit in question was allotted in his favour by the respondent/promoter on 16.05.2013 vide agreement to sell, and the complainant continued to pay for the same. It is also a fact that on the due date, the respondent/promoter was not able to complete the subject unit and failed to provide the offer of possession of the allotted unit. Admittedly, the possession of the unit was offered on 18.12.2018 instead of 14.11.2016, after a gap of more than 2 years. The conveyance deed of the allotted unit was executed in favour of complainant herein by the respondent/promoter on 09.05.2019. But after taking physical

possession of the allotted unit, the complainant sold the same to respondent no. 2 vide sale deed dated 16.08.2021 and transferred the physical possession in favour of respondent no. 2. The present complaint was filed on 01.09.2021 by the complainant/original allottee seeking delayed possession charges under section 18 of the Act of 2016. Now, the issue for determination that arise before the Authority is whether the complainant herein was an allottee at the time of filing of complaint as per provisions of section 2(d) of the Act of 2016 and the same is reproduced as under:-

*"2 In this Act, unless the context otherwise requires-  
(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, **has been allotted**, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes **the person who subsequently acquires the said allotment through sale, transfer or otherwise** but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

*(Emphasis supplied)*

Accordingly, following are allottees as per this definition:

**(a) Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.


**(b) Allottees after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

28. In the present complaint, the complainant is an not allottee under the Act as the complainant does not fall under any of the two categories

stated above reason being that the complainant has already transferred the subject unit in favour of Mr. Lalit Kumar Tyagi and Mrs. Savita Tyagi (subsequent allottees/present owners) vide agreement to sell dated 27.02.2021. After transferring the unit in question, the complainant does not have any right, title or interest in the said property. Thus, the complainant has no locus standi to claim delay possession charges under section 18 of the Act as she does not fall under the definition of allottee as define under section 2(d) of the Act 2016.

29. In light of the above-mentioned findings of the Authority, the complainant is not entitled to any relief and accordingly the present complaint stands dismissed being not maintainable. Pending applications, if any, also stands disposed off.
30. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 22.10.2024