BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 6369 of 2022
Complaint filed on : 27.09.2022
Date of decision: 01.10.2024

1. Mr. Surender Kumar Aggarwal
2. Mrs. Sunita Aggarwal

Both RR/o:- 164, Phulkain Enclave, Patiala, Punjab **Complainants**

Versus

M/s Emaar MGF Land Ltd.
Registered office at: ECE House, 28, Kasturba Gandhi Marg, New Delhi- 110001
Also at:- Emaar MGF Business Park, M.G. Road, Sikanderpur Chowk, Sector- 28, Gurgaon- 122002. **Respondent**

CORAM:
Shri Arun Kumar **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Gaurav Rawat (Advocate) Complainants
Shri Harshit Batra (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees 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 complainants, 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.	Project area	31.62 acres
3.	DTCP license no.	I. 228 of 2007 dated 27.09.2007. Valid/renewed up to 26.09.2019. II. 93 of 2008 dated 12.05.2008. Valid/renewed up to 11.05.2020. III. 50 of 2010 dated 24.06.2010. Valid/renewed up to 23.06.2020.
4.	Unit no. and size	L-1202, 12th floor, Tower-L measuring 1900 sq. ft. (super area) [Page no. 42 of complaint]
5.	Provisional allotment letter was issued in favour of Original allottee namely I.G.E. (India) Limited	25.10.2007 [Page no. 33 of reply]
6.	Date of execution of buyer's agreement between Original allottee and the respondent	11.03.2008 [page 39 of complaint]
7.	Original allottee transferred the unit to 1st subsequent allottee i.e., Jasdeep Singh Bhasin & Pawandeep Singh Bhasin vide nomination letter dated	03.05.2012 [Page no. 90 of reply]
8.	1st subsequent allottee transferred the subject unit in favour of the complainants i.e. Surender Agarwal & Sunita Agarwal vide	Agreement to sell dated 25.06.2016 [Page 35 of complaint] and the same was acknowledged by the respondent vide **nomination letter dated 28.08.2016** [Page no. 91 of reply]
9.	Possession clause	***14. POSSESSION***

		(a) Time of handing over the Possession *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 compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Apartment/Villa/Penthouse* ***by December 2010****. 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****.* (Emphasis supplied) [Page 56 of complaint]
10.	Due date of possession	31.03.2011 [**Note:** 90 days grace period is included]
11.	Total consideration as per statement of account dated 08.06.2023 at page 149 of reply	Rs.1,07,52,835/-
12.	Total amount paid by the complainant as per statement of account dated 08.06.2023 at page 149 of reply	Rs.1,07,52,836/-
13.	Occupation certificate	01.04.2015 [page 102 of reply]
14.	Letter of intimation of possession to the 1st subsequent allottees i.e., Jasdeep Singh Bhasin & Pawandeep Singh Bhasin	15.04.2015 [page 104 of reply]

15.	Possession offer letter issued by the respondent to the complainants herein	23.09.2016 [Page 85 of complaint]
16.	Unit handover letter issued in favor of the complainants herein	11.11.2016 [page 114 of reply]
17.	Conveyance deed executed between the respondent and the complainants herein	10.03.2017 [page 118 of reply]

B. Facts of the complaint

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

i. That in the year 2007, the respondent company issued an advertisement announcing a group housing colony project called "Premier Terraces At Palm Drive" at Sector - 66, Gurugram was launched by Emaar MGF Land Ltd. on the 45.48 acres of land, under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana, and Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.

ii. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely Palm Drive. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered

several such projects in the national capital region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.

iii. That relying on various representations and assurances given by the respondent company and on belief of such assurances, original allottee namely Jasdeep Singh Bhasin and Pawan Singh Bhasin, booked a unit in the project by paying an amount of Rs.10,00,000/- dated 11.10.2007, towards the booking of the said unit bearing no. L-1202 (12th floor, tower-L), in Sector 66, having super area measuring 1900 sq. ft. to the respondent dated 11.10.2007 and the same was acknowledged by the respondent. The total sale consideration of Rs.96,63,380/- along with car parking and other specifications of the allotted unit and providing the time frame.

iv. That a buyer's agreement was executed between the original allottee and respondent on 11.03.2008. As per annexure of the buyer's agreement the sale price of the said apartment shall be Rs.96,63,380/-.That would include the basic sale price, EDC, IDC, preferential location charges and exclusive right to use the dedicated car parking. Further, the complainants having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before by December 2010. They were also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of

owning a unit of the complainants was shattered due to dishonest, unethical attitude of the respondent. As per clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit by December 2010 with a grace period of 90 days for applying and obtaining the occupation certificate.

v. That the original allottees subsequently transferred/endorsed the property in favour of the complainants vide "Agreement to Sell dated 25.06.2016" in favour of the complainants for an appropriate consideration. The balance amount for obtaining the property which was still under construction was paid by the complainants according to the demands raised by the respondent. The respondent/promoter, vide their nomination letter, recorded their consent to the transfer by stating: "Accordingly, now the captioned property stands in the name of the complainants.

vi. That the agreement to sell is executed between Jasdeep Singh Bhasin and Pawan Singh Bhasin and complainants on 25.06.2016. Thereafter, a nomination confirmation of the unit is executed on 05.08.2016 in favour of complainants. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.1,10,31,822/-, towards the said unit against total sale consideration of Rs.96,63,380/-. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached

the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.

vii. That the respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of Act, 2016 and the Rules, 2017.

viii. The complainant have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for residential purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they

could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA. The complainant after many requests and emails; received the offer of possession on 23.09.2016. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement. The area of the unit increased from 1900 sq. ft. to 1947 sq. ft. Without any prior intimation.

ix. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the Agreement, by the complainant and hence the offer of possession. Further, the respondent is asking for 12 months of advance maintenance charges from the complainants which is absolutely illegal and against the laws of the land.

x. That the responsibility for upkeep and maintenance of these areas is collective. The contributions made for the same are in the form of a stipulated fee to manage expenses for the management and repair of any damage to the same. This amount contributed for operational expenditure on the common areas of the premises is

called common areas maintenance. The common area maintenance charges are calculated on monthly basis, based on actual charges and are then paid by the owners of the units to the maintenance agency or to the association which manages the complex where the units are situated. Hence these are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding gas a deposit of annual common area maintenance charges along with the final payment is unjustified and illegal and therefore needs to be withdrawn immediately as the same is not payable by the complainants at all.

xi. That the respondent asking for electric meter charges of and electrification charges from the complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/-. Hence asking for such a huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately. So are the other demands required to be withdrawn, as per details provided above and those which are not a part of the buyer's agreement. The palm drive amenities are 24x7, power back up, 24x7 Security, badminton court, basketball court, broadband connectivity, club house, covered parking, creche, Gym, health facilities, intercom facility, kids play area, lawn tennis court, maintenance staff, open parking, recreation facilities, religious

place, school, servant quarters, shopping arcade, swimming pool, visitor parking.

xii. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. Complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same. The fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.

xiii. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the respondent but even the settlement-cum-amendment agreement is also heavily loaded in favour of the respondent. Needless to mention that such one-sided agreements have been held to be unconstitutional and hence in valid by the Honourable Supreme Court and the Honourable High

Courts in number of cases. Though not agreeing to but even if we presume that the same is legal, in view of above it would be noticed that the respondents not having honoured the date of possession even as per the settlement cum amendment agreement, are not entitled to take advantage of the same and deny the delayed compensation charges as per the Act of 2016 and the rules framed thereunder. The stand of the respondent not to pay the delayed possession charges is therefore against the text and context, letter and spirit of Act, 2016 and the Rules, 2017.

xiv. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 10.03.2017. While this sale deed acknowledges that the complainant have paid the total consideration of Rs.1,10,31,822/-, 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 flat and project. They were not given any opportunity to negotiate the terms of the said sale deed. The complainant was told that the sale deed will encompass all the relevant issues at hand. It is submitted that this agreement and various clauses therein amount to an unconscionable agreement that is an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the

superior bargaining power, that they are contrary to good conscience.

xv. That the complainant is the one who has invested their life savings in the said project and are dreaming of a home for themselves and the Respondents have not only cheated and betrayed them but also used their hard earned money for their enjoyment. The complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Authority. That the Complainant has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law. Hence the present Complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:

i. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

ii. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of, 2016.

iii. Direct the respondent to set aside the one-sided indemnity bond get signed by the respondent from the complainant under undue influence.

5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply filed by the respondent

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

i. That the complainants have got no *locus standi* or cause of action to file the present complaint. The 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 11.03.2008 as shall be evident from the submissions made in the following paragraphs of the present reply.

ii. 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. Therefore, the present complaint deserves to be dismissed on this ground alone.

iii. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower in which the apartment in question is located was made on 28.06.2013 i.e., before the notification of the Rules of 2017 and the occupation certificate was thereafter issued on 01.04.2015. Thus, in accordance with the definition of Rule 2(o) of the Rules, the project in question does not come within the meaning and ambit of "ongoing project" and accordingly this court has no jurisdiction to deal with the present matter.

iv. That the complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply. It is vehemently and most humbly stated that the true and correct facts and circumstances as shall be stated hereunder are without prejudice to the contention of the respondent that the Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable for reasons stated in the present reply.

v. That the complainants are not "allottees" but Investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative

investment and not for the purpose of self-use as his residence. Therefore, no equity lies in favour of the complainants.

vi. That I.G.E India Limited (Through Mr. S. Murali and Mr. Iqbal A. Mohamed) had booked the unit in question, bearing number TPD L-F12-1202, admeasuring 1900 sq. ft. situated in the project developed by the respondent, known as "Premier Terraces" at Palm Drive, Sector 66, Gurugram, Haryana, vide application form. That the original allottee, prior to approaching the respondent, had conducted extensive and independent inquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. 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 they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect *bonafide* of the original allottee and hence, issued the provisional allotment letter dated 25.10.2007. Thereafter subsequently, the respondent sent the buyer's agreement to the original allottee, which was executed between the parties on 11.03.2008.

vii. That thereafter the original allottee transferred the unit to Mr. Jasdeep Singh Bhasin and Mr. Pawandeep Singh Bhasin (hereinafter referred to as "Erstwhile Allottees"). This transfer by the original allottee was accepted by the respondent and consequently, nomination letter dated 03.05.2012 was issued acknowledging the transfer of the unit in favour of the erstwhile allottees. The nomination letter dated 03.05.2012, acknowledging the transfer of the unit in favour of the erstwhile allottees, Mr. Jasdeep Singh Bhasin and Mr. Pawandeep Singh Bhasin. That thereafter, the erstwhile allottees further sold the unit to the complainants herein and requested the respondent to endorse the complainants. The unit was transferred to the complainants by the erstwhile allottees upon the request of the erstwhile allottees and the complainants, the transfer was accepted by the respondent vide nomination letter dated 28.08.2016.

viii. That as per clause 14(a) of the agreement, the due date of possession was subject to the complainant having complied with all the terms and conditions of the agreement. That being in a contractual relationship, reciprocal promises are bound to be maintained. That the rights and obligations of an allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect.

ix. That the remittance of all amounts due and payable by the complainants under the agreement as per the schedule of payment incorporated in the agreement was of the essence. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the Respondent. It is pertinent to mention that it was categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since the complainant has defaulted in timely remittance of payments as per the schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants.

x. That there have been miserable defaults in timely remittance of the instalments and hence the date of delivery of possession of the unit in question is not liable to be determined in the manner sought by the complainants. The complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

xi. At this stage, it is categorical to note that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of ***Deepak Kumar v. State of Haryana, (2012) 4 SCC 629***. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble

High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

xii. That the time consumed on account of circumstances beyond the power and control of the respondent, is bound to be removed for calculation of delay, if any. All the circumstances stated hereinabove come within the meaning of ***force majeure***, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of delay, if any.

xiii. Despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by this Authority that despite the default caused, the respondent applied for occupation certificate on 28.06.2013 and the same was thereafter issued on 01.04.2015. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned Authority, 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 utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from the computation of the time period utilized for the implementation and development of the project.

xiv. That a meager increase of 2.49% was made in the tentative super area, as computed after the receipt of the occupancy certificate. The said increase in area is within the terms and conditions of the agreement and within the permissible limits as per the model

agreement to sale and hence no contention/allegation in regard to the same can be accepted.

xv. That at this instance, it is categorical to note that the offer of possession was made to the erstwhile allottees on 15.04.2015. The erstwhile allottee has failed in taking the due payment and taking possession, hence, possession reminders dated 13.05.2015 and 05.06.2015 were also given. That an offer for possession marks termination of the period of delay, if any. It was after the possession had already been offered, that the transfer was made by the erstwhile allottee to the complainants. It is a matter of fact that the agreement to sell was executed between the erstwhile allottees and the complainants on 25.06.2016 and the unit was subsequently nominated on 28.08.2016. Hence, there was no iota of delay for complainants, who had bought the unit after over 1 year of it being ready to use and the offer of possession being issued to the original allottee.

xvi. That on the basis of the above, the complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. The complainants finally took the possession of the unit on 11.11.2016 after

executing the indemnity cum undertaking for occupancy and use of the unit on 08.11.2016 and consequently, the conveyance deed was executed on 10.03.2017. It was specifically and expressly agreed that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. They have 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 complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.

xvii. That in accordance with the facts and circumstances noted above, that the present claim is barred by limitation as has been filed after 7 years, 5 months, 2 days (2712 days) of the offer of possession and after 5 years, 6 months, 7 days (2017 days) after the execution of conveyance deed. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after over 4 years of passing of limitation, which cannot be condoned under any circumstance whatsoever. Moreover, without accepting the contents of the complaint in any manner whatsoever, and 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 principal 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 additionally, it is submitted that the respondent has credited Rs.3,12,775/- as the subvention benefit. This amount is bound to be adjusted.

xviii. That the original copy of the conveyance deed was given to the State Bank of Patiala on 03.04.2017, i.e., there exists a lien of the said Bank over the unit and the present complaint is bad for non-joinder of necessary party. That any claim with respect to the present unit cannot be adjudicated in the absence of the State Bank of Patiala. That in light of the *bona fide* conduct of the respondent, no delay for the complainant, the peaceful possession having been taken by the complainant, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainant, this complaint is bound be dismissed with costs in favour of the respondent.

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 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

9. 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

10. 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.*

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 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 maintainability of complaint on account of complainant being investor.

12. The respondent took a stand that the complainant is investor and not consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and they have paid total price of Rs.1,07,52,836/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(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;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The

concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

G.II Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of, 2016.

G.III Direct the respondent to set aside the one-sided indemnity bond get signed by the respondent from the complainant under undue influence.

13. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. The original allottee i.e., I.G.E (India) Limited was allotted a unit bearing no. L-1202, admeasuring 1900 sq. ft. on the 12th Floor of tower- L, in project of the respondent named "Premier Terraces at the Palm Drive", situated in Sector 66, Gurugram, Haryana vide provisional allotment letter dated 25.10.2007 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 11.03.2008. Thereafter, the original allottee i.e., I.G.E (India) Limited sole its unit to the first subsequent allottee namely Jasdeep Singh Bhasin and Pawandeep Singh Bhasin vide nomination letter dated 03.05.2012. The occupation certificate was received from

the competent authority on 01.04.2015 and possession of the unit was offered to the first subsequent allottee vide offer of possession letter dated 15.04.2015. Thereafter, the first subsequent allottee requested the respondent to transfer/sell the said unit to the complainant vide agreement to sell dated 25.06.2016. Accordingly, the respondent vide nomination letter dated 28.08.2016, 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 complainants herein vide unit handover letter dated 11.11.2016. Also, the conveyance deed bearing vasika no. 31175 dated 10.03.2017 was also executed by it in favour of the complainants in respect of the said unit.

15. Considering the above-mentioned facts, the authority is of the view that the complainants herein is a second subsequent allottee who had purchased the apartment from the previous allottee on 25.06.2016 i.e., at such a time when the possession of the subject unit was already offered to the first subsequent allottee. It simply means that the ready to move-in property was offered to the complainants 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 first subsequent allottee on 15.04.2015 after issuance of the occupation certificate by the concerned authority. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 25.06.2016 i.e.,

after offer of possession which was made on 15.04.2015 to the first subsequent allottee. It is pertinent to mention here that the present allottee never suffered any delay and also respondent builder had neither sent any payment demands to the complainant nor complainant paid any payment to the respondent. So, there is no equity in favour of the complainant. Hence, in such an eventuality and in the interest of natural justice, delay possession charges and other reliefs sought cannot be granted to the complainant as there is no infringement of any of his right (being subsequent allottee after offer of possession) by the respondent-promoter.

16. In the light of the facts mentioned above, the complainants herein who have become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as he 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.
17. Hence, no case for DPC is made out.
18. Complaint as well as applications, if any, stands dismissed being not maintainable. The case stands disposed off accordingly.
19. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 01.10.2024