

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

Complaint no. : 6373 of 2022
Date of order : 25.09.2024

1. Vinita Seth.
2. G P Capt V N Seth
Both R/o: 1107, Sector-21,
Gurugram, Haryana.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

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

**Complainants
Respondent**

HARERA
GURUGRAM
ORDER

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

the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	"Premier Terraces at the Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing
3.	DTCP License no.	DS-2007/24799 of 2007 Dated- 27.09.2007
4.	RERA registered	Not registered
5.	Unit no.	J-1002, 10 TH Floor, Tower/block-J
6.	Unit area	197.42 sq.mtr. [super-area] 166.62 sq.mtr. [apartment area] Alongwith 2 car parkings
7.	Allotment letter	05.01.2008 (As on page 45 of reply)
8.	Date of execution of buyer's agreement	30.12.2008 (As on page 35 at annexure C-1 of complaint)
9.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions,</i>

		<p><i>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 90 days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p>(Emphasis supplied) (As on page 53 of complaint)</p>
10.	Due date of possession	December 2010 (As per the possession clause)
11.	Total sales consideration	Rs.1,14,05,810/- (As on page 40 of complaint)
12.	Amount paid by the complainant	Rs.1,10,58,456/- (As per S.O.A dated 10.04.2017 at page 87 of complaint)
13.	Offer of possession	10.04.2017 (As on page 81 of complaint)
14.	Conveyance deed	05.09.2017 (As on page 90 of complaint)
15.	Indemnity cum undertaking	04.05.2017 (As on page 134 of reply)
16.	Unit handover letter	17.05.2017 (As on page 86 at annexure-C-3 of complaint)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That in 2007, the respondent issued an advertisement announcing a Group Housing colony called "Premier Terraces at Palm Drive" at

Sector - 66, Gurugram on the 45.48 acres of land, under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana, Chandigarh. The respondent thereby invited applications from prospective buyers for the purchase of unit in the said project.

- II. That relying on various representations and assurances given by the respondent, the complainants booked a unit in the project by paying an amount of Rs.10,00,000/- dated 27.12.2007 towards the booking of the unit bearing no. Unit TPD J-1002 on 10th Floor in Tower J having super area measuring 2125 sq. ft. to the respondent for a total sale consideration of Rs.1,05,41,175/- alongwith car parking and other specifications and provided the time frame within which the next instalment was to be paid.
- III. That a Buyer's Agreement was executed between the allottee and respondent on 30.12.2008. 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.
- IV. As per the demands raised by the respondent, based on the payment plan, the complainant paid a total sum of Rs.1,10,58,456/-, towards the said unit against total sale consideration of Rs.1,05,41,175/-. The complainant approached the respondent enquiring the status of the construction and also raised objections towards non-completion of the project.

- V. That in terms of clause 14(a) of the said buyer's agreement, the respondent was under dutiful obligation to complete the construction and to offer the possession on or before December 2010 with a grace of 90 days.
- VI. It is abundantly clear that the respondent has played a fraud upon the complainants and cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the Buyer's Agreement executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- VII. That the complainant after many request and emails; received the offer of possession on 10.04.2017. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which were actually not payable as per the Builder Buyer Agreement:
- i. The area of the unit increased from 2125 to 2202.09 sq. ft. without any prior intimation. Money in lieu of extra area was demanded Rs.3,47,522/-.
 - ii. Advance monthly maintenance for 12 months of Rs. 91,167/-
 - iii. .Electric meter charges of Rs. 10,700/-
 - iv. Club membership charges of Rs.1,75,000/-.
 - v. Gas connection charges of Rs.16,961/-.
 - vi. Sewerage connection charges of Rs.165/-.
 - vii. Electrification charges of Rs.79,919/-.

- VIII. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. The complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- IX. That the complainants sent email dated 16.06.2017 to respondents stating and raising various grievance with respect to delayed possession charges, air conditioners, grid power supply, car parking, solar panels, golf range, palm drive condominium association and HVAT. Furthermore, stating that solar panels has been installed in phase-1 of the project not in the tower of the complainants, as per the agreed terms of the booking and name of the project itself indicates that there will be golf range but till date respondents have failed to provide the same. Thereafter, various reminder emails and letters was sent to the respondents on the above mentioned issues but till date respondent failed to provide any satisfactory response to the complainants.
- X. It is pertinent to note that the complainants were enticed to book the said project at a much higher price than the market price only for the reason that the project was supposed to have large green landscapes by way of a Golf Driving Range along with Putting Greens consisting of

seating areas for the players, which the complainants could enjoy along with all other amenities. The complainants and residents agreed to invest in such an expensive property primarily because of the Golf Driving Range and large green areas around the same. It is submitted that the Golf Driving Range has not been delivered till date i.e. after more than 10 years from the stipulated time of delivery.

- XI. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed on 05.09.2017.
- XII. That 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.

C. Relief sought by the complainants:

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

- i. Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said unit from the due date of possession till the actual handing over of possession.
- ii. Direct the respondent to provide all the amenities and golf driving range as per the layout plan provided at the time of booking.
- iii. Set aside the one sided indemnity bond that the respondent got signed from the complainants under undue influence.

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

D. Reply by the respondent.

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

- I. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') 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 27.05.2015, i.e., before the notification of the Haryana Real Estate Regulation and Development Rules 2017 and the Occupation certificate was thereafter issued on 13.02.2017. 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.
- II. That the complainants are not "Allottees" but Investors who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The complainants approached the respondent and expressed interest in booking an apartment in the residential group housing colony developed by respondent known as "Premier Terraces at Palm Drive" situated in Sector 66, Urban Estate Gurgaon, Haryana.
- III. That thereafter the complainants, vide an application form dated 27.12.2007 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no TPD J-F10-1002, located on the

Tenth Floor, Tower-J admeasuring 2125 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 05.01.2008.

- IV. Thereafter, a Buyer's Agreement dated 30.12.2008 was executed between the complainants and the respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- V. That as per clause 14(a) of the Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continues to be binding upon the parties thereto with full force and effect.
- VI. It is submitted that the remittance of all amounts due and payable by the original allottees under the agreement as per the schedule of payment incorporated in the Buyer's 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.
- VII. That it is submitted that the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants and had paid delayed payment interest at multiple occasions. A list of the demand notes, request letters, and reminder are as under:

S. No.	Particulars	Ref No.	Dated
		2008	

	Demand Note	EMGF/TPD/12901	05.02.2008
	Demand Note	EMGF/TPD/12901	11.06.2008
2009			
	Demand Note	EMGF/TPD/12901	16.02.2009
2010			
	Demand Note	EMGF/TPD/12901	12.01.2010
	Payment request letter	EMGF/TPD/12901	08.03.2010
	Payment request letter	EMGF/TPD/12901	21.04.2010
	Payment request letter	EMGF/TPD/12901	21.06.2010
	Payment request letter	EMGF/TPD/12901	31.08.2010
	Payment request letter	EMGF/TPD/12901	03.11.2010
1.	Payment of enhanced EDC/IDC	TPD/602822/20101127150148567	20.11.2010
सत्यमेव 2011			
2.	Payment request letter	EMGF/TPD/12901	07.01.2011
3.	Payment request letter	EMGF/TPD/12901	02.05.2011
2012			
4.	Intimation for Service tax	TPD/602822/2012011164732081	11.01.2012
5.	Payment request letter	TPD/602822/20120530141340174	30.05.2012
2014			
6.	Payment request letter	TPD/602822-PR-1/20141204180150109	04.12.2014
2017			
7.	Payment request letter	TPD/602822-PR-1/20170216113007102	16.02.2017

VIII. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under Clause 14(b)(i) and Clause 31 of the Agreement. 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.

- IX. That a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities.
- X. It is further submitted that despite the default caused, the respondent applied for Occupation Certificate in respect of the said unit on 04.06.2015 and the same was thereafter issued on 13.02.2017.
- XI. That thereafter, the complainants were offered possession of the unit in question through letter of offer of possession dated 10.04.2017. It is pertinent to mention at this instance that a meager increase of 3.62% 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 Buyer's Agreement and within the permissible limits as per the Model RERA Agreement and hence no contention/allegation in regard to the same can be accepted.
- XII. It is submitted that the allegations of the complainants that possession was to be delivered by December, 2010 are wrong, *malafide* and result of an afterthought in view of the fact that the complainants had made several payments to the respondent even after December, 2010. Infact, the last payment was received from the complainants on 01.05.2017, if there was infact a delay in delivery of project as alleged by the complainants, then the complainant would not have remitted instalments after December, 2010.

- XIII. That the Respondent has credited an amount of Rs. 7,60,110/- (Rupees Seven lakhs Sixty Thousand One Hundred and Ten Only) to the complainants on account of the delay caused due to the default of the complainants in timely remittance of instalments and due to the reasons beyond the control of the respondent.
- XIV. That thereafter, an indemnity cum undertaking for possession dated 04.05.2017 of the said unit was executed between the complainants and the respondent for use and occupation of the said unit whereby the complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question.
- XV. The complainants finally took the possession of the unit on 17.05.2017 and consequently, the conveyance deed was executed on 05.09.2017. After the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties thereunder.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The respondent has raised a preliminary objection/submission that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of the complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial

as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.

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

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 05.09.2017 and the

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transaction between the parties stands concluded upon the execution of conveyance deed.

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

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

15. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
16. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand

excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

17. In the present matter the cause of action arose on 10.04.2017 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 10.10.2022 which is 5 years 10 months from the date of cause of action. The complaint has not been filed within a reasonable period of time nor have the complainants explained any grounds for the delay in filing the same. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.

G. Findings regarding relief sought by the complainant

- G.I Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.**
- G.II Direct the respondent to provide all the amenities and golf driving range as per the layout plan provided at the time of booking.**
- G.III Set aside the one sided indemnity bond that the respondent got signed from the complainants under undue influence.**

18. In the present complaint, the buyer's agreement was executed on 30.12.2008. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the allottees by December 2010. The date of execution of Buyer's Agreement is 30.12.2008. The respondent is also entitled to the grace period of 90 days. Thus, the due date comes out to be 30.03.2011.
19. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that the Buyer's Agreement between the complainants and the respondent was executed on 30.12.2008. According to the terms of this agreement, possession of the unit was to be offered by

December 2010 plus an additional 90 days grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the grace period was 30.03.2011. The respondent obtained the occupation certificate for the relevant tower on 13.02.2017. An offer of possession was made to the complainants on 10.04.2017, and the unit was formally handed over on 17.05.2017, as indicated by the handover letter dated 17.05.2017. The conveyance deed was executed in favour of the complainants on 05.09.2017.

20. The cause of action for this complaint arose on 10.04.2017, when possession was offered. The complainant filed the present complaint on 10.10.2022, resulting in a delay of 5 years and 6 months from the date the cause of action arose. Consequently, the complaint is dismissed being barred by limitation.

21. Complaint stands disposed of.

22. File be consigned to the registry.

Dated: 25.09.2024

HARERA
GURUGRAM



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