

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

Date of decision: 01.10.2024

NAME OF THE BUILDER		M/s Emaar MGF Land Limited presently Known as M/S Emaar India Limited.	
PROJECT NAME		"The Palm Drive", Sector- 66, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/7398/2022	Mr. Sanjeev Mahajan & Mrs. Savita Mahajan V/S M/s Emaar MGF Land Limited presently Known as M/S Emaar India Limited	Adv. Gaurav Rawat (Complainant) Adv. Harshit Batra (Respondent)
2.	CR/7420/2022	Mr. Anurag Vohra & Mrs. Vishakha Vohra V/S M/s Emaar MGF Land Limited presently Known as M/S Emaar India Limited	Adv. Gaurav Rawat (Complainant) Adv. Harshit Batra (Respondent)

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

1. This order shall dispose of all the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "The Palm Drive", Situated in Sector- 66, Gurugram, Haryana, being developed by the respondent/promoter i.e., M/s Emaar MGF Land Limited presently Known as M/S Emaar India Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking award for delayed possession charges and others.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Palm Drive", Sector- 66, Gurugram, Haryana.
Project area	31.62 acres
Nature of the project	Group housing colony
DTCP license no. and other details	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
Occupation certificate	01.04.2015
Possession clause as per buyer's agreement	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, 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 <u>grace period of ninety (90) days, for applying and</u></i>

obtaining the occupation certificate in respect of the Group Housing Complex. (Emphasis supplied)".
 (Page No. 21 of the complaint)

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.	Date of offer of possession and unit handover letter	Conveyance Deed executed on
1.	CR/7398/2022 Mr. Sanjeev Mahajan & Mrs. Savita Mahajan V/S M/s Emaar MGF Land Limited presently Known as M/S Emaar India Limited DOF: 21.12.2022 RR: 29.05.2023	L-1203, on 12 th Floor, in tower/block-L Area ad-measuring 2125 sq. ft. (super area). [Page 44 of the complaint]	AL:- 25.10.2007 [Page 32 of reply] BBA 11.03.2008 [Page no. 40 of reply]	31.03.2011 [Note:- December 2010 as mentioned in the buyer's agreement + 90 days grace period]	TC: 1,20,41,223/- AP: 1,20,41,223/- [As per statement of account dated 09.05.2023 at page no. 134 of reply]	OOP 07.04.2015 [Page no. 126 of the reply] Possession letter 18.05.2015 [Page no. 107 of the complaint] UHL 11.07.2015 [Page no. 103 of the complaint]	08.01.2016 [Page no. 111 of the complaint]
2.	CR/7420/2022 Mr. Anurag Vohra & Mrs. Vishakha Vohra V/S M/s Emaar MGF Land Limited presently Known as M/S	L-1203A, on 12 th A Floor, in tower/block-L Area ad-measuring	AL:- 25.10.2007 [Page 37 of reply] BBA 11.03.2008 [Page no. 34 of complaint]	31.03.2011 [Note:- December 2010 as mentioned in the buyer's agreement + 90 days grace period]	TC: 1,20,41,223/- AP: 1,20,41,224/- [As per statement of account dated 22.05.2023 at	OOP 07.04.2015 [Page no. 126 of the reply] Possession letter 18.05.2015 [Page no. 91 of the complaint]	30.11.2015 [Page no. 138-195 of the reply]

Emaar India Limited	2125 sq. ft. (super area).			page no. 134 of reply]	UHL 22.07.2015 [Page no. 137 of the reply]	
DOF: 21.12.2022	[Page 38 of the complaint]					
RR: 05.06.2023						

Relief sought by the complainant:-

- Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession
- Direct the respondent company 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, 2016.
- Direct the respondent to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking.
- Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer's Agreement
AL	Allotment Letter
OOP	Offer of possession
UHL	Unit Handover Letter

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/7398/2022** titled as **Mr. Sanjeev Mahajan & Mrs. Savita Mahajan V/s M/s Emaar MGF Land Limited presently known as M/S Emaar India Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

5. 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:

CR/7398/2022 titled as Mr. Sanjeev Mahajan & Mrs. Savita Mahajan V/s M/s Emaar MGF Land limited presently known as M/S Emaar India Limited.

S. No.	Particulars	Details
1.	Name of the project	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.	L-1203, 12 th floor, Tower-L (inadvertently mentioned as L-1203A, 12 th floor, in proceeding dated 01.10.2024) (Page no. 44 of the complaint)
5	Provisional allotment letter dated	25.10.2007 [Page no. 32 of reply]
6	Date of execution of buyer's agreement between original allottee and the respondent	11.03.2008 [page 40 of complaint]
7	Agreement to sell executed between the original allottee and the complainant herein	30.11.2011 [Page 106-110 reply]
8	Indemnity cum undertaking of the transferor and transferee dated	14.03.2012 [Page 117-121 of reply]
9	Nomination letter in favour of complainants	21.03.2012 [Page 122 of reply]
10	Possession clause	14. POSSESSION (a) Time of handing over the Possession The company propose to handover the possession of the apartment/villa/penthouse by December 2010 . The apartment's allottee agrees and understand that the company shall be entitled for grace period of 90 days for applying and obtaining necessary approvals in respect of the group housing Complex. (Emphasis supplied)
11	Due date of possession	March 2011 [Note: 90 days grace period is included]

12.	Total consideration as per statement of account dated 09.05.2023 at page 134 of reply	Rs.1,20,41,223/-
13.	Total amount paid by the complainant as per statement of account dated 09.05.2023 at page 134 of reply	Rs.1,20,41,223/-
14.	Occupation certificate	01.04.2015 [annexure R8, page 123-125 of reply]
15.	Offer of possession	07.04.2015 (Page 126 of the reply)
16.	Indemnity cum undertaking	29.04.2015 (Page 131 of the reply)
17.	Possession letter dated	18.05.2015 [Page no. 107 of the complaint]
18.	Unit handover letter dated	11.07.2015 (Page 103 of complaint)
19.	Conveyance deed	08.01.2016 (Page 111 of the complaint)

B. Facts of the complaint

6. The complainants have 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 "Premium 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, 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. That the complainants 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 complainants 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 complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.

- III. That relying on various representations and assurances given by the respondent company and on belief of such assurances, original allottee namely I.G.E (India) Private Limited, booked a unit in the project by paying an amount of Rs.10,00,000/- dated 25.10.2007, towards the booking of the said unit bearing no. TPD-L-F12-1203 (12th floor, Tower/Block-L), situated in Sector 66, having super area measuring 2125 sq. ft. to the respondent dated 25.10.2007 and the same was acknowledged by the respondent.
- IV. That the respondent confirm the booking of the unit to the original allottee providing the details of the project, confirming the booking of the unit dated 25.10.2007, allotting a unit bearing no. PTT- TPD-L-F12-1203 (12th floor, Tower/Block-L) measuring 2125 sq. ft. in the aforesaid project of the developer for total sale consideration of Rs.1,13,45,858/- along with car parking and other specifications of the allotted unit and providing the time frame.
- V. 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.1,13,45,858/-. 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 respondents. As per clause 14(a) of the buyer's agreement the Respondent had to deliver the possession of the unit by December, 2010.

- VI. That the original allottees subsequently transferred/endorsed the property in favour of the complainants vide "agreement to sell dated 30.11.2011" 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." That the agreement to sell is executed between original allottees and complainants on 30.11.2011. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs.1,22,81,438.00, towards the said unit against total sale consideration of Rs.1,13,45,858/-.
- VII. That a nomination confirmation of the unit is executed on 21.03.2012 in favour of complainants. 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. 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.

- VIII. That in terms of clause 14(a) of the said buyer's agreement respondent was under dutiful obligation to complete the construction and to offer the possession on or before December, 2010. The complainants approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainants that the construction will get completed soon. Further, the respondent despite having made multiple tall representations to the complainants, 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 complainants after many requests and emails; received the offer of possession of the allotted unit on 07.04.2015 along with the respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement. Further the area of the unit was increased from 2125 sq. ft. to 2202.09 sq. ft. without providing any justification for the same.
- IX. That the respondent has played a fraud upon the complainants and have 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 BBA 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.
- X. 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 complainants and hence the offer of possession. 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. 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 demand in 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 complainants sent various reminder 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 were sent to the respondents on the above mentioned issues but till date respondent failed to provide any satisfactory response to the

complainants. 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 is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the Rules, 2017. The complainants has suffered on account of deficiency in service by the respondents and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the Rules, 2017. As per section 18 of the Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. That the complainants have 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: -

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

- I. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession.
- II. Direct the respondent company 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, 2016.
- III. Direct the respondent to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking.

IV. Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent.

8. 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

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

- I. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. The complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. That the present reply is without prejudice to the contentions of the respondent on maintainability of the present complaint which have been filed separately vide application dated 03.05.2023. The contents of the same are not repeated herein to avoid repetition.
- II. 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.
- III. 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.

- IV. That the complainants have not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply. That the complainants are vehemently and most humbly stated that bring out the true and correct facts and circumstances is subject 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 are Investors who has 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 complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favor of the complainants.
- VI. That the original allottee (M/s IGE India Limited) approached the respondent and expressed interest in booking of 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. Prior to the booking, the original allottee conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that it took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- VII. That thereafter the original allottee, vide an application form applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit

bearing no TPD L-F12-1203, located in Tower-L admeasuring 2125 sq. ft. was allotted vide provisional allotment letter dated 25.10.2007. The original allottee consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that it shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the original allottee and proceeded to allot the unit in question in its favor.

- VIII. Thereafter, a buyer's agreement dated 11.03.2008 was executed between the original allottee 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. 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.
- IX. That the remittance of all amounts due and payable by the original allottee 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.
- X. That the original allottee as well as the complainants had defaulted /delayed in making the due payments, upon which, reminders were also served to the original allottees as well as the complainants and had paid delayed payment interest at multiple occasions. That the bonafide of the respondent is also essential to be highlighted at this instance, who had

served a number of request letters and demand notes to the complainants to ensure that the payments are made in a timely fashion.

- XI. That further, the original allottee approached the respondent and expressed its intention in lieu of transferring the rights, title, interest of the said property to the complainants. That pursuant thereto, an agreement to sell dated 30.11.2011 was executed between the original allottee and the complainants for transferring rights, title, interest of the said unit. Thus, unit was transferred to the complainants by the original allottee upon the execution of the affidavit dated 14.03.2012 and indemnity cum undertaking dated 14.03.2012 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 21.03.2012. Further, an endorsement was also made in the name of the complainants attached with the buyer's agreement.
- XII. That at this instance, the complainants being subsequent buyers, have no right to seek delay possession charges. That at the time of nomination of the complainants, the project was already delayed due to reasons beyond the control of the respondent. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the application of occupancy certificate having been made, the complainants willingly and voluntarily entered into the agreement for sell and the transfer documents thereof leading to their nomination. That such prior knowledge, willing and self-initiated endorsement of the complainants, without any protest, amounts to acceptance of the existing circumstances and the complainants now cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainants.

- 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 in respect of the said unit on 28.06.2013 and the same was thereafter issued vide memo bearing no. ZP-308/SD(BS)/2015/5253 dated 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 statutory 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 computation of the time period utilized for implementation and development of the project.
- XIV. That it is further submitted that on receiving the occupation certificate from the competent authorities, the respondent issued an intimation of possession dated 07.04.2015 duly intimating the complainants about the receipt of the occupation certificate and procedure of handing over the possession of the said unit. That the said intimation of possession was duly acknowledged by the complainants. That thereafter, an indemnity cum undertaking for possession dated 29.04.2015 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. That thereafter, without any protest or demur, whatsoever, consequently, the conveyance deed was executed on 08.01.2016. 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 favor 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 victimize and harass the respondent. That it is most humbly submitted that the respondent has raised objections with respect to the maintainability of the complaint 7 years after execution of the conveyance deed. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The Article 113 of Schedule I of the Limitation Act is applicable and the present complaint was filed after 7 years of passing of conclusion of contract, which cannot be condoned under any circumstance whatsoever.
- XVI. That moreover, 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. That after the execution of the conveyance deed, the parties are estopped from making any claims at this instance. That the present reply is without prejudice to

the contentions of the respondent on maintainability of the present complaint which have been filed separately vide application dated 03.05.2023. The contents of the same are not repeated herein to avoid repetition.

- XVII. That moreover, without accepting the contents of the complaint in any manner whatsoever. The respondent has given a credit of Rs.3,43,826/- and Rs.179/- 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.
- XVIII. That in light of the bona fide conduct of the respondent, no delay for the complainants, the peaceful possession having been taken by the complainants, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with costs in favor of the respondent.
- XIX. All other averments made in the complaints were denied in toto.
10. 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**
11. 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**
12. 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

13. 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) 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.

14. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Objections raised by the respondent.

F.I Objection regarding maintainability of complaint on account of complainant being investor.

15. The respondent took a stand that the complainants are investors and not consumers and therefore, they are 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 complainants are buyer's, and have paid a total price of Rs.1,20,41,223/- to the promoter towards purchase of a 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;"

16. In view of the 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 to 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 the 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 complainants at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession.**
- G.II Direct the respondent company 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, 2016.**
- G.III Direct the respondent to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking.**
- G.IV Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent.**

17. 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.
18. The original allottee i.e., M/s I.G.E. (India) Limited was allotted a unit bearing no. L-1203, 12th floor, admeasuring 2125 sq. ft., in project of the respondent named "The Palm Drive" at Sector-66, Gurugram 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., M/s I.G.E. (India) Limited sold it's unit to the first subsequent allottee i.e., complainants (Sanjeev Mahajan and Savita Mahajan) vide agreement to sell dated 30.11.2011 and the same was endorsed by the respondent/promoter through nomination letter dated 21.03.2012. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 21.03.2012 i.e., date on which the complainant stepped into the shoes of the original allottee.
19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act of 2016. The buyer's agreement was executed between the original allottee and the respondent on 11.03.2008 and as per clause 14(a) of the agreement the respondent was directed to handover the possession of the unit by December 2010 and a grace period of 90 months for applying and obtaining the occupation certificate in respect of the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the

agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. **So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.** Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

20. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 31.03.2011 including grace period of 90 days.
21. During proceeding dated 01.10.2024, in complaint bearing no. 7398 of 2022, the unit bearing no. inadvertently mentioned as L-1203A, 12th floor, in Tower-L, instead of L-1203, 12th floor, in tower-L, the same is corrected accordingly.
22. In the present complaint, the occupation certificate was received from the competent authority on 01.04.2015 and possession of the unit was offered to the complainant herein vide offer of possession letter dated 07.04.2015.

Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 11.07.2015. Also, the conveyance deed bearing vasika no. 25002 dated 08.01.2016 was also executed by it in favour of the complainants in respect of the said unit. The complainant has filed the present complaint after a long delay on 21.12.2022.

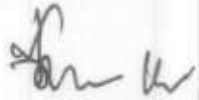
23. The respondent has filed an application dated 08.05.2023, with regard to dismissal of complaint that the complaint is barred by limitation as the complaint has filed by the complainants lapsed of 7 years from the date of execution of conveyance deed. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, after the unit was allotted to the original complainant on 25.10.2007, a buyer's agreement in this regard was executed on 11.03.2008. Though the possession of the unit was to be offered on or before 31.03.2011 after completion of the project but the same was offered only on 07.04.2015 after receipt of occupation certificate on 01.04.2015 and ultimately leading to execution of conveyance deed of the same on 08.01.2016. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 07.04.2015 and not from 08.01.2016. Therefore, the limitation period of three years was expired on 07.04.2018 and accordingly, the period between 15.03.2020 till 28.02.2022 as excluded by 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 shall not be excluded while calculating the period of limitation as the limitation expired prior to the beginning of the said period. The present complaint seeking delay possession charges and other reliefs was filed on 21.12.2022 i.e., beyond three years w.e.f. 07.04.2015.

24. As noted above, the possession of the subject unit was offered to the complainant on 07.04.2015 after obtaining occupation certificate on 01.04.2015. Thereafter, the conveyance deed of the unit was executed between the parties on 08.01.2016 and the present complaint was filed on 21.12.2022. There has been complete inaction on the part of the complainants for a period of more than 7 years and 8 months from the offer of possession till the present complaint was filed in December 2022. The complainants remained dormant of his rights for more than 7.8 years and they didn't approach any forum to avail his rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.
25. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
26. Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]** the Hon'ble Supreme Court held that

"Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

27. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable and the same is declined.
28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein the details of paid up amount along with offer of possession, unit handover letter, possession letter and execution of conveyance deed is mentioned in each of the complaints.
29. Complaint as well as applications, if any, stands disposed off accordingly.
30. Files be consigned to registry.


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 01.10.2024