

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

Complaint no. : 6744 of 2022
Date of order : 04.09.2024

Mrs. Neeru Bhatia
R/o: C-28, Mahendru Enclave,
Lane no.4.

Complainant

Versus

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

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Sh. Kuldeep Kohli (Advocate)
Sh. Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Emerald Hills Floors", Sector-62 and 65, Gurugram.
2.	Area of project	102.7412 acres
3.	Nature of project	Residential
4.	DTCP License no.	Licence no. 10 of 2009 Dated-20.05.2019
5.	RERA registered	Registered Vide registration no. 162 of 2017 Dated-29.08.2017
6.	Unit no.	EHF-350-I-FF-78 in Ivory Sector, Floor-1 st . (As on page no. 47 of reply)
7.	Unit area	292.64 sq.mtrs having super build up area of 1750 sq.ft. Alongwith one car parking space
8.	Allotment letter	27.07.2009 (As on page no. 47 of reply)
9.	Date of execution of buyer's agreement	28.12.2009 (As on page no. 51 of reply)

10.	Agreement to sell between original allottee and the complainant	25.05.2011 (As on page no. 124 of complaint)
11.	Possession clause	<p>Clause 13 POSSESSION</p> <p>(a) Time of handing over the Possession'</p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of 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 Floor <u>within 27 months from the date of execution of this agreement.</u> The Allottee agrees and understands that the Company shall be entitled to a grace period of 6 (six) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Floor and/or the Project.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 71 of reply)</i></p>
12.	Due date of possession	28.09.2012 [Calculated 27 months from date of execution of the agreement i.e., 28.12.2009 + 6 months grace period]

13.	Total sales consideration	Rs.78,12,684/- (As per S.O.A dated 10.10.2023 at annexure-2 of additional documents submitted by the respondent on 12.10.2023.)
14.	Amount paid by the complainant	Rs.78,12,684/- (As per S.O.A dated 10.10.2023 at annexure-2 of additional documents submitted by the respondent on 12.10.2023)
15.	Nomination letter	28.07.2011 (As on page no. 137 of reply)
16.	Occupation certificate	09.06.2016 (As per annexure-1 of additional documents submitted by the respondent on 12.10.2023)
17.	Offer of possession	28.04.2017 (As on page no. 148 of complaint)
18.	Unit handover letter	04.07.2017 (As on page no. 153 of complaint)
19.	Indemnity cum undertaking	18.07.2011 (As on page no. 128-129 of reply)
20.	Conveyance deed	04.09.2017 (As on page no. 153 of reply)

B. Facts of the complaint

3. The complainant has made the following submission: -

- I. That the complainant is an allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The respondent,

M/s Emaar India Ltd. is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.

- II. That the respondent advertised about its project namely "Emerald Hills - Floors' situated Sector-65 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims. Thereby inviting applications from prospective buyers for the purchase of units in the project and confirmed that the project had got building plan approvals from the Authority.
- III. That while searching for an accommodation, the complainant was lured by the advertisements and calls from the brokers of the respondent. The respondent told the complainant about the moonshine reputation of the company and the representative of the respondent made huge presentations about the project.
- IV. Relying on the representations and assurances given by the respondent and on belief of such assurances, the original allottees, Mrs. Gurdeep Kaur Sood and Mr. Nitin Sood, booked a unit in the project by paying an amount of Rs.5,00,000.00 dated 17.06.2009, towards the booking of the unit bearing no EHF-350-I-FF-078 admeasuring 1750 sq. ft. and the same was acknowledged by the respondent.
- V. That the respondent confirmed the booking of the unit to the original allottees, providing the details of the project allotting unit no. EHF-350-I-FF-078 for a total sale consideration of the unit i.e. Rs.67,00,000/-, which includes basic price, Plus EDC and IDC, PLC, car parking charges and additional charges of the allotted unit and providing the time frame within which the next instalment was to be paid. The Buyer's Agreement was executed between the original allottees and respondent on 28.12.2009. It is pertinent to mention that the same was endorsed in

favour of the complainant i.e., Mrs. Neeru Bhatia vide endorsement dated 18.07.2011.

- VI. As per clause 13(a) of the buyer's agreement the respondent had to deliver the possession of the unit within period of 27 months from the date of execution of the agreement. Therefore, the due date of possession comes out to be 28.03.2012.
- VII. The original allottee transferred/endorsed the property in favour of the complainant vide agreement to sell dated 25.05.2011. The original allottee and the complainant executed an "Agreement to Sell" for a total consideration of Rs.70,00,000/-. That the original allottee had paid an amount of Rs.21,00,000/- to the respondent which the complainant paid to the original allottee while executing the agreement to sell. The balance amount of Rs.49,00,000.00 for obtaining the property which was still under construction was paid by the complainant as per the demands raised by the respondent.
- VIII. As per the demands raised by the respondent, the complainant has paid a total sum of Rs.70,54,521/- towards the unit against total sale consideration of Rs.67,00,000/-. The complainant paid an amount of Rs.21,00,000/- to the original allottee while executing agreement to sell dated 25.05.2011 and the complainant paid the balance amount of Rs.49,54,521/-to the respondent which is clearly visible in the statement of account dated 16.08.2012.
- IX. That the complainant visited the office of the respondent several times and requested them to allow her to visit the site but she was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The

complainant even after paying a huge amount still received nothing in return but only loss of the time and money invested by her.

- X. That the respondent have played a fraud upon the complainant and have cheated her 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 Floor Buyer's Agreement executed them. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint
- XI. That after many requests and emails, the complainant received the offer of possession on 28.04.2017. It is pertinent to note here that the offer of possession, respondent raised several illegal demands on account of the following which are actually not payable as per the Agreement:
- i. Electrification Charges of Rs.65,167/-
 - ii. Sewerage Connection Charges of Rs.316/-
 - iii. Water Connection Charges of Rs.3,996/-
 - iv. Electricity Connection Charges of Rs.27,600/-
- XII. 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, and hence the offer of possession.
- XIII. That it has been held by the NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and

unjustified and therefore not a valid offer of possession. In fact it is a letter for demand of money rather than being an offer of possession.

- XIV. That the respondent raised a demand for advance monthly maintenance charges for a period of 23 months amounting to Rs.53,823/-from the complainants which is absolutely illegal.
- XV. Hence these are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an amount of Rs.53,823/- as 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.
- XVI. That after many follow ups and reminders and clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent, the complainant got the physical handover of the unit. Thereafter, the respondent issued handover letter on account of handing over the physical possession of the unit. Thereafter, on 04.07.2017, respondent handed over the physical possession of the unit.
- XVII. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of the unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from the allotted point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

XVIII. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment till the realization of money under section 18 & 19(4) of Act. Hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has 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 apartment from the due date of possession i.e., 28.03.2012 till the actual handing over of possession i.e., 04.07.2019.
- ii. Direct the respondent to execute conveyance deed in favour of the complainant.
- iii. Direct the respondent to provide all the amenities as provided in the buyer's agreement.
- iv. Direct the respondent not to charge anything which is not a part of the builder buyer's agreement.

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 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.

- II. That the Authority has no jurisdiction to deal with the present matter and that the present complaint is not maintainable. That the complainant is not an "Allottee" but an Investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale and not for the purpose of self-use as her residence. Therefore, no equity lies in favor of the complainant.
- III. That the original allottees (Ms. Gurdeep Kaur Sood and Mr. Nitin Sood) approached the respondent and expressed interest in booking an apartment in the residential group housing colony known as "Emerald Hills-Floors" situated in Sector 65, Urban Estate Gurgaon, Haryana. Prior to the booking, the original allottees conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- IV. That thereafter the original allottees, vide an application form dated 17.06.2009 applied for provisional allotment of the unit. Pursuant thereto, unit bearing no EHF-350-I-FF-078, located on the First Floor, admeasuring 1750 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 27.07.2009. The original allottees consciously and willfully opted for a construction linked payment plan 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 the *bonafide* of the original allottees and proceeded to allot the unit in question in their favor.

- V. Thereafter, a Buyer's Agreement dated 28.12.2009 was executed between the original allottees and the respondent. As per clause 13(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. That the remittance of all amounts due and payable by the original allottee 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 13(v) 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.
- VII. That the complainant had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainant and had paid delayed payment interest at multiple occasions. A list of the demand notes, request letters, and reminder are as under:

<i>S. No.</i>	<i>Particulars</i>	<i>Ref No.</i>	<i>Dated</i>
2009			
1.	Payment request letter	EHF/705784-PR-020	03.09.2009
2011			
2.	Payment request letter	EHF/705784-PR-040/20110802122054701	02.08.2011
2012			
3.	Payment request letter	EHF/705784-PR-050/20120217105412051	17.02.2012
4.	Payment request letter	EHF/705784-PR-060/20120320152703473	20.03.2012
5.	Payment request letter	EHF/705784-PR-070/20120807165233826	07.08.2012
2013			
6.	Payment request letter	EHF/705784-PR-080/20130509172440445	09.05.2013
7.	Payment request letter	EHF/705784-PR-090/20131112121029566	05.08.2013
8.	Payment request letter	EHF/705784-PR-0/20130805130018963	12.11.2013

VIII. That thereafter, the original allottees approached the respondent in lieu of transferring the rights, title, and interest of the unit to the complainant. Pursuant thereto, an Agreement to Sell dated 25.05.2011 was executed between the original allottees and the complainant for transferring rights, title, interest of the unit. Thus, unit was transferred to the complainant by the original allottees upon the execution of the affidavit dated 18.07.2011 and indemnity cum undertaking dated 18.07.2011 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 28.07.2011. That further, an endorsement was also made in the name of the complainant. It is a matter

of fact that the complainant bought the unit after being aware of the fact that there is a legitimate delay on account of reasons beyond the control of the respondent and was purchased by the complainant without any delay or demur.

- IX. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under Clause 13(b) and Clause 30 of the Agreement. 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. All the circumstances stated hereinabove come within the meaning of *force majeure*. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project.
- X. That without prejudice to the contentions of the respondent, it is submitted that the possession was to be delivered by March, 2012 are wrong, *malafide* and result of an afterthought in view of the fact that the complainant stepped into the shoes of the erstwhile allottee vide nomination letter dated 28.07.2011 knowing well that the construction of the project is delayed for the reasons beyond the control of the respondent. That the said position was duly accepted by the complainant and the said complaint is an afterthought in order to generate unwarranted litigation against the respondent. Moreover, the respondent has received the payment from the allottees even after March, 2012. At the time of nomination, the complainant was well aware that she is not entitled to any interest whatsoever.
- XI. That the respondent earnestly requested the complainant to obtain possession of the unit and further to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. Thereafter, an indemnity cum undertaking for possession dated 02.06.2017 of the unit was executed between the

complainant and the respondent for use and occupation of the unit whereby the complainant has declared and acknowledged that she has no ownership right, title or interest in any other part of the project except in the unit area of the unit in question.

- XII. That it is pertinent to mention that the complainant did not had adequate funds to remit the balance payments requisite for taking possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter, the complainant refrained from taking possession of the unit. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainant finally took the possession of the unit on 04.07.2017. That multiple requests were made to the complainant regarding execution of the conveyance deed and consequently, the conveyance deed was executed on 04.09.2017. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- XIII. That there was no delay in delivering the possession to the complainant. Since the original allottees entered into an agreement for sale with the complainant, the complainant was very well aware of the delay in the project but still proceeded to go ahead and purchased the unit under no coercion. The intention of the legislature in regards to the delay possession charges was to ensure monetary equity for the allottees who had invested in the project and got delayed possession, hence, in cases of delay, the payment of delayed possession charges are awarded. However, wrongful benefit of the same cannot extend to the complainant for whom, there had been not an iota of delay.

XIV. That the present complaint is barred by limitation. In cases where no specific limitation period is mentioned in the Act, the limitation of 3 years applies.

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.1 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 04.09.2017 and the 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. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or

movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. The allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get her title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a

flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

17. 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.
18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainant/allottee retains the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

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

19. 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.

20. 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.
21. In the present matter the cause of action arose on 28.04.2017 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 18.10.2022 which is 5 years 5 months and 20days from the date of cause of action. The present complaint has been filed on 18.10.2022. Even after taking into account the exclusion period from 15.03.2020 to 28.02.2022, the complaint has not been filed within a reasonable period of time nor has the complainant 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 execute conveyance deed in favour of the complainant.**
- G.III Direct the respondent to provide all the amenities as provided in the buyer's agreement.**
- G.IV Direct the respondent not to charge anything which is not a part of the builder buyer's agreement.**

22. In the present complaint, the buyer's agreement was executed on 28.12.2009. As per clause 13 (a) of the agreement the respondent was to

offer the possession of the unit to the allottees within 27 months from the date of execution of the buyer's agreement. The date of execution of Buyer's Agreement is 28.12.2009. Thus, the Authority have calculated 27 months from the date of date of execution of the agreement also the grace period of 6 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 28.09.2012.

23. 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 original allottees and the respondent was executed on 28.12.2009. According to the terms of this agreement, possession of the unit was to be offered within 27 months plus an additional 6 months from the execution date. Therefore, the due date for possession, considering the 6-month grace period was 28.09.2012. An Agreement to Sell was executed between the original allottees and the complainant on 25.05.2011, followed by a nomination letter for the unit in favor of the complainant dated 28.07.2011. The respondent obtained the occupation certificate for the relevant tower on 09.06.2016. An offer of possession was made to the complainant on 28.04.2017, and the unit was formally handed over on 04.07.2017, as indicated by the handover letter dated 04.07.2017. The conveyance deed was executed in favour of the complainant on 04.09.2017.
24. The cause of action for this complaint arose on 28.04.2017, when possession was offered. The complainant filed the present complaint on 18.10.2022, resulting in a delay of 5 years, 5 months, and 20 days from the date the cause of action arose. Consequently, the complaint is barred by limitation and is, therefore, dismissed.

H. Directions of the authority: -

25. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The cause of action arose on 28.04.2017 when the offer of possession was made by the respondent to the complainant and the complainant has filed the present complaint on 18.10.2022, after a delay of 5 years 5 months and 20 days. The present complaint is barred by limitation and is dismissed.

26. Complaint stands disposed of.

27. File be consigned to the registry.

Dated: 04.09.2024


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