

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

Complaint no. : 3823 of 2021
Order reserved on : 02.07.2024
Order pronounced on: 03.09.2024

1. Mr. Virender Singh Raghave
 2. Mrs. Anjana Raghave
- Both RR/o: F-401, Munirka Apartments, Plot no. 11,
Sector- 9, Dwarka, New Delhi

Complainants

Versus

M/s Emaar MGF Land Ltd.
Registered office at: 306-308, 3rd floor, Square One,
C-2, District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Jagdeep Kumar
Shri Harshit Batra

Advocate for the complainant
Advocate for the respondent

ORDER

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



A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
7.	Occupation certificate granted on	30.05.2019 [annexure R5, page 133 of reply]
8.	Unit no.	GGN-12-0601, 6 th floor, building no. 12 measuring 1650 sq. ft. [annexure P2, page 49 of complaint]
9.	Provisional allotment letter issued in favor of Vikrant Rohilla (Original Allottee) on	25.01.2013 [annexure P1, page 32 of complaint]
10.	Date of execution of buyer's agreement between Vikrant Rohilla & respondent	01.04.2013 [annexure P2, page 46 of complaint]
11.	Possession clause	14. POSSESSION (a) Time of handing over the Possession



		<p><i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i> (emphasis supplied) [annexure P2, page 61 of complaint]</p>
12.	Date of start of construction as per statement of account dated 17.10.2021 at page 222 of reply	14.06.2013
13.	Due date of possession	14.11.2016 [calculated from the date of start of construction i.e., 14.06.2013 + 5 months grace period]
14.	Nomination letter issued by the respondent in favour of Mr. Praveen Kumar (1 st subsequent allottee)	25.04.2013 [Page 97 of reply]
15.	Total consideration as per statement of account dated 17.10.2021 at page 222 of reply	Rs.95,25,541/-
16.	Total amount paid by the complainants as per statement of account dated	Rs.1,01,86,322/-

	17.10.2021 at page 223 of reply	
17.	Offer of possession to the first subsequent allottee (Mr. Praveen Kumar)	01.06.2019 [annexure R4, page 124 of reply]
18.	Complainants herein are second subsequent allottees	The respondent acknowledged the complainants as allottee vide nomination letter dated 06.08.2019 (annexure R3, page 99 of reply) in pursuance of agreement to sell dated 13.07.2019 (annexure P7, page 111 of complaint) executed between the complainants and the previous allottee (Mr. Praveen Kumar)
19.	Unit handover letter signed by the complainants on	04.09.2019 [annexure R1, page 29 of reply]
20.	Conveyance deed executed by the complainants on	09.09.2019 [annexure R6, page 137 of reply]

B. Facts of the complaint

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

- i. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.



- ii. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.
- iii. That Mr. Vikrant Rohilla S/o Mr. M.S Rohila, R/o C225, Madhuban, Vikas Marg, New Delhi 110092, Delhi was the original allottee, who paid advance booking amount of Rs.7,50,000/- through cheque no. 908922 & cheque no. 908923 dated 30.01.2012 to book the flat no. GGN-12-0601 at Gurgaon Greens, Sector 102, Gurugram, Haryana, having super built up area admeasuring 1650 sq. ft. in the project.
- iv. That the original allottee and respondent entered into a builder buyer's agreement on 01.04.2013 and subsequently the "buyer's agreement" was endorsed in favour of Mr. Praveen Kumar S/o Shri Hoshiar Singh Dahiya on 25.04.2013.



- v. That Mr. Praveen Kumar S/o Shri Hoshiar Singh Dahiya purchased the said flat in the project from original allottee vide "agreement to sell" dated 17.04.2013 and endorsement the buyers agreement was subsequently made on 25.04.2013, thus stepping into the shoes of the original allottee.
- vi. That the said flat was subsequently purchased by Mr. Virender Singh Raghave & Mrs. Anjana Raghave, R/o, F-401, Munirka Apartment, Plot No. 11, Sector 9, Dwarka, New Delhi on 13.07.2019 by executing agreement to sell between Mr. Praveen Kumar S/o Shri Hoshiar Singh Dahiya, and Mr. Virender Singh Raghave & Mrs. Anjana Raghave, endorsement on the buyers agreement was subsequently made on 06.08.2019, thus stepping into the shoes of the original allottee. Further, the respondent confirmed nomination of the complainants for the said flat through nomination letter and endorsement on the buyer's agreement on 06.08.2019. Further, on 06.08.2019, the respondent issued a nomination letter in which respondent confirms that the nomination formalities having completed and accordingly now the captioned property stands in the name of complainants and the respondent also confirm having received of consideration amount from original buyer.
- vii. That after the endorsement was made on the buyer's agreement in favour of the complainants, the complainants with bona-fide intentions continued to make payments on the basis of the demand



raised by the respondent. During the period starting from 06.08.2019, the date of endorsement on the buyer's agreement, the respondent raised demands of payments vide various demand letter which were positively and duly paid by complainants. A total sum of more than Rs.1,01,86,322/- was paid. Thus, it shows the complainant has complete sincerity and interest in project and the said flat.

- viii. That the said unit was offered to the original allottee for a total sale consideration exclusive of taxes is Rs.89,34,983/- (which includes the charges towards basic price Rs.74,36,583, exclusive/dedicated covered car parking of Rs.3,00,000/-, EDC&IDC of Rs.5,70,900/-, club membership of Rs.50,000/-, IFMS of Rs.82,500/-, and PLC for central greens area of Rs.4,95,000/-) hereinafter referred to as "sale consideration".
- ix. That the said buyer's agreement executed between the respondent and original buyer on 01.04.2013 and subsequently endorsed in the name of Mr. Praveen Kumar S/o Shri Hoshiar Singh Dahiya on 25.04.2013 and thereafter endorsed in the name of complainant herein on 06.08.2019. Buyer's agreement consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of buyers agreement by complainants, will cost him forfeiting of 15% of total consideration value of unit. Respondent exceptionally

increase the net consideration value of flat by adding EDC, IDC and PLC and when complainants opposed the unfair trade practices of respondent they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 24% they said this is standard rule of company and company will also compensate at the rate of Rs.7.5 per sq. ft. per month in case of delay in possession of flat by company. They opposed these illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there is no other option left with complainants because if complainants stop the further payment of installments then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainants.

- x. That as per annexure-III (schedule of payments) of the buyer's agreement the sales consideration exclusive of ST and GST is Rs.89,34,983/- (which includes the charges towards basic price, covered car parking, EDC&IDC, Club Membership, IFMS, and PLC Central Greens) but later at the time of possession respondent add Rs.30,076/- in sale consideration and increase sale consideration to Rs.89,65,059/- without any reason for the same and respondent also charge IFMS Rs.82,500/- separately, whereas IFMS Charges already included in sale consideration and that way respondent



charge IFMS twice from complainants. In total the respondent increased the sale consideration by Rs.1,12,576/- (Rs.30076/- + Rs.82,500/-) without any reason, which is a unilateral and unfair trade practice. The complainants opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainants.

- xi. That as per the clause 14 of the said flat buyer's agreement, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a five (5) months grace period, from the date of start of construction. However the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement.
- xii. That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 24.08.2021, issued by the respondent, upon the request of the complainants, they have already paid Rs.1,01,86,322/- towards total sale consideration plus taxes as on today to the respondent and now nothing is pending to be paid on the part of complainants. Although the respondent had charged additional amount of Rs.1,12,576/- from the complainants on sales price without stating any reason for the same and respondent also squeeze money amounting Rs.5,89,982/- by way of imposing



delay payment charges at rate of 24% on delay of Installment payments.

- xiii. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyers agreement, the original buyer's & subsequent allottee(s) had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the allottees about the completion and delivery said flat. The allottees thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- xiv. That the conduct on part of Respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat basis its false and frivolous promises, which the Respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.

xv. That the offer of possession offered by respondent through "intimation of possession" was not a valid offer of possession because respondent offered the possession on dated 01.06.2019 with stringent condition to pay certain amounts which are never be a part of agreement and project was delayed approx. three years. At the time of offer of possession respondent did not even adjusted the delay penalty @ Rs.7.5/- sq. ft. per month (from proposed handing over date 14.06.2016 to actual date of offer of possession 01.06.2019). In case of delay payment, builder charged the penalty @ 24% per annum and in delay in possession respondent did not pay a single penny, this is illegal, arbitrary, unilateral and discriminatory and above all respondent did not allow complainants to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the Offer of possession. Respondent demanded two year advance Maintenance charges from complainants which was never agreed under the buyer's agreement and respondent also demanded a lean marked FD of Rs.2,93,729/- in pretext of future liability against HVAT which are also a unfair trade practice. Complainants informed the respondent about his unfair calculation of delay possession penalty and also enquire the construction status of rest of project through telephonically but nothing changed and respondent does not want answer any enquiry before getting complete payment against his final demand. Respondent left no

other option to complainants, but to pay the payment two year maintenance charges Rs.1,44,540/- and fixed deposit of Rs.2,93,729/- with a lien marked in favour of Emaar MGF Land Limited and Rs.4,11,600/- towards E-Stamp duty and Rs.45,000/- towards registration charges of above said unit no. 0601, Tower 12, Gurgaon Greens in addition to final demand raised by respondent along with the offer of possession. Respondent handover the physical possession of said flat on 04.09.2019 after receiving all payments on 31.07.2019 from the complainants.

xvi. That the GST Tax which has come into force on 01.07.2017, it is a fresh tax, and the possession of the apartment was supposed to be delivered to complainant on 14.06.2016, therefore, the tax which has come into existence after the due date of possession of flat, this extra cost should not be levied on complainant, since the same would not have fallen on the complainant if Respondent had offer the possession of flat within the time stipulated in the builder buyer's agreement.

xvii. That after taking possession of flat on 04.09.2019, the complainants also identify that some major structural changes were done by respondent in project "Gurgaon Greens" in comparison to features of project narrated to complainants at the office of respondent, area of central park was told 8 acre but in reality it is very small as compare to 8 acre and respondent also build car parking underneath 'Central Park', Joggers park is no

were exist whereas respondent charge a PLC of Rs.4,95,000/- from the complainants in pretext of central park. Most of the amenities are nowhere exist in project whereas it was highlight at the time of booking of flat. Respondent did many structural changes and cut down on the internal features of project, based on which respondent sold this flat to complainants and gain exception amount of profit on the cost of complainants and other buyers of the unit in the project Gurgaon Greens. Respondent did not even confirm or revised the exact amount of EDC, IDC, and PLC after considering the structural changes neither they provide the receipts or documentary records showing the exact amount of EDC, IDC and PLC paid to government and respondent did not even adjust the surplus amount of EDC, IDC and PLC charged from complainants and other buyers.

xviii. That the respondent charge exceptionally high PLC from complainants without even transferring the ownership rights of amenities to complainants on the common area of project. Respondent compelled almost every flat owner (total 672) through unilateral buyer's agreement to pay PLC of Rs.4,95,000/- for central park whereas respondent sell car parking of Rs.3,00,000/- each underneath Central Park, this way respondent sell same area twice to residents and collect exceptionally high and unilateral and unjustified PLC from the complainants. Respondent only spread grass on roof of covered parking area and sell it as "Central Green"

at exceptionally high rate of Rs4,95,000/- each. Further, the respondent did not provide the final measurement of above subject unit and no architect confirmation provided by respondent about the final unit area which respondent will going to handover to complainants.

- xix. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainants to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project. Respondent using sub-standard signage boards all over the flats and lobby area and other common area which made the project look more sub-standard.
- xx. That the cause of action accrued in favour of the complainants and against the respondent on 30.01.2012 when the said flat was booked by original allottee and it further arose when respondent failed/neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.



C. Relief sought by the complainant

4. The complainant is seeking the following relief:

- i. Direct the respondent to pay delayed possession interest @ 18% on account of delay in offering possession on the amount paid by the complainant of Rs.1,01,86,322/- against the sale consideration of the said flat from the date of payment till the date of delivery of possession;
- ii. Direct the respondent to return an excess amount of Rs.1,12,576/-, unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
- iii. Direct the respondent to return the amount of Rs.5,89,982/- charged by respondent as interest @24% on delay payment of installments for the period of 30.11.2016 to 31.07.2019.
- iv. Direct the respondent to charge maintenance in accordance with buyer's agreement and furnish the records and details of maintenance calculations to the complainants.
- v. Direct the respondent to return entire amount paid as GST tax paid by the complainant between the period from 01.07.2017 to 24.07.2019.
- vi. Direct the respondent to return entire amount paid as VAT tax paid by the complainant between the period from 01.04.2014 to 30.06.2017.
- vii. Direct the respondent to issue necessary instruction to complainants bank to remove the lien marked over fixed deposit of Rs.2,52,929/- in favour of respondent on the pretext of future payment of HVAT for the period of 01.04.2014 to 30.06.2017.



- viii. Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance of actual size deliver to complainants.
- ix. Direct the respondent to charge electricity charges accordance with consumption of units by complainants and restrain respondent from charging fixed minimum charges on electricity meters.
- x. Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.
- xi. Direct the respondent to return an proportionate amount of PLC out of Rs.4,95,000/- charged for viewing a 8 acre central green area.
- xii. Any other relief/order or direction which this Authority may deems fit and proper considering the facts and circumstances of the present complaint.

D. Reply filed by the respondent

5. 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. That the complainant was handed over the physical possession of the unit on 04.09.2019 which is reflected in the unit handover letter dated 04.09.2019. The complainant is in the peaceful possession of the unit since more than two years and the present complaint is filed with a malafide intention.
 - ii. That the address of the respondent mentioned in the proforma is not functional and unregistered. That the respondent was formerly known under the name and style of M/s Emaar MGF Land Ltd.,

however, had changed its name to "Emaar India Limited" w.e.f. 07.10.2020 as is evident from the certificate issued by the Government of India, Ministry of Corporate Affairs, New Delhi and got incorporated under the Companies Act, 1956, having its Regd. Office at 306-308, Square One, C-2, District Centre, Saket New Delhi South Delhi DL 110017 and corporate office at Emaar Business Park, Sector 28, Gurgaon 122002.

- iii. That Mr. Vikrant Rohilla (the "Original Allottee") being interested in the real estate development of the respondent, licence no. 75 of 2012 dated 31.07.2012 for development of a group housing colony was granted to the complainant by the Director, Town & Country Planning, Govt. of Haryana upon which the complainant devised the development of the project, under the name and style of "Gurgaon Greens" situated at Sector 102, Gurugram, Haryana, tentatively applied for provisional allotment of the unit vide application who was allotted unit no. GGN-12-0601 on sixth floor in building/tower no. 12, having a super area of 1650 sq. ft. vide an allotment letter dated 25.01.2013 and consequently through the buyer's agreement dated 01.04.2013.
- iv. That thereafter, the unit was transferred to Mr. Praveen by the original allottee vide a nomination letter dated 25.04.2013. Subsequently the unit was assigned to the complainants, vide a nomination letter dated 06.08.2019. The nomination letters dated



25.04.2013, 06.08.2019, assignment docket in favour of Mr. Virender Singh Raghav and Anjana Raghav.

- v. 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 it must be noted, whilst there is no doubt that being a subsequent allottee, the complainant has entered into the shoes of the original allottee, however, the same is not absolute.
- vi. That, the complainants entered into the picture in 2019, i.e., when the construction of the project was already delayed from the proposed timelines, due to reasons beyond the control of the respondent. That having knowledge of the same, the complainants willingly and voluntarily entered into the agreement for sell and the transfer documents thereof. That having known about the same, the complainants cannot, under no circumstance whatsoever, be allowed to take benefit of their own wrong. Hence, the complaint is liable to be dismissed with costs against the complainant.
- vii. That since the complainants were already in knowledge of the delay caused, they had consequently agreed to not take any compensation or rebate that the original allottee might have been entitled to, as evident from the assignment docket document no. 14 annexed herewith. That in lieu of the knowledge of such delay, the proposed date of delivery of possession was 02.07.2019. Moreover, it must be

categorically noted that the offer of possession was made to the first subsequent allottee, Mr. Praveen Kumar on 01.06.2019.

- viii. That the complainants were nominated after having the possession was offered to the first subsequent allottee. That the complainants bought the unit with the prior knowledge of the offer of possession being already made and thus with no anticipation of any delay whatsoever. That thereafter, without any delay, the complainants were handed over the unit on 04.09.2019.
- ix. That the respondent has complied with all of its obligations, not only with respect to the agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. That despite the innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for part occupation certificate vide an application for issuance of occupation certificate dated 31.12.2018, before the concerned Authority and successfully attained the occupation certificate dated 30.05.2019. It is to be noted that the construction of all the booked apartments has been completed, out of which 563 units were handed over at the time of filing this complaint.
- x. That thereafter, and only after obtaining the requisite permissions, the respondent legally offered the possession of the unit to the complainants on 01.06.2019 and request the payment of final dues



and taking the possession of the Unit on or before 02.07.2019. That consequently, the possession of the unit was taken by the complainants on 04.09.2019 and the conveyance deed was executed on 09.09.2019.

- xi. That the project has been duly completed after having obtained all the necessary approvals and fulfilling all the requirements as per the existing bye laws. That at the outset, without prejudice to the contents of this complaint, it must be noted that the complainant is a renowned real estate developer of international repute.
- xii. That the complainants after having executed the conveyance deed for more than two years, taking and enjoying peaceful possession of the unit, and having enjoyed such possession for such a long period, the complainants should not be entitled to claim the interest on the delayed possession. The complaints should be liable to be dismissed with heavy costs. Thus, the present complaint is devoid of any cause of action and is nothing but an abuse process of Law. It is submitted that a contract is deemed to be concluded after execution of conveyance deed. It is also submitted that the complainants executed a unit hand over letter where it is stated that the complainant upon acceptance of possession, the liabilities and obligations of the company as enumerated in the allotment letter/buyers agreement stands satisfied.



- xiii. That through the present compliant, the complainants have sought delayed possession charges. That without accepting the contents of the complaint and without prejudice to the present reply, even if in any circumstance, whatsoever, if the delay possession charges are considered to be a statutory right, the complainants have slept over their rights for a long period of time. That the Act came into force on 01.05.2016 and the rules were implemented on 28.07.2017 and the complainants were nominated on 06.08.2019, i.e., much after RERA being in force and even after the offer of possession being made. That no person should be allowed to misuse the process of law. After having slept over their rights for a number of years, the complainants should not be allowed to get any relief whatsoever.
- xiv. That timely payments from the allottees are key to timely delivery of Unit. It must be noted that the payments against the unit were delayed. A number of payment request letters and reminders at various instances had been sent to the complainant for payment of dues.
- xv. That no demand was raised before-hand by it. In order to ensure utmost transparency, the respondent raised demands as and when the construction was being done. The complainants have caused delay which has been critical to the respondent and stands in gross violation of the agreement. That such delay has gravely hampered the smooth functioning and construction of the project. This clearly

shows the mala fide conduct exercised by the respondent which is in complete breach of the terms of the agreement.

- xvi. That the delivery of possession of the unit by the respondent was “subject to the allottee having timely complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and compliance with all provisions, formalities, documentation etc..”.
- xvii. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent builder. That the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 14(b)(I), however, despite all the hardships faced by the respondent, the respondent did not, suspend the construction and managed to keep the project afloat through all the adversities.
- xviii. That the complaint is a frivolous attempt of the complainant to extract monies out of the respondent. That there exists no cause of action for the complainant to file the present complaint. That the respondent has made good on all parts of his responsibilities and obligations under the agreement read with the transfer documents and under the law, rules and regulations. That for the reason of non-existence of an existing cause of action, this complaint is liable to be dismissed on this ground alone. That after having slept on their

rights for a number of years, the complainants cannot be rightly allowed to have the present claims.

- xix. Moreover, without accepting the contents of the complaint in any manner whatsoever, the bonafide conduct of the respondent has to be highlighted as the respondent has raised various credit memos: for TDS Certificate, on account of GST Migration, on account of anti-profiting amounting and on account of EPR as is evident from the statement of accounts dated 17.10.2021. The respondent also credited an amount of Rs.34,132/- towards anti-profiting. Moreover, the respondent has also credited a sum of Rs.3,128/- as benefit on account of EPR (early payment rebate). 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 principle 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.
- xx. That in light of the bona fide conduct of the respondent, the peaceful possession having been taken by the complainants, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favour of the respondent.

- xxi. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant. Furthermore, the project of the respondent has been registered under the Act, 2016 and the Rules, 2017. Registration certificate granted by this Authority vide memo no. HRERA-139/2017/2294 dated 05.12.2017 has been appended with this reply. It is pertinent to mention that the respondent had applied for extension of the registration and the validity of registration certificate was extended till 31.12.2019.
- xxii. It needs to be highlighted that an amount of Rs.45,000/- towards E-Challan due and payable by the complainants. The complainants have intentionally refrained from remitting the aforesaid amount to the respondent. That the complainants have consciously defaulted in his obligations as enumerated in the buyer's agreement as well as under the Act. The complainants cannot be permitted to take advantage of his own wrongs. The instant complaint constitutes a gross misuse of process of law. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent.
6. The complainant and respondent have filed the written submissions on 21.04.2023 and 02.09.2022 respectively which are taken on record. No



additional facts apart from the complaint or reply have been stated the written submissions.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent.

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

11. The respondent took a stand that the complainant is investor and not consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and they have paid total price of Rs.1,01,86,322/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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



12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

- G.I Direct the respondent to pay delayed possession interest @ 18% on account of delay in offering possession on the amount paid by the complainant of Rs.1,01,86,322/- against the sale consideration of the said flat from the date of payment till the date of delivery of possession.**
13. The original allottee i.e., Vikrant Rohilla was allotted a unit bearing no. GGN-12-0601, admeasuring 1650 sq. ft. on the 6th Floor of Building -12, in project of the respondent named "Gurgaon Green" at Sector-102, Gurugram vide provisional allotment letter dated 25.01.2013 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 01.04.2013. Thereafter, the original allottee i.e., Vikrant Rohilla sold his unit to the first subsequent allottee namely Praveen Kumar vide nomination letter dated 25.04.2013. The occupation certificate was received from the competent authority on 30.05.2019 and possession of the unit was offered to the first subsequent allottee vide offer of possession letter



dated 01.06.2019. Thereafter, the original allottee requested the respondent to transfer/sell the said unit to the complainant vide agreement to sell dated 13.7.2019. Accordingly, the respondent vide nomination letter dated 06.08.2019, confirming substitution of name in the aforementioned apartment and the said apartment was transferred/endorsed in the name of the complainant. Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 04.09.2019. Also, the conveyance deed bearing vasika no. 6456 dated 09.09.2019 was also executed by it in favour of the complainants in respect of the said unit.

14. Considering the above-mentioned facts, the authority is of the view that the complainants herein is a second subsequent allottee who had purchased the apartment from the previous allottee on 06.08.2019 i.e., at such a time when the possession of the subject unit was already offered to the first subsequent allottee. It simply means that the ready to move-in property was offered to the complainants and he was well aware about the fact that the construction of the tower where the subject unit is situated has already been completed and the possession of the same has been offered to the first subsequent allottee on 01.06.2019 after issuance of the occupation certificate by the concerned authority. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 06.08.2019 i.e., after offer of possession which was made on 01.06.2019 to the first subsequent allottee. It is pertinent to mention here that the present



allottee never suffered any delay and also respondent builder had neither sent any payment demands to the complainant nor complainant paid any payment to the respondent. So, there is no equity in favour of the complainant. Hon'ble Apex Court has also categorically held in many judgements that the rules and procedure are handmaid of justice and not its mistress. Hence, in such an eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainant as there is no infringement of any of his right (being subsequent allottee) by the respondent-promoter.

15. In the light of the facts mentioned above, the complainants herein who have become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as he has not suffered any delay in the handing over of possession. Hence, the claim of the complainant w.r.t. delay possession charges is rejected being devoid of merits.

- G.II Direct the respondent to return an excess amount of Rs.1,12,576/-, unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.**
- G.III Direct the respondent to return the amount of Rs.5,89,982/- charged by respondent as interest @24% on delay payment of installments for the period of 30.11.2016 to 31.07.2019.**
- G.IV Direct the respondent to charge maintenance in accordance with buyer's agreement and furnish the records and details of maintenance calculations to the complainants.**
- G.V Direct the respondent to return entire amount paid as GST tax paid by the complainant between the period from 01.07.2017 to 24.07.2019.**
- G.VI Direct the respondent to return entire amount paid as VAT tax paid by the complainant between the period from 01.04.2014 to 30.06.2017.**
- G.VII Direct the respondent to issue necessary instruction to complainants bank to remove the lien marked over fixed deposit**



of Rs.2,52,929/- in favour of respondent on the pretext of future payment of HVAT for the period of 01.04.2014 to 30.06.2017.

G.VIII Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance of actual size deliver to complainants.

G.IX Direct the respondent to charge electricity charges accordance with consumption of units by complainants and restrain respondent from charging fixed minimum charges on electricity meters.

G.X Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of the present litigation.

G.XI Direct the respondent to return an proportionate amount of PLC out of Rs.4,95,000/- charged for viewing a 8 acre central green area.

16. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. In the above mentioned relief sought by the complainants the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties.
18. Moreover, the clause 13 of the conveyance deed dated 09.09.2019 is also relevant and reproduced hereunder for ready reference:

13. That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein.

19. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.
20. In the present case, the Authority (Shri. Arun Kumar, Hon'ble Chairperson, Shri. Vijay Kumar Goyal, Member & Shri. Sanjeev Kumar Arora, Member) heard the complaint and reserved the order on 02.07.2024, the same was fixed for pronouncement of order on 03.09.2024. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora got retired and has been discharged from his duties from the Authority. Hence, rest of the presiding officers of the Authority have pronounced the said order.
21. Hence, no case for DPC is made out.
22. Complaint as well as applications, if any, stands dismissed being not maintainable. The case stands disposed off accordingly.
23. File be consigned to registry.

V.I. 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.09.2024