

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

Complaint no. : 2480 of 2023
Order reserved on : 08.10.2024
Order pronounced on : 10.12.2024

1. Mrs. Ritu Lal
2. Mr. Pratik Prakash
Both R/o:-EEA-A-F10-03, Emerald Estates Apartments,
Sector- 65, Gurugram.

Complainants

Versus

M/s Emaar India Ltd.
(Formerly known as Emaar MGF Land Ltd.)
Address: Emaar MGF Business Park, M.G. Road, 2nd
Floor, Mehrauli Road, Sikandarpur Chowk, Sector-28,
Gurugram-122002, Haryana.
Also at:- ECE House, 28, Kasturba Gandhi Marg, New
Delhi- 110001

Respondent

Coram:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

Appearance:

Shri Gaurav Rawat
Shri Harshit Batra

Advocate for the complainants
Advocate for the respondent

ORDER

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

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Estate at Emerald Hills, Sector 65, Gurugram, Haryana
2.	Project area	25.499 acres
3.	Nature of project	Group housing colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008 Valid up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and 4 others
6.	RERA Registered/ not registered	Registered vide no. 162 of 2017 dated 29.08.2017 Valid up to 28.08.2022
7.	Provisional allotment in favour of original allottee i.e., Ms. Aakansha Lall.	06.10.2009 [annexure R1, page 52 of reply]
8.	Date of execution of buyer's agreement in favour of original allottee i.e., Ms. Aakansha Lall	06.02.2010 [Page 54 of reply]
9.	Unit/Plot no.	EEA-A-F10-03, on 10 th floor, in building no. -A [Page 59 of reply]
10.	The original allottee transferred the unit to the complainant vide an agreement to sell dated	16.08.2017 [Page 150-154 of reply]
11.	Transfer confirmation letter in favour of complainant herein	12.09.2017 [annexure R8, page 164 of reply]
12.	Possession clause	"11. POSSESSION (a) Time of handing over the possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and</i>

		<p><i>conditions of the buyer's Agreement, and not being in default under any of the provisions of this buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the proposed unit within 36 months from the date of commencement of construction and development of the unit. The Allottee(s) agrees and understands that the Company shall be entitled to <u>a grace period of 6 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the Project.</u>"</i></p>
13.	Date of commencement of construction	26.08.2010 [annexure R21, page 174 of reply]
14.	Due date of possession	26.02.2014 [Note: 6 months grace period is included]
15.	Total consideration as per statement of account dated 27.07.2023 at page 174 of reply	Rs.44,56,429/-
16.	Total amount paid by the complainant as per statement of account dated 27.07.2023 at page 174 of reply	Rs.44,55,862/-
17.	Occupation certificate	08.01.2018 [annexure R9, page 166 of reply]
18.	Offer of possession	18.04.2018 [annexure R10, page 168 of reply]
19.	Unit handover letter dated	10.05.2018 [annexure R11, page 173 of reply]
20.	Date of conveyance deed	07.08.2018 [annexure R13, page 181 of reply]

B. Facts of the complaint

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

- i. That in the year 2008, the respondent company issued an advertisement announcing a group housing colony project called "Emerald Estate Apartments" at Sector - 65, Gurugram was launched by Emaar MGF Land Ltd., under the license no. No. 06 of 2008 dated 17.01.2007, issued by DTCP, Haryana, and Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.
- ii. 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 emerald estate apartments. 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, Mrs. Aakash Lall, booked a unit in the project by paying an amount of Rs.5,00,000/- dated 22.08.2009, towards the booking of the said unit bearing no. EEA-A-F10-03, 10th floor in Sector 65, having super area measuring 1020 sq. ft. to the respondent dated 22.08.2009 and the same was acknowledged by the respondent.

- iv. That the respondent confirm the booking of the unit to the original allottee vide allotment letter dated 22.08.2009, providing the details of the project, confirming the booking of the unit dated 22.08.2009, allotting a unit no. EEA-A-F10-03, 10th floor, in Sector 65, measuring 1020 sq. ft. (super built up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.41,43,880/-, which includes basic price, Plus EDC and IDC, car parking charges and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- v. That the original allottees subsequently transferred/endorsed the property in favour the complainants vide agreement to sell in favour of the complainants for an appropriate consideration. The balance amount for obtaining the property which was still under construction was paid by the complainants according to the demands raised by the respondent. The respondent/promoter, vide their nomination letter dated 12.09.2017, recorded their consent to the transfer by stating:
- "Accordingly, now the captioned property stands in the name of Ritu Lal and Pratik Prakash."*
- vi. That a buyer's agreement was executed between the original allottee and respondent on 10.12.2009. It is pertinent to mention here that same was endorsed in favour of the complainants vide nomination letter dated 12.09.2017. 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 August, 2013. The complainants 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.

- vii. That as per clause 11(a) of the buyer's agreement the respondent had to deliver the possession of the unit within period of 36 months from the date of start of construction plus six months grace period. Start of construction is 26.08.2010. Therefore, the due date of possession comes out to be 26.08.2013. 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.44,75,227/-, towards the said unit against total sale consideration of Rs.41,43,880/-.
- viii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. 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.
- ix. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once

complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- x. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc. 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.
- xi. That the respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of the Act, 2016 and the Rules, 2017.
- xii. That the respondents have 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 FBA 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.

- xiii. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.
- xiv. That the complainants after many request and emails; received the offer of possession on 18.04.2018 along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement:
- Advance monthly maintenance for 12 months of Rs.42,840/-;
 - Electric meter charges of Rs.9,103/-;
 - Gas connection charges of Rs.17,213/-;
 - Electricity connection charges of Rs.28,766/-;
 - Electrification charges of Rs.18,573/-;
 - HVAT of Rs.13,327/-.
- xv. 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.

- xvi. That the respondent asked for 12 months of advance maintenance charges amounting to Rs.42,840/- from the complainants which is absolutely illegal and against the laws of the land and having no option left complainants paid the same also.
- xvii. That the responsibility for upkeep and maintenance of these areas is collective. The contributions made for the same are in the form of a stipulated fee to manage expenses for the management and repair of any damage to the same. This amount contributed for operational expenditure on the common areas of the premises is called common areas maintenance. The common area maintenance charges are calculated on monthly basis, based on actual charges and are then paid by the owners of the units to the maintenance agency or to the association which manages the complex where the units are situated. Hence these are paid monthly once the expenses have been incurred and billed to the owner of the unit and therefore demanding an amount of Rs.42,840/- 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.
- xviii. That the Respondent asking for electric meter charges of Rs.9,103/- and electrification charges of Rs.18,573/- from the Complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/- hence asking for such a huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately. So are the other demands required to be withdrawn,

as per details provided above and those which are not a part of the BBA.

- xix. The project amenities are 24x7 power back up, 24x7 security, badminton 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, visitor parking.
- xx. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. Complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- xxi. That the complainants in some instalment has paid delayed charges @ 15% while making payment and has always made the payment as per the construction linked plan attached to the BBA. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the physical handover of the unit. Further, respondent issued handover advice letter. Thereafter, respondent

issued handover letter dated 10.05.2018 on account of handing over the physical possession of the unit. Thereafter, complainants approach the company raising our concern on the above mentioned issues and several emails and reminder emails were also sent to the company. In response, company admitting their fault and illegal act replied vide email dated 27.07.2020 stating that revenue roads will soon be coming under the purview of the MCG. Therefore, company is working toward approaching MCG and finding the solution. Further, admitting the inconvenience that has been caused to Complainants and ensuring to take all the measures to resolve the issue.

- xxii. That vide email dated 26.08.2020, company informed complainants that the issue pursuant to revenue rasta has been permanently resolved and reconstruction of boundary walls will commence soon. On receiving the said email we asked the company to provide Complainants the copy of the documents/agreement/papers that has been executed but till date Company even after repeated reminders has failed to provide the same. It is pertinent to note here that ironically it is false today also that issue pertaining to revenue rasta has been permanently resolved. This is an absolute misrepresentation on the part of company and making mockery of whole issue. This issue has been raised in all meetings with the facilities team but no legal document has been shared with complainants so far.
- xxiii. That no negotiations were permitted in relation to the buyer's agreement. The complainants was told that the sale deed will encompass all the relevant issues at hand. It is submitted that this agreement and various clauses therein amount to an

unconscionable agreement that is an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.

- xxiv. That the present Complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the Respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the Respondent, from the Respondent point of view may be unique and innovative but from the allottee 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.
- xxv. That the complainants is the one who has invested their life savings in the said project and are dreaming of a home for themselves and the respondents have not only cheated and betrayed them but also used their hard earned money for their enjoyment. That the complainants has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law. Hence the present complaint.

C. Relief sought by the complainants

4. The complainants have filed the present compliant for seeking following reliefs:
- i. Direct the respondent to pay the interest on account of delay in offering possession on Rs.44,75,227/- paid by the complainants as

- sale consideration of the said flat from the date of payment till the date of delivery of possession.
- ii. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.
 - iii. Direct the respondent to set aside the one sided indemnity bond get signed by the respondent from the complainants under undue influence.
 - iv. Direct the respondent to refund the amount collected under different heads along with offer of possession which complainants was not liable to pay as per the payment plan.
 - v. Direct the respondent to return unreasonably charged by respondent by increasing sale price after execution of the buyer's agreement between respondent and complainants.
 - vi. Direct the respondent to issue necessary instruction to complainants bank to remove the lien marked over fixed deposit in favour of Respondent on the pretext of future payment of HVAT
 - vii. Direct the respondent to get the clear title of revenue rasta and produce the document to that effect.
 - viii. Direct the respondent to refund collected on account of club membership charges amounting to Rs.75,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present 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 complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
- 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 06.02.2010 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. The present complaint deserves to be dismissed on this ground alone.
- iv. That Ms. Akanksha Lal, i.e., original allottee had booked the unit in question, bearing no. EEA-A-F10-03, 10th floor, tower A, admeasuring 1020 sq. ft. situated in the project developed by the respondent, known as "Emeral Estate" at Maidawas, Sector 65, Gurugram, Haryana vide application form dated 22.08.2009 and requested for provisional allotment of the unit bearing no. EEA-A-F10-03.

- v. That the original allottees, prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottees were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake the development of the same, that the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The original allottees consciously and willfully opted for a construction-linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottees shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect bonafide of the original allottee and hence, issued the provisional allotment letter dated 06.10.2009 to the original allottee. Thereafter, subsequently, the respondent sent the buyer's agreement to the original allottee, which was executed between the parties on 06.02.2010.
- vi. That as per clause 11(a) of the buyer's agreement, the delivery of possession of the unit was proposed to be within 36 months from the date of start of construction (26.08.2010) and a grace period of 6 months, i.e., 26.02.2014. That being in a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of an allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect.
- vii. That the remittance of all amounts due and payable by the allottees 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. Clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since the allottees have defaulted in timely remittance of payments as per the schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants.

- viii. That there have been miserable defaults in timely remittance of the instalments and hence the date of delivery of possession of the unit in question is not liable to be determined in the manner sought by the complainants. The complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- ix. That the original allottees entered into an agreement to sell and purchase dated 16.08.2017, with the complainants herein Mrs. Ritu Lal and Mr. Pratik Prakash. Thereafter, the original allottees and complainants approached the respondent in lieu of transferring the rights, title, and interest of the said property to the complainants. That pursuant thereto the original allottee and the complainant's execution of the affidavit dated 29.08.2017 and indemnity cum undertaking dated 22.08.2017. The transfer was thereafter accepted

by the respondent vide nomination letter dated 12.09.2017. That without prejudice it is submitted that the complainants bought the unit after fully knowing the fact that there is a legitimate delay on account of the reasons beyond the control of the respondent and was purchased by the complainants without any delay or demur. That the complainants bought the unit with open eyes after having inspected the unit and the entire project.

- x. That the complainants being subsequent buyer, has 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 company. That having knowledge of the existing delay, due to circumstances beyond the control of the respondent, the complainants willingly and voluntarily entered into the agreement for sell and transferred 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 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.
- xi. That it needs to be categorically noted that in the present case, since the original allottees entered into an agreement for sale with the complainant, the complainant was very well aware of the delay in the said project but still proceeded to go ahead with the purchase of the said 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, the wrongful benefit of the same cannot extend to the complainant, for whom, there had been not an iota of delay.

- xii. 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 the Authority that despite the default caused, the respondent applied for occupation certificate on 29.06.2017 and the same was thereafter issued on 08.01.2018. 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 for this project to the respondent is necessarily required to be excluded from the computation of the time period utilized for the implementation and development of the project.
- xiii. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by 26.08.2013 are wrong, malafide and result of an afterthought in view of the fact that the several payments were made against the unit to respondent even after 26.08.2013. If there

was in fact a delay in delivery of project, as alleged by the complainants, then no payment would have been remitted after 26.08.2013. The allegations put forth by the complainants qua the respondent are absolutely illogical, irrational, and irreconcilable in the facts and circumstances of the case.

- xiv. That an offer for possession marks termination of the period of delay, if any. That the present complainants were nominated only on 12.09.2017 and offer of possession is made on 18.04.2018. That without prejudice it is submitted that the law is clear on the terms that when a subsequent allottee is nominated then the charges for the delayed possession shall be paid from the date of nomination. It was after the due date of possession that the complainants were nominated. Hence, there was no delay charges are to be paid since the alleged due date. It is also pertinent to mention here that the complainants were also given compensation on the offer of possession of Rs.2,52,178/- as shown by entry no. 56 of the statement of Accounts dated 27.07.2023. It is further submitted that the parties have executed the conveyance deed dated 07.08.2018. That in accordance with the facts and circumstances noted above, it is most humbly submitted that the present claim is barred by limitation as has been filed after 5 years, 1 months, 8 days (1884 days) of the offer of possession and after 4 years, 9 months, 19 days (1753 days) after the execution of conveyance deed. Thus, the claim of the complainants is not maintainable.
- xv. That in cases where no specific limitation period is mentioned in the Act, the limitation of 3 years applies. The Haryana RERA has taken cognizance of the same and has categorically noted that absence of a

provision of limitation does not allow the Authority to take cognizance of the barred claims.

- xvi. Therefore, it cannot be concluded that the respondent was wrong in demanding the above said charges from the complainant. The charges/enhanced price has been charged in accordance with the terms of the buyer's agreement. Moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees /complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments, etc. That additionally, it is submitted that the respondent has credited Rs.2,53,177/- and Rs.6,310/- to the complainants. This amount is bound to be adjusted.
- xvii. That in light of the bona fide conduct of the respondent, no delay for the complainant, 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 to be dismissed with costs in favor of the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The complainant and respondent have filed the written submissions on 11.10.2024 and 29.10.2024 respectively which are taken on record and

has been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the authority

9. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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

10. 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 office 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

11. 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.

12. 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 complaint being barred by limitation.

13. The respondent has filed the reply on 10.01.2024, which is taken on record and raised the preliminary objection in its reply that the complaint is not maintainable being barred by limitation. It is necessary to deal with the preliminary objection before proceeding with the reliefs sought by the complainants.
14. On consideration of the documents available on record, the authority observes that the original allottee i.e., Aakansha Lall was allotted a unit bearing no. EEA-A-F-10-03, 10th floor, admeasuring 1020 sq. ft., in project of the respondent named "Emerald Estate at Emerald Hills" situated at Sector-65, Gurugram vide provisional allotment letter dated 06.10.2009 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 06.02.2010. Thereafter, the original allottee i.e., Aakansha Lall sold it's unit to the first subsequent allottee i.e., complainants (Ritu Lal and Pratik Prakash) vide agreement to sell dated 16.08.2017 and the same was endorsed by the respondent/promoter through nomination letter dated 12.09.2017. The occupation certificate for the subject unit has been obtained by the respondent promoter on 08.01.2018 and the possession has been offered on 18.04.2018. The unit handover letter was issued on

10.05.2018 and conveyance deed was executed between the parties on 07.08.2018.

15. The complainant is seeking delayed possession charges from the respondent while the respondent on the other hand is pleading that the present complaint is barred by limitation as the complainant has got the offer of possession on 18.04.2018 and his conveyance deed executed on 07.08.2018, the transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed and the complainant has filed the present complaint after a long delay on 02.06.2023 i.e., lapsed of 5 years, 1 months, 8 days (1884 days) of the offer of possession and after 4 years, 9 months, 19 days (1753 days) after the execution of conveyance deed. Thus, the claim of the complainants is not maintainable. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the complaint on the ground of the limitation.
16. After the unit was allotted to the original complainant on 06.10.2009, a buyer's agreement in this regard was executed on 06.02.2010. Though the possession of the unit was to be offered on or before 26.02.2014 after completion of the project but the same was offered only on 10.05.2018 after receipt of occupation certificate on 08.01.2018 and ultimately leading to execution of conveyance deed of the same on 07.08.2018. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 10.05.2018 and not from 07.08.2018. 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 is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

17. 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.
18. In the present matter the cause of action arose on 18.04.2018 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 02.06.2023 which is 5 years 1 month and 15 days from the date of cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 31.03.2023. 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.
19. 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.
20. 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.

21. 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. 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.
22. Complaint as well as applications, if any, stands disposed off accordingly.
23. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2024

(Arun Kumar)
Chairman