

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

Complaint no.: 834 of 2023
Date of first hearing: 08.08.2023
Date of Order: 05.12.2024

1. Rajesh Kumar Passi
2. Poonam Passi

Complainants

Both R/o: - AD-80B, Shalimar Bagh,
Saraswati Vihar, Delhi-110088

Versus

Emaar MGF Land Ltd. presently known as
Emaar India Ltd.

Respondent

Regd. office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur
Chowk, Sector-28 Gurugram-122002

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Shri Ishaan Dang (Advocate)

Complainants
Respondent

ORDER

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



A. 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	"Palm Drive", Sector 66, Gurugram, Haryana
2.	Total area of the project	31.62 acres (Inadvertently mentioned as 37.708 acres in proceedings of the day dated 10.10.2024)
3.	Nature of the project	Group housing colony
4.	DTCP license no.	1. 93 of 2008 dated 12.05.2008. Valid/renewed up to 11.05.2020. 2. 50 of 2010 dated 24.06.2010. Valid/renewed up to 23.06.2020.
5.	Unit no.	J-1203, 12 th floor, tower J (As per page no. 33 of the complaint)
6.	Area admeasuring	1900 sq. ft. (Super area) (As per page no. 33 of the complaint)
7.	Provisional allotment letter dated	11.08.2008 (As per page no. 52 of the reply)
8.	Date of execution of buyer's agreement	24.09.2008 (As per page no. 57 of the reply)
9.	Possession clause	14. POSSESSION (i) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Apartment/Villa/Penthouse by December 2010. The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of ninety (90) days,</i>

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		<i>for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i> (As per page no. 47 of the complaint)
10.	Date of commencement of construction	30.11.2008 (As per statement of account dated 11.10.2023 on page no. 118 of the reply)
11.	Due date of possession	31.03.2011 [Note:- December 2010 as mentioned in the buyer's agreement + 90 days grace period] (Inadvertently mentioned as December 2010 in proceedings of the day dated 10.10.2024)
12.	Total sale consideration	Rs.1,11,29,857/- (As per statement of account dated 11.10.2023 on page no. 118 of the reply)
13.	Total amount paid by the complainants	Rs.1,11,44,015/- (As per statement of account dated 11.10.2023 on page no. 118 of the reply)
14.	Occupation certificate	13.02.2017 (As per page no. 34 of the reply)
15.	Offer of possession	10.04.2017 (As per page no. 146 of the reply)
16.	Indemnity undertaking cum for possession	25.04.2017 (As per page no. 153 of the reply)
17.	Unit handover letter issued in favour of the complainants on	28.06.2017 (As per page no. 154 of the reply)
18.	Conveyance deed	14.07.2017 (As per page no. 131 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 1. That the complainants, Mr. Rajesh Kumar Passi and Mrs. Poonam Passi are law abiding citizens and residing at R/o AD-80B, Shalimar Bagh, Saraswati Vihar, Delhi-110088, India.

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- II. That the respondent, M/s Emaar MGF Land Ltd. advertised about its new project namely 'Premier Terraces at Palm Drive' on the 45.48 acres of land, in Sector 66 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims.
- III. In 2007, the respondent issued an advertisement announcing a group housing colony project called "Premier Terraces at Palm Drive" at Sector - 66, Gurugram launched by Emaar MGF Land Ltd. on the 45.48 acres of land, under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. respondent confirmed that the projects had got building plan approval from the authority.
- IV. That the complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely Palm Drive. The respondent told the complainants about the moonshine reputation of the company and the representative of the respondent 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 complainant for payments.
- V. That relying on various representations and assurances given by the respondent company and on belief of such assurances, complainants,

booked a unit in the project by paying an amount of Rs.10,00,000/- dated 05.08.2008, towards the booking of the said unit bearing no. TPD J-F12-1203 (Flat 1203, 12th Floor, Tower J) along with car parking spaces 02 (two) No(s) L-J-62 and L-J-62A, in Sector 66, having super area measuring 1900 sq. ft. to the respondent dated 05.08.2008 and the same was acknowledged by the respondent.

- VI. That the respondent confirm the booking of the unit to the allottee providing the details of the project, confirming the booking of the unit dated 05.08.2008, allotting a unit no. TPD J-F12-1203 (Flat 1203, 12th Floor, Tower J) admeasuring 1900 sq. ft. (super built up area) in the aforesaid project of the developer for total sale consideration of Rs.1,00,43,380/- along with two car parking charges at a consideration of Rs.6,00,000/- car parking spaces 02 (two) No(s) L-J-62 and L-J-62A and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- VII. That a buyer's agreement was executed between the allottees and respondent on 24.09.2008. As per clause 1.2 (a) of the buyer's agreement the sale price of the said apartment shall be Rs.1,00,43,380/-. That would include the basic sale price, EDC, IDC, Preferential location charges and exclusive right to use the dedicated car parking Car Parking spaces 02 (two) No(s) L-J-62 and L-J-62A.
- VIII. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 2018. While this sale deed

acknowledges that the complainants have paid the total consideration of Rs.1,11,44,015./-, towards full and final consideration of the said apartment and applicable taxes etc, it makes no provision for compensating the complainants for the huge delay in handing over the flat and project. The complainants were not given any opportunity to negotiate the terms of the said sale deed.

- IX. That complainants' tenants Mr. Prashant Gutch who have been renting the apartment TPD J-F12-1203 since June 2019 were made to park their cars in various other parking's, whereas the allotted car parking spaces No(s) L-J-62 and L-J-62A were being occupied by tenants of another apartment TPD J-F13-1302 in the same building. The complainant's tenants kept suffering but continued co-operating to avoid any altercation between neighbours and did not inform complainants. However, in July 2022, the administration of the Palm Drive advised that the same parking's had been allotted by Emaar India to two owners viz. TPD J-F12-1203 and TPD J-F13-1302 and asked complainants tenants to approach Emaar India and inform them of that the same car park spaces have been assigned to both owners resulting in chaos between the residents. The complainants and their tenants wrote and met Emaar India officials on several occasions, but to no use, as they always maintained a cold shoulder approach and did not even wish to apologize for their blunder / cheating. The Owners Association of The Palm Drive (Palm Drive Condominium Association) was requested and involved to assist in this deceit / cheating by Emaar India, who intervened on Complainants request and thereby communicated with Emaar India

at their level to resolve this issue. Such a communication from Mr Pankaj Srivastava of PDCA is already confirming and validating that this is a serious issue and needs to be handled with due care especially with the sale deed, unit handover letter and handover advise letter of the two owners of TPD J-F12-1203 and TPD J-F13-1302.

- X. That multiple communications continued till 10.10.2022 when Mr. Saubhik Das of Emaar India informed to Mr. Pankaj Srivastava unilaterally without consulting and getting a NOC and proper written authorisation from complainants.
- XI. That the complainants relying on the expertise of Emaar India and placing reliance and trust on the reputed name of Emaar India in the market never imagined that the car parking spaces that have been confirmed by legal title and document of sale deed dated 14.07.2017 and unit handover letter of 28.06.2017 and handover advise letter of 29.05.2017 has being given to another resident.
- XII. That respondent is put on strict written notice to confirm and substantiate documentarily that the owners of TPD J-F13-1302 do having the proper sale deed, unit handover letter and handover advise letter with car parking space 02 (two) No(s) L-J-62 and L-J-62A. Also, on what basis they decided to take our legal right to use these allocated parkings and move the complainants to other parkings at two different levels, after 5 years.
- XIII. That the respondent is fully aware the purchase of TPD J-F12-1203 was the hard earned life savings of complainants not being a small amount and the car parking space 02 (two) No(s) L-J-62 and L-J-62A

are confirmed by way of sale deed, unit handover letter and handover advise letter. The complainants do not have any grievance and complaint against the other owners of TPD J-F13-1302 but with due respect and good faith would like the resolution of this complex issue to be done cleanly and legally.

- XIV. That the complainants received the email on 10.10.2022 from Emaar India dealing with the car parking spaces in an arbitrary and unilateral manner. The complainants fails to understand how something so important can be taken in such an irresponsible and non-procedural manner and still not resolve after 5 years and more after the sale deeds were executed and signed and stamp duty paid. Emaar India through the above has repeatedly, on multiple occasions and with respect to car parking space 02 (two) No(s) L-J-62 and L-J-62A and services, deceived and defrauded complainants by misrepresenting the true facts and making false commitments and more. It is also pertinent to mention that complainants has been seeking clarifications and explanations via phone, e-mail, SMS as well as WhatsApp messages since a long time ago, from various employees of Emaar India responsible for advising and assisting complainants, but have not received any satisfactory responses or resolution to this, solely caused by negligence and deceit of Emaar India. Emaar India has also breached the privacy and confidentiality of complainants by using this highly confidential information regarding the car parking space 02 (two) no(s) L-J-62 and L-J-62A. Emaar India has compelled and pressurized complainants into making a high-risk property purchase by misrepresenting it to be a no risk purchase and making

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false commitments. The complainants are facing extreme difficulty dealing with the lease / rent of the property also.

- XV. That Emaar India has always been very quick to debit the amounts including stamp duty payments from complainants account, but has failed to provide the documents, confirmation e-mail or any other assurances to ascertain the complete and sole title to the car parking spaces till date and despite repetitive requests don't even admit their negligence. It seems that this is Emaar India practice to take advantage of innocent customers who trust them with their hard-earned life savings. Furthermore, complainants have had to deal with so much distress, inconvenience and harassment over the past many months now. Despite no fault of theirs, complainants have had to invest so much of his time in requesting for clarifications and coordinating with different people of PDCA and with Emaar India instead of concentrating on their work and family. Emaar India has failed to pay any heed to the difficulties faced by complainants. It is clearly evident that the intention of Emaar India was to defraud complainants. The complainants through his counsel also send legal notice dated 23.11.2022 to the respondent but till date respondent failed to provide any satisfactory response till date.
- XVI. 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. It is pertinent to state herein that 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.

- XVII. That in terms of clause 14(a) of the said buyer's agreement, the respondent was under dutiful obligation to complete the construction and to offer the possession on or before December 2010 with a grace of 90 days. That the complainants approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainants that the construction will get completed soon.
- XVIII. 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.
- XIX. The respondent has completely failed to honour its promises and not provided the services as promised and agreed through the brochure, FBA and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of Act of 2016 and Rules, 2017.
- XX. That the respondent has played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to provide car parking 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.

- XXI. 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 FBA. Hence the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondent to provide the car parking originally allotted to the complainants i.e., car parking spaces 02 (two) no(s) L-J-62 and L-J-62A of apartment no. TPD J-F12-1203, Palm Drive, Sector 66, Gurugram, Haryana 122102.
 - II. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from the date amount paid by the complainants i.e. Rs.6,00,000/- in 2017, for car parking spaces 02 (two) No(s) L-J-62 and L-J-62A of Apartment No. TPD J-F12-1203, Palm Drive, Sector 66, Gurugram, Haryana 122102.
 - III. 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 RERA, 2016.



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

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment in question was submitted on 27.05.2015, i.e. well before the notification of the Rules, 2017. The occupation certificate has been thereafter issued on 13.02.2017, prior to notification of the Rules.
 - ii. That the part of the project in which the unit in question is situated (Palm Drive, Sector 66, Gurgaon) is not an 'ongoing project" under Rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.
 - iii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. Therefore, the complainants have 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 24.09.2008, as shall be evident from the submissions made in the following paragraphs of the present reply.

- iv. That the complainants had approached the respondent for purchasing an independent unit in its upcoming residential project "The Palm Drive" situated in Sector 66, Urban Estate, District Gurgaon, Haryana. The complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- v. That thereafter the complainants vide an application form dated 05.08.2008 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, were allotted an independent unit bearing no J-1203, located on the 12th Floor in Tower J , in the project vide provisional allotment letter dated 11.08.2008. The complainants consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they would remit every installment on time as per the payment schedule. The complainants further undertook to be bound by the terms and conditions of the application form. The buyer's agreement dated 24.09.2008 was willingly and consciously executed by the complainants without raising any objection to its terms and conditions.
- vi. That it is respectfully submitted that the rights and obligations of complainants as well as respondent are completely and entirely

determined by the covenants incorporated in the buyer's agreement dated 24.09.2008 which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 14 of the buyer's agreement, the respondent had offered to deliver possession of the unit by December, 2010 along with 90 days of grace period subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of occurrence of the facts/reasons beyond the power and control of the respondent. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's 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. Therefore, the date of delivery of possession is not liable to be determined in the manner suggested by the complainants.

- vii. That upon receipt of the occupation certificate dated 13.02.2017, the respondent offered possession of the unit in question through letter



of offer of possession dated 10.04.2017 to the complainants. The complainants were called upon to remit balance payment and to complete the necessary formalities/documentation necessary for handover of the unit to them. The compensation amounting to Rs.6,87,000/- was also credited in favour of the complainants in accordance with the buyer's agreement dated 24.09.2008.

- viii. That the complainants took possession of the unit on 28.06.2017. In the unit handover letter dated 28.06.2017, the complainants have admitted and acknowledged that they are fully satisfied with regard to the unit, its measurements, location, dimension and development etc. and that the complainants did not have any claim of any nature whatsoever against the respondent. It was further explicitly stated in the aforesaid letter that upon acceptance of possession, the obligations of the respondent under the buyer's agreement /allotment stood discharged. The complainants are estopped from filing the present complaint and from alleging delay.
- ix. That thereafter the conveyance deed bearing Vasika no 2180 dated 14.07.2017 has also been registered in favor of the complainants. The respondent has duly fulfilled its obligations as per the buyer's agreement and there is no lapse or default on its part. Institution of the present complaint after an unexplained delay of more than five years from the date of registration of the conveyance deed in favor of the complainants is clearly indicative of the mischievous and malicious intent of the complainants and the fact that the present complaint is baseless and nothing but an afterthought and an attempt to realise unjust gain and to cause undue loss to the respondent. The

complaint is barred by limitation and is liable to be dismissed on this ground alone. It is further submitted that upon registration of the conveyance deed, the transaction between the parties stands concluded. It is pertinent to note that no right or obligation can be attributed at this point of time against each other at variance from the terms and conditions of the conveyance deed.

- x. That the complainants were allotted two parking spaces L-J 62A and L-J 62 as mentioned in the unit handover letter as well as in the conveyance deed. Inadvertently, due to a bonafide clerical error, the same parking spaces were also allotted to another unit owner in the project, i.e., unit no J-F13-1302 and the parking spaces were also being used by the said unit owner/tenants. However, instead of pointing out the error to the respondent or raising any objection, the complainants used alternative parking spaces in the project as per their convenience to park their vehicles. Since at that time, the project occupancy was less, there were available vacant parking spaces which were used by the complainants/tenants, without seeking the permission of the respondent or of the concerned unit owners to whom the parking spaces were allotted.
- xi. That after an unexplained delay of more than 5 years, probably due to some unit owners objecting to the complainants using their parking spaces, the complainants drew the attention of the respondent to the discrepancy in allotment of parking spaces. By that time, the occupancy in the project had increased substantially and very few unallotted parking spaces were left. Nevertheless, the respondent made its best efforts to identify and allot to the complainants

alternative parking spaces in a convenient location. However, instead of accepting the alternative allotment, the complainants insisted that the same parking spaces which were allotted to unit no. J-F13-1302 and being used by the said unit owners, ought to be allotted to the complainants.

- xii. That by way of the present complaint, the complainants are also praying for a direction to the respondent to allot the same parking spaces, i.e. L-J-62 and L-J-62A that are also allotted to and being used by the unit owners of J-F13-1302 . Due to malafide and malicious intent on the part of the complainants, the complainants have wilfully refrained from impleading the owners of unit J-F13-1302 as parties to the present complaint. Without prejudice to the submission of the respondent that there is no merit in the false and frivolous complaint filed by the complainants, it is respectfully submitted that no order can be passed depriving the unit owners of J-F13-1302 of the parking spaces allotted to them and used by them, without impleading them as parties to the present complaint. It is evident that the complainants have no real interest in allotment of parking spaces no L-J-62 and L-J-62A but are only interested in trying to extort money from the respondent and unduly enrich themselves thereby. It is respectfully submitted that having slept over the issue for over 5 years and by using other parking spaces, the complainants have acquiesced to the allotment of parking spaces no L-J-62 and L-J-62A in favour of the unit owners of J-F 13- 1302 and are estopped from questioning the same. There is no cogent or plausible reason for the complainants to refuse to accept allotment of alternate parking spaces that have been offered

by the respondent. Moreover, the complainants as well as other allottees in the project are merely allotted exclusive rights to use certain parking spaces and no ownership rights or title gets transferred in their favour.

That there is no violation of any provision of Act of 2016 in so far as the respondent is concerned and the present complaint is not maintainable in law or on facts. This is without prejudice to the submission of the respondent that the provisions of Act of 2016 are not applicable to the unit owned by the complainants. The false and frivolous complaint is liable to be dismissed with costs.

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 submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of 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.1 Territorial jurisdiction

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

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

Section 11

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Finding on objections raised by the respondent:

F.I Objections regarding that the respondent has grant of occupation certificate of the project from the competent Authority.

9. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already obtained occupation certificate from the competent authority on 13.02.2017 i.e., before the coming into force of the Act and the rules made thereunder.

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10. The authority is of the view that as per proviso to section 3 of Act of 2016, on-going projects on the date of commencement of this Act i.e., 01.05.2017 and for which occupation/completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

11. The legislation is very clear in this aspect that a project shall be regarded as an "on-going project" until receipt of completion certificate. Since, the completion certificate is yet to be obtained by the promoter-builder with regards to the concerned project, therefore the plea advanced by it is hereby rejected.

F.II Objections regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of

coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer's agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein.



Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Finding on the relief sought by the complainants:

G.I Direct the respondent to provide the car parking originally allotted to the complainants i.e., car parking spaces 02 (two) no(s) L-J-62 and L-J-62A of apartment no. TPD J-F12-1203, Palm Drive, Sector 66, Gurugram, Haryana 122102.

15. The complainants were allotted a unit bearing no. J-1203, 12th floor in Tower-J in project of the respondent named "The Palm Drive" at Sector-66, Gurugram vide allotment letter dated 11.08.2008 and a buyer's agreement was also executed between the complainants and the respondent regarding the said allotment on 24.09.2008.
16. In the present complaint, the complainants intend to continue with the project and are seeking interest on the paid up amount for amenities as provided under the proviso to section 18(1) of the Act of 2016. The buyer's agreement was executed between the complainants and the respondent on 24.09.2008 and as per clause 14(a) of the agreement the respondent was under an obligation to handover the possession of the unit by December 2010 and a grace period of 90 months for applying and obtaining the occupation certificate in respect of the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in *Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari* wherein it has been held that if the

allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

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

17. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 31.03.2011 including grace period of 90 days.
18. In the present complaint, the occupation certificate was received from the competent authority on 13.02.2017 and possession of the unit was offered to the complainants herein vide offer of possession letter dated 10.04.2017. Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 28.06.2017. Also, the conveyance

deed dated 14.07.2017 was also executed by it in favour of the complainants in respect of the said unit. The complainants have filed the present complaint after a long delay on 06.09.2022.

19. The counsel for the respondent vide proceedings of the day dated 25.07.2024 and 10.10.2024 brought to the notice of the Authority that the present complaint is barred by limitation as the complaint has filed by the complainants lapsed of 5 years from the date of execution of conveyance deed and the relief regarding the amenities cannot be sought at this belated stage. Though the counsel for the respondent made his advanced submissions with regard to the maintainability of the complaint on the ground of the limitation. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as **M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others** which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

20. In view of settled proposition of law, the case of complainants cannot be thrown away being barred by limitation but the Authority is of the view

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that 3 years is a reasonable period for filing of complaint. As discussed earlier, after the unit was allotted to the complainants on 11.08.2008, a buyer's agreement in this regard was executed on 24.09.2008. Though the possession of the unit was to be offered on or before 31.03.2011 after completion of the project but the same was offered only on 10.04.2017 after receipt of occupation certificate on 13.02.2017 and ultimately leading to execution of conveyance deed of the same on 14.07.2017. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 10.04.2017 and not from 14.07.2017. Therefore, the limitation period of three years was expired on 10.04.2020 and accordingly, the period between 15.03.2020 till 28.02.2022 as excluded by the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 shall be excluded while calculating the period of limitation as the limitation expired after the beginning of the said period.

21. On consideration of the documents available on record and submissions made by both the parties, the Authority is of the view that though the present complaint is barred by limitation even after the exclusion of zero period for delay possession interest as one cannot sleep over his rights for indefinite period. At the same time, the respondent cannot shy away from his liabilities and is still bound by the contractual obligations as agreed by way of buyer's agreement as well as conveyance deed. Therefore, the complainants are entitled for the parking space 02 (two) No(s) L-J-62 and L-J-62A as mentioned (page no. 95 of the complaint) in the conveyance deed dated 14.07.2017.
22. The Authority hereby directs the respondent-promoter to restore the car parking space 02 (two) No(s) L-J-62 and L-J-62A allotted to the



complainants as per buyer's agreement and conveyance deed within 90 days of this order.

G.II Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from the date amount paid by the complainants i.e. Rs.6,00,000/- in 2017, for car parking spaces 02 (two) No(s) L-J-62 and L-J-62A of Apartment No. TPD J-F12-1203, Palm Drive, Sector 66, Gurugram, Haryana 122102.

G.III 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 RERA, 2016.

23. On the above-mentioned reliefs sought by the complainants, are taken together being interconnected.
24. As stated in para 18, in the present complaint the unit was handed over to the complainants on 28.06.2017 after obtaining the occupation certificate on 13.02.2017. The present complainant has been filed after a substantial delay of more than 5 years and hence is barred by limitation. Moreover, the conveyance deed for the subject unit was executed on 14.07.2017 which specifically mentions the relinquishment of all claims by the allottee after execution of conveyance deed. The relevant clause of the conveyance deed is reproduced below:

"That the vendee undertakes that the vendee shall, before taking possession of the said apartment or at any time thereafter, have no objection to the vendors constructing or continuing with the construction of the other building(s) adjoining to or otherwise (including the addition of structures in the said complex) in the site earmarked for the said complex. The vendee confirms that the vendee shall not raise any objection or make any claims on account of inconvenience, if any, which may be alleged to be suffered by the vendee due to such developmental/construction or its incidental/related activities. The vendee confirms that all rights including the rights of ownership of such land(s), facilities and amenities (other than those within the said building and the land underneath the said building only) shall vest solely with the vendors, who shall alone have the sole and absolute right/authority to deal in any manner with such land(S), facilities and amenities."

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25. Therefore, the above-sought relief by the complainants becomes redundant. Thus, no direction to this effect.

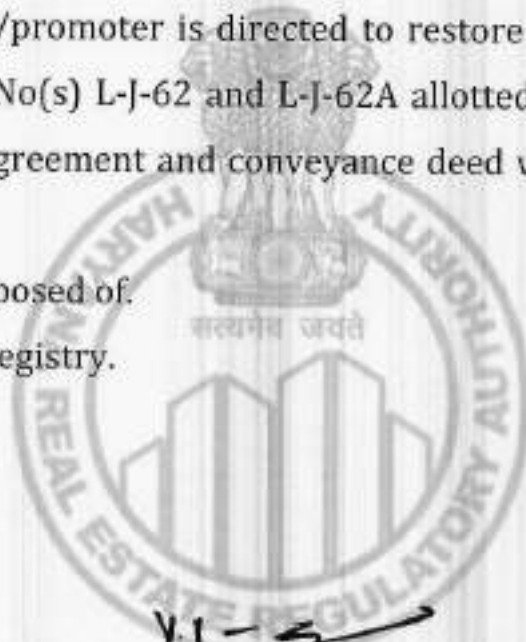
H. Directions of the Authority:

26. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent/promoter is directed to restore the the cark parking space 02 (two) No(s) L-J-62 and L-J-62A allotted to the complainants as per buyer's agreement and conveyance deed within 90 days of this order.

27. Complaint stands disposed of.

28. File be consigned to registry.



V. I. S.
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.12.2024