

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

<b>Complaint no.</b>	:	<b>2873 of 2021</b>
<b>Date of filing complaint:</b>		<b>29.07.2021</b>
<b>Date of decision</b>	:	<b>06.08.2024</b>

<b>Vaibhav Kansal and Neha Kansal</b> Both R/o: EFP-31-0201, emerald floor premier, Sector 65, Gurugram, Haryana 122102	<b>Complainants</b>
Versus	
<b>M/S Emaar MGF Land Ltd.</b> Regd. Office: Ece House, 28 Kasturba Gandhi Marg, New Delhi 110001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. K.K Kohli and Kanish Bangia (Advocate)	Complainants
Sh. Ishaan Dang (Advocate)	Respondent

**HARERA**  
**ORDER**  
**GURUGRAM**

- The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (ins short, the Act) read with rule 29 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 there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	Emerald Floors Premier at Emerald Estate, Sector 65, Gurugram, Haryana
2.	Total area of the project	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008, renewed upto 16.01.2020
5.	Licensee	Active Promoters Pvt. Ltd. M/s Sewak Developers Pvt. Ltd. Rajiv Kumar son of Sh. Nanu Ram, Smt. Sakuntala W/o Sh. Nanu Ram G/o M/s Emaar MGF Land Pvt. Ltd.
6.	Area for which license was granted	25.49 acres
7.	Registered/not registered	Registered vide no. 104 of 2017 dated 23.08.2022
8.	Validity of registration	23.08.2022
9.	Occupation certificate on	05.03.2019 [page 43 of reply]
10.	Provisional allotment letter in favour of Original Allottee (Sanjay Choudhary)	03.11.2009 [Page 61 of reply]
11.	Unit no.	EFP-31-0201, 2 <sup>nd</sup> floor, tower 31 [page 99 of reply]
12.	Area of the unit (super area)	1650 sq. ft.
13.	Buyer's agreement (between the original allottee and the respondent)	01.02.2010 [page 97 of reply]
14.	Possession clause	<b>11. POSSESSION</b> <b>(a) Time of handing over the Possession</b>



		<p>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this 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 Unit <b>within 36 months from the date of execution of buyer's agreement.</b> The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of <b>three months, for applying and obtaining the occupation certificate</b> in respect of the Unit and/or the Project. (Emphasis supplied) [page 112 of reply]</p>
15.	Due date of possession	01.05.2013
16.	Complainants are subsequent allottees	In pursuance of agreement to sell dated 18.02.2015 (page 152 of reply) executed between the complainants and the original allottee the complainants' name was endorsed on the buyer's agreement in terms of affidavit dated 28.03.2015. Thereafter the respondent has issued nomination letter in favour of the complainants on 08.04.2015 (Page 156 of reply). [Name of the co-complainant i.e. Neha Kansal was added in terms of affidavit date 26.08.2018]
17.	Total consideration	Rs.77,92,284/- [As per the statement of account dated 31.08.2021 at page 91 of reply]
18.	Total amount paid by the complainant	Rs.78,19,349/- [As per statement of account dated 31.08.2021 at page 92 of reply]
19.	Tripartite Agreement b/w complainant, respondent and HDFC Ltd.	12.10.2018 [page 128 of complaint]
20.	Conveyance Deed executed	28.01.2021

21.	Occupation certificate on	05.03.2019 [page 43 of reply]
22.	Offer of possession	29.01.2020 [As on page no. 171 of reply]
23.	Unit handover letter dated	02.03.2020 [As on page no. 179 of reply]
24.	Delay compensation paid by the respondent in terms of the buyer's agreement	Rs. 14,07,424/- [As per statement of account dated 31.08.2021 at page 92 of reply]

**B. Facts of the complaint:**

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

- i. The respondent company announced the launch of "Emerald Floors Premier" project in the year 2008. The complainant(s) being second buyers for the flat bearing no. EPF- 31-0201 on second floor with a servant quarter at 6<sup>th</sup> floor at sector-65, Gurugram Haryana.
- ii. On 22.09.2009, the Allottees vide cheque bearing no.424374 made booking payment of Rs. 5,00,000/- for aforesaid unit. Further payments which were duly acknowledged by the respondent vide statement of account dated 07.04.2021, were made in following manner:

Dates	Vide Receipt/Cheque no.	Amount
17.10.2011	131015 & 142481	Rs.4,51,837/-
28.12.2009	771105 & 989259	Rs.7,76,770/-
12.01.2010	990987 & 999206	Rs.6,38,385/-
28.08.2010	030891	Rs. 3,19,193/-
06.01.2011	319927	Rs. 7,700/-
17.10.2011	122147 & 142478	Rs.4,51,784/-
01.12.2011	131015 & 142481	Rs. 4,51,838/-
30.12.2011	142484 & 142484	Rs. 7,22,255/-
16.01.2012	142485 & 143892	Rs. 7,22,256/-
26.03.2012	142485 & 143892	Rs. 5,31,600/-
28.05.2014	871361 & 415978	Rs. 5,41,126/-
11.02.2015	RTGS no. 721219156	Rs. 22,828/-
25.04.2017	000046	Rs. 52,681/-
03.10.2017	000052 & 000051	Rs. 7,03,161

- iii. The builder while executing the builder buyer agreement has failed to offer the exclusive right of open space as per the terms and conditions of the builder buyer agreement and thereby guilty of charging the complainants unjustly, without living up to the terms of one-sided agreement.
- iv. The builder buyer agreement was endorsed in favour of complainants vide endorsement on 26.09.2018. The complainants being second allottees were charged a hefty amount of Rs.2,96,917 as PLC for their allotment. Further it is pertinent to mention that builder failed to provide any stairs or lift access to allotted parking which has not been any good for the complainant because the complainants has to use other towers stairs to reach the basement allotted parking(s). Further in the name of open space area a clubhouse building is constructed which blocks the open space outside the allottee(s) house as promised in builder buyer agreement.
- v. Further the complainants had to pay the car park tax amounting to Rs. 6438 which is refundable in nature and the same was charged arbitrarily.
- vi. That it is absolutely evident that the respondent is involved in unethical/unfair practices so as to extract money from the complainants and the respondent company capriciously involved them in demanding money illegally from the complainants. It is well established that the contractual damages are usually awarded to compensate an injured party to a breach of contract for the loss of his bargain.
- vii. Before we address the issue of PLC amount, it would be appropriate to look at the settled legal position concerning the same. At the outset, we may note that even under the Consumer Protection Act, 1986, the damages for commercial contracts need to be determined as per the Indian Contract Act.
- viii. It is apposite to mention that Hon'ble Supreme Court of India in M/s. Motilal Padampat Sugar Mills vs. State of Uttar Pradesh & Ors. :

*"it has been observed that the true principle of promissory estoppel is that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not. Equity will in given case where justice and fairness demand prevent a person from insisting on strict legal rights even where they arise, not under any contract, but on his own title deeds or under statute."*

- ix. It is well established from the above judgments, that if a representation made by a party to create a legal relation which amounts to a promise and that if acted upon by the other party then it will be binding on both the parties and shall be enforceable.

**C. Relief sought by the complainant:**

4. The complainants have sought following relief(s).
- Direct the respondent to refund of PLC amounting to Rs.5,46,917.5 with interest.
  - Direct the respondent to pay compensation Rs. 30,00,000 with the interest @18% per annum from the actual date of payment of amounts till realisation.
  - Direct the respondent to pay cost of litigation of Rs.50,000/-.
  - Direct the respondent to pay Rs. 10,000.00 for mental agony faced by the complainant.

**D. Reply by respondent:**

5. The respondent by way of written reply made following submissions:
- That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to

the project in question. The application for issuance of occupation certificate in respect of the project in question was made on 29.06.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The occupation certificate has been thereafter issued on 05.03.2019. Thus, the project in question (Emerald Floors Premier, Sector 65, Gurgaon) is not an 'Ongoing Project' under Rule 2(1)(o) of the Rules.

- ii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants have executed a settlement agreement dated 11.12.2019 with the respondent in full and final settlement of all the claims, contentions and grievances harboured by them. It is pertinent to mention that the settlement agreement expressly records that the complainants are left with no further claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses, compensation etc. in respect of the unit in question against the respondent. The complainants are bound by the terms and conditions of the said agreement which supersedes all earlier agreements between the parties. The filing of the present complaint is nothing but an abuse of process of law on the part of the complainants. It is respectfully submitted that the settlement agreement was executed by the Complainants in consideration of the benefits that were extended to them by the respondent upon the deliberate representations of the complainants. It is further pertinent to mention that the benefits enumerated in the settlement agreement were towards full and final settlement of all claims, contentions and grievances of the complainants. The complainants admittedly are not left with any further claims, benefits, compensation etc of any nature whatsoever in respect of the unit in question and therefore filing of the instant complaint is a gross abuse of process of law.
- iii. That even otherwise, 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 01.02.2010, as shall be evident from the submissions made in the following paragraphs of the present reply.

- iv. That the original allottees i.e., Mr. Sanjay Choudhary and Ms. Deepti Choudhary had booked the unit in question, bearing number EFP-31-0201, situated in the project developed by the respondent, known as "Emerald Floors Premier", Sector 65, Gurugram, Haryana vide application form dated 22.09.2009. Provisional allotment letter dated 03.11.2009 had been issued by the respondent in this regard and subsequently a buyer's agreement dated 01.02.2010 was executed between the original allottee and respondent. It is pertinent to mention herein that at the time of application, the building plans of the project had not yet been approved by the competent authority and this fact was clearly and transparently disclosed to the original allottees at the time of booking itself and clearly mentioned in the application form. 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 they shall remit every installment on time as per the payment schedule. The original allottees further undertook to be bound by the terms and conditions of the application form. The original allottees were conscious and aware that the construction would commence only after approval of building plans and as such were/are aware that time was not the essence of the contract when it came to delivery of possession.
- v. That the original allottee had defaulted in terms and conditions of the buyer's agreement. That that the original allottees had defaulted in remittance of installments on time. Respondent was compelled to issue demand notices, reminders etc. calling upon the original allottees to make payment of outstanding amounts payable by them under the payment plan/instalment



plan opted by them. However, the original allottees despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent.

- vi. It is pertinent to mention that clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the original allottees, having defaulted in timely remittance of instalment, were thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the buyer's agreement.
- vii. That thereafter the complainants approached the original allottees for purchasing their rights and title in the unit in question. The original allottees acceded to the request of the complainants and agreed to transfer and convey its rights, entitlement and title in the unit in question to them. An agreement to sell dated 18.02.2015 was executed between the original allottees and the complainants. Nomination letter dated 08.04.2015 issued by the respondent in favour of the complainants.
- viii. Furthermore, it needs to be highlighted that the complainants had executed an affidavit dated 28.03.2015 and an indemnity cum undertaking dated 28.03.2015 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of original allottees. It was further declared by the complainants that the complainants having been substituted in the place of original allottees in respect of the provisional allotment of the unit

in question were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.

- ix. Furthermore, the respondent, at the time of endorsement of the unit in question in favour of the complainants, had specifically indicated to the complainants that the original allottees was not entitled for any compensation/interest on account of their defaults in adhering to the terms and conditions incorporated in the buyer's agreement. Consequently, the complainants would not be entitled to stake any claim against the respondent in this regard. The said position was duly accepted and acknowledged by the complainants. The complainants are conscious and aware of the fact that they are not entitled to any compensation/interest in the facts and circumstances of the case. The complainants have intentionally distorted the real and true facts and have filed the present complaint in order to harass the respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- x. Furthermore, without prejudice to the foregoing, it is an admitted fact that the complainants had stepped into the shoes of the original allottees and therefore all the rights and liabilities of the original allottees were transferred to the complainants. As has been delineated hereinabove, the original allottees were not entitled to any compensation or interest for delay, if any, in offering possession of the unit in terms of the buyer's agreement on account of default of terms and conditions thereof by the original allottees. Thus, the complainants are estopped from advancing claims in contradiction and derogation of the rights and liabilities transferred to them from the original allottees.
- xi. That the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the

buyer's agreement. It is submitted that as per clause 11 of the buyer's agreement the time period for delivery of possession was 36 months alongwith grace period of 3 months from the date of execution of the buyer's agreement subject to the allottee(s) having strictly complied with all the 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 is further provided therein that the time period for delivery of possession of the unit shall stand extended on occurrence of circumstances/reasons which are 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 is categorically provided in clause 11(b)(iv) 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 respondent's discretion till the payment of all outstanding amounts to the satisfaction of respondent. Clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Clause 14 (b) (iv) is herein reproduced below for further reference:

*"That the Allottee(s) agrees and accepts that in case of any default/delay in payment as per the Schedule of Payments, the date of handing over of the possession shall be extended accordingly solely on the Company's discretion till the payment of all outstanding amounts to the satisfaction of the Company"*

- xii. That the complainants have defaulted 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 to be done 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.

- xiii. That it is pertinent to note that the complainants have preferred the instant complaint seeking refund of Preferential Location Charges (PLC) remitted by them to the respondent. The possession of the said unit has been offered vide letter of offer of possession dated 29.01.2020. The complainants have obtained possession of the unit in question vide the Unit Handover Letter dated 02.03.2020. The complainants prior to obtaining possession of the unit in question had satisfied themselves with regard to construction and development of the unit in question including its area, measurements, location, dimensions, development etc. The complainants had inspected the unit in question and had specifically acknowledged that they have no claim/complaint against any aspect of the unit in question including the amenities, specifications, design thereof. Consequently, the complainants cannot be legally permitted to allege that the unit has ceased to be preferentially located. The allegations of the complainants regarding the alleged absence of preferential location aspects from the unit in question as well as the supposed inconvenient location of car parking space are fabricated, misconceived and unfounded.
- xiv. That, without admitting or acknowledging in any manner the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is submitted that the complainants have miserably failed to provide the particulars as to how the unit in question has ceased to be a preferentially located unit or regarding the alleged inconvenience of location of the car parking space. The complainants have merely advanced vague and nonspecific allegations against the respondent without substantiating the same in any manner. The complaint preferred by the complainants is baseless, whimsical and ill-founded.

xv. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of respondent, it is submitted that the project has got delayed and changes had to be incorporated in the layout plan on account of the following reasons which were/are beyond the power and control of respondent:

**I. Second staircase issue:**

- The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code in terms of which buildings having height of 15mtrs. or above but having area of less than 500 sq. mtrs. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.
- Subsequently, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e., buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two stair cases.
- Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005.
- The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application has been insisting on two staircases in all high rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the Developer within one year from the date of issuance of the provisional Fire NOC.
- In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the Respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. It was pointed out by the Respondent that construction of a second stair case would not be possible for several technical reasons such as obstruction of Fire tender path, violation of the set back norms, violation of fire safety norms in as much as the second staircase would not be connected to the common lobby area

and that construction of second staircase by connecting balconies of the dwelling units would pose a security and privacy concern. The Respondent had also pointed out that the allottees of the dwelling units were also eagerly awaiting possession of their units since long and requested that the Fire NOC be issued without any pre conditions.

- The Fire department inspected the site of the project and sought alternate proposals from the Respondent to meet the requirement of second staircase in the buildings in question. The Respondent accordingly submitted various proposals to the Fire Department.
- Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the Respondent had taken a decision to go ahead and construct the second staircase. It is submitted that the construction of the second stair case has been completed and occupation certificate has been obtained by the respondent in respect of the project in question. It is further submitted that the respondent has delivered the possession of the unit in question to the complainants on 02.03.2020.

xvi. That the complainants have been provided with a preferentially located unit. The unit cannot cease to be preferentially located merely on the basis of subjective inclinations of the complainants. Moreover, it is submitted that the project has been constructed in accordance with the sanctioned layout and building plans. The respondent cannot be legally compelled to provide a separate lift for each unit/floor. The number of elevators and location thereof depend on a number of factors like number of floors and units in the building, super area of the building, expected daily traffic etc. The installation of elevators cannot be made subject to the subjective whims and fancies of the complainants. It is submitted that the complaint preferred by the complainants has been drafted in a clever manner. The entire complaint does not state/establish that the aspects for which PLC have been charged from the complainants have not been provided to the complainants nor does it state the alleged hardship/inconvenience faced by the complainants on account of

location of their car parking space. The instant complaint is nothing but a gross misuse of process of law.

- xvii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the Complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- xviii. That the allegations of the complainants that the delivery of possession of the unit in question has been delayed are wrong, malafide and result of afterthought in view of the fact that the complainants had made several payments to respondent even after the alleged due date of delivery of possession of the unit in question. Infact, the last payment was received from the complainants on 01.09.2021. The complainants have wantonly and needlessly leveled false, defamatory and vexatious allegations against the respondent. It is submitted that if there was a delay in the manner claimed by the complainants, then the complainants would not have remitted any amount after the supposed due date of delivery of possession of the unit in question. The allegations of the complainants are irreconcilable, illogical and a result of afterthought. Moreover, it is pertinent to note that the complainants had purchased the unit in question from the original allottees in the year 2015. The complainants were fully aware of the status of construction at the relevant time

and have consciously and willfully proceeded to purchase the unit in question. The allegations advanced by the complainants are barred by estoppel.

- xix. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants and without prejudice to the contentions of respondent, it is submitted that the project has got delayed on account of the following reasons which were/are beyond the power and control of respondent:

**I. Defaults of Contractor:**

- That a contract dated 1 November 2010 was executed between the Respondent and M/s B L Kashyap and Sons (BLK/Contractor) in terms of which the Contractor was to construct residential projects being developed by the Respondent in the name and style of "Emerald Estate" and "Emerald Floors Premier" including civil structure, finishing, MEP, external development, infrastructure, horticulture, EWS, clubhouses, swimming pools, convenience shopping etc. The start date of the project as determined by the parties was 26 July 2010 and the scheduled date of completion of the project was 25 July 2013.
- That the Contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the Contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the Respondent made several requests to the Contractor to expedite progress of the work at the project site. However, the Contractor did not adhere to the said requests and the work at the site came to a standstill.
- That in the aforesaid circumstances, the Respondent was constrained to issue Notice of Termination dated 16.01.2015, terminating the Contract and calling upon the contractor to remove itself from the Project site without removal/ damage to the materials, equipments, tools, plant & machinery, and to hand over the Contract documents.
- That the Respondent apprehended that the Contractor would remove from the Project site, material, tools, plant & machinery which would then not be available to the Respondent for use for completion of the Project in terms of Clause 95.1 (GCC) of the Contract. Therefore, the Respondent





filed a petition bearing no. O.M.P. No. 100 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Hon'ble High Court seeking urgent reliefs in the nature of restraining the Contractor from interfering with the business activities of the Petitioner at the Project site, removing any material, equipment, tools, plant & machinery from the Project site and appointing a local commissioner to inspect the Project site and prepare an inventory of material, equipment, tools, plant & machinery.

- However, the parties settled the disputes during the pendency of the aforesaid proceedings and the contractor assured the respondent that the project shall be completed within the decided timeline. This was considered to be in the interest of the Project as well as to mitigate losses, since considerable time would have been spent in re-tendering of the works. Further, the Contractor had also undertaken to complete the Project within the agreed timelines i.e. within eighteen (18) months.
- That in spite of the aforementioned settlement between the Respondent and the Contractor, and with the contractor's assurances that the project will be finished within the agreed timeline, the Contractor did not amend its ways, and persistently defaulted in meeting the agreed timelines for completion of the Project.
- That in the meanwhile, the National Building Code (NBC) was revised in the year 2016 and in terms of the same, all high rise buildings (i.e buildings having height of 15 mtrs and above) irrespective of the area of each floor, are now required to have two stair cases. Furthermore, it was notified vide Gazette published on 15.03.2017 that the provisions of NBC 2016 supersedes those of NBC 2005. The respondent had accordingly sent representations to various authorities identifying the problems in constructing a second staircase. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question, the Respondent had taken a decision to go ahead and construct the second staircase. However, due to the impending BL Kashyap (contractor) issue of non-performance, the construction of the second staircase could not be started as well.
- That in view of the above, the Respondent was constrained to terminate the contract with the Contractor vide termination notice dated 30.8.2018. After termination of the contract, the Respondent filed a petition against the Contractor before the Hon'ble Delhi High Court seeking interim

protection against the Contractor so that the Contractor does not, inter alia, disturb the possession and work at the site. Similar petition was also filed by the Contractor against the Respondent.

- That the aforesaid two petitions, along with two other petitions pertaining to a different contract came up for hearing on 6th of September 2018. The Honourable High Court by order dated 6th of September 2018 disposed of the said cases and issued several directions. The Honourable High Court appointed Justice A P Shah (Retd) as the Sole Arbitrator for adjudication of disputes between the Respondent and the Contractor. Furthermore, RITES Ltd ( a Government Undertaking) was appointed as the Local Commissioner to inter alia, inspect and take joint measurement of work done and balance to be done and file its report before the Sole Arbitrator. The High Court gave liberty to the Respondent to award the contract to new agency(ies) for completing the remaining work. However, it was directed that the project site shall be handed over to such new agency(ies) with the permission of the Sole Arbitrator.
- That the arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated.
- The hon'ble Arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

xx. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon respondent. Respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.

xxi. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent has applied for occupation certificate on 29.06.2017

the same was thereafter issued in favour of the respondent vide memo bearing no. ZP-441/SD(DK)/2019/5982 dated 05.03.2019. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the 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 utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

xxii. That the complainants cannot claim any interest on the amount of PLC as the same is in contravention of the provisions of the buyer's agreement. The complainants cannot unilaterally stake any claim against the respondent which is beyond the purview of the buyer's agreement. The complainants and respondent are bound by the terms and conditions comprised in the buyer's agreement and the same is binding upon them with full force and effect. The complaint preferred by the complainants is false and frivolous to their positive knowledge.

xxiii. That the project has been constructed in accordance with the sanctioned layout and building plans. Moreover, the respondent cannot be compelled to provide a separate lift for each unit. The number of elevators and location thereof depends on a number of factors like number of floors and units in the building, super area of the building, expected daily traffic etc. The installation of elevators cannot be made subject to the subjective whims and fancies of the

complainants. Therefore, the claim regarding re-location of car parking space is ridiculous, fanciful and misconceived.

xxiv. That it is submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed and agreed to between the parties. Therefore, no default or lapse can be attributed to the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

xxv. That the complainants have availed a loan from HDFC bank. Thus, HDFC is a necessary and proper party to the complaint. The complainants have failed to implead HDFC as a party to the present complaint. The complaint is liable to be dismissed on account of non-joinder of necessary party.

xxvi. That, in so far as payment of compensation/interest to the complainants is concerned, it is submitted that the complainants, being in default, are not entitled to any compensation in terms of Clause 13(c) of the buyer's agreement. Furthermore, in terms of Clause 13(d) of the buyer's agreement, no compensation is payable due to delay or non-receipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority. Although not entitled to any compensation under Clause 13(c) of the buyer's agreement, nevertheless, the respondent has credited an amount of Rs.14,07,424/- as delay compensation against the last instalment payable on notice of possession. Furthermore, the respondent has also credited a sum of Rs.79,790/- as benefit on account of anti-profiting. 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.

xxvii. It needs to be highlighted that an amount of Rs.4,37,650 is due and payable by the complainant. The complainant has intentionally refrained from remitting the aforesaid amount to the Respondent. It is submitted that the complainant has consciously defaulted in his obligations as enumerated in the buyer's agreement as well as under the Act. The complainant cannot be permitted to take advantage of his own wrongs. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement for not obtaining possession. The instant complaint constitutes a gross misuse of process of law.

6. Written submissions are filed by the respondent. The same has been taken on record and perused further.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

10. 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**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on relief sought by the complainants:**

**F.I Direct the respondent to refund of PLC amounting to Rs.5,46,917.5 with interest.**

13. In the present complaint, complainants are the subsequent allottees. Complainant no.1 entered into an agreement to sell dated 18.02.2015 with original allottee, the complainant no.1 was endorsed on the buyer's agreement

in terms of affidavit dated 28.03.2015, after the due date of possession i.e., 01.05.2013. Thereafter, the respondent has issued nomination letter in favour of the complainant no.1 on 08.04.2015. The name of complainant no.2 was added in terms of affidavit dated 26.08.2018. Complainants raised the issue of refund of PLC, which was charged for open space as per the builder buyer agreement dated 01.02.2010 executed between the original allottee and the respondent. The offer of possession was offered to the complainants on 29.01.2020 and unit handover letter was issued on 02.03.2020. Subsequently, on 28.01.2022 conveyance deed was executed between respondent and the complainants.

14. The Authority vide order dated 12.01.2023 appointed Local Commissioner (LC) Sh. J.S. Sindhu, Executive Engineer was to visit the site and submit his report regarding visibility of open space from the balcony of the flat of complainant. The LC visit the site for inspection on 31.01.2023 and the reports of the same were submitted in the Authority. In the conclusion of LC report dated 16.03.2023, it is observed that there is a community centre built in front of apartment of the complainants, the entrance of the community centre is not in front of the captioned unit block and as per site plan as approved by DTCP Haryana and photos submitted in the LC report there is paved parking with greenery in front of the unit and behind the Community centre. On ground, the location of the community centre is also found exactly the same as shown in the site plan as approved by DTCP Haryana. In brochure map submitted by complainant, the front open space area is indicated as community space.

15. Moreover, 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 of refund of PLC amount before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than

statutory benefits, if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

**F.II Direct the respondent to pay compensation Rs.30,00,000 with the interest @18% per annum from the actual date of payment of amounts till realisation.**

**F.III Direct the respondent to pay cost of litigation of Rs.50,000/-.**

**F.IV Direct the respondent to pay Rs.10,000.00 for mental agony faced by the complainant.**

16. The above mentioned reliefs no. F.II, F.III and F.IV as sought by the complainants are being taken together as the findings in one relief.

17. The complainants are also seeking relief of compensation w.r.t litigation expenses and mental agony. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

18. In the light of the facts mentioned above the complaint as well as applications, if any, stands dismissed being non-maintainable. The case stands disposed off accordingly.

19. File be consigned to the registry.

(Demitted Office)  
**(Sanjeev Kumar Arora)**  
Member

  
**(Ashok Sangwan)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2024