

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

Complaint no. : 1950 of 2022
Date of decision : 28.01.2025

Jaya Pandey
R/o: IG-04-0502, Imperial Garden, Sector- 102, Village
Kherki, Gurugram- 122006.

Complainant

Versus

1. M/s Emaar India Limited (Formerly Emaar MGF Land Ltd.)
 2. M/s Kamdhenu Projects Private Limited.
- Both having registered office at:** 306-308, Square One, C-2, District Centre, Saket, New Delhi-110017.

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Nilotpall Shyam
Shri Dhruv Rohtagi
None

Advocate for the complainant
Advocate for the respondent no. 1
Advocate for the respondent no. 2

HARERA
GURUGRAM
ORDER

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

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]
6.	Occupation certificate	17.10.2019 [Page 217 of reply]
7.	Provisional allotment letter issued in favor of Sanjiv Sachdeva (Original allottee)	28.02.2013 [Page 42 of reply]
8.	Unit no.	IG-04-0502, 5 th floor, building no. 04 [Page 42 of reply]
9.	Area of the unit (super area)	2025 sq. ft.
10.	Date of execution of buyer's agreement Sanjiv Sachdeva (Original allottee)	29.04.2013 [page 54 of reply]



11.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within <u>42 (Forty Two) months from the date of start of construction</u>, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 3 (three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</u></p> <p>(Emphasis supplied) [annexure R3, page 72 of reply]</p>
12.	Date of start of construction as per schedule of payment annexed with BBA dated 29.04.2013 at page 115 of reply	11.11.2013
12.	Due date of possession	11.08.2017 [Note: 3 months Grace period is allowed]
13.	Total consideration as per payment plan annexed with the buyer's	Rs.1,50,58,895/-



	agreement at pg. 115 of reply	
14.	Total amount paid by the complainants as per statement of account dated 28.01.2021 at page 89-90 of complaint	Rs.1,60,04,602/-
15.	Offer of possession to original allottee i.e. Sanjiv Sachdeva	22.10.2019 [annexure R9, page 179-184 of reply]
16.	Date of transfer of unit to Rajiv Sachdeva in place of Sanjiv Sachdeva (Substitution of name)	31.12.2020 [page 95 of complaint]
17.	Unit handover letter in favor of Rajiv Sachdeva (1 st subsequent allottee)	28.01.2021 [annexure R16, page 220 of reply]
18.	Conveyance deed executed between the respondent and Rajiv Sachdeva (1 st subsequent allottee)	03.03.2021 [annexure R17, page 221-245 of reply]
19.	Sale deed executed between the Rajiv Sachdeva and the complainant herein	30.03.2021 [annexure R19, page 254 of reply]
20.	Transfer ownership letter issued by the respondent herein in favor of the complainant (2 nd subsequent allottee) on	10.04.2021 [annexure R20, page 266 of reply]
21.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 28.01.2021 at page 90 of complaint	Rs.5,98,620/-

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:
- i. That the complainant is a respected citizen of India. The respondents through their representative had approached one Mr. Sanjiv Sachdeva and represented that the respondent's residential project name "Imperial Gardens" located at Sector-102, Dwarka Expressway, Gurugram, Haryana will effectively serve the residential purpose of erstwhile allottee and his family and has the best of the amenities.
 - ii. That the respondent no. 1 claimed that they have obtained a license from the Director General, Town & Country Planning, Haryana (DTCP), Chandigarh for development of the project land into group housing complex comprising of multi-storied residential apartments in accordance with law bearing license no.102 of 2012 dated 15.10.2012. Further, M/s Kamdhenu Projects Private Limited which is respondent no. 2 is the wholly owned subsidiary of respondent no.1 and is the owner of impugned project land whereby the respondent no. 1 entered in to a collaboration agreement. All the payments by the erstwhile allottee have been made to respondent no. 1.
 - iii. That based on the aforementioned representation and enquiries made, the erstwhile allottee started payment from 26.02.2013 pursuant to which apartment buyer's agreement was executed on 29.04.2013, between respondent company and erstwhile allottee. Erstwhile allottee made the first payment of Rs.1,000,000/- on 26.02.2013 for allotment of unit no. IG-04-0502 proposed to be built at 5th floor in the impugned project. Accordingly, provisional allotment letter dated 28.02.2013 was issued in favour of erstwhile allottee by the respondent company whereby unit no. IG-04-0502, ad-measuring 2025 sq. feet was situated



at 5th floor, in tower-04, in the impugned project was provisionally allotted to the erstwhile allottee.

- iv. That as per the apartment buyer's agreement, the respondent company agreed to sell/convey/transfer the apartment/impugned unit no. IG-04-0502 5th floor, having a carpet area of 2025 sq. ft. to the erstwhile allottee for an amount of Rs.1,44,23,825/-, which includes basic sale price, car parking, applicable preferential location charges. Further, as per clause 14 of the ABA, the possession date for the subject unit was agreed within 42 months of the start of construction i.e., 11.05.2017.
- v. That the erstwhile allottee in pursuant to the apartment buyer's agreement made a total payment of Rs.1,60,04,602/- towards the impugned unit in accordance with the demand raised by the respondent company.
- vi. That as per clause 16 of the apartment buyer's agreement further stipulates that the respondent company, if failed to deliver the possession of the impugned unit within the stipulated time frame i.e. as provided under clause 14 of the apartment buyer's agreement. In such event, the respondent company shall pay compensation @ Rs.7.5/- per sq. feet of the super area of the impugned unit per month for the entire period of delay. The said clause is not only ex facie ones-sided and arbitrary and hence not binding on the complainant in view of settled law as propounded by Hon'ble Supreme Court in this regard, but, the said clause is also in violation of express provisions of the Act, 2016 which has retroactive effect in view of law laid down by Hon'ble Supreme Court.
- vii. That this Authority granted the registration certificate to the respondent company vide registration no. 208 of 2017 dated



15.09.2017 wherein the said registration was valid till 31.12.2018. The said registration was extended by this Authority to 31.12.2019 vide extension no. 3 of 2019 dated 02.08.2019. However, it is submitted that the said extension cannot be treated as the extension of last date of handing over the possession of the impugned unit to the complainant.

- viii. That on 31.12.2020, the respondent company at the request of the erstwhile allottee, substituted the name of the erstwhile allottee with one Mr. Rajiv Sachdeva in accordance with the apartment buyer's agreement. The actual physical possession of the impugned unit was handed over to the subsequent allottee by the respondent company on 28.01.2021. Thus, there is delay of almost 4 years in handing over possession by the respondent company for which the respondent company is liable to pay delayed possession interest in accordance with the Act of 2016. That pursuant to handing over the possession of the impugned unit to the subsequent allottee, the respondents executed conveyance deed with regard to the impugned unit in favour of subsequent allottee, the said deed was registered on 03.03.2021.
- ix. That pursuant to the execution of the conveyance deed, the subsequent allottee transferred all his right, title as well as interest in the impugned unit to the complainant vide registered sale deed dated 30.03.2021. Thus, the complainant acquires the allotment of the impugned unit through sale/transfer by the subsequent allottee and thus be deemed as allottee in terms of the Act, 2016.
- x. That the respondent company failed to deliver the possession in agreed time-frame i.e., 11.05.2017 for reasons best known to them and the respondent never bothered to intimate rhymes and reasoning for the delay in handing over the possession of the impugned unit. Therefore,



the respondent company has breached the sanctity of the apartment buyer's agreement.

- xi. That the respondent company is liable to pay delayed possession interest at prescribed rate to the complainant for the delay (around 3 years and 10 months) in handing over possession of the impugned unit i.e. from the date of delivery of possession as promised under the apartment buyer's agreement till the actual date of delivery of possession to the subsequent allottee in terms of section 18 of the Act, 2016. There is around 4 years of unexplained delay in handing over the possession of the impugned unit by the respondent company. Therefore, the complainant have genuine grievance which require the intervention of the Authority in order to do justice with them.
- xii. That the subsequent allottee was compelled to pay Rs.5,26,681/- towards HVAT security demanded by the respondent company for the period of 01.04.2014 to 30.06.2017.
- xiii. That it is a fit case wherein Authority shall order respondent company to pay interest prescribed rate for delayed period of handing over the possession till the actual date of handing over the possession along with refund of Rs.5,26,681/- paid towards HVAT security in view the mandatory obligation as provided under section 18 of the Act, 2016 as well as on account of the acrimony of respondent company wherein they obliterated the trust reposed on them. The respondents did not perform the required reciprocity which goes to very root of any bilateral agreement.

C. Relief sought by the complainant

4. The complainant is seeking the following relief:



- i. Direct the respondent company to pay interest at prescribed rate to the complainant for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the apartment buyer's agreement to the actual date of handing over the possession with regard to subject unit.
- ii. To refund of an amount of Rs.5,26,681/- paid towards HVAT security charged by the respondent company.

D. Reply filed by the respondent no. 1

5. The respondent no. 1 has contested the complaint on the following grounds:
 - i. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 29.04.2013, as shall be evident from the submissions made in the following paras of the present reply.
 - ii. That the instant complaint is barred by limitation. The complainant has alleged that the respondent no. 1 was obligated to offer possession of the unit in question by May, 2017 and by way of the instant complaint have sought interest for indemnifying them for the alleged delay in delivery of the unit in question. It is submitted that cause of action, if any, for seeking interest accrued in favour of the complainant in 2017 and consequently the instant complaint is barred by limitation.
 - iii. That the complainant is not an "allottee" but an investor who has purchased the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been purchased by the complainant as a speculative



investment and not for the purpose of self-use. Therefore, no equity lies in favour of the complainant.

- iv. That Mr. Sanjiv Sachdeva had approached the respondent no. 1 sometime in the year 2013 for purchase of an independent unit in its upcoming residential project "Imperial Gardens" situated in Sector 102, Village Kherki Majra Dhankot, Tehsil & District Gurugram, and Haryana. The original allottee prior to approaching the respondent no. 1, had conducted extensive and independent enquiries regarding the project and it was only after the original allottee was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent no. 1 to undertake development of the same, that the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent no.1.
- v. The original allottee, in pursuance of the aforesaid application form, was allotted an independent unit bearing no IG-04-0502, in the project wide provisional allotment letter dated 28.02.2013. The original allottee consciously and willfully undertook to remit the sale consideration for the unit in question in accordance with the payment plan incorporated in the buyer's agreement. The original allottee further undertook to be bound by the terms and conditions of the application form.
- vi. That the rights and obligations of original allottee as well as respondent no. 1 are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 29.04.2013, which continues to be binding upon the parties thereto with full force and effect. The original allottee, out of his own free will and volition, without any inducement, force, misrepresentation or coercion of the respondent no. 1 purchased the said unit with open eyes.



- vii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent no. 1, 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. 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 complainant for seeking interest and compensation 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.
- viii. That the original allottee from the beginning was in default in remittance of the timely installments. In pursuant to the delay in remittance of the installments by the original allottee, an indemnity cum undertaking was executed by the original allottee stating that he shall not be entitled to raise any claim against the company and if in case, any claim is raised then the same shall be settled after adjustment of all concessions granted by the company. Despite of many payment requests letters, reminders, notices sent to the original allottee, no response was ever received from him. The respondent no. 1 had to move from pillar to post in order to get the installments from the original allottee. The original allottee neglected/failed to deposit the payments due and payable to the respondent no. 1 within the stipulated time. The present complaint is in utter disregard and contravention of



the indemnity cum undertaking dated 20.07.2015 given by the original allottee to the respondent no.1.

- ix. That the rights and obligations of the original allottee as well as the respondent no. 1 are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. As per clause 12 of the buyer's agreement, time is of the essence with respect to the allottee's obligations to perform or observe all the obligations of the allottee under this agreement to pay sale consideration along with other charges on or before due date or as and when demanded by the respondent no. 1 but on the contrary, the original allottee paid no heed to the terms and conditions of the buyer's agreement and defaulted in remitting timely installments. Furthermore, the respondent no. 1 ultimately, in order to amicably resolve the issue and to maintain cordiality and as a goodwill gesture, waived off the said delay payment charges to the tune of Rs.9,96,610/-. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent no. 1 and compel the respondent no. 1 to surrender to her illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- x. That the original allottee was offered possession of the unit in question through letter of offer of possession dated 22.10.2019. The original allottee was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities /documentation necessary for handover of the unit in question to the original allottee. However, the original allottee approached the respondent no. 1 with request for payment of compensation for the



alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent no. 1 explained to the original allottee that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent no. 1 earnestly requested the original allottee to obtain possession of the unit in question and further requested the original allottee to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. The respondent no. 1 in order to settle the unwarranted controversy needlessly instigated by the complainant proceeded to credit an amount of Rs.13,142/- as benefit on account of anti-profiting, a sum of Rs.10,340/- towards early payment rebate (EPR). Moreover, due to the good reputation and a goodwill of the respondent in the real estate sector, the respondent no. 1 even credited an amount to the tune of Rs.5,98,620/- towards compensation in full and final satisfaction of her alleged grievances. Without prejudice to the rights of the respondent no. 1, delayed interest if any has to be calculated only on the amounts deposited by the allottee/complainant towards the basic principle amount of the unit in question and not on any amount credited by the respondent no. 1, or any payment made by the allottee /complainant towards delayed payment charges (DPC) or any taxes/statutory payments etc.

- xi. That pursuant thereto, the original allottee (Mr. Sanjiv Sachdeva), made a request to substitute the name of Mr. Rajiv Sachdeva as the new allottee in the said allotment as per the terms and conditions set out in the buyer's agreement. That the name was duly substituted vide letter



dated 31.12.2020. The subsequent allottee further executed an affidavit dated 06.11.2020 and an indemnity cum undertaking dated 06.11.2020 whereby the subsequent allottee had consciously and voluntarily declared and affirmed that he would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the subsequent allottee that having been substituted in the place of the original allottee, he is 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 no. 1. Similarly, the original allottee had also executed an affidavit and indemnity cum undertaking on the same lines. Furthermore, the respondent no. 1, at the time of endorsement of the unit in question in his favour, had specifically indicated to the subsequent allottee that the original allottee had defaulted in timely remittance of the installments pertaining to the unit in question and therefore, have disentitled himself for any compensation/interest. The respondent no. 1 had conveyed to the subsequent allottee that on account of the defaults of the original allottee, the subsequent allottee would not be entitled to any compensation for delay, if any. The said position was duly accepted and acknowledged by the subsequent allottee. That the subsequent allottee was also apprised with the fact that the respondent no. 1 has already offered the possession of the said unit in question and the original allottee failed to remit the balance outstanding dues and to complete other formalities. The subsequent allottee is conscious and aware of the fact that she is not entitled to any right or claim against respondent no. 1.



- xii. That an indemnity cum undertaking for possession dated 30.12.2020, was also executed by the subsequent allottee. The subsequent allottee did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the subsequent allottee refrained from obtaining possession of the unit in question. The subsequent allottee needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. Therefore, there is no equity in favour of the subsequent allottee. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondent no. 1, that the alleged interest frivolously and falsely sought by the complainant is baseless and without any credible evidences. The complainant is not entitled to contend the interest on the amount paid even when the possession was offered with the agreed time as per the buyer's agreement. The original allottee as well the subsequent allottee has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the original allottee, subsequent allottee and the complainant are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.
- xiii. That the respondent no. 1 had submitted an application dated 11.02.2019 for grant of occupation certificate to the concerned statutory authority. The occupation certificate vide memo bearing no. ZP-845/AD(RA)/2019/25815 was granted on 17.10.2019. That once an application for issuance of occupation certificate is submitted before



- the concerned competent authority the respondent no. 1 ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent no. 1 does not exercise any control over the matter. Therefore, the time period utilized by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilized in the implementation of the project in terms of the buyer's agreement. As far as respondent no. 1 is concerned, it has diligently and sincerely pursued the development and completion of the project in question.
- xiv. That subsequently, the subsequent allottee approached the respondent no. 1 requesting it to deliver the possession of the unit in question. A unit handover letter dated 28.01.2021, was executed by the subsequent allottee, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. Moreover, the subsequent allottee has admitted its obligation to discharge their HVAT liability there under. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.
- xv. That after execution of the unit handover letter dated 28.01.2021 and obtaining of possession of the unit in question, the subsequent allottee is left with no right, entitlement or claim against the respondent no. 1.



It needs to be highlighted that the subsequent allottee has further executed a conveyance deed dated 03.03.2021 in respect of the unit in question. The transaction between the subsequent allottee and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. It is pertinent to take into reckoning that the subsequent allottee have obtained possession of the unit in question and the complaint is a gross misuse of process of law. The contentions advanced by the complainant in the false and frivolous complaint are barred by estoppel.

- xvi. That it was the original allottee and the subsequent allottee who were not forthcoming with the outstanding amounts as per the schedule of payments, and the situation was fully accepted by the complainant at the time of execution of the sale deed and therefore, is disentitled for any compensation/interest. The present complaint is nothing but an abuse of the process of law.
- xvii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent no. 1, after the execution of the conveyance deed dated 03.03.2021 in favour of the subsequent allottee, the subsequent allottee opted to transfer the said unit in question. That pursuant thereto, the subsequent allottee, made a request for transfer of the said allotment in the name of the complainant. Accordingly, the parties submitted the agreement to sell dated 27.01.2021 along with necessary request letters, indemnities and affidavits. Accordingly, the sale deed bearing number 2135 dated 30.03.2021 was executed between the subsequent allottee and the complainant thereby



conveying, transferring all his rights, titled and interest of the said unit in question in the favour of the complainant.

- xviii. That the respondent no. 1 vide its transfer ownership letter dated 10.04.2021, confirmed the said transfer in favour of the complainant. The complainant at the time was well aware of the status of construction of the project and chose to go ahead to purchase the same from the erstwhile allottee with open eyes. That in the manner aforesaid, the complainant stepped into the shoes of the subsequent allottees.
- xix. That the several allottees, including the original allottee, subsequent allottee as well as the complainant, 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. The construction of the tower in which the unit in question is situated was completed well within the stipulated time and the subsequent allottee even had taken the possession of the said unit in question. That the transaction between both the parties stands satisfied. Therefore, there is no default or lapse on the part of the respondent no. 1 and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objection raised by the respondent no. 1

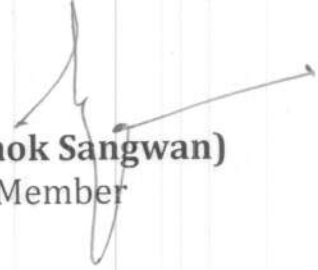
F.I Objection regarding maintainability of complaint as there is no privity of contract between the complainant herein and the respondent no. 1.

10. The respondent has filed the reply on 23.08.2022, which is taken on record and raised the preliminary objection in its reply as well as during proceeding dated 27.04.2023, that the complaint is not maintainable as there is no privity of contract between the complainant herein and the respondent no. 1. It is necessary to deal with the preliminary objection before proceeding with the reliefs sought by the complainant.
11. The original allottee i.e., Sanjiv Sachdeva was allotted a unit bearing no. IG-04-0502, on the 5th floor of Building -04, in project of the respondent named "Imperial Garden" at Sector-102, Gurugram vide provisional allotment letter dated 28.02.2013 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 29.04.2013. The occupation certificate was received from the competent authority on 17.10.2019 and possession of the unit was offered to the original allottee vide offer of possession letter dated 22.10.2019. Thereafter, upon the request of the original allottee, name of Rajiv Sachdeva was substituted in place original allottee i.e., Sanjiv Sachdeva vide letter dated 31.12.2020. Further, at the time of offer of possession, an amount of Rs.9,96,610/- has already been paid by the respondent to the original allottee towards compensation for delay in handing over of possession and the unit handover letter was issued on 28.01.2021 to the first subsequent allottee. The conveyance deed is also executed between the first subsequent allottee and the respondent herein on 03.03.2021. Thereafter, the first subsequent allottee requested the respondent to transfer/sell the said unit to the complainant vide agreement to sell dated 30.03.2021. Accordingly, the

transfer of ownership letter dated 10.04.2021 issued by the respondent and confirmed the substitution name in the subject unit and the said unit was transferred/endorsed in the name of the complainant herein.

12. Considering the above-mentioned facts, the Authority is of the view that the complainant herein is a subsequent allottee who had purchased the apartment from the first subsequent allottee on 30.03.2021 i.e., at such a time when the possession of the subject unit was already offered to the original allottee. It simply means that the ready to move-in property was offered to the complainant and she was well aware about the fact that the construction of the tower where the subject unit is situated has already been completed and the possession of the same has been offered to the original allottee on 22.10.2019 after issuance of the occupation certificate by the concerned authority. Moreover, she has not suffered any delay as the subsequent allottee/complainant herein came into picture only on 30.03.2021 i.e., after offer of possession which was made on 22.10.2019 to the original allottee.
13. Hence, in such an eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainant as there is no infringement of any of his right (being subsequent allottee) by the respondent-promoter.
14. In the light of the facts mentioned above, the complainant herein who have become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as she has not suffered any delay in the handing over of possession. Hence, the claim of the complainant w.r.t. delay possession charges is rejected being devoid of merits.
15. Hence, no case for DPC is made out.

16. Complaint as well as applications, if any, stand dismissed. Pending applications, if any, also stand disposed off.
17. File be consigned to registry.


(Ashok Sangwan)
Member

v.1-3

(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.01.2025


HARERA
GURUGRAM