



HARERA
GURUGRAM

Complaint no. 1584 of 2023

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

Complaint no. : 1584 of 2023
Order reserved on : 19.11.2024
Order pronounced on : 04.03.2025

1. Mr. Prateek Sabharwal
2. Mrs. Payal Sabharwal

Both R/o: - Premium Terraces at Plam Drive, unit no.
TPD H-F07-706, in Sector- 66, Gurugram, Haryana-
122018

Complainants

Versus

M/s Emaar India Ltd.

(Formerly known as Emaar MGF Land Ltd.)

Office at:- ECE House, 28, Kasturba Gandhi Marg, New
Delhi- 1100001

Also at:- Emaar MGF Business Park, M.G. Road,
Sikandarpur Chowk, Sector-28, Gurugram-122002,

Respondent

Coram:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

Appearance:

Shri Gaurav Rawat (Advocate)
Shri Dhruv Rohatgi (Advocate)

Complainants
Respondent

ORDER

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

A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	Premier Terraces at Palm Drive, Sector 66, Gurugram, Haryana
2.	Project area	31.62 acres
3.	RERA registration details	Registered 24 of 2020 Valid from 10.9.2020 up to 08.08.2021
4.	Allotment letter	30.11.2007 (Page no. 39 of complaint)
5.	Unit no.	H-706, 7 th floor, in tower/block- H (Page no. 48 of complaint)
6.	Area admeasuring	2125 sq. ft. (Super area)
7.	Date of execution of buyer's agreement	26.02.2008 [Page no. 44 of complaint]
8.	Possession clause	14. POSSESSION (a) 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 <u>ninety (90) days, for applying and obtaining the occupation certificate in respect of the Group</u></i>

		<u>Housing Complex.</u> (Emphasis supplied) [Page no. 62 of complaint]
9.	Due date of possession	31.03.2011 [Note:- December 2010 as mentioned in the buyer's agreement + 90 days grace period]
10.	Total consideration	Rs.1,21,29,841 /- (As per SOA dated 28.08.2023 at page 151 of reply)
10.	Total amount paid by the complainant	Rs.1,21,29,841 /- (As per SOA dated 28.08.2023 at page 151 of reply)
11.	Occupation certificate	25.01.2018 [Page no. 107 of reply]
12.	Offer of possession to the complainants	23.02.2018 [Page no. 109 of reply]
13.	Unit handover letter issued by the respondent in favor of the complainants dated	27.06.2018 [Page no. 121 of reply]
14.	Conveyance deed executed between the respondent and the complainants on	09.10.2018 [Page no. 124 of reply]

B. Facts of the complaint

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

- i. That in the year 2007, the respondent company issued an advertisement announcing a group housing colony project called "Premier TERRACES AT PALM DRIVE" at Sector - 66, Gurugram was launched by Emaar MGF Land Limited on the 45.48 acres of land, under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana, and Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the Authority.



- ii. That the complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely palm drive. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the national capital region.
- iii. That the respondent issued vital brochures containing detailed specifications of the project. It also indicated the arrangements of the different towers, parking space, an exclusive golf driving range, view from their flat of the golf driving range, extensive recreation facilities that celebrated the outdoors such as landscaped public areas, jogging trails, walkways, green areas, driveways, swimming pools, gyms, clubhouse, multiple amphitheaters etc. The respondent had conducted various road shows, extensive marketing and promotion including but not limited to India and Dubai. Finding the layout plan of the project, the grand entrance, the large central green common areas, the amenities like swimming pool, gym, club house building, recreational facilities like badminton, squash, football, bowling alley and most importantly the golf driving range attractive as well as the project as a whole, the complainants booked flats and some even paid preferential location charges (PLC) for apartments facing in a certain direction in the project and started making payments to respondent.
- iv. That relying on various representations and assurances given by the respondent company and on belief of such assurances, specifically with a golf driving range view, complainants booked a unit in the project by



- paying an amount of Rs.10,00,000/- dated 25.11.2007, towards the booking of the said unit bearing no. TPD H-F07-706, in Sector 66, having super area measuring 2125 sq. ft. to the respondent dated 25.11.2007 and the same was acknowledged by the respondent.
- v. That the respondent confirmed the booking of the unit to the allottee providing the details of the project, confirming the booking of the unit dated 25.11.2007, allotting a unit no. TPD H-F07-706, measuring 2125 sq. ft. in the aforesaid project of the developer for total sale consideration of Rs.1,07,36,675/- along with car parking and other specifications of the allotted unit and providing the time frame.
- vi. That complaint has bought specifically the captioned unit, premier terraces because this apartment is overlooking golf course range. This was very clearly seen as per the brochure annexed along with the complaint. A buyer's agreement was executed between the parties on 26.02.2008. As per annexure of the buyer's agreement the sale price of the said apartment shall be Rs.1,07,36,675/-. That would include the basic sale price, EDC, IDC, preferential location charges and exclusive right to use the dedicated car parking. This agreement and various clauses therein amount to an unconscionable agreement that is an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.
- vii. That the complainants having dream of its own residential unit in NCR signed the agreement in the hope that the unit will be delivered on or before by December, 2010. They were also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainants was shattered due to



- dishonest, unethical attitude of the respondents. As per clause 14(a) of the buyer's agreement the respondent had to deliver the possession of the unit by December, 2010. Therefore due date of possession comes out to be December, 2010.
- viii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. Such arbitrary and illegal practices have been prevalent amongst builders before the advent of the Act of 2016, wherein the payment/demands/etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing /facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- ix. That 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. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of the Act, 2016 and the rules, 2017.
- x. That the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period.



The respondent had further malafidely failed to implement the BBA 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. 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. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA. The complainants after many requests and emails; received the offer of possession on 23.02.2018. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement.

- xi. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the agreement, by the complainants and hence the offer of possession.
- xii. That the complainants sent various reminder to respondents stating and raising various grievance with respect to delayed possession charges, air conditioners, grid power supply, car parking, solar panels, golf range, palm drive condominium association and HVAT. Furthermore, stating that solar panels has been installed in phase-1 of the project not in the tower of the complainants, as per the agreed terms of the booking and name of the project itself indicates that there will be golf range but till date respondents have failed to provide the same. Thereafter, various



reminder emails and letters were sent to the respondents on the above mentioned issues but till date respondent failed to provide any satisfactory response to the complainants. The palm drive amenities are 24x7 power back up, 24x7 security, badminton court, golf driving range, basketball court, broadband connectivity, club house, covered parking, creche, Gym, health facilities, intercom facility, kids play area, lawn tennis court, maintenance staff, open parking, recreation facilities, religious place, school, servant quarters, shopping arcade, swimming pool, visitor parking.

- xiii. That the complainants requested the respondent to show/inspect the unit before complainants pay any further amount and requesting to provide the car parking space no but respondent failed to reply. The respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. The complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- xiv. 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 09.10.2018. While this sale deed acknowledges that the complainants has paid the total consideration 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.

xv. That the complainants are getting depressed because everyone is aware that golf view apartments are premium apartments and the complainants intend to stay within the amid of greens. Their dreams are getting shattered as respondent builder is not giving the golf course at the specific location which was earmarked for the golf course. The complainants request the competent authorities to make sure that Emaar give golf course at the same location. They are filing present complaint not for any compensation or monetary gain, they are filling the case to have golf course at the same location where they have mentioned, even if we google palm drive plans, it comes with golf course range view. That in the present project respondent specifically charged extra with purpose to charge the premium and specifically on account of golf range view at the designated location which was shown to the complainants at time of booking and also shown in the brochure. The same has been paid by the complainants in timely manner but till date respondent failed to provide the same to the complainants even after the repeated reminders and requests.

xvi. That the complainants believe that completion certificate, grant of which is mandatory for every residential project is yet to be granted to the respondent company in respect of The Palm Drive. The said delay and failure to declare and obtain the completion certificate indicates that the project is well behind the scheduled date of completion. The term "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the



sanctioned plan, layout plan and specifications, as approved by the competent Authority under the local laws. Basic facilities like the grid electricity and water supply; sewerage connection; gas connection; fire exits; lighting at various common areas; some basic bathroom fittings and geyser in the health club, car parking etc. we're missing if not delayed considerably when possession was offered only till recently many of these were properly completed.

- xvii. That the complainants were enticed to book the said project at a much higher price than the market price only for the reason that the project of the respondent company, was supposed to have large green landscapes by way of a golf driving range at a designated location along with putting greens consisting of seating areas for the players, which the complainants could enjoy along with all other amenities. The respondent company boasted of building a golf driving range at a designated location and gained a premium from the market in excess of a minimum of Rs.1500/- per sq. ft. and/or 30% premium. The complainants agreed to purchase such an expensive property primarily because of the golf driving range and large green areas around the same. The golf driving range has not been delivered till date i.e., after more than years from the stipulated time of delivery. Golf is respected to be a prestigious and affluent sport. The appeal to the same is of exclusivity and superior facilities. The golf driving range at the designated location encompassed a large green area and a dominant feature in the palm drive. From an owner's standpoint, the same covered a significant area of around and above 35% of the total area of the project. The name of the project taking its cue from the same with the driving range being the focal feature of The Palm "Drive".



- xviii. That the project sales brochure and description further boasted of extensive recreation facilities that celebrated the outdoors such as wonderful greenery, wide-open spaces, an uplifting sense of safety, security and community, landscaped public areas, planted parks, Jogging trails, walkways and an exclusive golf driving range along with all other facilities. That as per the brochure the project was to be of thirty one + acres approximately having all facilities etc. out of which the golf driving range at the designated location was expected to occupy a large area required for modern three lane driving practice range with putting greens. But nothing of such has been completed till date.
- xix. That no negotiations were permitted in relation to the buyer's agreement. The complainants was told that the sale deed will encompass all the relevant issues at hand. This agreement and various clauses therein amount to an unconscionable agreement that is an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.

C. Relief sought by the complainants

4. The complainants have filed the present compliant for seeking following reliefs:
- i. Direct the respondent to deliver the golf driving range at the designated location as promised at the time of booking.
 - ii. Direct the respondent to provide the amenities and golf driving range at the designated location as per brochure and layout plan provided at the time of booking.



- iii. Direct the respondent to pay delay possession charges from the due date of possession till the handing over of possession at prescribed rate of interest on the total amount paid by the complainants.
 - iv. To initiate penal proceedings against the respondent on account of violation of various provisions of the Act, 2016 and for not getting the project registered.
 - v. To set aside the one-sided indemnity bond and settlement agreement signed by the respondent from the complainants under undue influence.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 26.02.2008, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of hearing of the present complaint, so as to bring out mutual obligations and responsibilities of the respondent as well as the complainants.
 - ii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have been enjoying the said unit



without any demur/protest. That the possession was offered to the complainants on 23.02.2018 and the unit was handed over on 27.06.2018 and thereafter, executed a conveyance deed dated 09.10.2018, regarding the unit in question, whereas the present complaint has been filed on 01.04.2023, i.e., after almost 4 years 6 months from the date of execution of the conveyance deed. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent, they chose to remain silent for such a long period and have approached this authority to extort money. The complainants chose to never raise any claim towards delay possession charges and were agreeable to the compensation so awarded by the respondent in terms of the buyer's agreement. The respondent has credited a sum of Rs.8,80,817/- as compensation for the delay in offering the possession of the unit. Hence, it is clear from the lack of any documentary proof, whereby the complainants may have raised any such additional claim or if he may have been dissatisfied with the awarded compensation. Thus, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion. There is nothing on record to suggest that there was any coercion or undue influence at the time of handing over of the possession, as has been alleged.

- iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only



be adjudicated by the civil court. Therefore, the present complaint deserves to be dismissed on this ground alone.

- iv. That the complainants are not "Allottees" but Investors who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- v. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number TPD H-F07-706, 7th floor, admeasuring 2125 sq. ft. situated in the project developed by the respondent, known as "Palm Terraces at Palm Drive" at Sector 66, Gurugram, Haryana. That thereafter the complainants vide application form dated 21.11.2007 applied to the respondent for provisional allotment of a unit bearing number TPD H-F07-706 in the project. The complainants consciously and wilfully opted for an instalment payment/subvention plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. That the respondent issued the provisional allotment letter dated 30.11.2007 to the complainants. Subsequently, the respondent sent the buyer's agreement to the complainants, which was executed between the parties on 26.02.2008. That the buyer's agreement was consciously and voluntarily executed by the complainants after reading and understanding the contents thereof to their full satisfaction. The payments request letter and reminders thereof were sent to the



complainants by the respondent clearly mentioning the outstanding amount and the due date for remittance of the respective amounts as per the schedule of payments, requesting him to timely discharge his outstanding financial liability but to no avail.

- vi. 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 which continues to be binding upon the parties thereto with full force and effect. Clause 14 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, the respondent shall handover the possession of the unit by December 2010. Furthermore, the respondent is entitled for a grace period of 90 days. The buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. Furthermore, it is categorically expressed in clause 14(b)(vi) that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. The complainants have defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainants. The complainants are conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands.
- vii. That as per clause 16 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 buyer's agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the buyer's 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. The complainants by way of instant complaint are demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

- viii. Despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. The respondent applied for occupation certificate on 30.06.2017 and the same was thereafter issued vide memo bearing no. ZP-308-Vol-I/SD(BS)/2018/3486 dated 25.01.2018. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period 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.



- ix. 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. 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. That the interest for the alleged delay or compensation demanded by the complainants are beyond the scope of the buyer's agreement and the same cannot be demanded by the complainants being beyond the terms and conditions incorporated in the buyer's agreement.
- x. That on receipt of the occupation certificate, the respondent issued an offer of possession letter dated 23.02.2018. The complainants were 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 complainants. However, the complainants approached the respondent 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 explained to the complainants that they are 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 earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. Thereafter, an indemnity cum undertaking for possession dated 22.04.2018 of the said unit was executed by the complainants in favour of the respondent for use and occupation of the said unit whereby the Complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. Moreover, the complainants have admitted their obligation to discharge their HVAT liability thereunder. The instant complaint is preferred in complete contravention of their earlier representations and documents executed.

- xi. That the complainants 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 complainants refrained from obtaining possession of the unit in question. The complainants 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 complainants. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. That an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the



- alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.
- xii. That subsequently, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 27.06.2018 was executed by the complainants, 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. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.
- xiii. That after execution of the unit handover letter dated 27.06.2018 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. The complainants have further executed a conveyance deed dated 09.10.2018, in respect of the unit in question. The transaction between the parties stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. It is pertinent to take into reckoning that the complainants have obtained possession of the unit in question and the complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.

xiv. That several allottees, including the complainants, 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 the respondent. That the construction of the tower in which the unit in question is situated is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. The complainants have been in settled possession of their unit since 2018 and the present complaint has been filed after more than 4 years and 6 months, which amply proves that the present complaint has been filed with malafide intentions to extort money from the respondent. The complainants have remained silent and had no grievances in this entire period of 4 years and 6 months. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The complainant has filed the written submissions on 05.12.2024, which is taken on record and has been considered by the Authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the Authority

9. The preliminary objections raised by the respondent regarding jurisdiction of the Authority to entertain the present complaint stands rejected. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act

leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Observations of Authority with regard to maintainability of complaint on account of complaint is barred by limitation.

13. The respondent has filed the reply on 12.09.2023, which is taken on record and raised the preliminary objection in its reply that the complaint is not maintainable being barred by limitation. It is necessary to deal with the preliminary objection before proceeding with the reliefs sought by the complainant.
14. On consideration of the documents available on record, the authority observes that the complainants herein was allotted a unit bearing no. H-706, 7th floor, in tower-H, admeasuring 2125 sq. ft., in project of the respondent named "Premier Terraces at Palm Drive" situated at Sector-66, Gurugram vide provisional allotment letter dated 30.11.2007, and an apartment buyer's agreement was also executed between the complainants herein and the respondent regarding the said allotment on 26.02.2008. The occupation certificate for the subject unit has been obtained by the respondent promoter on 25.01.2018 and the possession has been offered on 23.02.2018. Further, at the time of offer of possession, an amount of Rs.8,80,817/- has already been paid by the respondent to the complainant towards compensation for delay in handing over of possession and the unit handover letter was issued on 27.06.2018. The conveyance deed is also executed between the parties on 09.10.2018.
15. The complainant is seeking delayed possession charges and other relief for providing the amenities and golf drive rang as per brochure and layout plans provided at the time of booking, and also to set aside the one sided indemnity bond get signed by the respondent. The respondent while the respondent on the other hand is pleading that the present complaint is barred by limitation

as the complainants have got the offer of possession on 23.02.2018 and the conveyance deed executed on 09.10.2018, the transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed and the complainant has filed the present complaint after a long delay on 17.04.2023 i.e., lapsed of 5 years, 1 month and 25 days (1879 days) of the offer of possession and after 4 years, 6 months and 7 days (1650 days) after the execution of conveyance deed. Thus, the claim of the complainants is not maintainable. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the complaint on the ground of the limitation.

16. In line with the aforesaid facts and submissions made by the parties and documents placed on record, the Authority observes that the unit was allotted to the complainant on 30.11.2007, a buyer's agreement in this regard was executed on 26.02.2008. 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 23.02.2018 after receipt of occupation certificate on 25.01.2018 and ultimately leading to execution of conveyance deed of the same on 09.10.2018. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 23.02.2018 and not from 09.10.2018. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a

reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

17. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
18. In the present matter the cause of action arose on 23.02.2018 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 17.04.2023 which is 5 years 1 month and 25 days from the date of cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 05.02.2023. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.
19. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.
20. Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.



21. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable and the same is declined.
22. Complaint as well as applications, if any, stands disposed off accordingly.
23. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2025

HARERA
GURUGRAM