

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

Complaint no. : 1743 of 2023  
Order reserved on : 19.11.2024  
Order pronounced on : 04.03.2025

Mr. Dinesh Chandra Gupta (HUF)  
R/o: - BQ-54, Upper Ground Floor, Shalimar Bagh Delhi-  
110088

**Complainant**

Versus

M/s Emaar India Ltd.  
Office at:- ECE House, 28, Kasturba Gandhi Marg, New  
Delhi- 110001

**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/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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Village Kherki Daula, Gurugram, Haryana
2.	Project area	21.90 acres
3.	RERA registration	Registered vide no. 330 of 2017 Valid from 24.10.2017 up to 31.12.2018
4.	Provisional allotment letter	19.01.2011 (Page no. 43 of reply)
5.	Unit no.	506 5 <sup>th</sup> floor building no. 7 1900 sq. ft. [Page 44 of complaint]
6.	Date of execution of buyer's agreement	27.04.2011 [page 42 of complaint]
7.	Possession clause	<b>10. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>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 within <b>36 months from the date of commencement of construction</b> , subject to timely compliance of the provisions of the buyer's agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of <b>three months</b>.</i>

		<b><u>for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</u></b> (emphasis supplied) [Page 51 of complaint]
8.	Date of start of construction	09.08.2012 (Page 123 of reply)
9.	Due date of possession	09.11.2015 [ <b>Note:</b> 3 months grace period is included]
10.	Total consideration as per SOA dated 16.06.2023 on page 123 of reply	Rs.96,84,536/-
11.	Total amount paid by the complainant as per SOA dated 16.06.2023 on page 124 of reply	Rs.98,11,196/-
12.	Occupation certificate	10.01.2018 [Page 86 of reply]
13.	Offer of possession to the complainants	16.03.2018 [Page 88 of reply]
14.	Unit handover letter issued in favor of the complainants	27.03.2019 [Page 91 of complaint]
15.	Conveyance deed executed between the respondent and the complainants on	03.04.2019 (Page 98 of the reply)

## B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the respondent advertised about its new project namely "Palm Gardens" in sector-83, Village Kherki Daula, Gurugram, Haryana. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing



exclusive luxury homes featuring highest design standards and premium amenities. That believing the representations of the respondent and on the lookout for an adobe for itself on 30.12.2010, the complainant booked a unit in the said project by making a payment of Rs.7,50,000/- of unit no PGN-07-0506 at Palm Gardens ad measuring 21.90 acres in the said project. Subsequently the complainant and the respondent entered into an agreement. Thereafter, the complainant contacted the respondent on several occasions and some unfair and arbitrary clauses in the agreement.

- ii. That believing on the respondent representation, the complainant kept on making payment as and when demanded by the respondent. Till date the complainant has paid a total sum of Rs.95,19,327.18/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs.92,91,001/-. As per clause 10(a) of the buyer's agreement, the respondent proposed to hand over the possession of the unit in question within a period of 36 months from the date of start of construction, subject to timely compliance of the provisions of the agreement by the allottee along with a grace period of 3 months for applying and obtaining competition certificate/occupation certificate. However, the respondent failed in handing over possession in accordance with the said agreement. The complainant had paid a total sum of Rs.95,19,327.18/- towards the total sale consideration of Rs.92,91,001/- for the said unit as and when demanded by the respondent. However, the respondent failed in handing over possession in accordance with the said agreement. The due date of possession as per the builder buyer



- agreement was 09.11.2015, but till the time of the said due date of possession, the construction of the projects was in its initial stage.
- iii. That the complainant on 07.02.2018 contacted the respondent in order to enquire about the date of handing over of possession but to the utter shock of the complainant, the project was nowhere near completion. The complainant due to the delay in handing over of possession requested the respondent to make the payment of delay possession charges on account of delay in offer of possession but to no avail. The respondent during the said period kept on demanding money and the same was demanded without attaining the stage of construction as per the payment plan but the complainant left with no other option but to make the payment on time as per demand raised by the respondent. Subsequently, the complainant kept making requests through calls, mails and several meetings to inquire as to when will the respondent handover the unit after removing all irregularities in the. But the respondent's representatives never furnished a concrete answer to the same. The complainant time and again contacted the respondents expressing his concern over the delay in handing over of possession and seeking an explanation from the respondent for the same, but to no avail.
- iv. That on 16.03.2018 the offer of possession of unit no. PGN-07-0506, was issued by the respondent. The respondent fraudulently kept the money of the complainant for so long and never paid any interest for delay possession charges. The complainant after receiving the offer of possession approached the respondent project to take the possession but the project was nowhere near completion and was full of irregularities. Further, the respondent issued a unit handover letter dated 15.03.2019

for the subject unit stating that the unit is ready for physical possession. However, the builder buyer agreement was signed on 27.04.2011, there is a huge delay in handover of the possession by the respondent, and the respondent handover the unit to the complainant on 27.03.2019.

- v. That the respondent highlighted and communicated that it will deliver the said unit to the complainant after completing with specifications and building/site layouts as mentioned in brochure, buyer's agreement, building/site layout plans etc. 36 months from the date of start of construction, subject to timely compliance of the provisions of the agreement by the allottee along with a grace period of 3 months for applying and obtaining competition certificate/occupation certificate but there was an inordinate delay in handing over the possession of the said unit.
- vi. That the respondent in order to add more misery again defrauded the complainant by charging an amount of Rs.2,85,000/- plus GST on account of preferential location charges claiming the allotted unit to be green view facing. The respondent highlighted and represented to the complainant that the project Palm Gardens shall be constructed on a land of 21.90 acre and shall have the following salient and unique features at the time of delivery of possession of their unit.
- vii. That the net area on which palm gardens is constructed is less than an area of 21.90 acre which was represented by the respondent and agreed upon by him at the time of booking the unit by the complainants and execution of buyer's agreement. But now it is found to be constructed on a net area of only 17.84 acre which is 4.06 acre less than area of 21.90 acre. Accordingly, relying upon respondent's declarations and

representations about big size of the project, the sale price was agreed upon. Now, it has traversed that Respondent had wrongly included the area consumed by 24 meter wide road and similar HUDA roads running outside the premises and other structures for public use as being part of net area of 21.90 acre of the project. By doing this the respondent violated the rules and regulations laid down by Department of Town and Country Planning, Haryana and other terms and conditions of its licenses granted by Government of Haryana.

- viii. That the respondents represented and advertised a green area in brochures, e-brochure, welcome letter, buyer's agreement, site plans and many other advertisements (in electronic and print media) by marking it as an eight acre central greens area. On survey/inspection the green area represented as central greens is found to be 3.65 acre and not 8 acre. It was found out by complainant and his architect that site plan of palm gardens submitted for approval to and sanctioned by appropriate Authorities in Government of Haryana itself shows that total aggregate green area spread all over the project is of only 3.8936 acres size i.e. 15756.920 sq.mt. (17.78% of the net site area). This total green area of 3.8936 acres is scattered over whole of 'Palm Gardens' in different small pockets of green patches. The respondent never intended to provide eight acre green area in the project, therefore no such green area of 8 acre was even planned or marked in the site and area details plan of palm gardens submitted to and sanctioned by Department of Town and Country Planning (DTCP) Government of Haryana. This site plan of Palm Gardens was sanctioned by DTCP Haryana on 22.03.2012.

- ix. That the respondent falsely and intentionally misrepresented to them that entire green area shown in the brochures and buyer's agreement etc. belongs to him and is owned by him and therefore forms central greens area in palm gardens. But later during survey/inspection, that green area was found out to be a property of some other third party. That the land parcel/area that would have contributed to form 8 acre central green area was never acquired by respondent till date while that had been falsely represented and wrongly shown to be part of premises of the project. Large amounts of money as sale price and PLCs were demanded and got paid by respondent from the complainant on the pretext that the palm gardens has the luxury of vast green areas in it.
- x. That the sanctioned site plan itself shows a total green area planned in palm gardens to be of size of 3.8936 acres i.e. 15756.920 sq.mt., but the respondent still continues, till filing of this complaint, to mislead and misrepresent to the unsuspecting home buyers by falsely representing that the project has a central green area of 8 acres and a mini golf course and 3 km long jogging track besides other common facilities and amenities.
- xi. That the said project does not have solar heaters and solar voltaic plants as agreed at the time of execution of the builder buyer agreement. The respondent had assured the complainants and other like buyers that they will provide for solar power in palm gardens as in their license it was mandatory to include solar heaters and solar voltaic plants at the project. This was of utmost importance because it will bring down the recurring cost of the common area electricity (CAE) and common area maintenance (CAM) Charges. The complainant and other residents contribute equally



every month towards these expenses (CAE and CAM) borne out of electricity consumption and maintenance of common facilities and amenities in the common areas of the project.

- xii. That the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain, and agony to the complainant along with the delay in handing over the possession of the said unit, the respondent had failed in providing the above mentioned several amenities, services as promised by the respondents at the time of execution of the agreement.
- xiii. That as per section 18 of the Act 2016, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. Accordingly, the complainant is entitled to get interest on the paid amount along with interest at the rate as prescribed by the Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession along with refund of preferential location charges and other reliefs.

**C. Relief sought by the complainant**

4. The complainant has filed the present complaint for seeking following reliefs:
  - i. Direct the respondents for the payment of delay possession charges as per the Act 2016, i.e., marginal cost of lending rate of SBI + 2% from the due date of possession as per the agreement till the actual handing over of possession.
  - ii. Direct the respondent to refund an amount of Rs.2,85,000/- illegally charges on account of preferential location charges.
  - iii. Direct the respondent to refund the holding charges.

- iv. Direct the respondent to charge delay payment charges at an equitable rate of Interest as per the Act of 2016.
  - v. Direct the respondent to refund an amount of Rs.98,300/- on account of maintenance charges for a period wherein the unit was not even handed over to the complainant.
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 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 27.04.2011, as shall be evident from the submissions made in the following paras of the present reply. That the present complaint is not maintainable for non-joinder of proper and necessary party. The unit in question has been booked in the name of "Dinesh Chandra Gupta (HUF)", whereas the present complaint is filed by Mr. Dinesh Chandra Gupta. The present complaint is liable to be dismissed on this ground alone.
  - ii. That the complainant is estopped by its own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The respondent has already offered possession of the unit in question to the complainant, who has taken the possession of the said unit and moreover, the conveyance deed has also been executed. Both the transaction between



both the parties stood satisfied once the conveyance deed has been executed, as such, the respondent has already complied with its obligations under the buyer's agreement. That the conveyance deed of the unit in question had already been executed in favour of the complainant as early as on 03.04.2019, whereas the present complaint has been filed on 10.04.2023, i.e. after almost 4 years. The complainant chose never to raise any claim towards delay possession charges and was agreeable to the compensation so awarded by the respondent in terms of the buyer's agreement. The respondent has credited a sum of Rs.88,441/- as benefit as EDC interest, Rs.15,442/- towards anti profiting and Rs.20,200/- on account of early payment rebate (EPR). The respondent even credited an amount to the tune of Rs.3,41,761/- as compensation for the delay in offering the possession of the unit. Hence, it is abundantly clear that the execution of conveyance deed was without any undue influence and coercion.

- 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 can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.
- iv. That the complainant is not "Allottee" but Investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale.

- v. That the instant complaint is barred by limitation. That the complainant filed the complaint before this Authority after the execution of the conveyance deed as all the terms and conditions as per the buyer's agreement stand fulfilled in the eyes of law. The complainant having received the offer of possession on 16.03.2018, and having executed the conveyance deed on 03.04.2019 has filed the present complaint on 10.04.2023, i.e. after a lapse of 4 years from the date of execution of conveyance deed. The complaint is admittedly belated and barred by limitation period of 3 years.
- vi. That the complainant 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 PGN-07-0506, 5th floor, tower-07 admeasuring 1900 sq. ft. situated in the project developed by the respondent, known as "Palm Gardens" at Sector 83, Village Kherki Daula, Gurugram, Haryana. Thereafter, the complainant vide application form, applied to the respondent for provisional allotment of a unit bearing number PGN-07-0506 in the project of the respondent company. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every installment on time as per the payment schedule. That the respondent issued the provisional allotment letter dated 19.01.2011 to the complainant. Subsequently, the respondent sent the buyer's agreement to the complainant, which was executed between the parties on 27.04.2011. The buyer's agreement was consciously and voluntarily executed by the

complainant after reading and understanding the contents thereof to their full satisfaction. That the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon the parties thereto with full force and effect. Clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months from the date of start of construction. It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.

- vii. That the respondent completed construction and had submitted an application on 29.06.2017 for grant of occupation certificate before the concerned statutory Authority. The occupation certificate has been granted by the concerned department vide memo dated 05.12.2018. Once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence over the same. Therefore, the time period utilized by the

concerned statutory Authority for granting the occupation certificate is liable to be excluded from the time period utilized for implementation of the project.

- viii. That the respondent on receipt of the occupation certificate, offered possession of the said unit to the complainant vide the letter of offer of possession dated 16.03.2018. The complainant has failed to comply with its obligations to take the possession of the unit in question. The instant complaint is a gross misuse of process of law. Therefore, no cause of action has accrued in favor of the Complainant in the facts and circumstances of the case.
- ix. That the complainant 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 complainant refrained from obtaining possession of the unit in question. The complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the buyer's agreement. 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, that the alleged interest frivolously and falsely sought by the complainant was to be construed for the alleged delay in delivery of possession. An offer for possession marks termination of the period of delay, if any. The complainant are 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 are

liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- x. That the complainant approached the respondent in order to take the possession of the said unit in question. The complainant has duly taken the possession of the unit in question. The conveyance deed in respect of the unit in question has also been executed. That it is pertinent to mention that after execution of the unit handover letter and obtaining of possession of the unit in question and after the execution of the conveyance deed, the complainant are left with no right, entitlement or claim against the respondent. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. The instant 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. That the respondent has credited a sum of Rs.88,441/- as EDC interest, Rs.15,442/- towards anti profiting and Rs.20,200/- on account of early payment rebate (EPR). That the respondent even credited an amount to the tune of Rs.3,41,761/- as compensation for the delay in offering the possession of the unit. Without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, 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. 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 complainant for seeking delayed penalty charges or interest cannot be called in to aid, in derogation and in negation of the provisions of the buyer's agreement.

- xi. 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. 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 complainant. Therefore, there is no default or lapse on the part of the respondent 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. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- xii. 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. Moreover, once application for grant of occupation certificate is submitted by the respondent in the office of concerned statutory Authority, the respondent ceases to have any control over the same. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- xiii. That without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of



abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the Authority**

8. The 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**

9. 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**

10. 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.*

11. 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.**
12. 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.
13. On consideration of the documents available on record, the authority observes that the complainants herein was allotted a unit bearing no. PGN-07-0506, 5<sup>th</sup> floor, in building no. 7, admeasuring 1900 sq. ft., in project of the respondent named "Palm Gardens" situated at Sector-83, Gurugram vide provisional allotment letter dated 19.01.2011, and an apartment buyer's agreement was also executed between the complainants herein and the respondent regarding the said allotment on 27.04.2011. The occupation certificate for the subject unit has been obtained by the respondent promoter on 10.01.2018 and the possession has been offered on 16.03.2018. Further, at the time of offer of possession, an amount of Rs.3,41,761/- 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 27.03.2019. The conveyance deed is also executed between the parties on 03.04.2019.

14. The complainant is seeking delayed possession charges and other relief with regard to refund the amount of preferential location charges and holding charges and maintenance charges charged 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 16.03.2018 and the conveyance deed executed on 03.04.2018, 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 1 day (1858 days) of the offer of possession and after 4 years and 14 days (1475 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.
15. 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 19.01.2011, a buyer's agreement in this regard was executed on 27.04.2011. Though the possession of the unit was to be offered on or before 09.11.2015 after completion of the project but the same was offered only on 16.03.2018 after receipt of occupation certificate on 10.01.2018 and ultimately leading to execution of conveyance deed of the same on 03.04.2019. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 16.03.2018 and not from 03.04.2019. 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.


16. 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.
17. In the present matter the cause of action arose on 16.03.2018 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 1 day 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 01.03.2023. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.
18. 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.

19. 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.
20. 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.
21. Complaint as well as applications, if any, stands disposed off accordingly.
22. 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