

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

	Complaint no Order reserv Order prono	ed on :	
1. Mr. Rahul Mahajan 2. Mrs. Srishti Mahajan Both R/o: - P.O. BOX-2146, Abu Dha	bi, UAE ⁷ ersus	8	Complainants
M/s Emaar MGF Land Limited Office at:- Emaar MGF Business Sikandarpur Chowk, Sector-28, Guru	ıgram-122002.	Road,	Respondent
Coram: Shri Arun Kumar Shri Vijay Kumar Goyal Shri Ashok Sangwan	त्यमेव जयते	ALLULA	Chairman Member Member
Appearance: Shri Gaurav Rawat (Advocate) Shri Dhruv Rohatgi (Advocate)	E REGULA		Complainants Respondent
I L L A	N LALV		

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	Sky Terraces- Palm Drive, Sector 66, Gurugram, Haryana		
2.	RERA Registration	Registered 24 of 2020 Valid from 10.92020 up to 08.08.2021		
	Date of allotment letter	12.03.2008 (Page no. 28 of reply)		
3.	Unit no.	A-402, 4 th Floor, in tower/block-A 3600 sq. ft. [page 37 of reply]		
4.	Date of execution of buyer's agreement	26.05.2008 [page 33 of reply]		
5.	Possession clause HA GUR	14. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and 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 grace period of 90 days for applying and obtaining the occupation certificate in respect of the group housing complex (Emphasis supplied)		
		[Page no. 51of reply]		

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		[Note: 90 days grace period is included]
7.	Total consideration	Rs.2,28,06,836/- (As per SOA dated 28.08.2023 at page 156 of reply)
8.	Total amount paid by the complainant	Rs.2,28,06,835/- (As per SOA dated 28.08.2023 at page 157 of reply)
9.	Occupation certificate	01.04.2015 [page 113 of reply]
10.	Offer of possession to the complainants	26.06.2015 [page 120 of reply]
11.	Unit handover letter issued in favor of the complainants herein	15.000 23.2007
12.	Conveyancedeed21.07.2016executedbetweenthe[page 128 of reply]respondentandthecomplainants onImage 128 of reply	

B. Facts of the complaint

- 3. The complainants have made the following submissions in the complaint:
 - i. That upon the representation by the respondent and advertisement done in said behalf, the respondent was to construct a Residential group housing colony namely "Sky Terraces - Palm Drive" on parcel of land admeasuring 102.471 acres wherein the group housing complex is developed on land measuring 45.476 acres located at Sector-66, Gurgaon, Haryana.
 - ii. That the complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing a commercial unit with the respondent upon which a buyers agreement was executed between the parties on 26.05.2008 and the complainant was allotted unit no. TPD A-F04-402 admeasuring 3729.37 sq. ft. in the said project for a total sale

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consideration of Rs.2,10,62,527/-. Till date the complainant has made a total payment of Rs.2,10,62,527/- as and when demanded by the respondent without any delay.

- iii. That as per clause 14(a) of the buyer's agreement, the vacant, peaceful and physical possession of the unit in question was to be handed over by December 2010, however, the possession of the same was not handed over on time.
- iv. That the respondent had made an illegal offer of possession and therefore, when the complainants were completely satisfied, the complainant got the conveyance deed executed only on 21.07.2016, but the respondent has not provided delay possession charges to the complainant. Thus, the complainant approached the Authority and filed a complaint relating to issue relating to delay of possession charges by invoking the jurisdiction of this Authority under section 18 of the Act of 2016.
- v. That the complainants have approached this Authority under section 31 of the Act of 2016. The complainant also reserves her right to file separate complaint for compensation as and when required before the appropriate forum/Authority.

C. Relief sought by the complainants

- 4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent company to pay interest on the amount paid by the complainant for delay in handing over of possession from the due date of possession till the actual handover of the unit in question.



- 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 26.05.2008, as shall be evident from the submissions made in the following paras of the present reply. The complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. They have been enjoying the said unit without any demur/protest. That the possession was offered to the complainants on 30.04.2015 and the unit was handed over on 25.07.2015 and thereafter, executed a conveyance deed dated 21.07.2016.
 - ii. That 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 never to 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.2,78,630/- as benefit for 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.

- iii. That the present complaint is not maintainable in view of the fact that the conveyance deed has already been executed and the respondent is absolved of all or any liability towards delay possession charges, even in terms of section 11(4) of the Act, 2016. Further, the complaint is admittedly belated and barred by limitation period of 3 years. Admittedly, the conveyance deed of the unit in question was executed on 21.07.2016. The 3 year limitation period for filing the present complaint expired on 20.07.2019. The present complaint has been filed on 20.04.2023, i.e., almost 4 years after the expiry of the period of limitation. The complainants have been in settled possession of the unit in question for the last more than 7 years and thus, are estopped in law and facts from raising any claims at this stage.
- iv. 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.
- v. That the complainants are not "Allottees" but Investors who have 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.

That the complainants had approached the respondent and expressed an vi. interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number TPD A-F04-402, 4th floor, admeasuring 3625 sq. ft. situated in the project developed by the respondent, known as "Sky Terraces at The Palm Drive" at Sector 66, Gurugram, Haryana. Thereafter, the complainants vide application form dated 02.03.2008 applied to the respondent for provisional allotment of a unit in the said project. That the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. 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. The respondent issued the provisional allotment letter dated 12.03.2008 to the complainants. Subsequently, the respondent sent the buyer's agreement to the complainants, which was executed between the parties on 26.05.2008. The buyer's agreement was consciously and voluntarily executed by the complainants after reading and understanding the contents thereof to their full satisfaction.



- vii. That the complainants were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainants requesting them to make payment of demanded amounts, payment request letters, reminders etc. 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 them to timely discharge their outstanding financial liability but to no avail.
- viii. That the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes enormous business losses to the respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. That the respondent, despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.
- ix. 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. In 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. That 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. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

x. That the 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. That the complainants having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards interest under the buyer's agreement. The complainants by way of instant complaint is 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.

- Despite there being a number of defaulters in the project, the respondent xi. had to infuse funds into the project and has diligently developed the project in question. The respondent applied for occupation certificate on 28.06.2013 and the same was thereafter issued vide memo bearing no. ZP-308/SD(BS)/2015/5253 dated 01.04.2015. 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.
- xii. Without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, 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 is 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.

xiii. That on receipt of the occupation certificate, the respondent issued an intimation of possession letter dated 30.04.2015 and an offer of possession dated 26.06.2015, intimating the complainants about the procedure of handing over the possession of the said unit. 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. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent and



threatened the respondent with institution of unwarranted litigation. Thereafter, an indemnity cum undertaking for possession dated 08.07.2015 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 his obligation to discharge their HVAT liability thereunder. The instant complaint is preferred in complete contravention of their earlier representations and documents executed.

- xiv. 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. 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, the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. The complainants is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.
- xv. That subsequently, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 25.07.2015, 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. The complainants have 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 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.

- xvi. That after execution of the unit handover letter dated 25.07.2015 and obtaining of possession of the unit in question, the complainants are left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainants have further executed a conveyance deed dated 21.07.2016, in respect of the unit in question. The transaction between both the parties stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. 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.
- xvii. 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. 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 complainants. Therefore, there is no default or lapse on the part of the respondent and there in no equity in favour of the complainants. The complainants have been in settled possession of their unit since 2016 and the present complaint has been filed after almost 7 years, 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 7 years. 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.

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

 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-



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. A-402, 4th floor, in tower-A, admeasuring 3600 sq. ft., in project of the respondent named "Sky Terraces at Palm Drive" situated at Sector-66, Gurugram vide provisional allotment letter dated 12.03.2008, and an apartment buyer's agreement was also executed between the complainants herein and the respondent regarding the said allotment on 26.05.2008. The occupation certificate for the subject unit has been obtained by the respondent promoter on 01.04.2015 and the possession has been offered on 26.06.2015. Further, at the time of offer of possession, an amount of Rs.2,78,630/- 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 25.07.2018. The conveyance deed is also executed between the parties on 21.07.2016.
- 14. The complainant is seeking delayed possession charges, 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 26.06.2015 and the conveyance deed executed on 21.07.2016, 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 27.04.2023 i.e., lapsed of 7 years, 10 month and 1 day (2862 days) of the offer of possession and after 6 years, 9 months and 6 days (2471 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 compliant 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 12.03.2008, a buyer's agreement in this regard was executed on 26.05.2008. 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 26.06.2015 after receipt of occupation certificate on 01.04.2015 and ultimately leading to execution of conveyance deed of the same on 21.07.2016. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 01.04.2015 and not from 21.07.2016. 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 26.06.2015 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 27.04.2023 which is 7 years 10 months and 1 day from the date of cause of action. Therefore, the limitation period of three years was expired on 26.08.2018 and accordingly, the period



between 15.03.2020 till 28.02.2022 as excluded by the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 shall not be excluded while calculating the period of limitation as the limitation expired prior to the beginning of the said period. The present complaint seeking delay possession charges and other reliefs was filed on 27.04.2023 i.e., beyond three years w.e.f. 26.06.2015. 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

