

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

Complaint no. : 7162 of 2022  
Order reserved on : 07.01.2025  
Order pronounced on : 18.02.2025

1. Mr. Ankush Mehra  
2. Mrs. Ritu Mehra  
Both R/o:- C-II-D/14A, Near Dabri Mor, Janak Puri, New  
Delhi- 110058.

**Complainants**

Versus

M/s Emaar India Ltd.  
(Formerly known as Emaar MGF Land Ltd.)  
Address:- ECE House, 28, Kasturba Gandhi Marg, New  
Delhi- 110001  
Also at:- Emaar MGF Business Park, M.G. Road,  
Sikandarpur Chowk, Sector-28, Gurugram-122002,  
Haryana

**Respondent**

**Coram:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman  
Member**

**Appearance:**

Shri Geetansh Nagpal (Advocate)  
Shri Harshit Batra (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainants/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.	Total area of the project	31.62 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	1. 93 of 2008 dated 12.05.2008. Valid/renewed up to 11.05.2020. 2. 50 of 2010 dated 24.06.2010. Valid/renewed up to 23.06.2020.
5.	Unit no.	M-1403, 14 <sup>th</sup> floor, in tower M [Page no. 44 of complaint]
6.	Area admeasuring	2125 sq. ft. (super area)
7.	Provisional allotment letter issued by the respondent in favour of Anil Mahajan and Ajay Bharti	10.10.2007 (Annexure A1 at Page no. 27 of reply)
8.	Date of execution of buyer's agreement between the original allottee (Anil Mahajan) and the respondent herein.	12.02.2008 [Page 40 of complaint]
9.	Original allottee transferred the unit to first subsequent allottee i.e., Anil Mahajan and Ajay Bharti	27.01.2009 (Page 92 of the complaint)
10.	Allotment letter in the name of first subsequent	06.03.2009 [Annexure C2, page 96 of the

	allottee i.e., Ajay Bharti	complaint]
11.	Agreement to sell executed between the first subsequent allottee and the complainant herein	29.10.2014 (Annexure C3 page 99 of the complaint)
12.	Nomination letter issued by the respondent in favour of the complainants herein	10.12.2014 (Annexure R/9, at page no. 122 of reply)
13.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></p> <p><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 ninety (90) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p>
14.	Date of commencement of construction	10.07.2008 (as per statement of account dated 02.12.2022 at page 188 of reply)
15.	Due date of possession	March 2011 ( <b>Note:</b> 90 days grace period is

		included)
16.	Total consideration as per statement of account dated 02.12.2022 at page 188 of reply	Rs.1,20,14,988/-
17.	Total amount paid by the complainant as per statement of account dated 02.12.2022 at page 189 of reply	Rs1,22,55,225/-
18.	Occupation certificate	01.04.2015 [Page no, 105 of reply]
19.	Offer of possession to the complainants herein	28.04.2015 [Page no. 107 of reply]
20.	Indemnity cum undertaking for possession	28.05.2015 (Page no. 123 of reply)
21.	Unit handover letter issued in favour of the complainants on	18.07.2015 [Page 126 of reply]
22.	Conveyance deed executed on	31.03.2016 [Page no. 130 of reply]

**B. Facts of the complaint**

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

- i. That around 2007-2008, the respondent company issued an advertisement announcing a group housing project called 'Premier Terraces At Palm Drive' in at Sector 66, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of units in the said project.
- ii. The original allottees, i.e., Mr. Anil Mahajan and Mr. Ajay Bharti booked a unit no. TPD-M-F14-1403, in the project of the respondent called "Premier Terraces at the Palm Drive". The original allottee made a



payment of Rs.10,00,000/- towards the booking amount through cheque no. 59651 dated 21.09.2007. A buyer's agreement was executed between the original allottee and respondent on 12.02.2008 for a total consideration of Rs.1,07,36,675/-.

- iii. That the original allottees namely Mr. Anil Mahajan and Mr. Ajay Bharti subsequently transferred/endorsed the whole unit in favour of Mr. Ajay Bharti on 27.01.2009. During this period, the second allottee tried to contact the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period and were not given any information about the status of construction and cause for delay.
- iv. That the second allottee executed an "Agreement to Sell" in favour of the complainants on 29.10.2014 for an appropriate consideration. The respondent/promoter, vide their request approval letter dated 07.11.2014 recorded their consent to the transfer by stating that "the captioned property now stands in the name of Mr. Ankush Mehra, Co-owner Mrs. Ritu Mehra". The respondent had received a total of Rs.1,06,97,314/- till the transfer of the property to the complainants.
- v. That after a long delay of more than 4 years, the complainants received a letter for intimation of possession of the above said unit on 24.04.2015 as the respondent had received the occupation certificate along with the letter of intimation of possession, demand to make a fixed deposit of Rs.6,50,403/- in favour of the respondent within a period of 30 days of receiving of possession letter was made. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit paid a total sum of Rs.1,06,97,314/- towards the said unit. Further, a long delay of more than 5 years, the respondent got the

conveyance deed executed dated 31.03.2016. While this sale deed acknowledges that the complainants have 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. The complainants were not given any opportunity to negotiate the terms of the said conveyance deed.

- vi. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the delay compensation. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to how the delay in the project will be compensated, but to no avail.
- vii. Although, the conveyance deed dated 31.03.2016 acknowledges that the complainants have paid more than the 90% of total 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. The complainants were not given any opportunity to negotiate the terms of the said conveyance deed.
- viii. 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 builder buyer agreement. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- ix. That while the conveyance deed acknowledges that the complainants have paid the total consideration towards full and final consideration of

the said unit and applicable taxes etc., it makes no provision for compensating the complainants for the huge delay in handing over the unit. The complainants were not given any opportunity to negotiate the terms of the said sale deed.

- x. That no negotiations were permitted in relation to the buyer's agreement dated 12.02.2008. The complainants were told that the conveyance deed will encompass all the relevant issues at hand. That this agreement and various clauses therein amount to an unconscionable agreement, i.e., 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.
- xi. That the buyer's agreement in clause 16 stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The so-called compensation payable as per the said agreement is Rs.5/- per sq. ft. per month. The said amount is atrociously low and unfair. No compensation was provided to the complainants till date. Moreover, the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15% as per clause 13 whereas under clause 16, the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft.
- xii. That the said clause is also in clear contravention of the provisions of the Act, 2016 itself which has clarified the position that the interest payable by the promoter in case of default shall be the same as the interest payable by the allottees in case of any default made by them.
- xiii. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be



unique and innovative but from the allottees point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

- xiv. That the Complainants are entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under section 18 & 19(4) of Act. The complainants are also entitled for any other relief which they are found entitled by this Authority.
- xv. That the Complainants have not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law.

**C. Relief sought by the complainants**

4. The complainants have filed the present compliant for seeking following reliefs:
- i. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act of 2016 and the Rules of 2017 from due date of possession till date of actual physical possession.
  - ii. Direct the respondent to provide the Golf Course as promised with builder buyer's agreement/brochure.
  - iii. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.
  - iv. Direct the respondent to not to charge any charges which the complainants are not legally bound to pay the same.



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 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 Adjudicating Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone.
  - ii. That the complainants are not "Allottees" but are 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 favor of the complainants.
  - iii. That the original allottees (Mr. Anil Mahajan and Mr. Ajay Bharti) approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Premier Terraces at Palm Drive" situated in Sector 66, Urban Estate Gurgaon, Haryana. Prior to the booking, the original allottees conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an



independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- iv. That thereafter the original allottees, vide an application form dated 24.09.2007 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no. TPD M-F14-1403, located in Tower-M admeasuring 2125 sq. ft. (tentative area) was allotted vide provisional allotment letter dated 10.10.2007. The original allottees consciously and willfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in his favor. Thereafter, a buyer's agreement dated 12.02.2008 was executed between the original allottees and the respondent. That the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- v. That as per clause 14(a) of the buyer's agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the buyer's agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. That it is respectfully submitted that the rights and obligations of allottee as well as the builder 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.
- vi. That the remittance of all amounts due and payable by the original allottees under the buyer's agreement as per the schedule of payment incorporated in the buyer's agreement was of the essence. It has also



been provided therein that the date for delivery of possession of the unit would stand extended in the event of the occurrence of the facts/reasons beyond the power and control of the respondent. It was categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottees in payment as per the schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.

- vii. That it is submitted that the original allottees as well as the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the original allottees as well as the complainant. That the bonafide of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and demand notes to the complainants to ensure that the payments are made in a timely fashion.
- viii. That thereafter, the original allottees approached the respondent and expressed their intention for the deletion of the name of the original co-allottee, i.e., Mr. Anil Mahajan from the allotment of the said unit. That both the original co-allottees executed the respective affidavits and indemnities dated 27.01.2009 thereby requesting the respondent to delete the name of one of the original co-allottee from its records. That considering the request raised by the original allottees, the respondent vide its letter dated 06.03.2009 confirmed having deleted the name of the original co-allottee from the allotment of the said unit. That pursuant thereto, the said unit solely stands in the name of Mr. Ajay Bharti. Further, an endorsement was also made in the name of the complainants attached with the buyer's agreement. It is a matter of fact and record that when the complainants bought the unit, the respondent has already



applied for occupancy certificate. That the complainants bought the unit with open eyes after having inspected the unit and the entire project.

- ix. That the delivery of possession was also subject to the force majeure circumstances as under clause 14(b)(i) and clause 31 of the buyer's agreement. It is categorical to note that in the year, 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for the development of the said project became scarce. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material

difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, the respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done.

- x. 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. That it must be noted by this Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said unit on 28.06.2013 and the same was thereafter issued vide memo bearing no. ZP-308/SD(BS)/2015/5253 dated 01.04.2015. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is

necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- xi. That it is further submitted that on receiving the occupation certificate from the competent authorities, the respondent issued an intimation of possession dated 28.04.2015 duly intimating the complainants about the receipt of the occupation certificate and procedure of handing over the possession of the said unit. Further, Ajay Bharti approached the respondent in lieu of transferring the rights, title, and interest of the said property to the complainants. Thus, unit was transferred to the complainants upon the execution of the affidavit dated 02.12.2014 and indemnity cum undertaking dated 02.12.2014 by both the transferor and the transferee. The transfer was thereafter accepted by the respondent vide nomination letter dated 10.12.2014 and an endorsement was also made in the name of the complainants attached with the buyer's agreement.
- xii. That the complainants being subsequent buyers, have no right to seek delay possession charges or other reliefs. That at the time of nomination of the complainants, there was no delay and the application of occupancy certificate of the project was already applied, of which the occupation certificate was received on 01.04.2015 and thereafter offer of possession was given to the complainants. That having knowledge of the same, the complainants willingly and voluntarily got their nomination done. That such prior knowledge, willing and self-initiated endorsement of the complainants, without any protest, amounts to acceptance of the existing circumstances and the complainants cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaint is liable to be dismissed with costs against the complainants.

- xiii. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainants that possession was to be delivered by December, 2010 are wrong, malafide, and a result of an afterthought in view of the fact that the complainants stepped into the shoes of the erstwhile allottees vide nomination letter dated 10.12.2014 and at the time of such nomination, there was no delay in the project. That the said position was duly accepted by the complainants and the said compliant is an afterthought post 7 years, in order to generate unwarranted litigation against the respondent. At the time of nomination, the complainants were well aware that they are not entitled to any interest whatsoever.
- xiv. That 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 occupation and use dated 28.05.2015 of the said unit was executed between the complainants and 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. The instant complaint is preferred in complete contravention of their earlier representations and documents executed. The present frivolous complaint has been filed with the mala fide intention to mount undue pressure upon respondent thereby compelling it to succumb to their unjust and illegitimate demands.
- xv. That thereafter, the complainants took possession of the unit on 18.07.2015 and consequently, the conveyance deed was executed on



31.03.2016. It was specifically and expressly agreed 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 favor 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 victimize and harass the respondent.

- xvi. That in accordance with the facts and circumstances noted above, the present claim is barred by limitation. The article 113 of schedule I of the Limitation Act is applicable and the present complaint was filed after 7 years of passing of limitation, which cannot be condoned under any circumstance whatsoever.
- xvii. That moreover, after the execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/grievance of the complainants with respect to the buyer's agreement or any obligation of the parties thereunder. Moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottee/complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges (DPC) or any taxes/statutory payments, etc.
- xviii. That in light of the bona fide conduct of the respondent, no delay for the complainants, the peaceful possession having been taken by the



complainants, non-existence of cause of action, claim being barred by limitation and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favor of the respondent.

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 respondent has filed the written submissions on 11.02.2025, which is taken on record and has been considered by the Authority while adjudicating upon the relief sought by the complainants.

**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 complainant 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 application on 29.09.2023, that the present complaint is barred by limitation as well as the respondent has filed the reply on 18.03.2024, 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 complainants. The execution of conveyance deed dated 08.01.2016 and which marks the ends of the contractual relationship between the parties and the present complaint was filed on 05.11.2022, i.e., after 2410 days (almost 6 years 7 months and 5days). Further, this Authority has already passed many of the judgements wherein, after the execution of conveyance deed and after having taken the vacant and peaceful possession of the subject unit, and the parties have entered into a settlement deed and thereafter, no claim persists.

14. On the other hand, the complainant has filed the reply of the said application 02.04.2024, that the application filed by the respondent is not maintainable in the eyes of law. That this Authority is a quasi-judicial Authority and does not powers of court and thereafter, limitation Act does not apply to this Authority. Further, the complainant relying on the order passed by the Hon'ble Real Estate Regulatory Authority, Punjab in case bearing no. **1828/2020 decided on 08.09.2021 titled as Kanishk Kapoor Vs ATS Estates Private Limited.**
15. Moreover, the Act of 2016, is a complete code in itself and no limitation has been prescribed thereunder, for filing a complaint with the Authority or the Adjudicating officer under section 31. The Act of 2016, prescribed the period of limitation, wherever, it thought it should be prescribed, such as section 44(2) and 58(1). The legislature in its wisdom has not incorporated any period of limitation for filing a complaint under section 31 of the Act of 2016.
16. On consideration of the documents available on record, the authority observes that the original allottees i.e., Anil Mahajan and Ajay Bharti were allotted a unit bearing no. M-1403, 14<sup>th</sup> floor, in tower-M, for an area 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 10.10.2007 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 12.02.2008. Thereafter, the one of the original allottee i.e., Anil Mahajan was request to delete his name and the same request approved by the respondent on 23.03.2009. Ajay Bharti sold it's unit to the subsequent allottee i.e., complainants (Ankush Mehra and Ritu Mehra) vide agreement to sell dated 29.10.2014 and the same was endorsed by the respondent/promoter through nomination letter dated 10.12.2014. 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 28.04.2015. The unit handover letter was


issued on 18.07.2015 and conveyance deed was executed between the parties on 31.03.2016.

17. The complainant is seeking delayed possession charges from the respondent while the respondent on the other hand is pleading that the present complaint is barred by limitation as the complainant has got the offer of possession on 28.04.2015 and his conveyance deed executed on 31.03.2016, 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 14.11.2022 i.e., lapse of 7 years, 6 months, 17 days (2757 days) of the offer of possession and after 6 years, 7 months, 14 days (2419 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.
18. After the unit was allotted to the original complainant on 10.10.2007, a buyer's agreement in this regard was executed on 12.02.2008. 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 28.04.2015 after receipt of occupation certificate on 01.04.2015 and ultimately leading to execution of conveyance deed of the same on 31.03.2016. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 28.04.2015 and not from 31.03.2016. 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.

19. In the present matter the cause of action arose on 28.04.2015 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 14.11.2022 which is 7 years 6 months and 17 days from the date of cause of action. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 28.04.2015 and not from 31.03.2016. Therefore, the limitation period of three years was expired on 28.04.2018 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 14.11.2022 i.e., beyond three years w.e.f. 28.04.2015.
20. 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.
21. 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.

22. 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.
23. Complaint as well as applications, if any, stand disposed off accordingly.
24. File be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.02.2025

**HARERA**  
GURUGRAM