

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

Complaint no. : 590 of 2023
Order reserved on : 01.10.2024
Order pronounced on : 07.01.2025

Anurag Prakash Lal
R/o:-TDP, A-301, The Palm Drive, Opp. Vatika Chowk,
Sector- 66, Nirvana Country, Gurugram Haryana -
122018

Complainant

Versus

1. M/s Emaar India Limited
Formerly known as Emaar MGF Land Ltd.)
Address: - Emaar MGF Business Park, M.G. Road, 2nd
Floor, Mehrauli Road, Sikandarpur Chowk, Sector-28,
Gurugram-122002, Haryana.
2. Active Promoters Private Limited
Address:- 306-308, Square One, C-2, District Centre,
Saket, South Delhi, New Delhi - 110017
3. Conscient Infrastructure Private Limited
Address:- K-1, Green Park Main, New Delhi- 110016

Respondents

Coram:

Shri Arun Kumar
Shri Vijay Kumar Goyal

**Chairman
Member**

Appearance:

Shri Geetansh Nagpal
Shri Dhruv Rohatgi

Advocate for the complainant
Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the

promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	Palm Drive, Sector 66, Gurugram, Haryana
2.	Total area of the project	37.708 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.	A-301, 3 rd floor, tower A [page 47 of reply]
6.	Area Admeasuring	3625 sq. ft. [page 47 of reply]
7.	Provisional allotment letter dated	27.05.2008 [annexure R2, page 37 of reply]
8.	Date of execution of buyer's agreement	04.08.2008 [page 38-97 of reply]
9.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as</i>

		<p><i>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>
10.	Date of commencement of construction	11.08.2008 (as per statement of account dated 19.06.2023 at page 158-159 of reply)
11.	Due date of possession	March 2011 [Note: 90 days grace period is included]
12.	Total consideration as per statement of account dated 19.06.2023 at page 158-159 of reply	Rs.2,29,77,807/-
13.	Total amount paid by the complainant	Rs.2,38,61,854/- (Statement of account dated 19.06.2023 at page 158-159 of reply)
14.	Occupation certificate	01.04.2015 [annexure R5, page 109-111 of reply]
15.	Offer of possession	03.04.2015 [annexure R6, page 112-124 of reply]
16.	Indemnity cum undertaking for possession	18.03.2019 (Page 125-129 of reply)
17.	Unit handover letter	06.05.2019 [Page 130 of reply]
18.	Conveyance deed executed on	08.01.2020 [Page 131-157 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- i. That in the year 2007-2008, the respondent company issued an advertisement announcing a group housing project called 'PALM DRIVE' in at Sector 66, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of units in the said Project. The complainant vide an application form dated 14.05.2008, booked a unit in the Group Housing Project of the Respondents called "Sky Terraces at the Palm Drive". The complainant made a payment of Rs.20,00,000/- towards the booking amount. The respondents, upon such confirmation of the booking application, allotted the residential apartment bearing no. A-301 to the complainant admeasuring 3625 sq. ft. in the said project.
 - ii. That the buyer's agreement was executed between the complainant and the respondent on 04.08.2008 for a total consideration of Rs.2,15,79,475/- as per the payment plan annexed at Annexure-II of the BBA. As per clause 14(a) of the buyer's agreement the Respondent had to deliver the possession of the unit by December 2010 and along with a grace period of 90 days, i.e. by March, 2011. During this period, the respondent company raised various demands and reminders for the payment of the outstanding dues of the complainant towards the said unit in the project of the respondent company.
 - iii. That after a long delay of more than 4 years, the complainant was sent a letter for offer of possession of the above said unit on 03.04.2015 and the respondent had received the occupation certificate on 25.01.2018. It is pertinent to mention herein that the respondent, malafidely, offered the possession of the unit to the complainant on 03.04.2015, but the respondent received their OC on 25.01.2018, which is a violation of the Act, 2016 as the promoter cannot offer the possession of the unit without



obtaining Occupancy Certificate from the concerned authorities. It is further pertinent to mention that the respondent without any prior intimation to the complainant, increased the area of the unit from 3625 sq. ft. to 3759 sq. ft. which led to an increase in the price of the unit as well. Along with the letter of offer of possession, demand of Rs.27,95,335/- was also made which included several illegal demands on account of the following which are actually not payable by the complainant as per the builder buyer agreement:

- Club membership charges of Rs.1,96,630/-.
- Electrification Charges of Rs.1,59,589/-.
- Sewerage Connection charges of Rs.3,168/-
- GAS charges of Rs.19,057/-.

- iv. That as per the above said statement, the offer of possession that the respondent offered to the complainant comes out to be an invalid offer of possession as it was offered prior to obtaining the occupation certificate from the concerned authorities and the said offer contained various invalid and illegal demands which the complainant paid to the respondent without any questions to them in a bonafide need.
- v. The respondent, after many requests and reminders of the complainant, handed over the possession of the unit in favour of the complainant vide unit handover letter dated 06.05.2019. After a long delay of 5 years, the respondent got the conveyance deed executed on 08.01.2020 in favour of the complainant. 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. The complainant till the year 2022, paid a total amount of Rs.2,38,61,854/- out of the total sale consideration of Rs.2,38,63,293/- as per the statement of account dated 27.12.2022 and out of total sale consideration of Rs.2,15,79,475/- as promised by the respondent as per the payment plan at Annexure-II of the buyer's agreement.
- vii. 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.
- viii. That, although the conveyance deed dated 08.01.2020 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.
- ix. 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.
- x. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession.

- xi. 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.
- xii. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the Rules, 2017. The complainants have suffered on account of deficiency in service by the respondents and as such the respondent is fully liable to cure the deficiency as per the provisions of the 2016 and the Rules, 2017.
- xiii. 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. 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 complainant

4. The complainant has filed the present complaint for seeking following reliefs:
 - i. Direct the respondent to pay the delayed possession charges on the total amount paid by the complainant at the prescribed rate of interest from the due date of possession December 2010 till the actual physical possession i.e., 06.05.2019.
 - ii. Direct the respondent to pay balance amount due to the complainant from the respondent on account of interest.
 - iii. Direct the respondent not to charge any charges which the complainant 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 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 04.08.2008, as shall be evident from the submissions made in the following paras of the present reply.
- ii. That the complainant is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the complainant has been enjoying the said unit without any demur/protest. That the possession was offered to the complainant on 03.04.2015 and the unit was handed over on 06.05.2019 and thereafter, executed a conveyance deed dated 08.01.2020. The lack of bonafide of the complainant 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 has approached this authority to extort money. The complainant 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.8,49,222/- as benefit as compensation for the delay in offering the possession of the unit. Hence, it is clear from the lack of any documentary proof, whereby the complainant 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. The present complaint is an afterthought with malafide intent to enrich themselves. 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.

- iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the civil court. Therefore, the present complaint deserves to be dismissed on this ground alone. The complainant has not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.
- 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. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainant.
- v. 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 TPD A-F03-301, 3rd floor, admeasuring 3625 sq. ft. (tentative area) situated in the project developed by the respondent, known as "Sky Terraces at The Palm Drive" at Sector 66, Gurugram, Haryana. That thereafter the complainant vide application form dated 14.05.2008 applied to the respondent for provisional allotment of a unit bearing number TPD A-F03-301 in the project. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant 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 complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. That the respondent issued the provisional allotment letter dated 27.05.2008 to the complainant.

- vi. That subsequently, the respondent sent the buyer's agreement to the complainant, which was executed between the parties on 04.08.2008. 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 complainant was irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainant requesting them to make payment of demanded amounts.
- vii. That the complainant 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. Therefore, there is no equity in favour of the complainant.

- viii. 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 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. It is submitted that the grace period of 3 months cannot be excluded and is liable to be included in terms of the Judgment of the Hon'ble Appellate Tribunal in *Fantasy Buildwell Pvt. Ltd. Vs Gaurav Manohar Negi, bearing Appeal No. 299 of 2022, decided on 09.12.2022.*
- ix. 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 complainant having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards interest under the buyer's agreement. The complainant 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. The Respondent applied for occupation certificate on 27.06.2013 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, respondent ceases to have any control over the same. 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.

- x. Without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. The interest for the alleged delay or compensation demanded by the complainant is beyond the scope of the buyer's agreement and the same cannot be demanded by the complainant being beyond the terms and conditions incorporated in the buyer's agreement.
- xi. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainant and the conveyance deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- xii. That on receipt of the occupation certificate, the respondent issued an intimation of possession letter dated 03.04.2015 along with reminders



for possession intimating the complainant about the procedure of handing over the possession of the said unit. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant 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 complainant that he is not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation. That thereafter, an indemnity cum undertaking for possession dated 18.03.2019 of the said unit was executed by the complainant in favour of the respondent for use and occupation of the said unit whereby the complainant has declared and acknowledged that he has 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 complainant has admitted his obligation to discharge their HVAT liability thereunder. The instant complaint is preferred in complete contravention of their earlier representations and documents executed.

- xiii. That it is pertinent to mention 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. Therefore, there is no equity in favour of the complainant. That an offer for possession marks termination of the period of delay, if any. The complainant is 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 is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. Subsequently, the complainant approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 06.05.2019, was executed by the complainant, 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.

- xiv. That after execution of the unit handover letter dated 06.05.2019 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be highlighted that the complainant has further executed a conveyance deed dated 08.01.2020, in respect of the unit in question. 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.
- xv. That it was the complainant who were not forthcoming with the outstanding amounts as per the schedule of payments, therefore, is



disentitled for any compensation/interest. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the complainant 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/complainant towards delayed payment charges (DPC) or any taxes/statutory payments etc.

xvi. That it is submitted that several allottees, including the complainant, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. The construction of the tower in which the unit in question is situated 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. The allegations levelled by the complainant are totally baseless. The complainant has been in settled possession of their unit since 2015 and the present complaint has been filed after more than 7 years, which amply proves that the present complaint has been filed with malafide intentions to extort money from the respondent. The complainant has 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.

xvii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the act are not retrospective in nature. It is further

submitted 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 interest is compensatory in nature and cannot be granted in derogation and ignorance of the clauses of the agreement. That the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent/developer.

xviii. That the complainant has consciously defaulted in performing their part of obligations as enumerated in the buyer's agreement as well as under the Act and it is trite that the complainant cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law, 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.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The complainant and respondent have filed the written submissions on 22.03.2024 and 09.07.2024 respectively which are 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. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complaint being barred by limitation.

13. The respondent has filed the reply on 07.08.2023, 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 complainants.

14. On consideration of the documents available on record, the authority observes that the complainant herein was allotted a unit bearing no. A-301, 3rd floor, in tower-A, admeasuring 3625 sq. ft., in project of the respondent named "The Palm Drive" situated at Sector-66, Gurugram vide provisional allotment letter dated 27.05.2008 and an apartment buyer's agreement was also executed between the complainant herein and the respondent regarding the said allotment on 04.08.2008. 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 03.04.2015. Further, at the time of offer of possession, an amount of Rs.8,49,222/- 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 06.05.2019. The conveyance deed is also executed between the parties on 08.01.2020.
15. 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 03.04.2015 and his conveyance deed executed on 08.01.2020, the transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed. The complainant has been in settled possession of their unit since 2015 and the present complaint has been filed after more than 7 years, which amply proves that the present complaint has been filed with malafide intentions to extort money from the respondent. The complainant has remained silent and had no grievances in this entire period of 7 years. Thus, it was submitted that the present complaint deserves to be dismissed at the very threshold. Both the parties through their respective

counsels advanced submissions with regard to the maintainability of the compliant on the ground of the limitation.

16. After the unit was allotted to the complainant on 27.05.2008, a buyer's agreement in this regard was executed on 04.08.2008. 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 03.04.2015 after receipt of occupation certificate on 01.04.2015 and ultimately leading to execution of conveyance deed of the same on 08.01.2020. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 03.04.2015 and not from 08.01.2020. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
17. In the present matter the cause of action arose on 03.04.2015 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 13.02.2023 which is 7 years 10 months and 10 days from the date of cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 31.03.2023. Therefore, the limitation period of three years was expired on 03.04.2018 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 13.02.2023 i.e., beyond three years w.e.f. 03.04.2015.

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. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
20. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law. Moreover, the Authority in case bearing no. ***2480 of 2023 titled as Mrs. Ritu***

Lal Vs M/s Emaar India Limited decided on 10.12.2024, has also dismissed the complaint being barred by limitation on the ground that they have approached the Authority after unreasonable delay despite offer of possession and execution of conveyance deed.

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


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.01.2025