

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

Complaint no. : 2813 of 2023  
First date of hearing: 03.11.2023  
Order reserved on: 27.09.2024  
Order pronounced on: 22.11.2024

1. Sourabh Mathur  
2. Ankita Mathur  
R/o: PGT-07-302, Garden Terraces at Palm Drive,  
Sector 66, Gurugram

**Complainants**

Versus

Emaar MGF Land Ltd.  
**Registered address:** 306-308, Square One, C-2,  
District Centre, Saket, New Delhi, Delhi 110017  
Also, at: ECE, House, 28 Kasturba Gandhi Nagar, New  
Delhi - 110001

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Gaurav Rawat  
Shri Dhruv Rohatgi

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 26.06.2023 has been filed by the complainants 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 under the provision of the Act or the rules and regulations



made thereunder or to the allottee as per the agreement for sale executed inter se.

**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	Garden Terraces at Palm Drive, Sector 66, Gurugram, Haryana
2.	Project area	6.1937 acres
3.	DTCP license no.	93 of 2008 dated 12.05.2008. Valid/renewed up to 11.05.2020.
4.	Licensee	Arjan Dev C/o Emaar MGF Land Pvt. Ltd.
5.	Unit no.	PGT-07-302, 3RD floor, tower/block no. PGT-07 [page 44 of compliant]
6.	Unit measuring	2920 sq. ft. (super area)
7.	Provisional allotment letter in favour of original allottee dated	13.08.2012 [page 84 of complaint]
8.	Date of execution of buyer's agreement between original allottee and the respondent	06.09.2012
9.	Complainants are subsequent allottee the respondent acknowledged the complainant as allottee vide nomination letter dated	28.10.2015 (pg. 85 of complaint).
10.	Possession clause	<b>13. POSSESSION</b> (a) Time of handing over the Possession Subject to terms of this clause and the Allottee(s) 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 upon complying with all provisions, formalities, documentation etc., as prescribed by the



		Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of Thirty (30) months but not later than thirty three(33) months from the date of signing of this Agreement, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project. <b>(Emphasis supplied)</b>
11	Due date of possession	06.09.2015 [Note: 90 days grace period is included] During the proceeding dated 27.09.2024 Inadvertently mentioned that the due date 06.06.2015(without grace period) instead of 06.09.2015 (with grace period).
12.	Total consideration	₹ 1,28,56,253/- [As per statement of account dated 15.09.2020 at page 95 of complaint]
13.	Total amount paid by the complainants	₹ 1,28,56,500/- [As per statement of account dated 15.09.2020 at page 95 of complaint]
14.	Occupation certificate dated	01.04.2015 (Page 132 of reply)
15.	Offer of possession dated	18.04.2016
16.	Unit handover letter dated	10.04.2016
17.	Conveyance deed dated	17.08.2017

**B. Facts of the complaint**

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

- I. That the respondent, M/s Emaar MGF Land Ltd. advertised about its new project namely "Garden Terraces at Palm Drive" (hereinafter called as 'the project') in Sector 66 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims. In 2007, the respondent company issued an advertisement announcing a group housing colony project called "Garden Terraces at Palm Drive" at Sector - 66, Gurugram was launched by Emaar MGF Land Ltd., under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. That the respondent confirmed that the projects had got building plan approval from the authority.
- II. The complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project namely Garden Terraces at Palm Drive. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and assured that they have delivered several such projects in the national capital region. The respondent handed over one brochure to the complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.
- III. That the respondent issued vital brochures containing detailed specifications of the project. Apart from specifications relating to the flats, the brochures boasted the complex to be a community designed for contemporary living in a green sanctuary, setting a modern



lifestyle in a heaven of peace and tranquillity. It also indicated the arrangements of the different towers, parking space, an exclusive Golf Driving Range, view from their flat of the Golf Driving Range, extensive recreation facilities that celebrated the outdoors such as landscaped public areas, jogging trails, walkways, green areas, driveways, swimming pools, gyms, clubhouse, multiple amphitheatres etc. The respondent had conducted various road shows, extensive marketing and promotion including but not limited to India and Dubai. Finding the layout plan of the project, the grand entrance, the large central green common areas, the amenities like swimming pool, gym, club house building, recreational facilities like badminton, squash, football, bowling alley and most importantly the Golf Driving Range attractive as well as the project as a whole, the complainants booked flats and some even paid preferential location charges (PLC) for apartments facing in a certain direction in the project and started making payments to respondent.

- IV. That the Relying on various representations and assurances given by the respondent company and on belief of such assurances, specifically with a Golf Driving Range view, original allottee booked a unit in the project by paying an amount of Rs. 5,00,000/- dated 13.07.2012, towards the booking of the said unit bearing no. Unit PGT-07-302(3rd Floor, Tower/Block-07), in Sector 66, having super area measuring 2920 sq. ft. to the respondent dated 13.07.2012 and the same was acknowledged by the respondent.
- V. That a buyer's agreement was executed between the original allottee and respondent on 06.09.2012. As per annexure of the buyer's agreement the sale price of the said apartment shall be Rs. 1,26,13,423/-. That would include the basic sale price, EDC, IDC,



- Preferential location charges and exclusive right to use the dedicated car parking. Clauses of the agreement were non-negotiable, extremely one sided and prejudicial to the interests of the flat owners who had no say whatsoever in finalizing the terms and conditions of the sale.
- VI. As per clause 13(a) of the buyer's agreement the respondent had to deliver the possession of the unit within 30 months from the date of agreement i.e. by 06.03.2015. Therefore, due date of possession comes out to be 06.03.2015. The original allottees subsequently transferred / endorsed the property in favour of complainants (of this present complaint) for an appropriate consideration vide agreement to sell. the balance amount if any for obtaining the property which was still under construction was paid by the complainants according to the demands raised by the respondent.
- VII. The respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees. The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- VIII. It is abundantly clear that the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the BBA executed with the complainants. Hence, the complainants being aggrieved by the



- offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- IX. The complainants after many requests and emails; received the offer of possession on 18.04.2016. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer agreement. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the agreement, by the complainants and hence the offer of possession.
- X. That the complainants after many follow ups and reminders and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed dated 17.08.2017. 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 and project. The complainants were not given any opportunity to negotiate the terms of the said sale deed.
- XI. That the complainants sent various reminders to respondents stating and raising various grievance with respect to grid power supply, car parking, solar panels, golf range, palm drive condominium association and HVAT. Furthermore, stating that solar panels has been installed in phase-1 of the project not in the tower of the complainants, as per



the agreed terms of the booking and name of the project itself indicates that there will be golf range but till date respondents have failed to provide the same. Thereafter, various reminder emails and letters were sent to the respondents on the above-mentioned issues but till date respondent failed to provide any satisfactory response to the complainants. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. That the complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants with no option instead of signing the same.

- XII. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the respondent but even the settlement-cum-amendment agreement is also heavily loaded in favour of the respondent. Needless to mention that such one-sided agreements have been held to be unconstitutional and hence in valid by the Honourable Supreme Court and the Honourable High Courts in number of cases.
- XIII. It is pertinent to note that the Complainants were enticed to book the said project at a much higher price than the market price only for the reason that the project of O.P., was supposed to have large green landscapes by way of a Golf Driving Range at a designated location along with Putting Greens consisting of seating areas for the players, which the Complainants could enjoy along with all other amenities. The O.P. boasted of building a Golf Driving Range at a designated





location and gained a premium from the market in excess of a minimum of Rs. 1500 Per Sq. Ft and / or 30% premium. The Complainants agreed to purchase such an expensive property primarily because of the Golf Driving Range and large green areas around the same. It is submitted that the Golf Driving Range has not been delivered till date i.e. after more than years from the stipulated time of delivery. Golf is respected to be a prestigious and affluent sport. The appeal to the same is of exclusivity and superior facilities. The Golf Driving Range at the designated location encompassed a large green area and a dominant feature in the Palm Drive. From an owner's standpoint, the same covered a significant area of around and above 35% of the total area of the project. The name of the project taking its cue from the same with the driving range being the focal feature of The Palm "Drive". A true discomfort for complainants who have paid significant premium is that their project is without the main feature of its designation. The Palm Drive is till date regarded and known as the same, a project without its main feature. Complainants felt cheated, traumatized and also looked down upon for living in a project that promised something which is not delivered till date.

- XIV. That the project sales brochure and description further boasted of extensive recreation facilities that celebrated the outdoors such as wonderful greenery, wide-open spaces, an uplifting sense of safety, security and community, landscaped public areas, planted parks, jogging trails, walkways and an exclusive golf driving range along with all other facilities. That as per the brochure the project was to be of thirty-one + acres approximately having all facilities etc. out of which the Golf Driving Range at the designated location was expected to occupy a large area required for modern three lane driving practice



range with putting greens. But nothing of such has been completed till date. The Golf Driving Range is not even close to completion till date. This fact is made evident through the minutes of the meeting between O.P. representatives and the residents held in June and July 2017.

- XV. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the Rules, 2017. The complainants has 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 Act, 2016 and the Rules, 2017. As per section 18 of the Act, 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. 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. Hence the present complaint.

**C. The complainants are seeking the following relief:**

4. The complainants have sought following relief(s):
- Direct the respondent to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking.
  - Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent.
  - Direct the respondent to refund FD amounting to ₹3,94,377/- deposited with respondent as pre-requisite condition for getting the conveyance deed.

**D. Reply filed by the respondent.**

5. The respondent had contested the 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 06.09.2012, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this authority to refer and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of hearing of the present complaint, so as to bring out mutual obligations and responsibilities of the respondent as well as the complainants.
- II. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have already obtained possession of the unit in question vide the letter of offer of possession dated 18.04.2016 and have, further, executed a conveyance deed dated 17.08.2017 regarding the unit in question, whereas the present complaint has been filed on 15.06.2023, after almost 6 years from the date of execution of the conveyance deed. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent, they chose to remain silent for such a long period and have approached this authority to extort money. The complainants chose to never raise any claim towards delay possession charges or any relief as sought for in the present complaint and were agreeable to the status of the project and the amenities and facilities so provided in the project. Hence, it is clear from the lack of any documentary proof, whereby the complainants may have raised

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any such additional claim. 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 complaint is admittedly belated and barred by limitation period of 3 years, reliance is placed on the judgments/ orders passed by this Authority in case titled **Ram Sarup Khurana & Anr. Vs Emaar MGF Land Limited**, bearing Complaint No. 2030 of 2022, Order dated 08.09.2022 and case titled **Madan Lal Khurana & Anr. Vs Emaar MGF Land Limited** bearing Complaint No. 2031 of 2022, Order dated 08.09.2022, wherein it was held: -

*"The conveyance Deed of the unit was executed on 28.07.2017. The Complaint was filed on 24.05.2022 after nearly 4 years and 10 months beyond the limitation period of 3 years. No case is made out in such a belated stage. The matter is barred by limitation and disposed off. File be consigned to registry."*

In view of the facts as stated above, the present Complaint deserves to be dismissed with heavy costs. The transaction between the Complainants and the Respondent stands satisfied. The reliefs sought in the present Complaint is false and frivolous and the same is barred by estoppel.

III. That the present complaint is barred by the recitals of the executed conveyance deed, where the complainants have absolved the respondent of all liabilities. It is also necessary to read out certain clause 11 of the conveyance deed, which are as follows:-

11. That the actual, physical, vacant, possession of the said Apartment has been handed over to the Vendee and Vendee hereby confirms taking over possession of the said Apartment/ parking space(s) from the Vendors after satisfying himself/ herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc have



*been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said apartment, any item of work, material, quality of work, installation etc, therein. A Perusal of the Contents of the Sale Deed clearly show that the Complainant has neither raised any grievance at the time of taking over the possession or at the time of execution of the Sale Deed, nor reserved any right in the covenants of the Sale Deed, to claim any delay interest for the alleged delay in possession or against any claim of "other charges". Rather, it has given an unequivocal waiver to raise any claim with respect to the amenities, construction etc.*

- 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 Adjudicating Officer/Civil Court. Therefore, the present complaint deserves to be dismissed on this ground alone. That the complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.
- 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 original allottee 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 PGT-07-302, 3<sup>rd</sup> Floor, admeasuring 2920 sq. ft. situated in the project developed by the Respondent, known as "The Garden Terraces" at Sector 66, Gurugram, Haryana. That thereafter the original allottee vide application form dated 23.07.2012 applied to the respondent for provisional allotment of a unit bearing number PGT-07-302 in the project. It is submitted that the original allottee prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottees 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, than the original allottee took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The original allottees consciously and wilfully opted for a subvention plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottees shall remit every instalment on time as per the payment schedule. the respondent had no reason to suspect bonafide of the original allottee. That the respondent issued the provisional allotment letter dated 13.08.2012 to the original allottee.

VI. That subsequently, the respondent sent the buyer's agreement to the original allottee, which was executed between the parties on 06.09.2012. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed by the original allottee after reading and understanding the contents thereof to their full satisfaction. That thereafter, the original allottee executed an

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agreement to sell dated 10.10.2015 in favour of the complainants for transferring and conveying rights, entitlement and title of the original allottees in the unit in question to the complainants.

VII. It is pertinent to mention that the complainants further executed an indemnity cum undertaking dated 14.10.2015 and an affidavit dated 14.10.2015 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees. It was further declared by the complainants that having been substituted in the place of the original allottees, they were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent. Further, the respondent issued the nomination letter dated 28.10.2015 in favour of the complainants. Furthermore, the respondent, at the time of endorsement of the unit in question in their favour, had specifically indicated to the complainants that the original allottee had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disentitled themselves for any compensation/interest. The respondent had conveyed to the complainants that on account of the defaults of the original allottees, the complainants would not be entitled to any compensation for delay, if any. That in the manner as aforesaid, the complainants stepped into the shoes of the original allottee.

VIII. That since, the complainants and the original allottees were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainants requesting him to make payment of demanded amounts. 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.

- IX. It is further submitted that despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. The respondent had applied for occupation certificate which 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. 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.
- X. That the original allottee, in terms of clause 14 of the buyer's agreement, were issued intimation of possession dated 27.05.2015 to make all the balance payments and intimated that the possession shall be handed over upon completion of all formalities as mentioned



therein. Subsequently in terms of clause 14 of the buyer's agreement, the respondent issued offer of possession of the unit in question to the complainants through letter of offer of possession dated 18.04.2016. 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.

XI. That thereafter, an indemnity cum undertaking for possession dated 06.07.2017 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. Moreover, the complainants have admitted their obligation to discharge their HVAT liability thereunder. The instant complaint is preferred in complete



contravention of their earlier representations and documents executed. 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.

XII. That the unit handover letter dated 10.04.2016 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. That it is pertinent to mention that after execution of the unit handover letter and obtaining of possession of the unit in question and after the execution of the conveyance deed, the complainants are left with no right, entitlement or claim against the respondent. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. the instant complaint is a gross misuse of process of law. The contentions advanced by the complainant in the false and frivolous complaint are barred by estoppel. That it is pertinent to mention that after execution of the unit handover letter dated 10.04.2016 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 17.08.2017 in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent

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or the complainants against the other. 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. Mere allegation of coercion does not suffice.

XIII. That the complainants have 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 complainants 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 complainants and without prejudice to the contentions of the respondent.

6. 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**

7. 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**

8. 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 offices 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**

9. 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.*

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage

## **F. Findings on the objections raised by the respondent.**

### **11. Objections raised by the respondent.**

**F.I Objection regarding maintainability of complaint on account of complainants being investor.**





12. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyer's, and have paid a total price of Rs.1,28,56,500/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainants.**

**G.I Direct the respondent to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking.**



**G.II Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent.**

**G.III Direct the respondent to refund FD amounting to ₹3,94,377/- deposited with respondent as pre-requisite condition for getting the conveyance deed.**

14. On the above-mentioned reliefs sought by the complainants, is being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected. The original allottee i.e., M/s Timeline Real Estates Pvt. Limited through of Authorized Mr. Sanjay Upadhyia resident of 311, Sector-40, Gurgaon, Haryana was allotted a unit bearing no. PGT-07-302, 3rd floor, tower/block no. PGT-07, admeasuring 2920 sq. ft., in project of the respondent named "Garden Terraces at The Palm Drive" at Sector-66, Gurugram vide provisional allotment letter dated 13.08.2012 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 06.09.2012. Thereafter, the original allottee i.e., M/s Timeline Real Estates Pvt. Limited through of Authorized Mr. Sanjay Upadhyia sold it's unit to the first subsequent allottee i.e., complainants (SOURABH Mathur and Ankita Mathur) vide agreement to sell dated 10.10.2015 and the same was endorsed by the respondent/promoter through nomination letter dated 28.10.2015. As per clause 13(a) of the agreement the respondent was directed to handover the possession of the unit by September 2015 and a grace period of 3 months for applying and obtaining the occupation certificate in respect of the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of



the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

15. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 06.09.2015 including grace period of 90 days.
16. In the present complaint, the occupation certificate was received from the competent authority on 01.04.2015 and possession of the unit was offered to the complainants herein vide offer of possession letter dated 18.04.2016. Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 10.04.2016. Also, the conveyance deed dated 17.08.2017 was also executed by it in favour of the



complainants in respect of the said unit. The complainants have filed the present complaint after a long delay on 26.06.2023.

17. During proceeding on 27.09.2024 the respondent stated that the complaint is barred by limitation as the complaint has filed by the complainants after lapse of more than 5 years from the date of execution of conveyance deed. As discussed earlier, after the unit was allotted to the original complainants on 13.08.2012, a buyer's agreement in this regard was executed on 06.09.2012. Though the possession of the unit was to be offered on or before 06.09.2015 after completion of the project but the same was offered only on 18.04.2016 after receipt of occupation certificate on 01.04.2015 and ultimately leading to execution of conveyance deed of the same on 17.08.2017. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 18.04.2016 (date of offer of possession) and not from 17.08.2017. Therefore, the limitation period of three years was expired on 18.04.2019. The present complaint seeking reliefs was filed on 26.06.2023 i.e., beyond three years w.e.f. 18.04.2016.
18. There has been complete inaction on the part of the complainants for a period of more than 7 years from the offer of possession till the present complaint was filed in June 2023. The complainants remained dormant of his rights for more than 7 years and they didn't approach any forum to avail his rights. There has been such a long unexplained delay in pursuing the matter. 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.
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 as the law is not meant for those who are dormant over their rights. Moreover, the clause 11 of the conveyance deed dated 17.08.2017 is also relevant and reproduced hereunder for ready reference:

*11. That the actual, physical, vacant possession of the said Apartment has been handed over to the Vendee and the Vendee hereby confirms taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself / herself that the construction as*


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*also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment, etc., therein.*

22. Therefore, after execution of the conveyance deed the complainants-allottees cannot dispute any amenities provided to the him by the respondent and any charges paid by him as per builder buyers agreement other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.
23. 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 reliefs sought are declined.
24. Complaint as well as applications, if any, stands disposed off accordingly.
25. File be consigned to registry.

**HARERA**  
GURUGRAM

V.I -   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2024