

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

Complaint no. : 5554 of 2022
Complaint filed on : 05.08.2022
Date of decision : 24.01.2025

Indu Bansal and Dheeraj Bhagat

R/o- 501, Tower-7, Emaar Palm Gardens,
Sector-83, Gurugram, Haryana,
Pin code- 122004

Complainants

Versus

M/s Emaar MGF Land Ltd.

Regd. office: 306-308, 3RD Floor, Square One, C-2,
District Centre, Saket, New Delhi -110017

Respondent

CORAM

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Chaintanya Singhal, (Advocate)

Shri Ishaan Dang, (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint dated 05.08.2022 has been filed by the complainants/allottees 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2023
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	02 of 2019 dated 02.08.2019.
	Extension valid up to	31.12.2019
6.	Unit no.	PGN-07-0501, 5 th floor, building no. 07. [page 17 of complaint]
7.	Area of the unit	1720 sq. ft
8.	Provisional allotment letter issued on	12.01.2011 [page 17 of complaint]
9.	Date of execution of buyer's agreement with original allottee	20.05.2011 [page 22 of complaint]
10.	Nomination letter in favor of complainants	04.04.2018 [pg. 94 of complaint]
11.	Possession clause	10. POSSESSION

		<p>(a) Time of handing over the possession</p> <p><i>Subject to terms of this clause and subject to allottee(s) having complied with all the terms and conditions of this buyer's agreement, and not being in default under any of the provisions of this buyer's agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the company, the company proposes to hand over the possession of the unit within 36 (thirty six) months from the date of start of construction, subject to timely compliance of the provisions of the buyer's agreement by the allottee. The allottee(s) agrees and understands that the company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.</i></p> <p>(Emphasis supplied) [pg. 31 of complaint]</p>
12.	Date of start of excavation as per SOA dated 04.04.2018	09.08.2012 [pg. 83 of complaint]
13.	Due date of possession	09.11.2015 <i>{as per possession clause 36 months from date of start of construction i.e., 09.08.2012 with grace period of 3 months}</i>
14.	Total consideration	Rs. 86,35,714/- [As per statement of account dated 04.04.2018, at page 83 of complaint]
15.	Total amount paid	Rs. 87,93,466/- [As per nomination letter dated 04.04.2018 at page 94 of complaint]
16.	Offer of possession	19.03.2018 [pg. 89 of complaint]

17	Date of handover advice letter to complainants i.e., Indu bansal and Dhiraj Bhagat	17.04.2018 [pg. 86 of complaint]	
18	Occupation certificate granted on	10.01.2018 For tower/building - 3, 4, 7, 5 and EWS Block [As per DTCP website]	17.10.2019 For tower/building- 1, 2, 11, 12 And Convenient Shopping [As per DTCP website]
19	Date of conveyance deed in favor of complainants	11.09.2018 [pg. 99 of complaint]	

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- i. That on 17.12.2010 the original allottee Mr. Kishore Kumar Aggarwala booked a residential unit in respondents project namely "Emaar Palm Gardens" located in Sector-83 Gurgaon and on 12.01.2011 the complainant received the provisional allotment letter for the unit.
 - ii. That on 20.05.2011 Builder Buyer Agreement (BBA) was executed between original allottee and respondent and was allotted unit no. PGN-07-501 having super area of 1720 sq. ft for a total sale consideration of Rs.84,81,640/- That as per "Clause 10" of the B.B.A the respondent had committed to deliver the possession of the booked unit within period of 36 months from the date of execution of BBA which comes to 20.05.2014 (sic. 09.11.2015) (deemed date of possession). Further as per Clause 12 of the B.B.A in case the respondent fails to handover the possession of the booked unit within a period of 36 months then the respondent will be liable to pay compensation at the rate of Rs.7.50/- per sq. ft. per month on the super area for the period of delay in offering the possession of the booked unit.

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- iii. That the respondent miserably failed to timely construct and handover the possession of the said unit on time. There has been a delay of 46 months in handing over of possession. Complainant has paid an amount of Rs.85,87,331/- to the respondent as per the final unit handover letter.
- iv. That on 19.03.2018 the respondent sent "Offer of Possession Letter" along with final demand for payment to the original allottee. Subsequently, on 04.04.2018 the original allottee transferred the unit in the name of the complainants vide endorsement/ transfer letter dated 04.04.2018 and thus complainants stepped into the shoes of the original allottee with all his rights and liabilities.
- v. That on 11.09.2018 the respondent got the conveyance deed executed in favour of the complainants. That there is a delay in handing over of possession. The respondent has not paid the delayed possession charges to the complainant which he is liable to pay as per section 18 of RERA read with Rule 15 of HRERA Rules, 2017.
- vi. The respondent has further wrongly/ illegally charged V.A.T from the complainant. Further, the respondent had wrongly charged GST from the complainant. However, GST came into force in the year 2017 and the possession of the unit was supposed to be delivered in the year 2014. Therefore, the tax which has come into existence after the deemed date of possession should not be levied being unjustified. Had it been delivered by the due date, the incidence of GST would not have fallen up to the complainant. It is wrongful act on the part of the respondent in not delivering the unit in time due to which the additional tax has become payable. For the inordinate delay by the respondent in delivering the unit, the incidence of GST should be borne by the respondent only. Further the respondent had wrongly charged Rs. 7,346/- on account of electrification charges. Further, the respondent has marked lien on fixed deposit (F.D) of the complainant on account of HVAT security which is completely wrong and illegal.

- vii. That due to delay in handing over of possession and subsequent non-payment of delayed possession charges the cause of action has arisen in favor of complainant and against the respondent and is still continuing one.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. To pay delayed possession charges as per Rule 15 of HARERA Rules 2017 from deemed date of possession i.e., 20.05.2014 till the final handover of possession i.e., 19.03.2018 plus 2 months.
 - ii. To remove lien on fixed deposit on the complainant on account of HVAT security.
 - iii. To refund GST and VAT amount wrongly collected from the Complainant.
 - iv. To refund electrification charges wrongly collected from complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the part of the project in question in was made on 29.06.2017, i.e., well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). The occupation certificate has been thereafter issued on 10.01.2018. Thus, the part of the project in question (Palm Gardens, Sector 83, Gurgaon) in which the unit allotted to the complainant is situated, is not an 'ongoing project' under Rule 2(1)(o) of the Rules and has consequently not been registered under the provisions of the

Act. This Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

- ii. That without prejudice to the submission of the respondent that the Act is not applicable to the project in question, it is submitted that the present complaint is not maintainable before this Authority. 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. The present complaint deserves to be dismissed on this ground alone.
- iii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- iv. That the complainant has 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 20.05.2011, as shall be evident from the submissions made in the following paragraphs of the present reply. The respondent craves leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants thereunder.

- v. That the complaint is barred by limitation. The complainants purchased the unit in resale from the original allottees in April 2018 and took possession of the unit on 28.04.2018. The conveyance deed was registered in their favour on 11.09.2018. Institution of the present complaint after an unexplained delay of almost five years is barred by limitation. Moreover, the so called cause of action in favour of the complainants arose prior to the Act on 20.05.2014, which according to the complainants, was the due date of possession under the buyer's agreement. The complaint has been filed beyond limitation and the same is liable to be dismissed on this ground alone.
- vi. That the original allottee, Kishore Kumar Agarwala, had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Palm Gardens" (hereinafter "the project") situated in Sector 83, Gurgaon, Haryana. Prior to making the booking, the Original allottee conducted extensive and independent enquiries with regard to the project and it was only after the original allottee was fully satisfied about all aspects of the project, that the original allottee took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- vii. That unit bearing no PGN-07-0501, in the residential project known as "The Palm Gardens (hereinafter "the project") situated in Sector 83, Gurugram, Haryana, was provisionally allotted in favour of the original allottee vide provisional allotment letter dated 19.01.2011. Buyer's Agreement dated 20.05.2011 was willingly and voluntarily executed by the original allottee after duly understanding and accepting the terms and conditions thereof.

- viii. That the original allottee had agreed and undertaken to make timely payment of sale consideration in accordance with the payment plan appended to the buyer's agreement. However, the original allottee, from the very beginning, defaulted in making timely payment of instalments. Consequently, the respondent was compelled to issue demand notices and reminders for payment.
- ix. That the respondent completed construction of the unit in the month of June 2017 and applied to the competent authority for issuance of the occupation certificate on 29.06.2017. Occupation Certificate was received by the Respondent on 10.01.2018. Upon receipt of the occupation certificate, possession of the unit was offered to the original allottee vide offer of possession letter dated 19.03.2018. The original allottee was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit to him.
- x. That in the meanwhile, the original allottee and the complainants approached the respondent and requested that the allotment be transferred in favour of the complainants. Agreement to sell dated 19.01.2018 between the original allottees and the complainants. Based on the transfer documents executed by the complainants including an affidavit and Indemnity cum Undertaking whereby the complainants agreed and undertook not to claim any compensation for any delay in delivering possession and upon the complainants undertaking to be bound by the buyer's agreement dated

20.05.2011, the allotment was transferred in favour of the complainants.

Nomination letter dated 04.04.2018 issued in favour of the complainants.

- xi. That it is pertinent to mention herein that at the time of purchasing the unit in resale from the previous allottee, the complainants were conscious and aware that the construction of the unit was completed and offer of possession had already been made to the original allottee. The complainants were also fully conscious and aware that the original allottee being a wilful defaulter was not entitled to any compensation under clause 12 (c) of the buyer's agreement and that as successors in interest of the original allottee, the complainants would also not be entitled to any compensation for any delay in offering possession. In any case, the due date of handing over possession stood extended on account of the defaults of the original allottee in accordance with clause 10(b)(iv). The complainants were also fully aware that the project had got delayed due to circumstances beyond the power and control of the respondent. The complainants therefore executed the transfer documents admitting and acknowledging that they shall not be entitled to claim any compensation for delay in offering possession. The complainants by their conduct in purchasing the unit in resale from the previous allottee after the so-called due date of possession under the buyer's agreement, have waived the time lines for delivery of possession under the buyer's agreement.
- xii. That the complainants took possession of the unit on 28.04.2018. Indemnity cum undertaking executed by the complainants for possession. The unit handover letter dated 28.04.2018 whereby the complainants have categorically admitted and acknowledged that they are fully satisfied with

regard to the unit, its measurements, location, dimension and development etc and that the complainants do not have any claim of any nature whatsoever against the Respondent. It was further explicitly stated in the aforesaid letter that upon acceptance of possession, the obligations of the respondent under the buyer's agreement /allotment stood discharged. The complainants are thus estopped from filing the present complaint and from alleging delay.

- xiii. That thereafter the conveyance deed bearing vasika No 2328 dated 11.09.2018 has also been registered in favour of the complainants. It is submitted that the respondent has duly fulfilled its obligations as per the buyer's agreement and there is no lapse or default on its part.
- xiv. That it is respectfully submitted that the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 20.05.2011 which continues to be binding upon the parties thereto with full force and effect.
- xv. That it is respectfully submitted that the complainants have misinterpreted and misconstrued the terms and conditions of the buyer's agreement. It is wrong and denied that the buyer's agreement contemplates hand over of possession of the unit in the manner claimed by the complainant in the complaint. It is submitted that reliance upon selective clauses of the contract in isolation while disregarding other provisions of the contract, is not permissible in law. It is submitted that the contract has to be read in its entirety and in a holistic manner and not in a piecemeal manner as is sought

to be done by the complainants. Moreover, the buyer's agreement has to be read in conjunction with the transfer documents executed by the complainants.

- xvi. That it is respectfully submitted that the rights and obligations of the complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement as amended by the transfer documents. It is submitted that as per clause 10 of the buyer's agreement, the time period for delivery of possession was 36 months along with grace period of 3 months from the date of start of construction subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. The complainant has completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. It is pertinent to mention that it was categorically provided in clause 10(b)(iv) that in case of any default/delay by the allottees in payment as per 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. Furthermore, it has been categorically provided in the agreement that the time period for delivery of project shall also stand extended on occurrence of facts and circumstances which are beyond the power and control of the respondent.

- xvii. That Without admitting or acknowledging in any manner the legality or truth of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the interest demanded by the complainant in the instant complaint is compensatory in nature for indemnifying the complainant for the alleged delay and hence the complaint preferred by the complainant is barred by estoppel.
- xviii. 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. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. 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 provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid, in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. It is further submitted that the interest demanded by the complainant for the alleged delay is beyond the scope of the buyer's agreement. The complainant cannot demand any interest beyond the terms and conditions incorporated in the buyer's agreement.
- xix. That without prejudice to the contentions of the respondent, it is submitted that the allegations of the complainant that possession was to be given by

May 2014 are illogical and wrong as the complainant has purchased the unit in resale in the year 2018, well after the so-called due date of possession under the Act and with full knowledge of the status of construction on that date. Thus, the complainant has waived the time lines for delivery of possession as set out in the buyer's agreement. It is submitted that by the failure of the previous allottees/complainant to repudiate the contract even after the so-called due date of possession and continuing to make payment even thereafter, the time lines for delivery of possession are deemed to have been waived by the complainant. The complainant has wantonly and needlessly leveled false, defamatory and vexatious allegations against the respondent. It is submitted that the complainant purchased the unit in question as a speculative investment and with an intent to obtain profit by reselling the same. The complainant is taking undue advantage of the situation and are intending to obtain wrongful gain by mounting undue pressure upon the respondent by prosecution of the instant complaint. The contention of the complainant that the respondent has delayed delivery of possession of the unit in question is legally unsustainable in the facts and circumstances of the case.

- xx. That it needs to be highlighted that the respondent had applied to the statutory authority for grant of occupation certificate in respect of the tower in which the unit in question is located on 29.06.2017 and the same was granted on 10.01.2018. It is reiterated that once an application for issuance of occupation certificate is submitted before the concerned competent authority, the respondent ceases to have any control over the same. The

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grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as the respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

- xxi. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent that RERA is not applicable to the part of the project in question in which the unit in question is situated, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. 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 provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and in negation of the provisions of the buyer's agreement. This is without prejudice to the submission of the respondent that the provisions of the Act are not applicable to the project in question. It is further submitted that the interest for the alleged delay demanded by the

complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- xxii. That 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, it is submitted 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.
- xxiii. That the construction work was entrusted to Infrastructure Leasing and Finance Ltd. (hereinafter referred to as "IL & FS") for the project. However, the amount of workforce deployed at the project site and the pace of work being carried out by IL & FS was not as agreed upon. Therefore, this was taken up by the opposite party, with IL & FS by way of various email and letters communications, between the years 2013 till 2018 pertaining to their lack of / inadequate performance due to which the project was getting delayed. That the reasons for this became clear when insolvency proceedings were admitted against IL&FS by the competent authority being the Hon'ble NCLT, Mumbai in CP/4506/2018.
- xxiv. That it is submitted that several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect



on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situate has been completed by the respondent. The respondent has already delivered possession of the unit in question to the complainants. 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. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is

situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter 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:

F.I Whether the complaint is being barred by limitation?

12. 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 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 a 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 is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

13. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
14. In the present matter the cause of action arose on 19.03.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 05.08.2022 which is 4 years, 4 months and 17 days from the date of cause of action. In the present matter 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 04.03.2023.
15. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

F.II Whether the complainant can claim delayed possession charges after execution of conveyance deed?

16. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than 19.11.2015 and therefore cause of action, if any, accrued in favour of the complainants in 19.11.2015. The transaction between the parties stands concluded upon the execution of conveyance deed as the same was executed in favour of the complainant on 11.09.2018.

17. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
18. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
19. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

20. The authority has already taken a view in in *Cr. no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
21. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants- allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

G. Findings on the relief sought by the complainant:

- G.I To pay delayed possession charges as per Rule 15 of HRERA Rules 2017 from deemed date of possession i.e., 20.05.2014 till the final handover of possession i.e., 19.03.2018 plus 2 months.**
22. Briefly, the facts of the case are that the unit bearing no. PGN-07-0501, 5th floor, building/tower-7 was allotted in favour of Mr. Kishore Kumar Agarwala (hereinafter in short referred as 'original allottee') by the respondent vide provisional allotment letter dated 12.01.2011 and thereafter the buyer's agreement was executed between the original allottees and the respondent on 20.05.2011. Subsequently, the offer of possession of the subject unit was offered to the original allottee on 19.03.2018 after receipt of occupation certificated by the competent authority on 10.01.2018. Thereafter, the subject unit was transferred in favour of Indu Bansal and Dhiraj Bhagat (hereinafter in short referred as complainants/subsequent allottees") vide nomination letter dated 04.04.2018.

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23. That the complainants herein are subsequent allottees who had purchased the subject unit from the original allottee and the same was acknowledged by the respondent vide nomination letter dated 04.04.2018 i.e., at such a time when the possession of the subject unit has already been offered to the original allottee. The occupation certificate in respect of the subject unit was obtained by the respondent promoter on 10.01.2018 and the possession of the subject unit was offered on 19.03.2018 to original allottee i.e., Mr. Kishore Kumar Agarwala. It simply means that the complainants were well aware about the fact that the construction of the subject project and the subject unit has already been completed and the possession of the same stands offered to original allottees. Moreover, the complainants herein have not suffered any delay as they came into the picture on 04.04.2018 after offer of possession which was made on 19.03.2018 to the original allottee and unit handover letter was given to complainants on 17.04.2018. Subsequently, respondent executed conveyance deed with complainants/subsequent allottees on 11.09.2018. In the light of the facts mentioned above, the complainants who have become subsequent allottees at such a later stage are not entitled to any delayed possession charges as they have not suffered any delay in the handing over of possession. The authority is of view that the present complainants have never suffered any delay. Neither the original allottee is impleaded as necessary parties. So, keeping in view all the facts, the complainants are not entitled for delay possession charges and other reliefs as sought by them in the present complaint. Hence, the complaint filed by the complainants is not admissible.

G.II Direct to remove lien on fixed deposit on the complainant on account of HVAT security.

G.III To refund GST and VAT amount wrongly collected from the complainant.

G.IV To refund electrification charges wrongly collected from complainant

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24. The above mentioned reliefs no. G.II, G.III and G.IV are taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
25. That the financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed except its statutory rights. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges 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.

H. Directions of the authority

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. In view of the factual as well as legal positions detailed above, the complaint filed by the complainant's seeking relief of delayed possession interest against the respondent is not admissible and the same is hereby ordered to be rejected.
 - ii. The respondent shall not charge anything from complainant which is not part of buyer's agreement.
27. Complaint stands disposed of.
28. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.01.2025