

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

Complaint no. : 5211 of 2023
Date of order : 29.01.2025

1. Anjali Tiwari .
2. Ratnesh Kumar Jha
Address: 221, First Floor, Deep Plaza Complex,
Opposite Civil Court, Gurugram.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Sanjeev Kumar Sharma (Advocate)
Harshit Batra (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint 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 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. Unit and project related details

2. The particulars of unit details, 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.	Headings	Particulars
1.	Name of the project	Emerald plaza
2.	Nature of the project	Commercial complex
3.	Location of project	Village-Nangli, Badshahpur, Maidawas, Gurugram.
4.	HRERA Registered	Registered
5.	DTCP license	License No. 10 of 2009 Dated-21.05.2009
6.	Provisional allotment letter	23.09.2009 (As on page no. 31 of reply)
7.	Buyer's Agreement	25.06.2010 (As on page no. 18 of complaint)
8.	Unit no.	EPS-GF-060, Floor-Ground (as on page no. 19 of complaint)
9.	Unit Area	479.09sq.ft. [Super-Area] (As on page no. 19 of complaint)
10.	Possession clause	Clause 16 POSSESSION (a) Time of handing over the possession (i) Within 30 months from the execution of the agreement (ii) The Company shall be entitled to a

		grace period of 120 days.
11.	Due date of possession	25.02.2013 [Calculated 30 months + 120 days]
12.	Total sale consideration	Rs.37,74,457/- (As per S.O.A dated 01.12.2023 on page no.113 of reply)
13.	Amount paid	Rs.37,92,471/- (As per S.O.A dated 01.12.2023 on page no.113 of reply)
14.	Occupation certificate	08.01.2018 (As on page no. 102 of reply)
15.	Offer of possession	24.01.2018 (As on page no. 53 of complaint)
16.	Unit handover letter	27.08.2018 (as on page no. 112 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the respondent was to construct a residential group housing colony namely "Emerald Hills" on parcel of land admeasuring 102.471 acres wherein the commercial complex namely "Emerald Plaza Retail" is developed on land admeasuring 3.963 acres located at Sector-65, Urban Estate, Gurgaon, Haryana.
- II. That the complainant showed the interest in purchasing a commercial unit with the respondent upon which a Buyers Agreement was executed between them on 25.06.2010 and the complainant was allotted unit no. EPS-GF-060 admeasuring 476.90 sq. ft. in the said project for a basic sale

consideration of Rs.28,61,400/- and additional car parking charges of Rs.4,00,000/-.

III. That as per clause 16 (a) of the Buyers Agreement, the physical possession of the unit was to be handed over within 30 months alongwith a grace period of 120 days i.e. by April 2013. However, the possession of the same was not handed over on time. That as per statement of accounts dated 24.01.2018, the complainant has paid an amount of Rs.34,32,946/- as and when demanded by the respondent without any delay.

IV. That the complainant after an exorbitant delay of 4.9 years received Letter for offer of possession on 25.01.2018 after a delay of 4.9 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant visited the office of the respondent with the request to pay delayed possession charges but the same were in vain. Thus, the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to pay the interest for delay possession charges till the actual handover of the unit in question.
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: -
 1. That at the outset, it is submitted that the present complaint is not maintainable as the respondent had already offered possession of the unit to the complainants and same was accepted by them. Therefore, the

- respondent had already complied with its obligations under the Retail Space Buyer's Agreement.
- II. That the complainants approached the respondent and expressed interest in booking of a retail space in the commercial complex known as "Emerald Plaza at Emerald Hills" situated in Sector 65, Urban Estate Gurgaon.
 - III. That thereafter, the complainants applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no EPS-GF-060 was allotted vide provisional allotment letter dated 23.09.2009. The complainants consciously and wilfully opted for a construction linked payment plan.
 - IV. That thereafter, an Office Space Buyer's Agreement dated 25.06.2010 was executed between the complainants and the respondent. As per clause 16(a) of the Agreement, the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. That the complainants had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainants and had paid delayed payment interest at multiple occasions. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances as under Clause 16(b)(i) and Clause 33 of the Buyer's Agreement.

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped



		that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.			movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19 th July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	7 th Nov, 2017	Environment Pollution (Prevention and Control Authority) had	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put



		directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.			an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

		work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.			
			Total days	166 days	

- V. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the respondent.
- VI. That despite the default caused, the respondent applied for Occupation Certificate in respect of the said unit on 26.05.2017 and the same was thereafter issued on 08.01.2018. The complainants were offered possession of the unit in question through letter of offer of possession dated 26.02.2018. 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. The respondent via. possession letter dated 26.02.2018, earnestly requested the complainant to obtain possession of the unit in question. However, the complainant did not pay any heed to the requests of the respondent. Thereafter, an indemnity cum undertaking for possession was executed between the complainant and the respondent on 07.07.2018. The physical possession of the unit in question was handed over to the complainants on 27.08.2018 despite the fact that offer of possession had already been made to them on 26.02.2018.
- VII. That the relief sought by the complainant is barred by limitation. The occupation certificate was received on 08.01.2018 and the offer of possession was issued on 26.02.2018. The cause of action to seek delayed

possession charges, if any, arose before the receipt of occupation certificate and the offer of possession.

VIII. That by signing the Unit Handover letter dated 27.08.2018, the complainant stood satisfied with respect to all the liabilities and obligations of the respondent. After taking the possession, the complainants had been enjoying the peaceful possession of the unit. It is pertinent to mention here that the complainants approached the Authority on 04.11.2023 i.e., after a delay of 5 years 8 months and 9 days from date of offer of possession (26.02.2018) and during these approximately 6 years the complainants raised no grievance towards 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.

E. Jurisdiction of the authority

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

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)(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;

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.

F. Findings on the objections raised by the respondent.

F.I. Whether the complaint is barred by limitation or not?

12. In the present complaint, the buyer's agreement was executed on 25.06.2010. As per clause 16 (a) of the agreement, the respondent was to offer the possession of the unit to the allottees by 25.02.2013. The respondent is also entitled to the grace period of 120 days. Thus, the due date comes out to be 25.02.2013.
13. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that the Buyer's Agreement between the complainants and the respondent was executed on 25.06.2010. According to the terms of this agreement, possession of the unit was to be offered within 30 months from the date of execution of the Buyer's Agreement plus an additional 120 days grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the

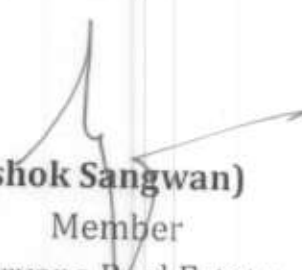


grace period was 25.02.2013. The respondent obtained the occupation certificate for the relevant tower on 08.01.2018. An offer of possession was made to the complainants on 24.01.2018, and the unit was formally handed over on 27.08.2018, as indicated by the handover letter dated 27.08.2018.

14. 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.
15. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
16. In the present matter the cause of action arose on 24.01.2018 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 17.11.2023 which is 5 years 9 months and 3 days from the date of cause of action. The complaint has not been filed within a reasonable period of time nor have the complainants explained any grounds for the delay in filing the same. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.

17. Consequently, the complaint is dismissed being barred by limitation.
18. File be consigned to the registry.

Dated: 29.01.2025


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM