

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

**Complaint no. :** 5762 of 2022  
**Date of order :** 14.01.2025

Mr. Abhishek Bishnoi  
R/o:- Ward No. 20, opposite Birla Mall, Sangaria,  
District Hanumangarh,- 335063 Rajasthan.

**Complainant**

Versus

M/s Emaar MGF Land Ltd.  
**Registered office at:** 306-308, 3<sup>rd</sup> floor, Square One,  
C-2, District Centre, Saket, New Delhi-110017

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Kuldeep Kumar Kohli  
Shri J. K. Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.
  - A. **Project and unit related details**
2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:



S. No.	Particulars	Details	
1.	Name of the project	Palm Premier at Palm Hills, Sector 77, Gurugram, Haryana.	
2.	Total area of the project	29.347 acres	
3.	Nature of the project	Group Housing Colony	
4.	DTCP license no.	56 of 2009 dated 31.08.2009	62 of 2013 dated 05.08.2013
	Validity of license	30.08.2024	04.08.2019
	Licensee	Robin Software Pvt. Ltd	Robin Software Pvt. Ltd
5.	Registered/not registered	<b>Registered</b> vide no. 01 of 2018 dated 01.01.2018 valid up to 28.02.2022 for tower A and B (part of the project palm hills) being developed over an area of 14271.558 sq. mtrs.	
6.	Unit no.	<b>PH3-EPP-A-08-02, 8<sup>th</sup> floor, in tower A</b> (As per page no. 47 of the complaint)	
7.	Area of the unit	1218 sq. ft. (carpet area) 2000 sq. ft. (super area) (As per page no. 41 of the complaint)	
8.	Provisional allotment letter in favour of complainant	22.03.2018 (As per page no. 41 of the complaint)	
9.	Date of execution of buyer's agreement between the complainant herein	21.08.2018 (As per page no. 44 of the complaint)	
10.	Possession clause	<b>7. POSSESSION AND SALE DEED</b> <i>(a). Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan. Annexure- along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company the Company shall offer the possession of</i>	



		<i>the Unit to the Allottee on or before 28.02.2022 or any time as may be extended by the Authorities.</i> (Emphasis supplied) [As per page no. 63 of the complaint]
11.	Due date of possession	28.02.2022 (As mentioned in the buyer's agreement)
12.	Basic sale consideration	Rs.1,17,23,160/- (As per payment plan annexed with the buyer's agreement at page no. 93 of the complaint)
13.	Total sale consideration	Rs.1,17,75,784/- (As per the statement of account 23.11.2021 at page no. 129 of the complaint)
14.	Total amount paid by the complainant	Rs.1,22,58,916/- (As per the statement of account 23.11.2021 at page no. 129 of the complaint)
15.	Offer of possession to the complainant	<b>15.01.2021</b> (As per page no. 106 of the reply)
16.	The complainant sold the subject unit to subsequent allottee (Ms. Renu Bose) vide assignment agreement dated 27.10.2021 (As per page no. 137 of the complaint) and the same was acknowledged by the respondent vide nomination letter	29.11.2021 (As per page no. 111 of the reply)
17.	Unit Handover letter signed by subsequent allottee	<b>10.12.2021</b> (As per page no. 112 of the reply)
18.	Conveyance deed executed between the Renu Bose and the respondent herein	<b>08.02.2022</b> (As per page no. 117 of the reply)

**B. Facts of the complaint**

3. The complainant made the following submissions in the complaint:

- i. The respondent company announced the launch of "PALM PREMIER at PALM HILLS" project in the year 2018. The complainant while searching



for a residential flat/accommodation were lured by the advertisements /brochures of the company to buy a flat/accommodation in their project namely "*PALM PREMIER at PALM HILLS*" project at Sector 77, Gurugram Haryana. The agents and officers of the respondent's company told the complainant about the moonshine reputation of the company and the agents of the respondent's company made huge presentations about the project mentioned above and assured that they have delivered several projects in the national capital region prior to this project. The respondent handed over one brochure to the complainant, which projected a very interesting landscaping of the said project and went on to incite the complainant to part with their hard-earned money by way of making payments. The respondent claimed that they have taken all due approvals, sanctions and government permissions towards development and construction of "Palm Premier at Palm Hills" project and after representing through brochures, about the facilities to be provided, the respondent managed to impress the complainant, who then decided to invest their hard-earned money in purchasing the unit in the said project. Relying on various representations and assurances given by the respondent company and on belief of such assurances, original allottee Mr. Abhishek Bishnoi booked a residential unit in the project by paying an amount of Rs.11,00,000/- dated 19.01.2018, towards the booking of the said unit bearing no PH3-EPP-A-08-02, in the project namely *Palm Premier at Palm Hills* situated in Sector 77, Gurugram, having super area measuring 2000 sq. ft. the same was acknowledged by the respondent in their statement of account.

- ii. That the respondent sent a provisional allotment letter dated 22.03.2018 to original allottee Mr. Abhishek Bishnoi confirming the



booking of the said unit and having super area measuring 2000 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs.1,17,23,160/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. That the original allottee Mr. Abhishek Bishnoi made payments against the demands raised by the respondent the same has been acknowledged by the respondent vide the statement of account. As per demands raised and based on the payment plan as agreed upon the complainant to buy the captioned unit made the total payment of Rs.1,16,18,666/- against the total consideration of Rs.1,17,23,160/-.

- iii. That the initial allottee Mr. Abhishek Bishnoi sold his unit to another person and in due course got the assignment agreement executed in sub-registrar office Manesar on 27.10.2021. That to transfer the unit to the buyer's name in their own records the complainant was asked to remit Rs.4,72,000/- towards the administration charges of the said unit no PH3-EPP-A-08-02 admeasuring 2000 sq. ft. via email dated 01.11.2021 in an email sent by the respondent to the complainant.
- iv. That the respondents have charged the transfer charges from the initial allottee which is entirely illegal and nothing such is mentioned in the apartment buyer's agreement for the same. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency, and failure in service of the respondent is filing the present complaint.
- v. That the respondent, in reference mail, asked to pay an amount of Rs.4,72,000/- towards administration charges i.e., transfer charges from the complainant which comes out to be illegal and against the laws of the land. The complainant had already paid an amount of Rs.50,000/- to the office of sub-registrar for this transfer to the buyer.





- vi. That the complainant had paid the said administration charges amounting to Rs.4,72,000/- for the transfer of the said unit and despite the complainant asking for refund of the excess demanded administration charges by the respondent, the respondent refused to pay the said amount, the respondent did not abide by the terms of the agreement. Hence, charging for such a huge amount, when the same is not a part of the apartment buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately.
- vii. That the cause of action arose in favour of the complainant against the respondent when the respondent sent an email to the complainant to remit the administration charges for Rs.4,72,000/- against the transfer of the said unit. That the complainant have not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law. The complainant after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance. Hence, this petition.

**C. Relief sought by the complainant**

4. The complainant is seeking the following relief:
- Direct the respondent to refund the transfer charges paid by the complainant for further transferring the apartment.
  - To grant the court fees amounting of Rs.50,000/- charges by the tehsil in favour of the complainant against the respondent.

**D. Reply filed by the respondent**

5. The respondent has contested the complaint on the following grounds:-
- That the present complaint is not maintainable in law or on facts. The complainant has preferred the instant complaint impugning the levy of transfer charges/administrative charges by the respondent. The



complainant has wrongly contented that the levy of transfer charges/administrative charges is not indicated in the buyer's agreement. However, even a cursory glance at the buyer's agreement would reveal that the levy of transfer charges/administrative charges has been unambiguously described in clause 24 of the said buyer's agreement. Thus, it is manifest that no cause of action as alleged has arisen in favour of the complainant at any time. The present complaint is liable to be dismissed on this ground alone.

- ii. That additionally, the complainant has no locus standi to file the present complaint. The complainant has sold the unit in question to Mrs. Renu Bose and has further endorsed the buyer's agreement in favour of Mrs. Renu Bose. Therefore, the complainant cannot be legally allowed to advance any claim directly or indirectly arising out of the terms and conditions of the buyer's agreement.
- iii. That without prejudice to the contentions of the respondent, it is submitted that 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 21.08.2018. The same shall be evident from the submissions made in the following paragraphs of the present reply.
- iv. That the complainant approached the respondent for purchasing an independent unit in its upcoming residential project "The Palm Hills" situated in Village Shikohpur, Sector 77, District Gurgaon, Haryana. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that



- the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- v. That thereafter the complainant vide an application form applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no EPP-A-0802, located on the 8<sup>th</sup> floor, in the project vide provisional allotment letter dated 22.03.2018. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant would remit every other charge/demand pertaining to the unit in question on time. The respondent had no reason to suspect the bona-fides of the complainant. The complainant further undertook to be bound by the terms and conditions of the application form.
- vi. That however the complainant wilfully and consciously defaulted in timely remittance of the instalments. Statement of account correctly maintained by the respondent in due course of its business dated 19.09.2022 depicting delay in remittance of various payments by the complainant.
- vii. That numerous allottees including the complainant have defaulted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. Despite defaults of several allottees earnestly fulfilled its





obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.

- viii. That it would not be out of place to mention that the respondent had offered possession of the unit in question through letter of offer of possession dated 15.01.2021 to the complainant. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question. However, the complainant did not take any step to complete the necessary formalities or to pay the balance amount liable to be paid by him. Although the due date of possession was 28.02.2022 nevertheless possession has been offered on 15.01.2021.
- ix. That the complainant did not have adequate funds to remit the balance payment requisite for obtaining possession in terms of the buyer's agreement at the relevant time. The complainant needlessly avoided the completion of the transaction with the intent of evading the consequences as enumerated in the buyer's agreement for delay in obtaining of possession on the part of the respective allottee. Even after a delay of more than 10 months the complainant approached the respondent and requested it to permit assignment of the unit in question in favour of Mrs. Renu Bose. The respondent, at the relevant time, specifically drew attention of the complainant to clause 24 of the buyer's agreement and unequivocally informed the complainant that he shall be liable to pay the administrative charges/transfer charges amounting to Rs.4,72,000/- for performing the contemplated /proposed transfer. The respondent further intimated the complainant that any stamp duty, registration charges or any other charges levied on account of such transfer would be borne by the complainant in addition



to the administrative charges/transfer charges, referred to above. The complainant did not raise any objection to the same and consciously agreed to remit all the payments towards transfer charges, registration charges, stamp duty etc. as and when demanded by the respondent. The respondent, relying upon the aforesaid representations of the complainant, agreed to the proposed assignment and accordingly facilitated the assignment/transfer of the unit in question from the complainant to Mrs. Renu Bose.

- x. That to take into reckoning that it has been expressly provided in clause 24 of the buyer's agreement that the allottee is contractually obligated to pay charges imposed by the respondent in the event of any assignment by the allottee of his rights, title and entitlements in the unit to a third party. Moreover, it has been categorically stated in the buyer's agreement that the stamp duty, registration fee, taxes etc. levied on account of such transfer/assignment shall also be borne by the allottee. Thus, the allegations of the complainant that he was not bound to pay transfer charges are illogical, baseless and false, misguided and result of after-thought.
- xi. That the respondent, while granting permission to the complainant to transfer his rights, title and entitlement in the unit in question in favour of Mrs. Renu Bose, was/is entitled to demand the transfer charges fixed by it for such a transfer. It needs to be emphasised that the complainant had not raised any objection regarding the transfer charges at the time of effecting the proposed assignment and had duly remitted the same to the respondent without any demur. In light of the aforesaid fact, transferred the unit in question in favour of Mrs. Renu Bose, both the complainant and the transferee/assignee are estopped from impugning



the payment of the transfer charges to the respondent. The complaint preferred by the complainant deserves to be dismissed in-limine.

- xii. That additionally, it is submitted that it has been expressly provided in clause 24 of the buyer's agreement that the allottee is contractually obligated to pay the stamp duty, registration fee, taxes etc. levied on account of transfer/assignment of the unit to a third party. Nevertheless, in accordance with clause 9 of the assignment agreement dated 27.10.2021, all expenses, charges including but not limited to stamp duty, registration fee in respect of execution and registration of the assignment agreement or any other document, power-of-attorney etc. required to be executed pursuant to the assignment agreement was to be paid and borne by Mrs. Renu Bose. Therefore, claim of the complainant, if any, in this regard has to be made against Mrs. Renu Bose. However, the complainant has omitted to implead Mrs. Renu Bose as a party to the instant litigation. The complaint is bad for non-joinder of necessary party and is liable to be dismissed on this ground alone. In any event, the registration fees is levied by the government and the Respondent does not control the manner/extent of levy thereof in any manner. The allegations of the complainant as far as they impugn the levy of registration charges are fallacious, whimsical, unwarranted, illogical and meritless.
- xiii. That without admitting in any manner the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, the controversy needlessly instigated by the complainant is a contractual dispute which cannot be adjudicated upon by this Authority. The complainant has alleged that the charges in question are extrinsic and extraneous to the terms and conditions of the buyer's agreement executed between the complainant and the



respondent. In fact, the relief claimed by the complainant is beyond the scope of the buyer's agreement and thus cannot be granted by this Authority. That the complaint in its present form can only be decided by the Civil Court. Thus, the complaint is not maintainable and is liable to be dismissed on this ground alone.

- xiv. That, without prejudice to the contentions of the respondent, it is submitted that every allottee is legally bound under Section 19 (6) of the Act, 2016 to make necessary payments in respect of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any, specified under the buyer's agreement. In the instant case, the transfer charges have been evidently demanded in accordance with clause 24 of the buyer's agreement. The complainant is conscious and aware of the aforesaid fact and has preferred the instant complaint in utter abuse of process of law to needlessly victimise, blackmail and harass the respondent.
- xv. That to take into reckoning that the assignment in favour of Mrs. Renu Bose had been admittedly performed by the complainant in October, 2021. The respondent, however, had offered possession of the unit in question on 15.01.2021 to the complainant. Thus, it was always open to the complainant to have first got the conveyance deed registered in its favour and thereafter the complainant was free to execute the conveyance deed in respect of the unit in question in favour of any third party. The complainant was completely aware of the aforesaid facts but willingly and consciously chose to perform the assignment of the unit in question prior to registration of the conveyance deed. Thus, it is evident that the complainant has instituted the instant complaint in order to obtain unlawful gain at the expense of the respondent.



- xvi. That it is worth pointing out that Mrs. Renu Bose has executed a unit handover letter dated 10.12.2021 whereby Mrs. Renu Bose has obtained peaceful and vacant physical possession of the unit in question after fully satisfying herself with regard to its measurements, location, dimension and development etc. Furthermore, a conveyance deed dated 08.02.2022 has been executed between Mrs. Renu Bose and the respondent. The transaction between the complainant and the respondent stood concluded with the transfer of the unit in favour of Ms Renu Bose. The complainant is not left with any right, title or interest in the unit after the unit was transferred in favour of Mrs Renu Bose. Thus, no claim whatsoever can be advanced by the complainant after execution of the conveyance deed. No cause of action as alleged has accrued in favour of the complainant. The complainant has preferred the instant complaint in order to obtain wrongful gain and to cause wrongful loss to the respondent.
- xvii. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act cannot undo or modify the terms of an agreement duly executed between the parties. The provisions of the Act cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The complainant cannot be legally permitted to demand any refund beyond the terms and conditions incorporated in the buyer's agreement.
- xviii. That all the demand raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. 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.

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.
7. The complainant and respondent have filed the written submissions on 13.12.2024 and 15.10.2024 respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority**

8. 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**

9. 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**

10. 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.*

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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the reliefs sought by the complainant.**

- F.I Direct the respondent to refund the transfer charges paid by the complainant for further transferring the apartment.**  
**F.II To grant the court fees amounting of Rs.50,000/- charges by the tehsil in favour of the complainant against the respondent.**

12. The complainant contended that he entered into a buyer's agreement on 21.08.2018, and thereafter, due to some exigency he intended to sell his allotted unit. In pursuance to this, he requested the respondent/promoter to grant permission to sell the subject unit to the subsequent allottee (Ms. Renu Bose) vide assignment agreement dated 27.10.2021, (page no. 137 of complaint) and the same was duly acknowledged by the respondent vide nomination letter dated 29.11.2021. The complainant further contended that the respondent/promoter raised an arbitrary demands of Rs.4,72,000/- towards administration charges i.e., transfer charges from the complainant which is illegal and against the laws of the land. In view of the said, the complainant asked for refund of the administration charges by the respondent and the respondent refused to pay the said amount. Moreover,



the complainant paid the registration fees of Rs.50,000/- at sub-registrar office for getting the assignment agreement registered. Hence, charging for such a huge amount, when the same is not part of the BBA, is unjustified and illegal, therefore needs to be withdrawn immediately.

13. On the other hand, the respondent contended that the complainant had paid the transfer charges willingly and without any objection at the relevant time. The amount of registration charges was payable by the complainant allottee in view of clause 9 of the BBA. Further, as per clause 24 of the BBA, the allottee is contractually obligated to pay charges imposed by the respondent in the event of any assignment by the allottee of his rights, title and entitlements in the unit to the third party and the relevant portion is reproduced for ready reference:-

**24. ASSIGNMENT**

*The Allottee agrees and understands that the Allottee shall not be entitled to get the names of his nominees, legal representatives etc. substituted in his place till the payment of 10% of the Total Price of the said Unit and also not before the signing of this Agreement. The Company may however, in its sole discretion, permit such substitution on such terms and conditions including such payments of administrative charges as it may deem fit. This Agreement or any interest in the Unit shall not be assigned by the Allottee without prior intimation to the Company, and shall be subject to Applicable Laws or any Government directions as may be in force and shall be subject to this Agreement and the terms, conditions and charges as the Company may impose. Any change in name of the Allottee, including addition /deletion of the Allottee will be deemed as substitution for this purpose. In case the Allottee is permitted to do so, the Allottee will be required to obtain a "No Dues Certificate" from the Company and the Maintenance Agency.*

***The Allottee shall pay to the Company administrative charges, if applicable from time to time in respect of such substitutions or nominations. The Allottee understands and agrees that on the Company consenting to such substitution, the assignee shall not be entitled to any compensation in terms of clause 13 herein above.***

*Stamp duty, registration fee, taxes, etc. levied as a result of assignment, transfer, conveyance or nomination of the Unit being allotted herein shall be borne by the Allottee.*

14. Moreover, it is categorically stated in the buyer's agreement that the stamp duty, registration fee, taxes etc. levied on account of such transfer /assignment shall be borne by the allottee. Thus, the allegations of the

complainant that he was not bound to pay transfer charges are unjustified, baseless, false and misguided.

15. On perusal of documents placed on record as already discussed above, the demands of transfer fee charges raised as per clause 24 of the buyer's agreement dated 21.08.2018. That the agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Accordingly, the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the prevailing laws are not unreasonable or exorbitant in nature. On the respondent contention that the complainant has sold the apartment on 27.10.2021, and thereafter the complainant filed the instant complaint on 29.08.2022. Now, the important question which needs to be determined by this Authority is whether the complainant herein is entitled to the aforesaid reliefs as are sought by him in the complaint and whether he falls under the definition of allottee as per section 2(d) of the Act of 2016 and the same is reproduced as under:-

*"2 In this Act, unless the context otherwise requires-*

*(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".*

*(Emphasis supplied)*

Accordingly, following are allottees as per this definition:

**(a) Original allottee:** A 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.

**(b) Allottees after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise.



However, allottee would not be a person to whom any plot, apartment or building is given on rent.

16. In the present complaint, the complainant is an not allottee under the Act as the complainant does not fall under any of the two categories stated above, reason being that the complainant has already transferred the subject unit in favour of Ms. Renu Bose (subsequent allottee/present owners) vide assignment agreement to sell dated 27.10.2021. After transferring the unit in question, the complainant does not have any right, title or interest in the said property as the instead complaint has been filed on 29.08.2022 i.e., after the transfer the of the subject unit.
17. Further, the complainant entered into a buyer's agreement on 21.08.2018, i.e., after coming into the Act of 2016 and the rules of 2017. From the bare reading of the assignment clause of the buyer's agreement, it becomes very clear that the allottee shall pay to the company administrative charges, if applicable from time to time in respect of such substitutions or nominations. The Authority compare the assignment clause of buyer's agreement executed between the parties with the agreement to sell prescribed in the rules of 2017. In both the agreements, the allottee was required to pay the company administrative charges, if applicable from time to time in respect of such substitutions or nominations. Moreover, neither the buyer's agreement executed between the parties nor the agreement to sell prescribed in the rules of 2017 provided any specific amount with respect to the administrative/transfer charges.
18. The Authority is of the view that the agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Accordingly, the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition





that the same are in accordance with the prevailing laws are not unreasonable or exorbitant in nature. The Authority further observes that the respondent/promoter is obligated to provide specific amount of charges to be levied by the respondent at the time of signing of agreement and the same is silent thereon and in absence any substantial document no relief with regard to the claim of refund of transfer charges can be granted.

19. The counsel for the complainant during proceeding dated 14.01.2025, the complainant has paid transferring the apartment and to grant the court fees amounting of Rs.50,000/- charged by the tehsil in favour of complainant against the respondent. However, the respondent has charged Rs.15,000/- only for transferring the subject unit. The Authority observes that as per Haryana Government gazette notification no. 8/1/208-41B-II dated 22.06.2018 passed in the Haryana Registration and Regulations of Society Rules, 2012 "32. Fixation of transfer fee- The Society shall not charge transfer fee not more than ten thousand rupees in case of sale of apartment and such society shall also modify the bye-laws accordingly and get the modified bye-laws approved from the District Registrar".

That the plea of the complainant is not sustainable as the said notification is applicable only for unit of registered societies is covered under the Haryana Registration and Regulations of Society Act and not to the project developed by the promoter after obtaining licence under the Haryana Development and Regulation of Urban Areas Act, 1975.

20. In view of the above, the complaint has no locus standi to claim refund of the administrative/transfer charges before the Authority as he do not fall under the term allottee of the Act. Consequently, the reliefs claimed by the complainant can't be granted to him as he is not an allottee within the meaning of section 2(d) of the Act 2016.




**HARERA**  
**GURUGRAM**

Complaint No. 5762 of 2022

21. Thus, the present complaint stands dismissed being not maintainable.  
Pending applications, if any, also stand disposed off.
22. File be consigned to registry

V.I - 3  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 14.01.2025



**HARERA**  
**GURUGRAM**