

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

Complaint no.: 6036 of 2022
Date of first hearing: 24.11.2022
Date of Order: 06.03.2025

1. Vivek Shah
2. Bandana Shah

Complainants

Both R/o: - A-901 La Lagune, Golf Course Road,
Sector-54, Gurgaon-122011

Versus

Emaar MGF Land Ltd. presently known as
Emaar India Ltd.

Respondent

Regd. office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28 Gurugram-122002

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Shri Ishaan Dang (Advocate)

Complainants
Respondent

ORDER

1. This 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(1)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	"Premier Terraces at the Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing
3.	DTCP License no.	i. 228 of 2007 dated 27.09.2007 valid up to 26.09.2019 ii. 93 of 2008 dated 12.05.2008 valid up to 11.05.2020
4.	Unit no.	N-405, Tower-N, 4th floor (As per page no. 41 of the complaint)
5.	Unit area	2125 sq. ft. (Super Area) (As per page no. 41 of the complaint)
6.	Revised unit area	2202.09 sq. ft. (Super Area) (As on page no. 131 of the reply) (Note: Super Area was increased to 2202.09 sq. ft from 2125 sq. ft.)
7.	Date of execution of buyer's agreement	06.02.2008 (As per page no. 3 of the complaint)
8.	Date of agreement to sell	02.12.2012 (As per page no. 44 of the complaint)
9.	Nomination letter	27.12.2012 (As per page no. 11 of the complaint)
10.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the</i>

		<p><i>Company proposes to hand over the possession of the Apartment/Villa/Penthouse by December 2010. The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of ninety (90) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i></p> <p>(Emphasis supplied) (As on page no. 55 of the complaint)</p>
11.	Due date of possession	<p>March 2011 (As mentioned in buyer's agreement plus grace period of 90 days plus grace period of 90 days)</p>
12.	Total sale consideration	<p>Rs.1,09,49,175/- (As per page no. 42 of the complaint)</p>
13.	Amount paid by the complainants	<p>Rs.1 22,24,138/- (As per SOA on page no. 166 of the reply)</p>
14.	Indemnity cum undertaking	<p>18.12.2012 (As per page no. 122 of the reply)</p>
15.	Occupation certificate	<p>01.04.2015 (As per page no. 50 of the reply)</p>
16.	Offer of possession	<p>13.07.2015 (As per page no. 83 of the complaint)</p>
17.	Unit handover letter	<p>10.09.2015 (As on page no. 131 of the reply)</p>
18.	Conveyance deed	<p>04.12.2015 (As per page no. 90 of the complaint)</p>

B. Facts of the complaint

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

1. That the complainants, Mr. Vivek Shah and Mrs. Bandana Shah are law abiding citizens and residing at R/o A-901 La Lagune, Golf Course Road, Sector-54, Gurgaon-122011.

- II. That in 2007, the respondent company issued an advertisement announcing a group housing colony project called "Premier Terraces at Palm Drive' at Sector - 66, Gurugram was launched by Emaar MGF Land Ltd. on the 45.48 acres of land, under the license no. DS-2007/24799 of 2007 dated 27.09.2007, issued by DTCP, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the project had got building plan approval from the authority.
- III. That the complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region.
- IV. That relying on various representations and assurances given by the respondent company and on belief of such assurances, the complainants booked a unit in the project by paying an amount of Rs. 10,00,000/- towards the booking of the said unit bearing no. N-405, 12th Floor, Tower N in Sector 66, having super area measuring 2125 sq. ft. to the respondent and the same was acknowledged by the respondent.
- V. That the respondent confirmed the booking of the unit to the original allottee providing the details of the project for a total sale consideration of the unit i.e. Rs.1,09,49,175/- which includes basic price, plus EDC and IDC, two car parking charges and other specifications of the allotted unit and provided the time frame within which the next instalment was to be paid.

- VI. That a buyer's agreement was executed between the complainants and respondent on 06.02.2008. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit by December 2010 with a grace period of 90 days for applying and obtaining the occupation certificate. The complainants were also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainants was shattered due to dishonest, unethical attitude of the respondent.
- VII. That as per the demands raised by the respondent, based on the payment plan, the complainants already paid a total sum of Rs.1,21,23,081/- towards the said unit against total sale consideration of Rs.1,09,49,175/-.
- VIII. That the payment plan was designed in such a way to extract maximum payment from the buyers. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of Act of 2016, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area road and other things promised in the brochure, which counts to almost 50% of the total project work.
- IX. That the respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottee. The respondent have completely failed to honour their promises and have not provided the

services as promised and agreed through the brochure, buyer's agreement and the different advertisements released from time to time.

- X. That the respondent has played a fraud upon the complainants and cheated them with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the buyer's agreement executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- XI. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for residential purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.
- XII. That the complainants after many request and emails, received the offer of Possession on 13.07.2015. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the builder buyer's agreement.
- XIII. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainants as per the agreement, by the complainants and hence the offer of possession.
- XIV. That the Palm Drive amenities are 24 X 7 Power Back up, 24 X 7 Security, Badminton Court, Basketball Court, Broadband Connectivity, Club House,

Covered Parking, Creche, Gym, Health Facilities, Intercom Facility, Kids Play Area, Lawn Tennis Court, Maintenance Staff, Open Parking, Recreation Facilities, Religious Place, School, Servant Quarters, Shopping Arcade, Swimming Pool, Visitor Parking.

- XV. That the complainants requested the respondent to show/inspect the unit before complainants pay any further amount and requesting to provide the car parking space no. but the respondent failed to reply.
- XVI. That the respondent asked the complainants to sign the indemnity bond as pre-requisite condition for handing over of the possession. The complainants raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- XVII. That the complainants have never delayed in making any payment and have always made the payment rather much before the construction linked plan attached to the buyer's agreement. The allottee has approached the company with a request for payment of compensation despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- XVIII. That the complainants after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent got the conveyance deed executed on 04.12.2015. While this sale deed acknowledges that the complainants have paid the total consideration of Rs.1,21,23,081/- towards full and final

consideration of the said apartment and applicable taxes etc. it makes no provision for compensating the complainants for the huge delay in handing over the unit and project. The complainants were not given any opportunity to negotiate the terms of the said sale deed.

- XIX. That no negotiations were permitted in relation to the buyer's agreement dated 06.02.2008. The complainants were told that the sale deed will encompass all the relevant issues at hand. It is submitted that this agreement and various clauses therein amount to an unconscionable agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.
- XX. That the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15% + 1% whereas the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft. The complainants are actually entitled to interest @ 9-10% per annum on the total sum paid by them.
- XXI. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent may be unique and innovative from the respondent's point of view but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

XXII. That the complainants are the ones who has invested their life savings in the said project and are dreaming of a home for themselves and the respondent has not only cheated and betrayed them but also used their hard-earned money for their enjoyment.

XXIII. The complainants after losing all the hope from the respondent company, having their dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

XXIV. That the present complaint is within the prescribed period of limitation. The complainants 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.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession
 - II. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.
 - III. Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent from the complainants under undue influence.
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 Act of 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the unit in question was submitted on 27.06.2013, i.e., well before the notification of the Rules, 2017. The occupation certificate has been thereafter issued on 01.04.2015, prior to notification of the Rules. Thus, the part of the project in which the unit in question is situated is not an 'ongoing project' under Rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This Hon'ble 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 foregoing, it is submitted that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case.
- iii. That the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 06.02.2008, as shall be evident from the submissions made in the following paragraphs of the present reply.

- iv. That the complainants before purchasing the unit in resale, the complainants had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- v. That the unit bearing no TPD-N-F04-405, located on the 4th floor in the residential project was provisionally allotted in favour of the original allottees, Mr. Ashutosh Dayal Sharma and Ms. Rati Sharma. The buyer's agreement dated 06.02.2008 was willingly and voluntarily executed by the original allottees after duly understanding and accepting the terms and conditions.
- vi. That the original allottees transferred the allotment in favour of the erstwhile allottees, Mr. Ashish Khosla and Ms. Archana Khosla. Thereafter, the erstwhile allottees entered into an agreement to sell dated 02.12.2012 with the complainants for sale of the unit in question. 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 06.02.2008, the allotment was transferred in favour of the complainants on 27.12.2012.
- vii. That upon receipt of the occupation certificate dated 01.04.2015, the respondent offered possession of the unit in question through letter of offer of possession dated 13.07.2015 to the complainants. The complainants were called upon to remit stamp and registration charges to complete the

necessary formalities/documentation necessary for handover of the unit to them.

- viii. That the complainants obtained possession of the unit on 10.09.2015 whereby the complainants have admitted and acknowledged that they are fully satisfied with regard to the unit, its measurements, location, dimension and development etc. and the complainants did 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 estopped from filing the present complaint and from alleging delay.
- ix. That subsequent thereto the conveyance deed bearing Vasika no. 21931 dated 04.12.2015 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. The present complaint after an unexplained delay of more than five years from the date of registration of the conveyance deed in favour of the complainants is clearly indicative of the mischievous and malicious intent of the complainants and the fact that the present complaint is baseless and nothing but an afterthought and an attempt to realise unjust gain and to cause undue loss to the respondent. The complaint is barred by limitation and is liable to be dismissed on this ground alone.
- x. 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 06.02.2008 which continues to be binding upon the parties thereto with full force and effect. It is submitted that as per clause 14 of the buyer's agreement, the respondent had offered to deliver

possession of the unit in December 2010 with 90 days of grace period 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. It has also been provided therein that the date for delivery of possession of the unit would stand extended in the event of occurrence of the facts/reasons beyond the power and control of the respondent. It is pertinent to mention that it was categorically provided in clause 14(b)(vi) 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.

- xi. 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, 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.

- xii. That all the demands 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. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.
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 respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes 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, 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) 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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Finding on objections raised by the respondent:

F.I Objections w.r.t. issuance of occupation certificate of the project from the competent Authority prior to notification of the Rules.

12. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already obtained occupation certificate from the competent authority on 01.04.2015 i.e., before the coming into force of the Act and the rules made thereunder.
13. The authority is of the view that as per proviso to section 3 of Act of 2016, on-going projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project

within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

14. The legislation is very clear in this aspect that a project shall be regarded as an “on-going project” until receipt of completion certificate. Since, the completion certificate is yet to be obtained by the promoter-builder with regards to the concerned project, therefore the plea advanced by it is hereby rejected.

F.II Objections regarding jurisdiction of authority w.r.t. buyer’s agreement executed prior to coming into force of the Act

15. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer’s agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

16. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

17. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

G. Finding on the relief sought by the complainants:

- G.I Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession.**
- G.II Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the Act of 2016.**
- G.III Direct the respondent company to set aside the one-sided indemnity bond get signed by the respondent from the complainants under undue influence.**

18. On the above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

19. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

20. Clause 14(a) of buyer's agreement dated 06.02.2008 provides for handing over of possession and is reproduced below:

14. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the 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 Apartment/Villa/Penthouse by December 2010. The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of ninety (90) days, for applying and obtaining the occupancy certificate in respect of Group Housing Complex.

(Emphasis supplied)

21. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit by December, 2010 from the date of execution of agreement with grace period of 90 days.

22. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue

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

"In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

23. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 31.03.2011 including grace period of 90 days.
24. In the present complaint, the occupation certificate was received from the competent authority on 01.04.2015 and possession of the unit was offered to the complainants herein vide offer of possession letter dated 13.07.2015. Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 10.09.2015. Also, the conveyance deed dated 04.12.2015 was also executed by it in favor of the complainants in respect of the said unit. The complainants have filed the present complaint after a long delay on 06.09.2022.
25. The counsel for the respondent vide proceedings of the day dated 06.03.2025 brought to the notice of the Authority that the conveyance deed was executed way back on 04.12.2015 (inadvertently mentioned as 10.09.2015) i.e., before the commencement of the Act of 2016 and the

complaint has filed by the complainants after a lapse of almost 7 years from the date of execution of conveyance deed and the relief regarding the amenities cannot be sought at this belated stage. The counsel requested for dismissal of the complaint on the ground of limitation but in view of settled proposition of law, the case of complainants cannot be out-rightly rejected being barred by limitation. In the present complaint, initially the buyer's agreement dated 06.02.2008 with regard to the unit was executed between the original allottees i.e., Mr. Ashutosh Dayal Sharma and Ms. Rati Sharma. Thereafter, the complainants entered into an agreement to sell on 02.12.2012 with the original allottees for purchasing the unit from them. The unit was allotted to the complainants vide nomination letter dated 27.12.2012. As per the possession clause of the buyer's agreement dated 06.02.2008, the possession of the unit was to be offered on or before 31.03.2011 after completion of the project but the same was offered only on 13.07.2015 after receipt of occupation certificate on 01.04.2015 and ultimately leading to execution of conveyance deed of the same on 04.12.2015. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 13.07.2015 and not from 04.12.2015. Therefore, the limitation period of three years was expired on 13.07.2018. The present complaint seeking delay possession charges and other reliefs was filed on 06.09.2022 which is more than 4 years after the expiry of limitation period.

26. As noted above, the possession of the subject unit was offered to the complainants on 13.07.2015 after obtaining occupation certificate on 01.04.2015. Thereafter, the conveyance deed of the unit was executed between the parties on 04.12.2015 and the present complaint was filed on 06.09.2022. There has been complete inaction on the part of the

complainants for a period of almost 7 years and 2 months from the offer of possession till the present complaint was filed in September, 2022. The complainants remained dormant of their rights for almost 7.2 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored.

27. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 3(12) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
28. Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

29. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable and the relief sought is hereby declined.
30. Complaint stands disposed of.
31. File be consigned to registry.

Dated: 06.03.2025

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory
Authority Gurugram