

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

**Complaint no.:** 7111 of 2022  
**Date of filing of complaint:** 30.11.2022  
**Date of Order:** 03.04.2025

1. Atul Joshi  
2. Sapna Joshi  
**Both R/o: - Flat no. PGT-07-202, Garden  
Terraces at Palm Drive, Sector-66, Gurugram-  
122011**

**Complainants**

**Versus**

Emaar MGF Land Ltd. presently known as  
Emaar India Ltd.  
**Regd. office at:** Emaar MGF Business Park,  
Mehrauli Gurgaon Road, Sikandarpur Chowk,  
Sector-28 Gurugram-122002

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Gaurav Rawat (Advocate)  
Shri Dhruv Rohtagi (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(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act

or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

#### A. Project and unit related details

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

S. No.	Particulars	Details
1.	Name of the project	"Garden Terraces at Palm Drive", Sector 66, Gurugram, Haryana
2.	Nature of project	Group housing colony
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.	RERA registered	Not registered
5.	Unit no.	S7-202, Tower-S7 and 2 <sup>nd</sup> floor (As per page no. 38 of the complaint)
6.	Revised unit no.	PGT-07 202, Tower-S7 and 2 <sup>nd</sup> floor (As per page no. 76 of the complaint) (Unit no. has been changed to PGT-07 202 from S7-202)
7.	Unit area	2920 sq. ft. (Super Area) (As per page no. 38 of the complaint)
8.	Revised unit area	2971.01 sq. ft. (Super Area) (As on page no. 76 of the complaint) (Note: Super Area was increased to 2971.01 sq. ft. from 2920 sq. ft.)
9.	Date of execution of buyer's agreement	02.08.2010 (As per page no. 36 of the complaint)
10.	Possession clause	<b>13. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this agreement, and not being in default under any of the provisions of this agreement and upon</i>



		<p><i>complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the unit (which falls within ground plus four floors tower/building) within a period of thirty(30) months but not later than thirty three (33) months from the date of signing of this agreement, subject to certain limitations as may be provided in this agreement and timely compliance of the provisions of this agreement by the allottee(s). The allottee(s) agrees and understands that the developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the unit and/or the project.</i></p> <p><i>(Emphasis supplied)</i></p> <p>(As on page no. 52 of the complaint)</p>
11.	Due date of possession	<p>02.05.2013</p> <p><b>(Note:</b> Due date to be calculated 30 months from the date of execution of buyer's agreement 02.08.2010 plus grace period of 3 months)</p>
12.	Total sale consideration	<p>Rs.1,60,05,064/-</p> <p>(As per schedule of payments on page no. 71 of the complaint)</p>
13.	Amount paid by the complainants	<p>Rs.1,80,28,806/-</p> <p>(As per SOA on page no. 82 of the complaint)</p>
14.	Occupation certificate	<p>10.04.2015</p> <p>(As per page no. 76 of the complaint)</p> <p>(Inadvertently mentioned as 10.01.2018 in proceedings of the day dated 03.04.2025)</p>
15.	Intimation for offer of possession	<p>09.07.2015</p> <p>(As per page no. 76 of the complaint)</p>
16.	Indemnity cum undertaking	<p>16.07.2015</p> <p>(As per page no. 125 of the reply)</p>



17.	Unit handover letter	27.01.2016 (As per page no. 85 of the complaint)
18.	Conveyance deed	15.02.2016 (As per page no. 91 of the complaint)

**B. Facts of the complaint**

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

- I. That the complainants, Mr. Atul Joshi and Mrs. Sapna Joshi are law abiding citizens and residing at R/o PGT-07-202, Garden Terraces at Palm Drive, Sector-66, Gurgaon.
- 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. PGT-07-202, 2<sup>nd</sup> Floor, Tower 07 in





Sector 66, having super area measuring 2920 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.1,60,05,064/- along with 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 02.08.2010. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit within 30 months from the date of agreement i.e., by 02.02.2013 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.1,28,80,806/- towards the said unit against total sale consideration of Rs.1,60,05,064/-.
- 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 allottees. 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 09.07.2015. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal

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demands on account of the following which are actually not payable as per the builder buyer's agreement.

- (i) Advance monthly maintenance for 12 months.
- (ii) Electric meter charges.
- (iii) Club membership charges.
- (iv) Gas connection charges.
- (v) Sewerage connection charges.
- (vi) Electrification charges.

- 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 15.02.2016. While this sale deed acknowledges that the complainants have paid the total consideration of Rs.1,80,28,806/- 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 02.08.2010. 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%-24% whereas the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft. The complainants are actually entitled to interest @ 9.80% 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 to provide the amenities and golf driving range as per brochure and layout plan provided at the time of booking
  - IV. 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 instant complaint is barred by limitation. It is also pertinent to mention that the complainants filed the complaint before the Authority after the execution of the conveyance deed as all the terms and conditions as per the buyer's agreement stands fulfilled in the eyes of law. It is also submitted that the present complaint has been filed only to harass the respondent and extort money. The complainants having received the offer of possession on 09.07.2015 and having executed the conveyance deed on 15.02.2016 have filed the present complaint on 30.11.2022, i.e., after a lapse



of 7 years 4 months from the date of offer of possession and 6 years 9 months from the date of execution of conveyance deed. The complaint is admittedly belated and barred by limitation period of 3 years. In view of the facts as stated above, the present complaint deserves to be dismissed with heavy costs.

- ii. That the complainants have got no locus standi or cause of action to file the present complaint after execution of conveyance deed. 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 02.08.2010, as shall be evident from the submissions made in the following paras of the present reply.
- iii. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have already obtained possession of the unit in question vide handover letter dated 27.01.2016 and have, further, executed a conveyance deed regarding the unit in question on 15.02.2016. The transaction between the complainants and the respondent is complete. The reliefs sought in the false and frivolous complaint are barred by estoppel.
- iv. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.

- v. 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 tower in which the apartment in question is located was made on 30.06.2017, i.e., before the notification of the Rules, 2017 and the Occupation Certificate was thereafter issued on 10.01.2018.
- (Sic: the occupation certificate of the unit of the complainants was received on 10.04.2015)
- vi. That the complainants are not "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as his residence. Therefore, no equity lies in favour of the complainants.
- vii. That the complainants approached the respondent and expressed interest in booking of an apartment in the residential group housing colony developed by respondent known as "Garden Terraces at Palm Drive" situated in Sector 66, Gurgaon. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- viii. That the complainants vide an application form dated 14.05.2010 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no PGT-07-202 located on the Second Floor, Tower-7 admeasuring 2920 sq. ft. was allotted vide provisional allotment letter. The complainants consciously and willfully opted for a construction linked payment plan for



remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in this favor. Accordingly, the complainants undertook to be bound by the terms and conditions of the application form/allotment letter. Thereafter, a buyer's agreement dated 02.08.2010 was executed between the complainants and the respondent.

- ix. That the complainants in terms of the indemnities and undertakings executed by them had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment. The complainants would not be entitled to any interest for any delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.
- x. That the complainants had defaulted in timely remittance of the instalments pertaining to the unit in question and therefore, have disentitled themselves for any compensation/interest. The respondent had conveyed to complainants that on account of the defaults, they would not be entitled to any compensation for delay, if any.
- xi. That since, the complainants were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainants requesting them to make payment of demanded amounts. The payments request letter and reminders thereof were sent to the complainants by the respondent clearly mentioning the outstanding amount and the due date for remittance of the respective amounts as per



the schedule of payments, requesting them to timely discharge their outstanding financial liability but to no avail.

- xii. That the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was 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. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. That 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. Therefore, there is no equity in favour of the complainants.
- xiii. That the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 13 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the unit would be handed over within 33 months from the date of signing of the buyer's agreement and development of the unit plus grace period of 3 months. Furthermore, it is categorically expressed in clause 13(b)(vi) of the buyer's agreement that in the event of any default or delay in payment of instalments as per the schedule of



payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. It is submitted that since the complainants have defaulted in timely remittance of the instalments, therefore, the date of delivery option is not liable to be determined by the complainants. The complainants are conscious and aware of the said buyer's agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

xiv. 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. 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 ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. It is submitted that the interest for the alleged delay or compensation demanded by the complainants are beyond the scope of the buyer's agreement and the same cannot be demanded by the complainants being beyond the terms and conditions incorporated in the buyer's agreement.

xv. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and

without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainants was to be construed for the alleged delay in delivery of possession. It is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously and maliciously refrained from obtaining possession of the unit in question. That since the unit was ready for the possession, offer of possession dated 18.09.2015 was issued to the complainants to take the possession of the said unit but all in vain.

xvi. That subsequently, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 27.01.2016 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from their commitments. No cause of action has arisen or subsists in favour of the complainants to institute or prosecute the instant complaint. The complainants have preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimise and harass the respondent.

xvii. That after execution of the unit handover letter dated 27.01.2016 and obtaining of possession of the Unit in question, the complainants are left with no right, entitlement or claim against the respondent. The complainants have further executed a conveyance deed dated 15.02.2016 in respect of the unit in question. The transaction between the complainants





and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other. The complainants have obtained possession of the unit in question and the complaint is a gross misuse of process of law. The contentions advanced by the complainants in the false and frivolous complaint are barred by estoppel.

- xviii. That it was the complainants who were not forthcoming with the outstanding amounts as per the schedule of payments, therefore, are disentitled for any compensation/interest. The present complaint is nothing but an abuse of the process of law.
- xix. That the complainants have consciously defaulted in performing their part of obligations as enumerated in the buyer's agreement as well as under the Act and it is trite that the complainants cannot be permitted to take advantage of their own wrongs. The instant complaint constitutes a gross misuse of process of law, without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations made by the complainants and without prejudice to the contentions of 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 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**

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*(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. Observations of Authority with regard to maintainability of complaint on account of complaint is barred by limitation.**





12. The respondent has filed the reply on 27.04.2023, which is taken on record and raised the preliminary objection in its reply that the complaint is not maintainable being barred by limitation. It is necessary to deal with the preliminary objection before proceeding with the reliefs sought by the complainant.
13. On consideration of the documents available on record, the authority observes that the complainants herein was allotted a unit bearing no. S7-202, 2<sup>nd</sup> floor, in tower-S7, admeasuring 2920 sq. ft., in project of the respondent named "Garden Terraces at Palm Drive" situated at Sector-66, Gurugram and an apartment buyer's agreement was executed between the complainants herein and the respondent regarding the said allotment on 02.08.2010. The unit no. of the complainants stands revised to PGT-07-202, 2<sup>nd</sup> floor in tower-S7 vide offer of possession and the same was never objected by the complainants. The occupation certificate for the subject unit has been obtained by the respondent promoter on 10.04.2015 and the possession has been offered on 09.07.2015. Further, the unit handover letter was issued on 27.01.2016 and the conveyance deed is also executed between the parties on 15.02.2016.
14. The complainant is seeking delayed possession charges and other relief for providing the amenities and golf drive rang as per brochure and layout plans provided at the time of booking, and also to set aside the one sided indemnity bond get signed by the respondent. While the respondent on the other hand is pleading that the present complaint is barred by limitation as the complainants have got the offer of possession on 09.07.2015 and the conveyance deed executed on 15.02.2016, the transaction between the complainants and the respondent stands concluded upon the execution of the conveyance deed and the complainants have filed the present complaint

after a long delay on 30.11.2022 i.e., lapsed of 7 years, 4 months and 21 days of the offer of possession and after 6 years, 9 months and 15 days from the date of execution of conveyance deed. Thus, the claim of the complainants is not maintainable. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the complaint on the ground of the limitation.

15. In line with the aforesaid facts and submissions made by the parties and documents placed on record, the Authority observes that the buyer's agreement with regard to the allotment of the unit in favour of the complainants was executed on 02.08.2010. Though the possession of the unit was to be offered on or before 02.05.2013 after completion of the project but the same was offered only on 09.07.2015 after receipt of occupation certificate on 10.04.2015 and ultimately leading to execution of conveyance deed of the same on 15.02.2016. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 09.07.2015 and not from 15.02.2016. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development 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 is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
16. 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.

17. In the present matter the cause of action arose on 09.07.2015 when the possession was offered to the complainants by the respondent. The complainants have filed the present complaint on 30.11.2022 which is 7 years 4 months and 21 days from the date of cause of action. In the present case the three years period of delay in filing of the case would fall on 09.07.2018 which is way prior to the period excluded by the Hon'ble Apex Court. 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. 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.
18. 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.
19. 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. The procedure of law cannot allow the litigants to avail more than statutory rights in cases where the conveyance deed has already been executed between the parties and vide which the

complainants have relinquished their claims on its execution. The relevant clause is reproduced below for ready reference:

*"That the actual, physical, vacant possession of the said apartment has been handed over to the vendee and the vendee hereby confirms taking over possession of the said apartment/ parking space(s) from the vendors after satisfying himself/herself that the construction as also the various installations like electrification work, sanitary fittings, water and sewerage connection etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said apartment, any item of work, material, quality of work, installation etc., therein."*

20. 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 same is declined.
21. Complaint as well as applications, if any, stands disposed off accordingly.
22. File be consigned to registry.

**Dated: 03.04.2025**

  
**(Vijay Kumar Goyal)**  
**Member**

Haryana Real Estate Regulatory  
Authority, Gurugram