

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

Complaint no.: 1965 of 2023
Date of filing: 12.05.2023
Date of decision: 25.03.2025

Surender Singh
R/O: 212A, Second Floor, Apex Our Homes,
Sector 37-C, Gurugram, Haryana-122001

Complainant

Versus

M/S Apex Buildwell Private Limited
Registered office at: 14A/36, W.E.A Karol
Bagh, New Delhi-110053

Respondent**CORAM:**

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Mr. Gaurav Rawat (Advocate)
Mr. Harshit Batra (Advocate)

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the



Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	Our homes Sector-37 C, Gurugram.
2.	Project area	10.144 acres
3.	DTPC license no. & validity status	13 of 2012 dated 22.02.2012
4.	Nature of project	Affordable Group Housing Colony
5.	Registration Details	GGM/346/78/2019/40 dated 08.07.2019 valid up to 01.12.2019
6.	Unit no. / Area admeasuring	212A, 2 nd floor, Tower Jasmine (pg. 16 of complaint)
7.	Date of builder buyer agreement	06.07.2013 (Page no. 27 of complaint)
8.	Building Plan Approval	29.08.2012 (as per the information provided by the respondent at the time of registration)
9.	Environmental Clearance	26.06.2013 (as per the information provided by the respondent at the time of registration)



10.	Possession clause	3. Possession 3(1) Developer proposes to hand over the possession of the apartment within a period of thirty-six months (36) , with a grace period of 6 month, from the date of commencement of construction of the complex upon the receipt of all projects related approvals including sanction of building plans.
11.	Due date of possession	26.12.2016 (Note: due date is calculated from the date of environmental clearance being later)
12.	Tri partite agreement	21.08.2014 [pg. 28 of complaint]
13.	Basic sale consideration	Not known
14.	Amount paid	Not known
15.	Occupation certificate	29.11.2019, 24.02.2020 (as per DTCP website)
16.	Offer of possession	Not known
17.	Possession certificate	02.09.2020 (Page no. 16 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- A builder-buyer agreement was executed between the respondent and the complainant on 6th July 2013. As per clause 3 of the B.B.A., the due date for possession was stipulated as 36 months from the date of execution, along with a grace period of 6 months. However, despite these agreed timelines, there has been a significant delay of approximately 6 years and 4 months in offering possession. Furthermore, no conveyance deed has been executed to date, and

the respondent has failed to pay any delayed possession interest to the complainant. The unit in question is flat no. 212A, 2nd Floor, Tower Jasmine, in the project "Apex Our Homes".

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to pay delay possession charges.
 - b. Direct the respondent to execute conveyance deed in favour of complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
 - a. The complainant has filed the present complaint against the respondent for delay possession charges along with other reliefs. The contents of the complaint are hereby reiterated and the same may be treated as part and parcel of the para reply and are not repeated herein for the sake of brevity. That no grievances have been settled between the parties till date, and the respondent is still liable to pay the DPC to the complainant. That as per the respondents claim Mou dated 07.09.2020 releases the respondents from all kinds of financial liabilities, therefore the complainant completely denies the fact, as the complainant had not agreed/signed any such document.
 - b. That the alleged settlement as per Mou has been executed on 07.09.2020 whereas the possession was already handed over on

02.09.2020 to the complainant, therefore the MOU stating the possession clause is completely against the fact. Also, in a similar matter in *CR no. 5146-2023* i.e., Mukesh Kumar & Harjeet vs. Apex Buildwell, the authority was of the view that this kind of MOU stands illegal and void, and the Authority has granted the relief to pay the delay possession charges.

- c. It is most respectfully submitted that it is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
- d. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance

deed does not mark an end to the liabilities of a promoter since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility.

- e. From above, it can be said that the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the builder buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020.
- f. It is observed that perusal of all the agreements/documents signed by the allottees reveals stark incongruities between the remedies available to both the parties. In most of the cases, these documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the allottee while filing the complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.
- g. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the

obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the Wg. Cdr. Arifur Rahman (supra), this authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

- h. That furthermore, complainant most respectfully submits that with respect to the objection on ground of limitation Hon'ble Authority has already adjudicated on the said issue in complaint bearing no. 1940 of 2022 date of decision 28.03.2023. Therefore, the present complaint is barred by limitation. But the counsel for the complainant submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation.
- i. As per Section 11(4)(b) of the RERA act: be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; Section 17. (1) The promoter shall execute a registered conveyance deed in favor of the allottee along

with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favor of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. (2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

- j. That it is most respectfully submitted that vide present application for dismissal as sought by the respondent is not maintainable. It is prayed that the reliefs sought by the respondent based on the unjustified interpretations of the various

provisions of the laws framed there under are unjustified, illegal and are based on erroneous interpretation and hence may kindly not be granted. On the bases of forgoing submissions and in the facts and circumstances, it is most respectfully prayed that this Hon'ble court shall most graciously please to dismissed the application on the bases of the preliminary submissions/objections of the complainant.

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to pay delayed possession charges on the amount paid at prescribed rate from the due date of possession till physical possession of the unit.

12. The complainant had booked a residential unit in the project titled "Our Home", being developed by the respondent in Sector-37C, Gurugram, Flat No. 212A on the 2nd Floor of Tower-Jasmine was allotted to the complainant, and a buyer agreement was executed between the parties on 06.07.2013. As per the terms and conditions of the BBA, the respondent was under an obligation to complete the construction and offer possession of the said unit to the complainant within the period stipulated in the agreement.
13. As per the record, the occupation certificate for the project was obtained by the respondent on 29.11.2019 & 24.02.2020 from the competent authority. The documents further indicate that the actual

possession was offered to the complainant on 02.09.2020. The complainant has alleged that despite the timeline promised in the agreement, there has been an inordinate delay in handing over the physical possession of the unit, thereby causing mental agony, financial loss, and hardship.

14. In response to the complaint, the respondent/developer filed an application dated 26.07.2024, submitting a Settlement Deed/Memorandum of Understanding (MOU) dated 07.09.2020 executed between both parties. In this application, the respondent has taken the plea that the parties had arrived at a full and final amicable settlement and the complainant has relinquished all case of action with respect to delay possession charges and shall not claim the same from any court.
15. According to the respondent, the said MOU was voluntarily entered into by the complainant, and through the same, the complainant had agreed not to raise any claims whether of interest, compensation, refund, or otherwise on account of the delay. Thus, the respondent submitted that the complaint filed subsequently is devoid of merit and is barred by the terms of the said MOU.
16. The respondent has contended that the filing of the present complaint is an abuse of the process of law, and is in complete contradiction of the understanding recorded in the MOU. It was specifically submitted that once the complainant has, through a written and signed agreement, given up all rights to claim compensation or damages, and accepted the developer's waiver of interest as a full settlement, then no further grievance survives before this Authority.

17. The Authority has perused the Memorandum of Understanding dated 07.09.2020, particularly paragraph 2, which is reproduced below for reference:

That the allottee accepts the goodwill gesture of the Developer in offering the compensation by way of waiver of interest due towards the allotted flat and against the same the Allottee relinquishes and foregoes all causes of actions as available to the allottee whether for compensation or interest or refund or whatsoever, due to the delay and non-delivery of the possession of the said project with the stipulated time period.

18. From the language of the clause, it is evident that the complainant willingly accepted the respondent's waiver of interest as a form of compensation. In consideration of this, the complainant has clearly and unequivocally relinquished all rights to initiate or continue with any proceedings against the respondent on any account related to the delay in possession. Such waiver is legally binding unless proven to be vitiated by coercion, fraud, or undue influence none of which have been alleged or demonstrated by the complainant in the present proceedings.
19. Furthermore, it is pertinent to note that a similar view has been consistently adopted by this Authority in complaint no. CR/3992/2023 and CR/6970/2022, wherein the complaints were disposed of in light of the settlement arrived at between the parties. Accordingly, the present matter is also liable to be considered in terms of the said precedent.
20. In view of the above facts, this Authority is of the firm view that the complainant has settled all disputes arising from the delayed possession of the allotted unit by entering into a legally valid and enforceable settlement agreement. The complainant has not provided any cogent material to show that the MOU was signed under duress or that the settlement should be declared invalid.

21. Therefore, the filing of the present complaint appears to be contrary to the express terms of the agreement between the parties. Having once waived his rights; the complainant is estopped from seeking any further relief through this forum. In light of the settlement deed dated 07.09.2020, and the fact that the complainant has voluntarily and unequivocally relinquished all rights and remedies against the respondent, the Authority holds that no cause of action survives in the present relief. The relief stands redundant in view of the principle of waiver and estoppel.

F.II. Direct the respondent to execute the conveyance deed in favour of the complainant.

22. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

23. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed



upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months as OC of the said unit has already been obtained and upon payment of requisite stamp duty by the complainant as per norms of the state government.

G. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to execute the conveyance deed of the allotted unit within 3 months as OC of the said unit has already been obtained and upon payment of requisite stamp duty by the complainant as per norms of the state government
 - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. Complaint stands disposed of.
26. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.03.2025