

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

Complaint no. :	1991 of 2023
Date of Pronouncement :	28.03.2025

1. Mr. Piyush Gupta
Address: Unit No. 42-002, Emerald Floors
Premier, Sector 65, Gurugram, Haryana - 122001
2. Urmil Gupta
Address: - 151, Vivekanand Puri,
Sarai Rohilla, Delhi - 110007

Complainants

Versus

M/s Emaar India Limited
Formerly Known as Emaar MGF land limited
Address: Emaar MGF Business Park, M.G. Road,
Sikanderpur Chowk, Sector-28, Gurugram

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri K.K. Kohli
Shri Dhruv Rohatgi

Advocate for the complainants
Advocate for the 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 to the allottee as per the agreement for sale executed inter se them.

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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.	Heads	Information
1.	Project name and location	"Emerald floors Premier III" in Sector 65, Gurugram, Haryana.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008
	License valid till	16.01.2025
	Licensee name	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
	Area for which license was granted	25.499
5.	HRERA registered/ not registered	Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
	HRERA registration valid up to	23.08.2022
6.	Applied for occupation certificate on	20.07.2020
7.	Occupation certificate granted on	11.11.2020
8.	Provisional allotment letter.	13.09.2011 [annexure R2, page 48-49 of reply]
9.	Unit no.	EFP-111-42-002, Ground floor, Building no. 42 [page 54 of reply]



10.	Unit measuring	1975 [page 54 of reply]
11.	Date of execution of buyer's agreement	24.02.2012 [Page 51 of the reply]
12.	Agreement to sell executed between Mrs. Gita Badhwar and Anoop Bhat dated	24.10.2012 [page 101 of the reply]
13.	Nomination letter dated	12.12.2012
14.	Agreement to sell executed between Anoop Bhat and Piyush Gupta dated	28.07.2021
15.	Nomination letter dated	14.10.2021
16.	Possession clause	11. Possession (a) Time of handing over the Possession <i>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 Unit within 24 months from the date of execution of agreement. The Allottee(s) agrees and understands that the Company shall be</i>

		<p><i>entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p><i>[Emphasis supplied]</i></p> <p>[Page 62 of complaint]</p>
17.	Due date of delivery of possession as per clause 11(a) of the said agreement	<p>24.05.2014</p> <p>[Grace period included]</p>
18.	Total consideration as per statement of account dated 28.08.2023 at page 225 of reply	Rs. 1,59,46,272/-
19.	Total amount paid by the complainant as per statement of account dated 28.08.2023 at page 225 of reply	Rs. 1,59,48,710/-
20.	Date of offer of possession to the first subsequent allottee	<p>28.07.2021</p> <p>[page 147 of the reply]</p>
21.	Unit handover letter issued in favour of the complainants on	18.11.2021
22.	Conveyance deed executed between the complainants and the respondent on	10.12.2021

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:
 - i. That original allottees vide application form dated 28.07.2011 booked a unit in the project of the respondent called "Emerald Floor Premier III situated at Emerald Estates" along with a payment of

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Rs.10,00,000.00 towards the booking of the said unit. That the original allottees were confirmed the booking of the apartment bearing unit No. EFP-III-42-0002, Ground Floor having super area 1975 sq. ft. at "Emerald Floor Premier III situated at Emerald Estates" Sector 65, Urban Estate, Gurgaon.

- ii. That a buyer's agreement was executed between the original allottees and respondent on 24.02.2012 which provides a total sale consideration of Rs. 1,51,97,511/- for the purchase of the captioned unit including Basic Sale Price, IDC & EDC charges, Car Parking charges, Club Membership charges, Taxes as applicable and PLC & Additional Charges.
- iii. That as per the clause 11(a) of the buyer's agreement, the company proposed to hand over the possession of the unit within 24 months from the date of execution of the buyer's agreement. The Allottee agreed and understood that the Company be entitled to a grace period of 3 months. Therefore, the due date of delivery comes out to be 24.02.2014 (24.05.2014 along with the grace period).
- iv. That the Original Allottees, vide endorsement dated 07.12.2012, endorsed the above-mentioned unit in the favour of the succeeding allottees, i.e. Anoop Bhat s/o Sh. Tribhwan Nath Bhat and Mrs. Bhavna Bhat w/o Mr. Anoop Bhat both. It is further submitted that as per the Nomination Letter dated 12.12.2012 by Emaar India Limited, the original allottees confirmed the transfer of the above-mentioned unit in the favour of the succeeding allottees vide nomination formalities dated 11.12.2012 and confirmed having received an amount of Rs. 33,99,558/- towards the captioned unit. That as per the demands raised by the Respondent, based on the payment plan, the succeeding allottees, in order to buy the captioned unit paid a total sum of Rs.

1,37,83,793.00, out of the total sale consideration of Rs. 1,51,97,511.76/-.

- v. That the succeeding allottees contacted the Respondent on several occasions and were regularly in touch with the Respondent but the Respondent was never able to give any satisfactory response to the succeeding allottees regarding the status of the construction. The matter was regularly pursued with the representatives of the Respondent, but to no avail. The succeeding allottees visited the site multiple times but was shocked to see that there was no progress regarding the construction of the commercial unit. Further, the Respondent was never definite about the delivery of the possession.
- vi. That the delivery of the above-mentioned unit was to be offered on 24.02.2014 (24.05.2014 along with the grace period), but no offer of possession or any handover letter was sent despite paying more than 90% of the sales consideration to the respondent. That after a long delay of 7 years, the succeeding allottees received a letter for offer of possession dated 28.07.2021. As per the offer of possession, the occupation certificate for the captioned unit has been received and the unit was ready for the possession.
- vii. That the succeeding allottees vide agreement to sell and purchase dated 28.07.2021 transferred the above-mentioned unit in favour of the complainants. As per the agreement to sell and purchase dated 28.07.2021, the total sale consideration in which the complainants purchased the captioned unit from the succeeding allottees is Rs. 1,71,50,000/- which includes Basic Sale price, EDC, IDC, PLC, IFMS, Club membership, Cost of 1 Car Parking and applicable taxes such as GST, HVAT as an all-inclusive cost. It is pertinent to mention here that out of the total sale consideration of Rs. 1,71,50,000/- the succeeding

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allottees were entitled to receive an amount of Rs. 1,49,87,521/- towards the full and final Sale Consideration and the balance amount of Rs. 21,62,479/- shall be paid by the Complainants to the Respondent along with the applicable stamp duty, possession charges, registration charges and administrative charges.

- viii. That the Respondent confirmed the completion of nomination formalities and transfer of the unit in favour of the Complainants vide email dated 14.10.2021, having received a total sum of Rs. 1,59,46,274/-. That the Respondent thereafter issued a Statement of Account dated 18.10.2021 in the favour of the Complainants as per which the Respondent received a total amount of Rs. 1,59,46,272/- towards the sale price of the unit along with IFMS and GST/ service tax. That the Complainants, on 18.11.2021, received a unit handover letter as per which the satisfactory, vacant and peaceful physical possession of the unit bearing no. EFP-III-42-0002 situated at Emerald Floors Premier – III, Sector 65, Urban Estate, Golf Course, Extension Road, Gurgaon has been handed over to Piyush Gupta HUF and Mrs. Urmil Gupta.
- ix. That on 10.12.2021 a conveyance deed was executed transferring the title in the aforesaid property in favor of the Complainants. That the Complainants, even after paying the total consideration amount to the Developer for the unit, as per the Payment Plan provided in the Buyer's Agreement which includes Basic Sale Price, IDC & EDC charges, Car Parking charges, Club Membership charges, Taxes and PLC and Additional charges was unable to obtain the desired layout of the preferential location as represented by the Respondent. It is pertinent to mention here that the Complainants paid an amount of Rs. 19,75,000.00 towards the Preferential Location Charges (PLCs) for the



front and the rear lawns that forms the part of preferentially located ground floor unit in order to have the exclusive rights over the same.

- x. That even though several requests and representations were made through various correspondence to the Respondent showing intention for taking over the physical possession of the above-mentioned unit, the Respondent caused a delay of more than 7 years in handing over the possession of the said unit and that too, without the Preferential Location, as was previously assured under the Buyer's Agreement.
- xi. Therefore, the Complainants through this Complaint request the Authority to grant Delay Possession Charges in lieu of the delay time period which the Respondent took in order to provide the possession of the said unit along with refund of the PLC, Electrification Charges and GST which was illegally recovered by the Respondent from the Complainants.
- xii. The Complainants after losing all the hope from the Respondent Company are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainants

- 4. The complainants have sought the following relief:
 - i. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.
 - ii. Direct the respondent to refund the PLC charges of Rs. 19,75,000/- along with interest.
 - iii. Direct the respondent to refund the electrification charges of Rs. 1,26,127/- along with interest also refund the GST amount to the complainant.

D. Reply filed by the respondent

- 5. The respondent has contested the complaint on the following grounds:

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- i. That the Complainant is not "Allottee" but Investor who has 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 complainant as a speculative investment and not for the purpose of self-use as their residence. therefore, no equity lies in favour of the complainant.
- ii. That Mrs. Gita Badhwar and Mr. Anil Badhwar (hereinafter "original allottees") had booked the unit in question, bearing number EFP-III-42-0002, situated in the project developed by the Respondent, known as "Emerald Estates" situated at Sector 65, Gurugram, Haryana. That thereafter the original allottees vide application form dated 28.07.2011 applied to the Respondent for provisional allotment of a unit bearing number EFP-III-42-0002 in the project. It is submitted that the original allottees prior to approaching the Respondent, had conducted extensive and independent enquiries regarding the project and it was only after the original allottees 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 original allottees took an independent and informed decision to purchase the unit, un-influenced in any manner by the Respondent. The original allottees consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the Respondent that the original allottees shall remit every instalment on time as per the payment schedule. The Respondent had no reason to suspect bonafide of the original allottees. That the Respondent issued the provisional allotment letter dated 13.09.2011 to the Original Allottees.





- iii. That subsequently, the Respondent sent the Buyer's Agreement to the original allottees, which was executed between the parties on 24.02.2012. It is pertinent to mention that the original allottees executed an Agreement to Sell dated 24.10.2012 in favour of Mr. Anoop Bhatt and Mrs. Bhavna Bhatt ("Subsequent Allottees"), whereby they transferred the allotment in their favour. . The said Original Allottees and the Subsequent Allottees also executed indemnities and affidavits, whereby, it was further declared by the subsequent allottees that having been substituted in the place of the original allottees, they were not entitled to any compensation for 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. Furthermore, the Respondent, at the time of endorsement of the Unit in question in their favour, had specifically indicated to the subsequent allottees that the Original Allottees 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 the subsequent allottees that on account of the defaults of the Original Allottees, the subsequent allottees would not be entitled to any compensation for delay, if any.
- iv. That in the manner as aforesaid, the subsequent allottees stepped into the shoes of the original allottees. That it needs to be highlighted that the original allottees, subsequent allottees as well as the Complainant were not forthcoming with the outstanding amounts as per the schedule of payments. The Respondent was constrained to issue reminders to the original allottees. The Respondent had categorically notified the original allottees that they had defaulted in remittance of the amounts due and payable by them. It was further conveyed by the Respondent to

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the original allottees that in the event of failure to remit the amounts mentioned in the said notice, the Respondent would be constrained to cancel the provisional allotment of the unit in question.

- v. It is submitted that the Complainant 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 Complainant 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 Complainant.
- vi. It is respectfully submitted that the rights and obligations of the Complainant 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 11 of the Buyer's Agreement provides that subject to the Allottees having complied with all the terms and conditions of the Agreement, and not being in default of the same, the Respondent shall handover the possession of the unit within 24 months from the date of execution of the Buyer's Agreement. Furthermore, the Respondent is entitled for a grace period of 3 months. It is submitted that the grace period of 3 months cannot be excluded and is liable to be included in

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terms of the Judgment of the Hon'ble Appellate Tribunal in **Fantasy Buildwell Pvt. Ltd. Vs Gaurav Manohar Negi**, bearing **Appeal No. 299 of 2022**, decided on **09.12.2022**. It is further provided in the Buyer's Agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the Respondent. Furthermore, it is categorically expressed in clause 11(b)(iv) 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. Clause 11(b)(iv) is reproduced below for further reference: *"That the Allottee(s) agrees and accepts that in case of any default/delay in payment as per the Schedule of Payments, the date of handing over of the possession shall be extended accordingly solely on the Company's discretion till the payment of all outstanding amounts to the satisfaction of the Company"*. It is submitted that the subsequent allottees and the Complainant has defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the Complainant. The Complainant is conscious and aware of the said agreement and has 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.

- vii. That the Clause 13(c) and (d) of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only be given to such Allottees who are not in default of their obligations envisaged under the Buyer's Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Buyer's Agreement. In case of delay caused due to non-receipt of occupation

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certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. That the Complainant having defaulted in payment of instalments, is thus not entitled to any compensation or any amount towards interest under the Buyer's Agreement. It is submitted that the Complainant by way of instant complaint is demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the Buyer's Agreement.

- viii. It is further submitted that despite there being a number of defaulters in the project, the Respondent had to infuse funds into the project and has diligently developed the project in question. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, 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. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the Respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.
- ix. That, without admitting or acknowledging the truth or legality of the allegations advanced by the Complainant and without prejudice to the



contentions of the Respondent, it is respectfully submitted that the provisions of the Act 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 Complainant 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 Complainant is beyond the scope of the Buyer's Agreement and the same cannot be demanded by the Complainant being beyond the terms and conditions incorporated in the Buyer's Agreement.

- x. That the construction of the project/allotted unit in question already stands completed and the Respondent has already handed over the possession of the unit in question to the Complainant and the Conveyance Deed has also been executed. The transaction between the parties is a concluded contract and as such no right to sue survives.
- xi. Despite, sending numerous payment request letters by the Respondent to the subsequent allottees, the subsequent allottees failed to remit timely instalments, the Respondent abided by its commitment as per the Buyer's Agreement and has duly offered the possession of the said unit vide offer of possession letter dated 28.07.2021. The subsequent allottees were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in



question to the subsequent allottees. The Respondent earnestly requested them to obtain possession of the unit in question and further requested to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, no heed was paid to the legitimate, just and fair requests of the Respondent and threatened the Respondent with institution of unwarranted litigation.

- xii. That an agreement to sell dated 28.07.2021 was executed between the subsequent allottees and the Complainant. It is pertinent to mention that the Complainant executed an indemnity cum undertaking dated 08.10.2021 and an affidavit dated 08.10.2021 whereby the Complainant had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the subsequent allottees. It was further declared by the Complainant that having been substituted in the place of the subsequent allottees, they were not entitled to any compensation for 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. Similarly, the subsequent Allottees had also executed an indemnity cum undertaking and an affidavit on the same lines. Further, the Respondent issued the Nomination letter dated 14.10.2021 in favour of the Complainant. Furthermore, the Respondent, at the time of endorsement of the unit in question in their favour, had specifically indicated to the Complainant that the subsequent allottees and the Original Allottees 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 the Complainant that on account of the defaults of the



subsequent allottees as well as the Original Allottees, the Complainant would not be entitled to any compensation for delay, if any. That in the manner as aforesaid, the Complainant stepped into the shoes of the subsequent allottees.

- xiii. That thereafter, an indemnity cum undertaking for possession dated 12.11.2021 of the said unit was executed by the Complainant in favour of the Respondent for use and occupation of the said unit whereby the Complainant has declared and acknowledged that it has no ownership right, title or interest in any other part of the project except in the unit area of the unit in question. The present frivolous complaint has been filed with the mala fide intention to mount undue pressure upon Respondent thereby compelling it to succumb to their unjust and illegitimate demands.
- xiv. That it is pertinent to mention that after execution of the unit handover letter dated 18.11.2021 and obtaining of possession of the unit in question, the Complainant is left with no right, entitlement or claim against the Respondent. It needs to be highlighted that the Complainant has further executed a conveyance deed dated 10.12.2021 in respect of the unit in question. The transaction between the Complainant and the Respondent stands concluded and no right or liability can be asserted by the Respondent or the Complainant against the other. It is pertinent to take into reckoning that the Complainant has obtained possession of the unit in question and the complaint is a gross misuse of process of law. It is pertinent to take into reckoning that despite being aware of the status of construction, amenities and the facilities, PLC of the unit and in the project, the Complainant has purchased the said unit directly from the original allottee without any involvement of the Respondent, hence, 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.

- xv. That it is pertinent to mention that the Complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter, the Complainant refrained from obtaining possession of the unit in question. The Complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the Buyer's Agreement. Therefore, there is no equity in favour of the Complainant. Without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the Complainant and without prejudice to the contentions of the Respondent, it is submitted that the alleged interest frivolously and falsely sought by the Complainant 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 Complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The Complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the Complainant is liable for the consequences including holding charges, as enumerated in the Buyer's Agreement, for not obtaining possession.
- xvi. The Complainant has intentionally distorted the real and true facts in order to generate an impression that the Respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the Complainant to institute or prosecute the instant complaint. The Complainant has preferred the instant complaint on absolutely false

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and extraneous grounds in order to needlessly victimise and harass the Respondent.

- xvii. That the provisions of the Act relied upon by the Complainant for seeking interest cannot be called in to aid in derogation and ignorance of the clauses of the Buyer's Agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the clauses of the agreement. It is submitted that the construction of the Project was affected on account of unforeseen circumstances beyond the control of the Respondent Developer. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of **"Deepak Kumar v. State of Haryana, (2012) 4 SCC 629"**. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, the Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the



Yamuna Riverbed. These orders infact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent to develop the project is the usual time taken to develop a project of such a large scale. Further, the parties have agreed that in the event of delay, the Allottee shall be entitled to compensation on the amounts paid by the allottee, which shall be adjusted at the time of handing over of possession/execution of conveyance deed subject to the allottee not being in default under any of the terms of the Buyer's Agreement.

- xviii. That the Respondent was not even made a party to the said Agreement to Sell between the Subsequent Allottee and the Complainant. That the Respondent with utmost sincerity has completed all its obligations as envisaged in the Buyer's Agreement executed with the original allottees. It is submitted that the Complainant has executed all documents with open eyes and under no undue influence and have taken the possession without any objection. That no liability lie against the Respondent and in favour of the Complainant. Hon'ble Supreme Court has held in **Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh 2021 SCC OnLine SC 479** that: 31...The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who

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steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number-possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat.

- xix. It is submitted that the Complainant has 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 Complainant 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 levelled by the Complainant and without prejudice to the contentions of the Respondent.

E. Jurisdiction of the authority

6. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all

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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

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

Section 11

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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.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainants

10. The original allottees, namely Mrs. Gita Badhwar and Mr. Anil Badwar, were allotted unit bearing no. EFP-111-42-002, situated on the Ground Floor of Building No. 42, in the project titled "Emerald Floors Premier III," located in Sector 65, Gurugram, Haryana, by virtue of a provisional allotment letter dated 13.09.2011.




11. Subsequently, an apartment buyer's agreement was executed between the original allottees and the respondent on 24.02.2012. Thereafter, on 24.10.2012, an Agreement to Sell was executed between Ms. Gita (original allottees) and Mr. Anoop Bhat (first subsequent allottee). Pursuant to the said agreement, a nomination letter was issued by the respondent on 12.12.2012, thereby recognizing Mr. Anoop Bhat as the nominee and intended transferee.
12. The Occupation Certificate in respect of the said unit was obtained by the respondent from the competent authority on 11.11.2020. Possession of the unit was offered to the first subsequent allottee on 28.07.2021. Thereafter, an Agreement to Sell was executed between Mr. Anoop Bhat and Mr. Piyush Gupta. Pursuant to the said agreement, a nomination letter was issued by the respondent on 14.10.2021, thereby recognizing Mr. Piyush Gupta as the subsequent nominee and intended transferee. Consequently, the unit handover letter was issued to the complainants herein on 18.11.2021, and the conveyance deed was duly executed between the complainants herein and the respondent on 10.12.2021.
13. Considering the aforementioned facts and circumstances, the Authority is of the considered view that the complainants are a second subsequent allottee, who purchased the subject unit from the first subsequent allottee on 28.07.2021, by which time the possession of the said unit had already been offered to the first subsequent allottees. This clearly indicates that the subject property was a ready-to-move-in unit at the time of purchase by the complainants, and the complainants were fully aware that the construction of the tower, wherein the subject unit is located, stood completed and the occupation certificate had already been issued by the competent authority. The offer of possession was accordingly made to the first subsequent allottees. It is further noted that the complainant, being a subsequent

purchaser, have not suffered any delay attributable to the respondent, as their rights accrued only post the issuance of the offer of possession on 28.07.2021

14. Hence, in such an eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainant as there is no infringement of any of his right (being subsequent allottee) by the respondent-promoter.
15. In the light of the facts mentioned above, the complainants herein who have become a subsequent allottees at such a later stage is not entitled to any delayed possession charges as they have not suffered any delay in the handing over of possession. Hence, the claim of the complainants w.r.t. delay possession charges is rejected being devoid of merits.
16. Hence, no case is made out for delay possession charges or any other reliefs.
17. Complaint as well as applications, if any, stand dismissed. Pending applications, if any, also stand disposed off.
18. File be consigned to registry.


HARERA
GURUGRAM

V.I. 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2025