

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

Complaint no.: 99 of 2024
Date of complaint: 23.01.2024
Date of Order: 22.05.2025

1. Mrs. Amrita Sharma
2. Mr. Umesh Dutt Sharma
Both R/o: Flat No. 1201, Tower 04,
TATA Primanti Garden Estate Sector
72, Gurugram, Haryana -122101

Complainants**Versus****TATA HOUSING DEVELOPMENT CO. LTD**

Registered office: E-Block, Voltas
Compound, T B Kadam Marg,
Chinchpokli, Mumbai -400033

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Jagdeep Kuumar (Advocate)
Shri Sumesh Malhotra (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/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 thereunder 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 complainant, 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	"Primanti", Sector 72, Gurugram
2.	Nature of project	Residential group Housing Complex
3.	RERA Registered/ Not Registered	98 of 2017 dated 28.08.2017 valid upto 30.06.2020
4.	DTPC License no.	155 of 2008 dated 14.08.2008 valid upto 13.08.2018 200 of 2008 dated 08.12.2008 valid upto 07.12.2018
5.	Unit no.	T4-1201, 12 th floor (page 47 of complaint)
6.	Unit admeasuring	2185 sq. ft. (page 47 of complaint)
7.	Allotment Letter	22.03.2011 (page 39 of complaint)
8.	Date of execution of agreement to sell	14.03.2012 (page 43 of complaint)
9.	Possession clause	4.2 <i>(a)THDCL, shall endeavor to give possession of the said unit to the purchase(s) on or before 16.12.2014 and after providing necessary infrastructure in the sector by the Govt but subject to force majeure circumstances and reasons beyond the control of THDCL.</i> (page 54 of complaint)
10.	Due date of possession	16.12.2014 (as per clause 4.2 of the agreement)
11.	Basic sale consideration	Rs.1,30,00,750/- (page 48 of complaint)
12.	Total amount paid by the complainant	Rs.1,58,03,165/- (as alleged by complainants) Rs.1,44,49,950/- (as per conveyance deed page 37 of reply)
13.	Occupation certificate	24.08.2016 (page 50 of reply)

14.	Offer of possession	26.12.2016 (page 147 of complaint)
15.	Possession letter	22.02.2017 (page 156 of complaint)
16.	Addition confirmation Letter (Umesh Dutt Sharma Co-applicant)	26.06.2020 (page 168 of complaint)
17.	Conveyance deed	12.05.2022 (page 37 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That somewhere in the month of November 2010, the respondent through its business development associate approached the complainant with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "PRIMANTI" in the Sector-72, Gurugram. On 24.11.2010 complainant had a meeting with respondent at the respondent's branch office where the respondent explains the project details of "PRIMANTI" and highlight the amenities of the project (PRIMANTI) like PRIMANTI is a green haven with 80% of the property reserved for open spaces. A luxurious 36-acre residential development on Southern Peripheral Road which offers Villas, residential apartments duplex units and Executive Apartments, having a series of interconnected orchards, meadows and gardens. Respondent informed that project will have 25000 sq. ft. state of the art club house and sporting zone with outdoor swimming pool, indoor temperature-controlled pool, restaurant and juice bar with many other amenities, on relying on these details' complainant enquire the availability of residential apartment unit of 2185 sq. ft. with 2 car parking space on Tower-04.
- II. That the respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential

and commercial project and in case the complainant would buy the residential apartment with 2 car parking space in the project of respondent then they would deliver the possession of proposed residential apartment on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to made by the complainant.

- III. The complainant while relying upon those assurances and believing them to be true, complainant booked a residential apartment of 2185 sq ft with 2 car parking space bearing no. 1201, TOWER -04 in the proposed project of the respondent measuring approximately super area of 2185 sq. ft. in the township to be developed by respondent. Accordingly, the complainant has paid Rs. 14,00,000/- through cheque bearing no. 356163 and Cheque bearing No. 314997 as booking amount on 24.11.2010.
- IV. That in the said application form, the price of the said flat was agreed at the rate of Rs. 5950/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, It was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.



- V. That on 22.03.2011 the respondent issued an allotment letter to complainant. That approximately after one year on 14.03.2012 the respondent issued a buyer's agreement which consisted very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by complainant, will cost him forfeiting of 15% of total consideration value of unit. Respondent exorbitantly increased the net consideration value of flat by adding IBMS of Rs.2,18,500/- and when complainant opposed the unfair trade practices of respondent they inform that IBMS is just the maintenance security and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and about the delay payment charges of 18% they said this is standard rule of company and company will also compensate at the rate of Rs.5/- per sq. ft. per month in case of delay in possession of flat by company. Complainant opposed these illegal, arbitrary, unilateral and discriminatory terms of buyer's agreement but as there is no other option left with complainant because if complainant stop the further payment of installments, then in that case respondent forfeit 15% of total consideration value from the total amount paid by complainant. on 14.03.2012 builder buyer agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in buyer's agreement.
- VI. That as per the Clause - 4.2 of the buyer's agreement dated 14.03.2012, the respondent had agreed and promise to complete the construction of the said premises (Residential Apartment along with 2 car parking space) by 16.12.2014. However, the respondent has breached the terms of said

apartment buyer agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame of the builder buyer agreement. The proposed possession date as per buyer's agreement was due on 16.12.2014.

VII. That from the date of booking 22.03.2011 and till 22.01.2017, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the apartment buyer's agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the apartment buyer's agreement. The complainant was and have always been ready and willing to fulfill their part of agreement, if any pending.

VIII. That as per Annexure A (Payment Plan) of apartment buyer's agreement the sales consideration for said residential apartment was Rs.1,53,78,575/- (which includes the charges towards Basic Price - Rs 1,30,00,750/-, PLC Charges - Rs 6,99,200/-, Govt Charges (EDC & IDC) - 7,10,125/-, IBMS - Rs 2,18,500/-, and Two Car Park - Rs 7,50,000/-) exclusive of Service Tax and GST, but later at the time of Possession Respondent add Rs 1,01,253/- in the name of other charges and Rs 1,27,950/- in the name of Vat charges till March 2014 in sale consideration without any reason for the same, which is an illegal, arbitrary, unilateral and unfair trade practice. Complainant opposed the increase in sales consideration at time of possession but respondent did not pay any attention to complainant.

IX. That the complainant has paid the entire sale consideration along with applicable taxes to the respondent for the said flat. Complainant have already paid Rs. 1,58,03,165/- towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time

and now nothing is pending to be paid on the part of complainant. Although the respondent charges Rs.1,50,605/- in the name of other charges and Rs.119779/- in the name of Vat charges till March 2014 extra from complainant.

- X. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the flat buyer's agreement is 16.12.2014, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
- XI. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the Complainant to buy the said flat on basis of its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- XII. That complainant along with a group of 22 other allottees of this same project sent a detailed notice dated 25.08.2016 to respondent through email dated 27.08. 2016, where the complainant raised various issues concerning illegalities done by respondent in booking, signing of builder buyer agreement, discriminatory charges of car parking, over charging of



EDC/IDC, unilateral change in layout plan and also raised the substantial questions on the arbitrary and unilateral clauses of apartment buyer agreement in regards to delay possession charges mentioned in one-sided apartment buyer agreement.

- XIII. That the respondent reverted to complainant notice through respondent's legal counsel "Luthra & Luthra" through letter dated 20.09.2016. That the offer of possession offered by respondent through "Intimation of Possession" was not a valid offer of possession because respondent offered the possession on dated 26.12.2016 with stringent condition to pay certain amounts which are never be a part of agreement above all respondent did not provide the possession of two car parking space which is the integral part of said premises. As on 26.12.2016 project was delayed approx. two years. Complainant opposed the offer of possession offered by the respondent because respondent didn't provide the possession of two car parking slot as the construction work was going on in the car parking area, after a regress follow-up of complainant through emails and personal visit to office of respondent, respondent provide the possession of two car parking slots through letter dated 01.02.2018 & complete the offer of possession of residential apartment 1201, tower -04, but at the time of completing the possession of said premises respondent did not adjusted the penalty for delay possession as per Act 2016. In case of delay payment, builder charged the penalty @18% per annum and in case of delay in possession builder promised to give Rs. 5/- sq ft Only, which is illegal, arbitrary, unilateral and discriminatory. Complainant reminded the Respondent said premises offered for possession on 01.02.2018 and respondent is liable to pay delay possession charges as per Act 2016.
- XIV. That the respondent also demanded an Indemnity-cum-Undertaking along with final payment, which is illegal and unilateral demand. Respondent did



not even allow complainants to visit the property at "PRIMANTI" before clearing the final demand raised by respondent along with the Offer of possession. Respondent demanded one-year advance maintenance charges from complainants which was never agreed under the buyer's agreement and respondent demanded Rs.1,01,253/- in pretext of other charges which was never agreed or mentioned in apartment buyers' agreement, and respondent also demanded Rs.1,27,950/- on the pretext of liability against HVAT till 31.03.2014 which is also an unfair trade practice. Complainant informed the respondent about his unfair calculation of delay possession penalty. Respondent left no other option to complainant, but to pay the one-year maintenance charges Rs.1,20,612/- and clear all additional demands raised by respondent along with the offer of possession.

- XV. That the parking space is an integral part of the residential apartment and offer of possession offered by the respondent without offering the parking space along with the residential apartment make the entire offer of possession an invalid offer of possession, same was described in Clause 3.3 and clause 10.5 of Apartment buyers' agreement.
- XVI. That the complainant wrote an email to respondent on 20.02.2017 soon after offering the invalid/incomplete of possession said premises to complainant by the respondent, complainant apprised the respondent that the compensation calculated by them are inadequate and was not considered correctly and same should be consider as narrated by the complainant in letter dated 25.08.2016, complainant also give reference to the meeting held on 28.01.2017 with Ms. Manjula Singh of THDCL in context of delay possession charges and other snag list of Project. Complainant pursued the issue of delay possession charges and allocation

of parking space which is integral part of said premises till 18.01.2018 with the higher officials of THDCL.

XVII. That the complainant received the possession of residential Apartment T4-1201 on 22.02.2017 under protest as the possession was offered without car parking and without adequate compensation for delay possession, Complainant put the remark on possession letter while taking the possession. Complainant enquire from respondent about the applicability of Act 2016 on the project through an email dated 16.06.2017, whereas the respondent misleads the complainant by stating a wrong information through email dated 20.06.2017 that Act, 2016 is not applicable to the phase-1, where the residential apartment of complainant is located.

XVIII. That on 09.03.2020 Mrs. Amrita Sharma W/o Shri Umesh Dutt Sharma out of natural love and affection requested M/s. Tata Housing Development Company Limited through a letter and requisite affidavits to transfer her 50% of share of residential apartment in the name of her husband Mr. Umesh Dutt Sharma. The said 50% share of Mrs. Amrita Sharma W/o Shri Umesh Dutt Sharma in the said residential apartment was transferred in the name of Mr. Umesh Dutt Sharma on 26.06.2020 by initiating a process of name substitution by M/s. Tata Housing Development Company Limited. On 26.06.2020 M/s. Tata Housing Development Company Limited issued an ADDITION CONFIRMATION LETTER to give effect to the name substitution and register the name of Mr. Umesh Dutt Sharma as co-applicant in the said residential apartment.

XIX. That respondent did not provide the final measurement of above said unit Respondent charge all IDC and EDC and Maintenance as per area of unit as 2185 sq. ft. but there is no architect confirmation provided by respondent



about the final unit area which respondent was going to handover to complainant.

- XX. That complainant repeatedly inform respondent by visiting the office of respondent from 02.02.2018 till 12.05.2022 that respondent is creating anomaly by not compensating the complainant for delay possession charges at the rate of interest specified in Act 2016. Complainant makes it clear to respondent that, if respondent not compensates the complainant for delay possession interest then complainant will approach the appropriate forum to get redressal. Whenever complainant enquire about the delay possession charges, respondent making excuse of getting approval from Directors, but till date respondent did not credit the delay possession Interest.
- XXI. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is unfair as well as illegal. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the Complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.
- XXII. That the respondent did not pay any heed to the several requests made by complainant for adequate delay possession interest for the period of delay caused by respondent, contrary to that respondent force duress on complainant by sending reminders through email dated 10.08.2021 to get conveyance deed done. Respondent also sent a legal notice dated 24.02.2022 to get the conveyance deed done.

XXIII. That complainant got his conveyance deed done on 12.05.2022 under protest after getting emails and legal notices from respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Pass an order to direct the Respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,58,03,165/- paid by the Complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession
 - II. Pass an order to direct the Respondent to return Rs.1,01,253/- amount unreasonably charged in the name of "Other Charges" after execution of Buyer's Agreement between Respondent and Complainants.
 - III. Pass an order to direct the Respondent to return the Rs 127950/- payment of HVAT for the period till 31st March 2014.
 - IV. Pass an order to direct the Respondent to pay an amount of Rs. 55,000/- to the Complainants as cost of the present litigation.
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 by filing reply on the following grounds: -

- i. That the present complaint filed by the complainants is not maintainable, wholly misconceived, erroneous, unjustified, devoid of merit, untenable in law and suffers from concealment of facts, besides being extraneous and irrelevant having regard to the facts and circumstances of the case under reference and is thus, liable to be dismissed at the very threshold.
- ii. That the complainants have approached the Authority with unclean hands and have tried to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such is guilty of "suppression very". The complainants have suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this

short ground alone, the complaint is liable to be rejected/dismissed. It is settled law as held by the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)*** that non-disclosure of material facts and documents amounts to a fraud on not only the opposite parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in ***Dilip Singh Vs State of UP 2010-2-SCC-114*** and ***Amar Singh Vs Union of India 2011-7-SCC-69*** which have also been followed by the Hon'ble National Commission in the case of ***Tata Motors Vs Baba Huzoor Maharaj being RP No. 2562 of 2012 decided on 25.09.2013***. Given the same, the complaint is liable to be dismissed on this ground alone.

- iii. That the complainants that they had booked a residential apartment bearing no. 1201, Tower - 04, admeasuring 2185 sq. ft. in the project 'Primanti' (hereinafter referred to as the said 'Apartment') for total sale consideration of Rs.1,30,00,750/- excluding taxes, EDC, IDC, PLC, IBMS and other charges in the project 'Primanti' situated at sector 72, village Fazalpur Jharsa, Tehsil and District, Gurugram and the said unit was allotted to the Complainants vide allotment letter dated 22.03.2011.
- iv. That after the allotment of the said apartment, apartment buyers (ABA) agreement dated 22.03.2011 was executed with the Complainants. As per the terms of the agreement the respondent has endeavoured to complete the construction of the towers and hand over possession to the allottees. Hence, abiding by its contractual obligations the respondent obtained occupation certificate on 24.08.2016 and offered possession to the complainants vide offer of possession dated 26.12.2016. Upon bare perusal of letter of offer of possession, it is apparent that the respondent has already paid delayed compensation charges as per the clause 4.2 of the ABA and adjusted the compensation amount in the final payments

outstanding towards the complainants. Further during the development there was downward revision in EDC/IDC charges (from INR 325/- to INR 231/-) and Respondent has fairly adjusted the surplus EDC/IDC amount in the final payments and lastly the Respondent has clearly specified and explained in the letter of offer of possession that the government has charged Haryana Value Added Tax (HVAT Act) the under the HVAT amnesty scheme to the complainants. As per the clause 3.12 (b) & (c) of ABA and agreed terms between the parties any taxes, charges etc. levied by the Government shall be the responsibility of the complainants. The respondent has appended final demand letter as Annexure A with the offer of possession thereby depicting the total outstanding dues towards the complainants, which includes amount of HVAT also. Hence the complainants cannot seek refund of tax amounts paid by the respondent to the Government and concerned authorities.

- v. That the complainants are seeking alleged delayed possession compensation vide the purported complaint whereas the complainants have concealed material fact that the Respondent has already adjusted delayed possession charges amounting to Rs.2,09,042/- in the final payments outstanding towards the complainants at the time of handing over of the possession of the apartment to the complainants and this fact is clearly reflected in the possession letter dated 22.02.2017. After the issuance of the offer of possession, the complainants requested for interior works in the apartment and finally took over possession of the apartment on 22.02.2017. Further as per the agreed terms the respondent also allotted two slots of car parking vide letter-dated 01.02.2018 (letter of allocation of parking dated 02.02.2018 appended with complaint as Annexure P-9 at page 158). The Complainants have misinterpreted the facts of the case to cause grave prejudice against the

Respondent by alleging that possession was offered on 01.02.2018, whereas it was only the parking slots allocation confirmation letter, which was issued in February, 2018. The possession was offered by respondent on 26.12.2016 and the complainant has taken the possession on 22.02.2017 and also has been using the parking space available at the project. hence the complainants are sitting in possession of the said apartment since February, 2017 and have filed the purported complaint to exploit respondent to seek undue monetary benefits.

- vi. That the respondent had obtained occupation certificate on 24.08.2016 in respect of the project - Primanti and offered possession to the complainants vide offer of possession dated 26.12.2017 and the same was taken over by the Complainants on 22.02.2017 vide possession letter. That all the above occurrences are prior to application/publication of RERA Act, 2016 being applied to State of Haryana. The Haryana Real Estate (Regulation & Development) Authority Rules, 2017 came into effect on 28.07.2017 (HRERA Rules) and the Ld. Authority was constituted thereafter. Even otherwise in terms of HRERA rules the present project does not fall within the definition of an ongoing project over which the Authority may have jurisdiction.
- vii. That the complainants with mala fide intent and as an afterthought after almost five years of taking possession to extort more money from the respondent under the garb of delayed possession compensation. That without prejudice and admitting the complaint and its cause, the alleged cause of action of the complainants firstly arose on 26.12.2016 when the final demand letter along with offer of possession was made to the complainants and subsequently arose on 22.02.2017 when possession was taken by the complainants, therefore it has been more than 7 years since possession has been taken by the complainants and they have been

sitting on their alleged cause. In the entire purported complaint, the complainants have not given any reason for the said delay. apposite to highlight here that there is not even a single communication between the parties whereby the complainants have addressed their grievance regarding alleged delayed possession compensation to the respondent, instead as a matter of fact there was no subsisting grievance of the complainants at the time of taking possession. Therefore, the present complaint is not maintainable time barred and is liable to be dismissed in limine.

- viii. That the complainants have further concealed material fact that after hand over of the possession of the apartment in February, 2017, the complainants have also executed conveyance deed on 12.05.2022 which clearly highlights that there was no subsisting grievance of any nature between the parties and this fact has been duly captured in clause 4 of the conveyance deed also. The complainants have executed conveyance deed with free will and after full satisfaction of their purported grievances, if any. The complaint is not only time barred but also bereft with true and material facts. The complainants are approbating and reprobating at their whims and fancies to suit their alleged cause hence, the complaint is liable to be dismissed at the very threshold.
- ix. That the complainants before taking possession of the apartment have made several requests to the respondent for change in specifications of the and all these alterations and additions were done within the project cost itself. The respondent benevolently and as an exception had accommodated the complainants with additions and alterations in the apartment as per the requirement of the complainants without charging any additional costs. Hence, the complainants have sought unaccountable benefits from the respondent while taking possession of the apartment.

This clearly shows that the complainants have been time and again extorting benefits from the respondent and presently also the purported complaint is motivated and has been filed with malafide intent to cause loss and injury to the respondent.

- x. That the complainants never requested the respondent for delayed possession compensation or waiver of other charges as alleged in the complaint and on the contrary the complainants happily accepted the possession of the apartment after all the necessary additions and changes were made in the apartment as per their requirement

7. All other averments made in the complaint were denied in toto.

8. 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 submissions made by the parties.

E. Jurisdiction of the Authority

9. 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.

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

12. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Pass an order to direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs.1,58,03,165/- paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession

F.II Pass an order to direct the respondent to return Rs.1,01,253/- amount unreasonably charged in the name of "Other Charges" after execution of buyer's agreement between respondent and complainants.

F.III Pass an order to direct the respondent to return the Rs.127950/- payment of HVAT for the period till 31st March 2014.

F.IV Pass an order to direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

13. Some of the admitted facts of the case that by the name of Primanti, a residential group housing situated in Sector 72, Gurgaon, Haryana was being developed by the respondent on the basis of DTCP license no. 155 of 2008 dated 14.08.2008 & 200 of 2008 dated 08.12.2008. The complainant was allotted a unit no. T4-1201, 12th floor in the respondents' project vide allotment letter dated 22.03.2011 for a sale consideration of Rs.1,30,00,750/



14. Subsequently, a buyer's agreement was executed between parties on 14.03.2012 setting out the terms and conditions of allotment, the price of the unit, its dimension, the payment plan, the due date of possession and other details. In pursuant to that document, the complainant started making payments against the allotted unit and has paid a total sum of Rs.1,44,49,950/- as evident from conveyance deed dated 12.05.2022 executed for the subject unit in favor of complainant. According to the complainant, an offer of possession was made by the respondent on 26.12.2016 after a considerable delay. The complainant alleges that the offer was not valid as it imposed certain conditions that were not part of the buyer's agreement. Additionally, car parking as per agreed terms of buyer's agreement was not provided at the time of possession. However, the version of respondent is otherwise and who took a plea that the complainant is seeking delay possession charges, however, the respondent has already adjusted delay possession charges amounting to Rs.2,09,042/- in the final payments outstanding towards the complainant. Further, on issuance of offer of possession the complainants requested for interior works in the subject unit and took over the possession on 22.02.2017. Also, as per the agreed terms the respondent allotted two slots of car parking on 01.02.2018.

15. Moreover, the respondent vide reply submitted that the complaint is time barred by limitation as complaint has been filed after five years from the date of taking over of possession of the subject unit. Further, the respondent submitted that the respondent has adjusted compensation for delay at the time of offer of possession and the complainants are already in possession since February 2017. Also, the respondent obtained the occupation certificate on 24.08.2016 which was before the enactment of the Act, 2016 and in terms of Rules, 2017 the subject project does not fall within the definition of an ongoing project.

16. Though the respondent through their respective counsel advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the present complaint of complainants is barred by limitation. As discussed earlier, after the unit was allotted a buyer's agreement was executed in this regard on 14.03.2012. The possession of the unit was to be offered on 26.12.2016 and possession was handed over on 22.02.2017. Further, leading to execution of conveyance deed of the same on 12.05.2022. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 26.12.2016. The present complaint was filed on 23.01.2024 and seeking delay possession charges which is beyond eight years w.e.f. 26.12.2016. With respect to entitlement of delay possession charges after the execution of conveyance deed, the authority is of the view 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. The same view has also 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.***
17. As noted above, the possession of the subject unit was offered to the complainants on 26.12.2016 after obtaining occupation certificate on 24.08.2016 i.e., before coming into force of the Act. Thereafter, the possession was handed over on 22.02.2017 and the present complaint was filed on 23.01.2024. There has been complete inaction on the part of the complainants for a period of more than eight years till the present complaint was filed.
18. The complainants remained dormant of their rights for more than 8 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes

behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.

19. One such principle is that delay, and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
20. 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. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.
21. In the light of the above stated facts and applying aforesaid principles authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the


litigants. 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.

22. Additionally, it is noted that the subject unit was originally allotted in the name of Ms. Amrita Sharma, and the buyer's agreement dated 14.03.2012 was executed solely between her and the respondent. Possession of the unit was also handed over to her on 22.02.2017. Mr. Umesh Dutt Sharma (Complainant No. 2) only became a co-applicant on 26.06.2020 over three years after the handing over of possession. Hence, the current complaint filed jointly by both Amrita Sharma and Umesh Dutt Sharma seeking interest for delay in possession is not maintainable. If any claim for such compensation existed, it could have only been made by the original allottee, Amrita Sharma, and within the appropriate timeframe as, the co-allottee i.e. Umesh Dutt Sharma acquired the ownership rights with the original allottee on 26.06.2020 after handing over of the possession to the original allottee and has suffered no delay in handing over the possession of the subject unit by the respondent.

23. In light of the above observations, the complaint stands dismissed.

24. File be consigned to registry.

Dated:22.05.2025


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