

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

Date of order: 15.05.2025

NAME OF THE BUILDER		M/s Parsvnath Developers Limited & M/s Parsvnath Hessa Developers Private Limited
PROJECT NAME		"Parsvnath Exotica", Sector-53, Gurugram, Haryana
S. No.	Case No.	Case Title
1.	CR/756/2023	Sachin Dhingra Vs. M/s Parsvnath Developers Limited - Respondent no.1 M/s Parsvnath Hessa Developers Private Limited - Respondent no.2
2.	CR/1993/2023	Jaya Ram Easwaran & Jyoti Jayaram Vs. M/s Parsvnath Developers Limited - Respondent no.1 M/s Parsvnath Hessa Developers Private Limited - Respondent no.2

CORAM:

Shri Vijay Kumar Goyal	Member
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APPEARANCE:

Shri Ayush Gupta, Advocate	Complainant
Shri Deeptanshu Jain, Advocate	Respondents

ORDER

1. This order shall dispose of both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Parsvnath Exotica", Sector-53, Gurugram, Haryana being developed by the respondents/promoter i.e., M/s Parsvnath Developers Limited & M/s Parsvnath Hessa Developers Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Parsvnath Exotica", Sector-53, Gurugram, Haryana.
Project area	23.0815 acres
Nature of the project	Group Housing Colony
DTCP license no. and other details	69-74 of 1996 dated 03.05.1996 Valid up to 02.05.2019. 52-57 of 1997 dated 14.11.1997 Valid upto 13.11.2019. M/s Florentine Estates of India Ltd. & 5 others
RERA Registered or not	Un-registered.
Possession clause as per buyer's agreement	10 (a) <i>Construction of the flat is likely to be completed within a period of thirty-six (36) months of commencement of construction of the particular block in which the flat is located, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt., Traffic Deptt., Pollution Control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-</i>

			<i>availability of building materials, disputes with contractors/work force etc.</i>		
Date of start of construction			Not provided		
Occupation certificate			Not yet obtained		
S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Buyer's agreement	Due date of possession	Total sale consideration and Total amount paid by the complainant in INR.
1.	CR/756/2023 Sachin Dhingra Vs. M/s Parsvnath Developers Limited & M/s Parsvnath Hessa Developers Private Limited DOF: 01.03.2023 RR: 29.04.2024	B1-302, 3rd floor, Tower/ Block -B1 3495 sq. ft. [super area] [Page 24 & 59 of complaint]	BBA 27.01.2006 [Page 46 of reply] Endorsement 09.02.2006 & 11.10.2021 [Page 39-41 of complaint] P.H. 06.07.2014 [As per page no. 59 of complaint]	27.07.2009 <i>[27.01.2009 + 6 months]</i> (Note: the due date of possession is calculated from date of execution of buyer's agreement dated 27.01.2006, as the date of start of construction is not provided) <i>[Grace period of 6 months is allowed, being unqualified]</i>	TSC: Rs.1,28,82,000/- [As per page no. 17 of complaint] AP: Rs.1,13,56,783/- [As per SOA at page 56 of complaint]
2.	CR/1993/2023 Jaya Ram Easwaran & Jyoti Jayaram Vs. M/s Parsvnath Developers Limited & M/s Parsvnath Hessa Developers Private Limited DOF: 12.05.2023 RR: 28.03.2024	B1-1101, 11th floor, Tower/ Block -B1 3495 sq. ft. [super area] [Page 25 & 83 of complaint]	BBA 10.06.2006 [Page 23 of complaint] Endorsement 17.06.2006 [Page 40 of complaint] P.H. 30.07.2014 [As per page no. 83 of complaint]	10.12.2009 <i>[10.06.2009 + 6 months]</i> (Note: the due date of possession is calculated from date of execution of buyer's agreement dated 10.06.2006, as the date of start of construction is not provided) <i>[Grace period of 6 months is allowed, being unqualified]</i>	TSC: Rs.1,00,11,250/- [As per page no. 17 of complaint] AP: Rs.98,86,735/- [As per customer ledger account dated 26.05.2017 at page no. 81 of complaint]
Reliefs Sought:					

- a. Pass and order/ direction thereby directing the respondents to handover legal possession of the subject flat after obtaining occupation certificate from the competent authority and execute the conveyance deed.
- b. Pass and order/ direction thereby directing the respondents to pay interest on the paid-up amount for each month of delay from the due date of possession at-least starting from November, 2010 till the legal possession of the subject flat is offered to the complainant after obtaining occupation certificate.
- c. To grant any other relief as may deem fit and proper in the facts and circumstances of the present case.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
BBA	Builder Buyer's Agreement
PH	Physical Handover
TSC	Total sale consideration
AP	Amount paid by the allottee/s.

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/756/2023 titled as Sachin Dhingra Vs. M/s Parsvnath Developers Limited & M/s Parsvnath Hessa Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

7. The particulars of the project, the details of 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:

CR/756/2023 titled as Sachin Dhingra Vs. M/s Parsvnath Developers Limited & M/s Parsvnath Hessa Developers Private Limited

S. No.	Particulars	Details
1.	Name and location of the project	"Parsvnath Exotica" Sector- 53, Gurugram
2.	Nature of the project	Group Housing
3.	Project area	23.0815 acres
4.	DTCP license no.	69-74 of 1996 dated 03.05.1996 Valid up to 02.05.2019. 52-57 of 1997 dated 14.11.1997 Valid up to 13.11.2019.
5.	Name of licensee	M/s Florentine Estates of India Ltd. & 5 others
6.	Unit no.	B1-302, 3rd floor and Tower/Block-B1 (As per page no. 24 of the complaint)
7.	Unit area admeasuring	3495 sq. ft. (Super area) (As per page no. 59 of the complaint)
8.	Date of execution of flat buyer's agreement	27.01.2006 (As per page no. 46 of the reply)
9.	Date of start of construction	Not provided
10.	Date of 1st endorsement (in favor of complainant and his parents)	09.02.2006 (As per page no. 39 of the complainant)
11.	Date of 2nd endorsement (in favor of complainant)	11.10.2021 (As per page no. 41 of the complainant)
12.	Possession clause	10 (a) <i>Construction of the flat is likely to be completed within a period of thirty-six (36) months of commencement of construction of the particular block in which the flat is located, with a grace period of six (6) months, on receipt of sanction of building plans/revised</i>

		building plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt., Traffic Deptt., Pollution Control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. (As per page no. 28 of the complaint)
13.	Due date of possession	27.07.2009 [27.01.2006 + 6 months] (Note: the due date of possession is calculated from date of execution of buyer's agreement dated 27.01.2006, as the date of start of construction is not provided) [Grace period of 6 months is allowed, being unqualified]
14.	Total sale consideration	Rs.1,28,82,000/- (As per page no. 17 of the complaint)
15.	Amount paid by the complainant	Rs.1,13,56,783/- (As per SOA on page no. 56 of the complaint)
16.	Occupation certificate	Not obtained for tower B1
17.	Offer of possession for fit-outs	27.05.2014 (As per page no. 54 of the complaint)
18.	Physical Possession taken on	06.07.2014 (As per page no. 59 of the complaint)

B. Facts of the complaint:

8. The complainant has made the following submissions: -

- I. That the respondent no.1 in the year 2004/2005 launched a residential group housing project namely 'Parsvanth Exotica' situated at Sector - 53, Golf Course Road, Gurugram, Haryana.
- II. The parents of the complainant along with complaint (Mr. Sachin Dhingra), on 09.02.2006, purchased a flat in the above-mentioned project in resale

from one M/s Dinesh & Aggarwal Travels Pvt. Ltd. bearing Flat No. B1-302 in the township Parsvnath Exotica, Sector 53, Gurugram admeasuring 3390 Sq. Ft along with 2 covered car parking later revised to 3495 sq. ft., to be constructed and developed by the respondent no.1. The flat was endorsed in favour of the complainant (Sachin Dhingra), his father (Mr. Ashok Kumar Dhingra) and mother (Mrs. Chander Kanta Dhingra) as co-applicant / co-owners vide endorsement dated 09.02.2006 by respondent no.1 in the flat buyer's agreement.

- III. That the parents thereafter decided to transfer the said flat in the name of their son alone i.e. the complainant alone, so accordingly, the name of the father (Mr Ashok Kumar Dhingra) and mother (Mrs. Chander Kanta Dhingra) of the complainant, were deleted as co-owners of the said flat and as such the complainant's name was endorsed by respondent no.2 as exclusive owner of the said Flat. Therefore, the present complaint is being filed by the complainant namely Sachin Dhingra. That the parents of the complainant are still residing in the said Flat with the complainant only.
- IV. That though the flat buyer agreement contained unreasonable, one-sided and vague terms and conditions, however from a bare reading of clause 10(a) of the flat buyer agreement, it is evident, that the construction was to be completed by the respondent no.1 within 36 (Thirty-Six) months from the date of start of construction of the particular tower, with a further grace period of (Six) 6 months. Further admittedly, the construction for Tower B1 started in February 2006 as such the respondent no.1 was under an obligation to handover the legal physical possession of the said flat, after obtaining completion certificate/ occupation certificate from the competent authority complete in all aspects & specification so promised on or before 28.02.2009. Further submitted that, though the flat buyer agreement contained provisions of grace period of 6 months. However, the

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respondents are not entitled to the benefit of the same, in view of the findings given by this Authority vide its order dated 26.11.2021 in complaint no. 3697 of 2021 titled as 'Anil Kumar Sharma & Anr. Vs. Parsvnath Hessa Developers Pvt. Ltd'.

- V. However, the respondent no.1 later vide its letter dated 29.04.2009 written to allottees of project extended time for completion of Tower B1 as November 2010. Therefore, admittedly the completion date of the construction even after including the grace period of 6 months would be November 2010.
- VI. That the said flat was originally booked by M/s Dinesh & Aggarwal Travels Pvt. Ltd. under the Construction Linked Plan, however at the time of purchasing the said flat by the complainant and his family, the respondent no.1 induced the complainant and his family, by offering 10 % rebate in case, the complainant shifts to down payment plan by misrepresenting that the project shall be completed on time. Based on the inducements, misrepresentations and promises made by the respondent no.1 and believing the same to be true and correct, complainant and his family, agreed to pay 95 % down payment against the said flat.
- VII. As such the total sales consideration payable by the complainant to the respondent no.1 against the said flat was agreed at Rs.1,19,93,800/- which included Rs.1,15,93,800/- on account of basic sale price of the said flat and another sum of Rs.4,00,000/- on account of two parking. That the complainant as a result of the above paid a total sum of Rs.1,13,49,700/- on account of BSP and parking charges as on 09.02.2006 being more than 95% of the sale consideration.
- VIII. That in early 2009, some of the allottees of the project, including the complainant and his father, upon observing that the construction of the project was nowhere near completion, made repeated requests and visits

to the respondent no.1 and even met the directors of respondent no.1. After much follow up, the respondent no.1 vide its letter dated 29.04.2009, written to one of the allottees of the project, shared revised completion schedule of all the towers, including Tower B1 i.e., the Tower in which the complainant had purchased the flat as November 2010 instead of February 2009.

- IX. That the respondent no.1 failed to fulfil its commitment and once again vide its letter dated 19.12.2009 shared yet another, revised completion schedule of all the towers, including Tower B1 i.e., the Tower in which the complainant had purchased the Flat as April 2011.
- X. That thereafter respondent no. 1 vide its letter dated 30.08.2010 informed the complainant that an agreement has been executed between respondent no.1 and respondent no.2, a joint venture company of respondent no.1 and under the terms of the said agreement development, construction and marketing of Tower-B1 has been transferred to respondent no.2. Such joint venture agreement was only an eyewash and an attempt by the respondent no.1 to run away from the liabilities towards the flat owners. Further no such joint venture agreement was shared with the complainant or his parents, however even the respondent no.2 was introduced in the project without the consent of the complainant or his parents.
- XI. That the Suo-moto transfer of responsibility for completion of certain towers of the project by respondent no.1 to respondent no.2 cannot absolve respondent no.1 of its obligation & responsibility to complete the project in terms of the flat buyer agreement specially in circumstances when 95% payment of the sale consideration has been collected by respondent no.1. As such both respondent no.1 & respondent no.2, are jointly and severally responsible to complete the project and as such both

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are a proper and necessary party to the present complaint and therefore are being arrayed accordingly.

- XII. That the respondents, vide their letter dated 28.05.2014, suo-moto, offered the flat to the complainant for fit-out and also offered the rebate of Rs.7,50,000/- in lieu of carrying out the finishing work like air conditioner, ac piping, wooden flooring, internal painting, china ware, false ceiling, electricity wires, and switches as the respondents were not able to do the same and further demanded certain payments.
- XIII. That it would not be out of context to mention here that, by this stage, the complainant aggrieved by the slow pace of work, under the extreme burden of making huge payment on account of interest to the banks for last more than 8 years and also based on the assurances made by the respondents and their directors regarding getting the completion certificate / occupancy certificate, agreed to take possession of the flat carry out the remaining work and also made certain payments as were demanded under protest. The complainant and his parents had no option as almost the complete consideration amount had already been paid and the respondents had always made promises that soon the conveyance deed will be executed. As such the respondents issued an authorization letter dated 05.07.2014 for carrying out the pending works along with final statement of account and also issued a certificate of possession dated 06.07.2014.
- XIV. That at the time of offering possession, the respondents, demanded a further sum of Rs.3,99,000/- on account of increase in area. Therefore, the total sale consideration of the said flat was revised to Rs.1,23,91,800/-.
- XV. Further the respondents did not pay/ adjust the amounts towards delayed possession penalty starting from February 2009 or at least November 2010, being the due date of possession and rather, unilaterally adjusted

the delayed penalty of Rs.9,15,300/- in the statement of account starting from May 2011 up-till July 2013, which act of the respondents is illegal and arbitrary and even such amount was not paid completely.

- XVI. That the respondents misused their dominant position as a result of which the possession was taken by the complaint under duress and protest. It is further imperative to mention that even at that stage the project lacked basic amenities like operational lift etc and was not in a habitable position.
- XVII. That in the above circumstances, the complaint and his family took possession of the aforesaid flat and thereafter spent huge sums of money in furnishing the said flat on the representations and promises made by the respondents that they will get the completion certificate / occupancy certificate and get the conveyance deed registered in favour of the complaint in few months. However, till date the respondents have failed to deliver the absolute and legal possession of the said flat after obtaining the completion certificate/ occupancy certificate from the competent authority. Further the respondents have also failed to execute the conveyance deed registered in favour of the complainant as a result of which the complainant have not got absolute right over the said Flat till date. Even till date the complainant has not been able to enjoy full rights and facilities in the society as are available to the residents of other towers having occupancy certificate like voting rights, access to club house and its facilities (without any additional payment), swimming pool, etc.
- XVIII. The complainant has been following-up with the respondents and their directors regarding occupancy certificate, conveyance deed and delayed penalty however all efforts are in vain.
- XIX. As such the complainant is inter-alia entitled to interest for every month of delay till having over the absolute title and legal possession of the said flat starting from at-least November 2010, at such rates as prescribed in



terms of Sections 18(1) of the Act read with rules framed thereunder. Further the complainant reserves its right to claim compensation by filing a separate proceeding before the Adjudication Officer in accordance with law at appropriate stage.

C. Relief sought by the complainant:

9. The complainant has sought following relief:

- i. Direct the respondents to handover legal possession of the subject flat after obtaining occupation certificate from the competent authority and execute the conveyance deed.
- ii. Direct the respondents to pay interest on the paid-up amount for each month of delay from the due date of possession at-least starting from November, 2010 till the legal possession of the subject flat is offered to the complainant after obtaining occupation certificate.
- iii. Any other relief as may deem fit and proper in the facts and circumstances of the present case.

10. 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/builder.

11. The respondent has contested the complaint by filing reply on the following grounds: -

- I. That the project construction is already completed. The competent authority has already granted occupancy certificate for the part of the project comprising of 11 towers and for remaining 5 towers remains awaited for getting occupancy certificate from the competent authority.
- II. That the respondent company under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. That out

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of the said 18 towers, 11 towers were duly developed and completed, and the occupancy certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. That the respondents have already applied for the occupancy certificate with respect to remaining 5 towers i.e. D4, D5 and D6 on 01.11.2011 and with respect to towers no. B1, and C4 on 13.08.2013 for which review was also filed by the respondent(s) on 24.11.2017 before DTCP. That the part occupancy certificate application with respect to 2 Towers B1 and C4 were also applied in 13.08.2013 before DTCP. Furthermore, the review letter for occupancy certificate of the above mentioned 5 Towers were again filed on 11.02.2019 before the Competent Authority. That appropriate and relevant reports from the Office of DTP, STP, PHE and External Services have been forwarded to Department of Town and Country Planning, (HQ), Chandigarh.

- III. Subsequently, with the intervention of the Hon'ble Supreme Court of India, part occupation certificate dated 30.11.2022 with respect 3 Towers i.e. D-4, D-5 & D-6 was received by the respondent(s). that the Application for the remaining towers is in active consideration with DTCP and as such the respondents are actively following with the DTCP for grant of the same.
- IV. That the respondent(s) had already offered fit outs possession to all the allottees of Tower B1 in which the flat of the complainant is located.
- V. That the Tower-B1 has been completed as per the applicable building bye laws and prevailing norms and as such the STP has granted a report for completion of Tower. Initially, and the respondent has offered the same for fit out purposes to the complainant along with FSA reflecting the special rebate amounting to Rs.7,50,000/- towards unfinished items and delay compensation for 27 months amounting to Rs.9,15,300/-. That all the basic facilities and amenities like electricity, water, club and swimming pool are

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duly available at the project site which is duly adequate with respect to the current occupancy at the project site.

- VI. That the respondent has already applied for part Occupancy Certificate (OC) for the Tower B1 in which the complainant's flat is located. That the entire project is developed in complete adherence of the building bye laws & norms which has been prevailing in Haryana.
- VII. That the Hon'ble Supreme Court of India in Civil Appeal bearing Diary No. 13163 of 2019 titled as "Parsvnath Developers Limited Versus Malika Raghavan" vide order dated 21.01.2022 issued notice to the Director of Town and Country Planning, Haryana who submitted a status report wherein it was stated that the due to non-construction of the EWS tower by the respondent, the occupancy certificate was not granted. Therefore, the project is being monitored by the Hon'ble Supreme Court of India and as such the grant of compensation to allottees is also pending before it. Hence, the complaint may be kept in abeyance till the issue with respect to the compensation is decided by the Hon'ble Supreme Court of India.
- VIII. That the enforcement of provisions under RERA Act should be prospective and not be retrospective. Further, it is apposite to state that respondent has further completed most of the development work in the Tower-B1 and the part occupancy certificate has already been applied before the competent authority. Thus, the question of awarding delay interest with other relief (s) of the deposited amount does not arise at all.
- IX. That the instant complaint, the complainant has sought for offering of possession and delay compensation for delay in handing over of possession. That the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence and cross examination. The issues raised by the complainant cannot be addressed before this Authority, Gurugram which follows a summary



procedure. In view of the same, the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this Authority, Gurugram. The complaint is liable to be dismissed on this ground alone.

- X. That the delay in handing over the possession of the apartment was caused only due to the various reasons which are beyond the control of the respondent. The various problems which are beyond the control of the respondent seriously affected the construction;

- Lack of adequate sources of finance;
- Shortage of labour;
- Rising manpower and material costs;
- Approvals and procedural difficulties

- XI. In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession:

- There was extreme shortage of water in the region which affected the construction works.
- There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.
- Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.
- Recession in economy also resulted in availability of labour and raw materials becoming scarce.
- There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).
- That the finishing work of the Flat is carried out only after the allottee clears the outstanding amount and agrees to take over the possession of the Flat. Since, the fittings and fixtures get damaged due to corrosion, the same cannot be done before handing over the possession.

- XII. All the above problems are beyond the control of the Respondent. It may be noted that the Respondent had at many occasions orally communicated to



the complainant that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the Respondent.

- XIII. That as per the flat buyer agreement, which is binding between the complainant and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. That the liability of the respondent on account of delay is specified in clause 10(c) of the said agreement and as such the complainant cannot claim reliefs which are beyond the compensation agreed upon by them. In this view of the matter, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the Courts is to interpret appropriately the existing Contract and decide the rights and liabilities of the parties within the four corners of the contract.
- XIV. That the complainant is a subsequent allottee 2. That initially the flat was allotted to one M/s Dinesh & Agarwal Travels Pvt. Ltd. (original allottee) in January' 2006. Subsequently, original allottee sold or transferred the flat to Mr. Ashok Kumar Dhingra, Mrs. Chander Kanta Dhingra & Mr. Sachin Dhingra on 09.02.2006. Thereafter, subsequent the original allottee entered into BBA dated 27.01.2006 with the respondent.
- XV. Subsequent thereto, Mr. Ashok Kumar Dhingra & Mrs. Chander Kanta Dhingra had transferred their shares in said flat to the Mr. Sachin Dhingra voluntarily & willingly in the records of the respondent and filed their NOCs on 14.06.2021 with the respondent. Afterwards, said flat vide dated 24.09.2021 was transferred into the favour of Mr. Sachin Dhingra. The complainant has already taken the possession and enjoying the benefits of

rebate. That subsequent allottees was issued a letter on 05.07.2014 mentioning for authorization for Interior and other remaining work in said unit. that the respondent has already offered fit-outs possession and thereby granting rebate of Rs.16,65,300/-.

XVI. That the captioned complaint is frivolous, vague and vexatious in nature as the complainant is not entitled to any relief qua delay interest/compensation as the complainant himself had waived the right for seeking delay compensation/interest penalty on account of delay in procuring occupancy certificate. The complaint has been made to injure the interest and reputation of the respondents and therefore, the instant complaint is liable.

12. All the averments made in the complaint were denied in toto.

13. 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 those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

14. 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

15. 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 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

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16. 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.

17. 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 objections raised by the respondent.

F.1 Objection regarding force majeure conditions:

18. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as shortage of labour due to implementation of social schemes like NREGA and JNNURM etc, demonetization, delay on part of government authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, heavy shortage of supply of construction material etc. All the pleas advanced in this regard are devoid of merit. Firstly, the Authority has gone through the possession clause of the agreement and observed that the respondent-

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promoter proposes to complete the construction of the project and deliver the possession of the allotted unit within 36 months from the commencement of construction or date of execution of buyer's agreement, whichever is later. In the present case, the buyer's agreement was executed between the parties on 27.01.2006 and the date of start of construction was not provided, So the due date is calculated from the date of execution of buyer's agreement, which comes out to 27.01.2009. It is further provided in agreement that the promoter is entitle to a grace period of six (6) months. Therefore, the grace period of 6 months is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 titled as Emaar MGF Land Limited Vs Babita Tiwari and Yogesh Tiwari***, wherein it has been held that if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided to the agreement. Therefore, the due date of possession in the present case as per clause 10(a) of BBA is comes to 27.07.2009 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondents to handover legal possession of the subject flat after obtaining occupation certificate from the competent authority and execute the conveyance deed.**
- G.II Direct the respondents to pay interest on the paid-up amount for each month of delay from the due date of possession at-least starting from November,**

2010 till the legal possession of the subject flat is offered to the complainant after obtaining occupation certificate.

G.III Any other relief as may deem fit and proper in the facts and circumstances of the present case.

19. On consideration of the documents available on record, the Authority observes that the original allottee (M/s Dinesh & Aggarwal Travels Private Limited) was allotted a unit bearing no. B1-302, admeasuring 3495 sq. ft. (super area) at 3rd floor, Tower/ Block -B1 in project of the respondent named "Parsvnath Exotica" at Sector-53, Gurugram and entered into a flat buyer's agreement with respondent no.1 on 27.01.2006. Thereafter, the original allottee sold the flat to the complainant (Sachin Dhingra), his father (Mr. Ashok Kumar Dhingra) and mother (Mrs. Chander Kanta Dhingra) and on 09.02.2006, the said unit was endorsed in favour of the complainant (Sachin Dhingra), his father (Mr. Ashok Kumar Dhingra) and mother (Mrs. Chander Kanta Dhingra). Further on 11.10.2021, the unit was endorsed in favour of the complainant (Sachin Dhingra) only, upon receipt of NOC of the co-allottees namely (Mr. Ashok Kumar Dhingra) and (Mrs. Chander Kanta Dhingra) on 14.06.2021, in which both the co-allottees requested to transfer their complete share in said unit, in the favor of their son (Sachin Dhingra).

20. As per clause 10(a) of the buyer's agreement dated 27.01.2006, *"the construction of the flat is likely to be completed within a period of thirty-six (36) months of commencement of construction of the particular block in which the flat is located, with a grace period of six (6) months..."*, therefore, the possession of the subject unit was to be offered to the complainant on 27.07.2009 (inclusive of grace period of 6 months, being unqualified). Admittedly, the possession for fit-outs of the unit has been already offered to the complainant on 27.05.2014 and on 05.07.2014, the allottees were given special rebate of Rs.9,15,300/- on account of delay possession compensation (from May, 2011 to July, 2013) and an optional rebate of Rs.7,50,000/- was offered on account

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of final finishing cost of the unit. The possession of the subject unit was taken over by the co-allottee (i.e., Mr. Ashok Kumar Dhingra, who is father of the complainant and was co-allottee at the time of taking possession) on 06.07.2014 after inspection of the unit in question on 06.07.2014. Now the question for consideration arises as to whether the complainant is entitled to delay possession charges from the due date of possession i.e., 27.07.2009 till actual handing over of possession after the receipt of OC.

21. Though, the complainant is claiming delay possession charges till handing over of possession on the basis of non-obtaining of occupation certificate till date, but it is admittedly in possession of the subject unit since 06.07.2014 and the present complaint has been filed by complainant on 01.03.2023, which is beyond the limitation of 3 years. Moreover, the issue w.r.t issuance of occupancy certificate for tower in which unit of the complainant is situated is pending before the Hon'ble Supreme Court of India in Civil Appeal bearing no. C.A. No.005289 of 2022 and C.A. No.005290 of 2022.
22. There has been complete inaction on the part of the complainant for a period of more than nine years till the present complaint was filed in March, 2023. The complainant remained dormant of their rights for more than nine years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. 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 the principle 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.

23. 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.
24. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein the complainant is seeking delay interest on total amount paid, is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In the light of above, the said relief w.r.t delay possession charges is declined, being not maintainable as barred by limitation.
25. Further, the complainant is seeking the relief for the execution of registered conveyance deed as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant(s). Whereas as per section 19(11) of the Act of 2016, the allottee(s) are also obligated to participate towards registration of the conveyance deed of the unit in question. The complainant had taken the possession of the unit on 06.07.2014 on offer of the possession of the unit. Whereas the possession was offered by the respondent/promoter without

obtaining the occupancy certificate. As per clause 11(a) of the buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said flat in favor of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

11(a)

"The conveyance deed of the flat as well as the proportionate undivided share of the land underneath as permissible as per applicable laws shall be executed in favour of the buyer by the developers, all costs of stamp duty, registration fee and other miscellaneous/ incidental expenses for execution and registration of the conveyance deed of the flat shall be borne and paid by the buyer."

26. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.
27. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17 (1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(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."

28. In view of the above, the respondents are directed to execute the registered conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016, after receipt of occupancy certificate from the competent

authority and upon payment of requisite stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

H. Directions of the authority

29. 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):

- i. The respondents are directed to execute the registered conveyance deed in favour of the complainant/allottee in terms of section 17(1) of the Act of 2016, after receipt of occupancy certificate from the competent authority and upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement and details of paid-up amount is mentioned in each of the complaints.

31. Complaints as well as applications, if any, stand disposed off accordingly.

32. Files be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.05.2025