

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

Complaint no. : **2518 of 2024**
Date of Decision: **11.04.2025**

Mr. Ajay Malik

Address: - 976, Village-Seenk, Tehsil Israna,
Panipat, Haryana

Complainant

Versus

M/s Emaar MGF Land Ltd.

Address: Emaar MGF Business Park, M.G. Road,
Sikenderpur, Sector-28, Gurugram, Haryana

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Shajat Kataria
Shri Harshit Batra

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 06.06.2024 has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

| Sr. No. | Particulars | Details |
|---------|--------------------------------------|--|
| 1. | Name of the project | Palm Gardens, Sector 83, Gurugram, Haryana |
| 2. | Total area of the project | 21.90 acres |
| 3. | Nature of the project | Group housing colony |
| 4. | DTCP license no. | 108 of 2010 dated 18.12.2010 |
| | Validity of license | 17.12.2020 |
| | Licensee | Logical Developers Pvt. Ltd. and 2 others |
| | Area for which license was granted | 21.9 acres |
| 5. | HRERA registered/ not registered | Registered vide no.330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities) |
| | HRERA registration valid up to | 31.12.2018 |
| | HRERA extension of registration vide | 02 of 2019 dated 02.08.2019 |
| | Extension valid up to | 31.12.2019 |

| | | |
|----|--|--|
| 6 | Provisional allotment letter dated | 16.01.2012 [page 25 of complaint] |
| 7 | Welcome letter dated | 16.01.2013 |
| 8 | Unit no. | 501, 5 th floor, tower 9 [page 31 of complaint] |
| 9 | Area of unit | 1720 sq. ft. |
| 10 | Date of execution of buyer's agreement | 01.03.2012 [page 30 of complaint] |
| 11 | Possession clause | <p>10. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><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 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(Emphasis supplied)</p> |

| | | |
|-----|---|--|
| 12 | Due date of possession | 01.06.2015 [Note: Grace period is allowed] |
| 13 | Total consideration | Rs.91,55,598/- (As per payment plan annexed with the buyer's agreement) |
| 14 | Total amount paid by the complainant | Rs. 37,40,000/- (As stated by the complainant) |
| 15 | Cancellation letter dated | 24.07.2015 [page 73-75 of the reply] |
| 16 | Respondent sent an email to the complainant for the intimation to the cancellation | 12.10.2018 [page 63 of the complaint] |
| 17 | OC received on | 02.05.2019 |
| 18. | Conveyance deed executed between Mr. Sachin Paul, Mrs. Anshika Kalra and Emaar Note: Third party rights already executed | 01.08.2019 [page 82 of reply] |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the property in question i.e. the residential apartment bearing Unit No. PGN-09-0501 (Flat no.501 on 5th Floor of 9th Tower) ad measuring 159.85 Sq Mtr. (1720 Sq. Ft.) situated in the respondent's project namely 'Emaar Palm' Gardens situated at Sector-83, Gurugram, Haryana, was booked by the complainant by

making the payment of ₹ 7,50,000/- vide RTGS on 30.12.2011 whereas the allotment letter was issued to the complainant on 16.01.2012. That, subsequent thereto, the complainant herein, received demand letter dated 16.01.2012.

- II. That, builder buyer agreement was registered between the parties on 01.03.2012 by virtue of which the complainant was allotted residential apartment bearing No. PGN-09-0501 (Flat no.501 on 5th Floor of 9th Tower) ad measuring 159.85 Sq Mtr. (1720 Sq. Ft.) situated in the project of the respondent i.e. Emaar Palm Gardens situated at Sector-83, Gurugram, Haryana for a total sale consideration of ₹91,55,598/-.
- III. That the complainant was greatly influenced by the fancy brochure which depicted that the project will be developed and constructed as state of the art and one of its kinds with all modern amenities and facilities, which led to the purchase of the property in question, by the complainant.
- IV. That it was represented to the complainant, by the respondent, by way of various advertisements, that the project in question shall be constructed, developed and designed by a team of ace architects and structural designers to meet world class infrastructure quality and standards. The complainant was induced by the representations of the respondent/promoter and thereby purchased the property in question.
- V. That, the said builder buyer's agreement dated 01.03.2012 (the "Agreement"), the respondent had stated that the possession of the

said apartment would be handed over to the complainant within 36 months plus 3 months grace period i.e. 01.06.2015,

- VI. That, the said buyer's agreement is totally one sided, which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs 7.5/- per Sq Ft, on the super area of the flat for any delay in possession beyond the given date plus grace period of 3 months till the date of notice of possession.
- VII. That, the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession as per the registered builder buyer's agreement. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
- VIII. That in accordance with clause 10(a) of the builder buyer agreement (BBA), the respondent was required to provide possession of the specified flat by June 1, 2015, inclusive of a period of 36 months plus an additional 3 months grace period. On July 24, 2015, the respondent unlawfully cancelled the specified unit without notifying the complainant, violating the terms of the builder buyer agreement (BBA). This action constitutes a breach of contract, particularly since the agreement included a construction-linked plan and stipulated possession by June 1, 2015. Consequently, the respondent was not entitled to request

additional funds from the complainant. Although the respondent received the occupation certificate on May 2, 2019, preventing them from offering possession of the specified flat before that date, the cancellation of the unit by the respondent on 24th July 2015 is in direct violation of the law.

- IX. That after multiple visits to the project site with no progress observed, the complainant on 09.01.2015, requested the respondent to refund the amount paid thus far or to allocate some shop of some value in the said project. Additionally, the complainant incurred interest expenses on the amount paid to respondent. Complainant made multiple requests for refund or allotment of flat on time. The complainant was repeatedly threatened to pay the amount by receiving cancellation letters, while the respondent consistently sent reminders for payment but ignored the complainant's requests for a refund or waiver of interest on the amount.
- X. That the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent- promoter. The allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021
- XI. That the complainant has paid a total amount of ₹37,40,000/- to the respondent till date against the sale consideration of the unit.

- XII. That the complainant had visited the premises at Sector-83, Gurugram, Haryana for the possession of the said unit but again the respondent didn't bothered to look after the genuine demands of the complainant. The complainant sent multiple emails to the respondent inquiring about the status of their flat, but the respondent failed to provide any response. The respondent cancelled the allotment of the said flat without informing the complainant and didn't even refund the amount paid by the complainant which is completely against the law.
- XIII. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession and unlawfully cancelling the allotment of the said flat. The complainant has lost faith in respondent who has taken the complainant and other home buyers for a ride by not completing the project on time.
- XIV. That the respondent had committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the buyer.
- C. The complainant is seeking the following relief:**
4. The complainant has sought following relief(s):
- Direct the Respondent to refund the entire amount paid by the Complainant, in connection with the unit allotted and subsequently cancelled, along with interest at the rate of 18% per annum from the respective dates of payment till the actual date of realization.
- D. Reply filed by the respondent.**

5. The respondent had contested the complaint on the following grounds:
- I. That the complainant being interested in the group housing colony of the respondent, known under the name and style of "Palm Gardens" at Sector 83, Village Kherki Daula, Tehsil and District Gurgaon ("**Project**") approached the respondent to purchase the unit and upon their application for allotment of a unit in the said project, an apartment bearing no. 501, on 5th floor, Tower 09 tentatively admeasuring super area of 1720 sq. ft. ("**Unit**") was allotted vide provisional allotment letter dated 16.01.2012.
 - II. That thereafter, a buyer's agreement was sent to the complainant and the same was executed on 01.03.2012 (the "**Agreement**"). It is pertinent to mention that the agreement was consciously and voluntarily executed and the terms and conditions of the same are binding on the parties.
 - III. That the complainant has got no *locus standi* or cause of action to file the present complaint. The complainant has not come before this hon'ble authority with clean hands and has suppressed vital and material facts from the Authority. The present complaint is based on an erroneous interpretation of the provisions of the RERA Act as well as an incorrect understanding of the terms and conditions of the agreement as shall be evident from the submissions made in the following paragraphs of the present reply.
 - IV. That the complainant is a habitual defaulter who has been in default of making payments since the very beginning as is evident from the table above, the complainant made the last payment on 13.04.2015 and thereafter stopped making payments of the

installments. That the complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent. The complainant had defaulted/delayed in making the due payments, upon which, notices and emails were also served to the complainant. That, as mentioned above the complainant, stopped making payments wrt., the unit, and the last payment made by the complainant was on 13.04.2015 hence, the respondent sent a notice dated 08.06.2015 to the complainant for making payment of the payment outstanding dues of Rs. 43,63,863.50/- within a period of 30 days, failing which the company shall have the right to cancel the allotment of the complainant, however, the complainant again failed to make payment of the sales considerations of the unit.

- V. That in accordance thereto and after the continued default of the complainant, the unit was finally cancelled on 24.07.2015. That as per the agreed terms and conditions of the agreement, the aforementioned amounts had to be deducted.
- VI. That it is submitted that after such cancellation of the unit of the complainant vide cancellation letter dated 24.07.2015, no cause of action remains. That the present complaint is filed on 27.05.2024 (date of proforma-B). The present Complaint has been filed after a delay of 8 years 10 months and 3 days. That the present Complaint being grossly barred by limitation, should be dismissed. That no individual should be allowed to take recourse of law at his own whims and fancies.

- VII. That without prejudice to the aforementioned, it is most vehemently submitted that the allotment of the unit of the complainant was cancelled legally and validly as per the agreed terms and conditions of the agreement. It is pertinent to note that the total sale consideration of the Unit was Rs. 91,55,598 /-. The entire forfeiture amount in terms of clause 1.2(a), comes to Rs. 40,51,967, as evident from the cancellation letter. However, the complainant had only paid a mere sum of Rs. 37,40,000 towards the unit, which did not even account for the entire forfeiture amount. The said amount was rightly and legally forfeited by the respondent. That it was also informed to the complainant that with effect from 08.07.2015, no right, title, interest or lien of the complainant existed.
- VIII. That it is essential to state at this instance that the respondent had validly completed the construction of the project and had obtained the occupation certificate on 02.05.2019.
- IX. That the respondent has already transferred the ownership of the unit to a third-party as the unit has been sold to Mr. Sachin Paul and Mrs. Anshika Kalra, who enjoys the complete rights and ownership over the Unit via conveyance deed dated 01.08.2019 hence, any relief against the said Unit cannot be imposed upon the respondent as the respondent has no right or title over the said unit. This Ld. Authority has held in **Vandana Sharma v BPTP Complaint No. 2758 of 2021, order dated 17.11.2021** that such cases where third party rights have been created and conveyance

deed has been executed, the complaint seeking possession is infructuous and should be dismissed

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

E. Jurisdiction of the authority

7. 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

8. 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 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

9. 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

.....

(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.

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the Respondent to refund the entire amount paid by the Complainant, in connection with the unit allotted and subsequently cancelled, along with interest at the rate of 18% per annum from the respective dates of payment till the actual date of realization.

11. That the Complainant was allotted Unit No. 501, 5th floor, tower 9, admeasuring 1720 sq. ft. of super area, in the residential project of the Respondent known as "Palm Gardens, located at Sector-83, Gurugram, Haryana. The said allotment was made vide Provisional Allotment Letter dated 16.01.2012. Subsequently, an Apartment Buyer's Agreement was duly executed between the Complainant and the Respondent on 01.03.2012 thereby confirming the terms and conditions governing the said allotment.
12. As per clause 10 of the agreement the respondent was directed to handover the possession of the unit by June 2015 and a grace period of 3 months for applying and obtaining the occupation certificate in respect of

the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. **So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.** Thus, with inclusion of grace period of 3 months as per the provisions in clause 11-(a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

13. 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 in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 01.06.2015 including grace period of 3 months.

14. The counsel for the complainant submits that the Occupation Certificate for the project, in which the allotted unit is situated, has not yet been obtained by the respondent-promoter. It is contended that the allottees cannot be expected to wait indefinitely for possession of the allotted unit, especially when a substantial amount has already been paid towards the total sale consideration.
15. It is further submitted that the complainant has paid a total amount of ₹37,40,000/- to the respondent till date, against the agreed sale consideration of the said unit.
16. The counsel for the respondent submits that the complainant has paid a sum of ₹37,40,000/- towards the total sale consideration of ₹91,55,598/- in respect of the unit in question. The last payment made by the Complainant was on 13.04.2015, whereafter the Complainant wilfully defaulted in making further instalment payments as per the agreed construction-linked payment plan. Consequently, the Respondent issued a formal notice dated 08.06.2015, calling upon the Complainant to clear the outstanding dues amounting to Rs. 43,63,863.50/- within 30 days, failing which the Respondent reserved the right to cancel the allotment. Despite such notice and ample opportunity, the Complainant failed to cure the default. Accordingly, the allotment of the said unit was cancelled on 24.07.2015, in consonance with the terms and conditions agreed upon between the parties under the Builder Buyer's Agreement. As per the contractual provisions, the Respondent was entitled to forfeit/deduct certain amounts already paid, due to the continued breach of payment obligations on the part of the Complainant.

17. Further the Respondent has, subsequent to the cancellation of the Complainant's allotment, lawfully transferred the ownership rights in the said unit to third parties, namely, Mr. Sachin Paul and Mrs. Anshika Kalra, vide duly executed Conveyance Deed dated 01.08.2019. The said third parties have since been in lawful possession and ownership of the unit in question. Consequently, the Respondent no longer retains any right, title, or interest in the said unit. In light of the aforesaid, no relief, whether in the nature of possession, direction for execution, or any other proprietary claim, can be granted against the Respondent with respect to the said unit, as the same now stands conveyed to bona fide purchasers for value.
18. Upon consideration of the documents on record, it is noted that the Occupation Certificate (OC) for the subject unit was duly obtained by the respondent on 02.05.2019. Subsequently, the ownership of the said unit was lawfully transferred to third-party purchasers, namely Mr. Sachin Paul and Mrs. Anshika Kalra, through a duly executed Conveyance Deed dated 01.08.2019. It is further observed that the present complaint has been filed only on 06.06.2024, i.e., nearly nine (9) years after the cancellation of the original allotment on 24.07.2015, and more than five (5) years after the conveyance of the said unit to third parties.
19. The complainant has sought the relief of refund along with interest before this authority based on an alleged breach of obligations arising from the original allotment dated 16.01.2012, which was governed by a Buyer's Agreement dated 01.03.2012. As per the said agreement, possession of the unit was to be delivered on or before 01.06.2015. Even assuming the cause of action accrued on 01.06.2015 (i.e., the promised date of possession), the limitation period of three (3) years, as prescribed under the Limitation Act,

1963, would have expired on 01.06.2018. The filing of the present complaint in June 2024 is, therefore, grossly delayed and barred by limitation.

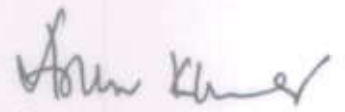
20. Furthermore, despite the grant of the Occupation Certificate on 02.05.2019 and the subsequent execution of the Conveyance Deed on 01.08.2019 in favour of third parties, the complainant failed to take any timely or proactive steps to challenge the cancellation of allotment or seek legal remedies. The prolonged inaction and silence of the complainant for over nine (9) years is inexplicable and fatal to the maintainability of the present complaint.
21. The complainant's inordinate delay in initiating proceedings is not supported by any cogent explanation. Such prolonged inaction amounts to waiver, acquiescence, and negligence in the assertion of legal rights. It is a settled principle of law that rights cannot be kept in suspended animation indefinitely, particularly in cases where third-party rights have been created in the intervening period, and substantial prejudice may result from reopening closed transactions.
22. It is further reiterated that delay and laches are valid grounds to reject a claim, even in proceedings that are otherwise not strictly governed by the Limitation Act. Although Section 35 read with Section 37 of the Real Estate (Regulation and Development) Act, 2016 empowers the Authority to pass necessary directions, such powers are discretionary in nature. The Authority must exercise such discretion judiciously and decline to entertain stale and belated claims that defeat the object of timely justice. The Complainant, by remaining inactive for nearly a decade, has waived any equitable claim. Reliance is placed on the decision of the Hon'ble

Supreme Court in **B.L. Sreedhar & Ors. v. K.M. Munireddy & Ors.**, [AIR 2003 SC 578], wherein it was held: "**Law assists those who are vigilant and not those who sleep over their rights.**" It is well-settled that litigants who fail to act diligently and allow their rights to lapse cannot invoke the equitable jurisdiction of this Authority at their own convenience.

23. It is a fundamental principle of natural justice that no party should suffer due to the inaction or delay of another. Where a litigant has failed to act within a reasonable time and has not provided any sufficient justification for the prolonged inaction, such a party cannot claim equitable relief or invoke the discretionary jurisdiction of this Authority. In view of the facts on record, the settled position of law, and the principles of equity, the Authority is of the view that the present complaint is barred by limitation and devoid of merit. Accordingly, the complaint is hereby dismissed.
24. Complaint as well as applications, if any, stands disposed off accordingly.
25. File be consigned to registry.

HARERA
GURUGRAM

Haryana Real Estate Regulatory Authority, Gurugram



(Arun Kumar)
Chairman

Dated: 11.04.2025