

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Order pronounced on: 20.05.2025**

NAME OF THE BUILDER		M/s Emaar MGF Land Limited	
PROJECT NAME		"Gurgaon Greens", Sector- 102, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/993/2024	Mr. Rishabh Kumar and Mrs. Rama Budhiraja Through SPA holder Shri Ravi Kumar V/S M/s Emaar India Limited	Adv. Vishal Kalra (Complainants) Adv. Ishaan Dang (Respondent)
2.	CR/995/2024	Mr. Vaibhav Kumar and Mrs. Rama Budhiraja Through SPA holder Shri Ravi Kumar V/S M/s Emaar India Limited	Adv. Vishal Kalra (Complainants) Adv. Ishaan Dang (Respondent)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

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, "Emerald Floors Premier-II", Situated in Sector- 65, Gurugram, Haryana, being developed by the respondent/promoter i.e., M/s Emaar India 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 thus seeking award for to provide the servant quarter and toilet as promised in the BBA, EPR, refund of PLC amount, execution of 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	"Emerald Floors Premier-II", situated in Sector- 65, Gurugram, Haryana.
Project area	25.49 acres
Nature of the project	Group housing colony
DTCP license no. and other details	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025.
Name of licensee	Active Promoters Pvt. Ltd and 4 others.
Occupation certificate	11.11.2020
Possession clause as per buyer's agreement	11. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this buyer's Agreement, and not being in default under any of the provisions of this buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the unit within 36 months from the date of execution of this buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation</i>

	<i>certificate in respect of the unit and/or the project".</i> <i>(Emphasis supplied)</i> <i>[Page 77 of complaint]</i>
--	---

Complaint No.	CR/993/2024	CR/995/2024
Unit no. and size	EFP-II-54-0001, in 54 th floor, Area ad-measuring 1975 sq. ft. (super area). [Annexure C/2, page 65 of complaint]	EFP-II-54-0101, in 54 th floor, Area ad-measuring 1975 sq. ft. (super area). [Annexure C/2, page 67 of complaint]
Allotment Letter and BBA	BBA:- 16.09.2009 [Annexure C/2, page 62 of complaint]	BBA:- 16.09.2009 [Annexure C/2, page 65 of complaint]
Due date of possession	16.12.2012 (Note:- Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 16.09.2009 plus grace period of 3 months)	16.12.2012 (Note:- Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 16.09.2009 plus grace period of 3 months)
Total sale consideration	Rs.1,28,05,289/- (As per statement of account dated 01.04.2024 at page 179 of reply)	Rs.1,08,88,804/- (As per statement of account dated 01.04.2024 at page 185 of reply)
Total amount paid by the complainant	Rs.1,33,26,012/- (As per statement of account dated 01.04.2024 at page 179 of reply)	Rs.1,14,17,264/- (As per statement of account dated 01.04.2024 at page 185 of reply)
Date of offer of possession and unit handover letter	OOP:- 30.12.2020 [Annexure C/3, page 105 of complaint] UHL:- 06.12.2021 [Annexure R11, page 235 of reply]	OOP:- 19.11.2020 [Annexure C/3, page 122 of complaint] UHL:- 06.12.2021 [Annexure R11, page 237 of reply]

Relief sought by the complainants:-

- Direct the respondent to provide the servant quarter and toilet as promised in the BBA or to return the amount so charged i.e., Rs.5,30,762/- along with interest.
- Direct the respondent to provide Early Payment Rebate amounting to Rs.51,24,454/-.
- Direct the respondent to return a sum of Rs.19,75,000/- charged as PLC along with interest.
- Direct the respondent to pay for the 418 sq. ft. of land which has not been provided exclusively to the complainants i.e., 38.85 sq. mts. @ Rs.72,000/- per sq. meters. i.e., Rs.27,97,200/- as the land is now an undivided common area specifically reserved for

the fire corridor to be exclusively used for the purpose of emergency fire exit for the whole lane of towers.

- v. Direct the respondent to provide the parking lots as promised.
- vi. Direct the respondent to return the delay payment charges collected without providing any sufficient calculations and details with interest from the date of collection till date of return.
- vii. Direct the respondent to execute the conveyance deed in favour of the complainants.
- viii. Direct the respondent to return the additional amount of Rs.1,04,501/- charged in the garb of price escalation.

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

Abbreviation	Full form
TC	Total consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer's Agreement
AL	Allotment Letter
OOP	Offer of possession
UHL	Unit Handover Letter

4. 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/993/2024** titled as **Mr. Rishabh Kumar and Mrs. Rama Budhiraja through SPA holder Shri Ravi Kumar V/s M/s Emaar India Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

5. 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/993/2024 titled as Mr. Rishabh Kumar and Mrs. Rama Budhiraja through SPA holder Shri Ravi Kumar V/s M/s Emaar India limited.

S. No.	Particulars	Details
1.	Name of the project	"Emerald Floors Premier-II, Sector 65, Gurugram, Haryana
2.	Nature of project	Residential
3.	DTCP License no.	06 of 2008 dated 17.01.2008 valid up to 16.01.2025
4.	Name of licensee	Active Promoters Pvt. Ltd and 4 others

5.	Unit no.	EFP-II-54-0001 & 54 th floor (As per page no. 64 of the complaint)
6.	Unit area	1975 sq. ft. (Super Area) (As on page no. 64 of the complaint)
7.	Date of execution of buyer's agreement	16.09.2009 (As per page no. 62 of the complaint)
8.	Possession clause	11. POSSESSION (a) Time of handing over the Possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this buyer's Agreement, and not being in default under any of the provisions of this buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the unit within 36 months from the date of execution of this buyer's agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the unit and/or the project.</i> (Emphasis supplied) (As on page no. 77 of the complaint)
9.	Due date of possession	16.12.2012 (Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 16.09.2009 plus grace period of 3 months)
10.	Total sale consideration	Rs.1,28,05,089/- (As per SOA on page no. 179 of the reply)
11.	Amount paid by the complainants	Rs.1,33,26,012/- (As per SOA on page no. 179 of the reply)

12.	Occupation certificate	11.11.2020 (For tower E from ground floor to 6 th floor) (As per page no. 225 of the reply)
13.	Offer of possession	30.12.2020 (As per page no. 105 of the complaint)
14.	Indemnity undertaking cum	11.01.2021 (As per page no. 232 of the reply)
15.	Unit handover letter	06.12.2021 (As on page no. 235 of the reply)

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -

- I. That in 2009, the respondent company announced the launch of "Emerald Floors Premier-II" project in Sector 65, Gurugram, Haryana. The respondent's authorized personnel, agents and sales officers lured the complainants by presenting the moonshine reputation of the respondent and made claims that they have delivered several projects in the national capital region prior to this project. Based upon the representations made by the respondent, the complainants decided to invest their hard-earned money in purchasing a unit in the project.
- II. That believing the statements made in the advertisements and brochure of the project to be true, the complainants applied in the project for allotment of a unit by submitting an application for the provisional allotment to the respondent. The complainants made a booking and was allotted the unit bearing no. EFP-II-54-0001 in Tower 54, admeasuring 1975 sq. ft. in the said project on 02.06.2010. Thereafter, a builder buyer agreement was executed between the parties for the said unit on 16.09.2010. As per para 11 (a) of the buyer agreement, the possession of the unit was to be delivered within 36 months from the date of signing this agreement. The complainants adhered

to time schedule fixed for payments by the respondents and made the required payments from time to time.

- III. That under the builder buyer agreement, the complainants had opted for certain additional facilities including a servant quarter along with common toilet for servants and proportionate terrace rights, rear lawn and car parking, for which, the complainants had paid additional charges as per the terms of the builder buyer agreement.
- IV. That the respondent vide e-mails dated 05.12.2012, 09.12.2012, 21.03.2013, 22.03.2013, 12.06.2013, 17.06.2014 updated the complainants that the construction of the unit is getting delayed, however, didn't provide any justified reasons for the delay. The complainants regularly followed up with the respondent seeking updates on the development of the project, but did not receive any concrete response from the respondent. The respondent failed to complete and deliver the possession of the unit to the complainants on the delivery date, i.e., within the assured period of 36 months of entering into the builder buyer agreement.
- V. That in 2015, aggrieved by the delayed delivery of the possession of the unit without any sufficient cause and justification, the complainants were forced to approach the Hon'ble National Consumer Dispute Redressal Commission (N.C.D.R.C.) seeking recourse against the respondent. On 02.11.2017, the Hon'ble NCDRC passed a judgment favour of the complainants and directed the respondent to: (i) Handover the possession of the unit to the complainants; and (ii) pay compensation @ 8% per annum with effect from the due date of delivery of possession of the unit to the complainants.
- VI. Despite the legal victory before the Hon'ble NCDRC, the complainant's battle for justice persisted as the respondent challenged the NCDRC judgment before the Hon'ble Supreme Court of India.

- VII. That on 05.01.2021, the Hon'ble Supreme Court appreciated the N.C.D.R.C. judgment and passed an interim order in favour of the complainants directing that: "The amount lying deposited in court would not, as an interim measure, form part of this arrangement, and thus, if any more amount is to be paid, in order to take possession, that would have to be paid". In pursuant to the Supreme Court order, the respondent offered the possession of the unit to the complainants.
- VIII. That the complainants took the possession of the unit on 06.12.2021. The respondent in a very high-handed manner, without providing any details and for no rhyme and reason, while giving the possession, apart from other dues as payable under the builder buyer agreement, also collected many amounts, which they were not legally bound to collect, the major being an interest of Rs.5,20,925/- the details of which were never provided nor disclosed in spite of being specifically asked through e-mails and letter dated 04.03.2022 and 12.04.2022. The complainants had no option but to pay the same as the complainants wanted to take the possession. The respondent took advantage of this and charged the delay payment charges without providing any bifurcations thereto.
- IX. That upon taking the possession of the unit, it came to the utter shock of the complainants that no servant quarter was provided for, whereas full payment against this the unit, including the cost of a servant quarter was made by the complainants as per the site plan of the BBA. The respondent had very conveniently intimated the complainants that they were not in a position to provide for a servant quarter along with common toilet for servants and proportionate terrace rights, as was provided for in the site plan of the BBA.

- X. That the respondent, as per the layout plan ground floor plan of the B.B.A, had assured the complainants a servant quarter measuring 8 x 6 sq. ft. = 48 sq. ft. On the roof of the block in which the complainants have been given the flat but unfortunately the same has not been provided. The entire area of the flat assured was 48 sq. ft. @ Rs.44,10/-, 211680(8709750/1975-4410) in addition EDC @ 240 per sq. ft. x 4,81,152/- has to be returned apart from this IDC @ 30 per sq. ft. x 48 = Rs.1440/- is to be returned that means a total of Rs.2,24,640/- + GST on Rs.2,24,640/- @18%- 40435.20/- is to be returned, which comes to Rs.2,65,075.20/-.
- XI. In addition to the above, the complainants had to pay an additional stamp duty @6% of Rs.2,65,075/- and Rs.15,904.51/-. Therefore, the complainants are entitled to a sum of Rs.2,80,979.71/- in the absence of a servant quarter. Further, the respondent, as per the layout plan TYPE B terrace floor plan of the BBA had assured the complainants a toilet and bathroom of 4 x 6 sq. ft. 24 sq. ft. and 4 x 6 sq. ft. 24 sq. ft. respectively on the roof of the block in which the complainants have been given the flat but unfortunately the same has also not been provided. The entire area of toilet and bathroom was assured 48 sq. ft. @ Rs.4410/- Rs.2,11,680/- (87,09,750/1975-4410) + GST on Rs.2,11,680/- @18% Rs.38,102.4/-. Therefore, the complainant is entitled to a sum of Rs.2,49,782.4/- against the said toilet and bathroom.
- XII. That the respondent vide its email dated 23.06.2021 denied of having any servant quarter on the terrace as being violation of the buyer's agreement. As stated above the servant quarter as per the map, type b ground floor plan of the B.B.A. is enclosed.
- XIII. That as per builder buyers agreement clause 4(c) and (e): "any alteration /modification resulting in more than 10% increase or decrease in super area of the unit, the company shall intimate the Allottee in writing of such increase

or decrease in super area and the excess amount towards the total consideration shall be adjusted by the company at the time of final accounting before giving possession to allottee(s)." The respondent altered the whole super area and constructed the 6th floor rather than constructing the servant quarter and a toilet which is a direct breach of the map shown in page no. 42 of the B.B.A. That in the brochure of the Project, it was shown that the building contains ground floor + 4 floors. However, when the complainants went to take over the possession, the building consisted of Ground Floor + 5 floors which is violative of brochure and B.B.A. as in place of the 6th floor there was to be a servant quarter with the common toilet. Further, the respondent had not even taken any N.O.C. from the complainants prior to making any alterations to the agreed site plan of the B.B.A., which is violative of the B.B.A.

- XIV. That the claim of the complainants is backed up with strong of the B.B.A. (type-B means flats with an area of 1975 sq. ft.) wherein the respondent had assured the complainants with a servant quarter measuring 8 x 6 sq. ft. = 48 sq. ft. on the roof of the block in which the complainants have been given the flat but, unfortunately, the same has not been provided to the complainants at the time of delivery of possession of the unit, for the reasons best known to the respondent.
- XV. That the respondent invited the complainants vide e-mail dated 18.01.2013 to make early payments and obtain an early payment rebate of 12%. As per the discussions between the parties, the complainants were informed that EPR will be calculated up to the date of actual handing over of physical possession of the unit. That during the complainants initial discussion with the respondent, the complainants had projected a claim of Rs.10,00,000/- along with 12% interest thereon as per the E.P.R. Scheme on pro rata basis.

They were assured by the respondent that they would revert to the complainants on receipt of necessary approvals from the higher authorities.

XVI. That the e-mails dated 5.12.2012, 9.12.2012, 21.03.2013, 22.03.2013, 12.06.2013, 17.06.2014 of the respondent confirming that the construction of the property purchased by the complainant is getting delayed as per details being given, which goes to prove beyond doubt that the respondent had collected early payment from the complainants on the pretext of delivering the unit to the complainants but, subsequently could not deliver on time and hence the complainants are entitled for the early payment rebate. The respondent has malafidely neither adjusted the said EPR at the time of handing over of possession nor provided the promised early payment rebate. The complainants are entitled to a claim of Rs.10,00,000/- along with interest @ 12% from the delivery date as per BBA. The respondent has to therefore, pay a sum of Rs.51,24,454.25/- to the complainants on account of EPR.

XVII. That the respondent having assured an exclusive area of 418 sq. ft. in the rear of the Ground Floor Flat purchased by the complainants as "Lawn" considering it as a 'Preferential Location' and had duly charged the complainants with an exorbitant amount of Rs.19,75,000.00/- as the 'Preferential Location Charges' or 'PLC' and were to allot the same to the complainants as mentioned in the builder buyer agreement, however, the respondent is now retracting from the commitment of providing the above said exclusivity of 418 sq. ft. in the form of having an exclusive access and right for the front and rear lawns that form part of preferentially located ground floor units. The respondent itself admitted on email dated 09.02.2021 that the front lawn area is 191.81 sq. ft. and rear lawn area is

584.64 sq. ft. The total area of front and rear lawn has been increased from 550 sq. ft.

- XVIII. The P.L.C. have been levied on account of the unit having exclusive access rights for the front and rear lawns that form part of preferentially located ground floor units and the same was duly communicated to the complainants at the time of signing the builder buyer agreement way back on 16.09.2010 and it was further specified in the builder buyer agreement that:“(i) However, if due to the change in the layout plan the unit ceases to be preferentially located, then in such an event the company shall be liable to refund only the amount of PLC paid by the Allottee(s) without any interest and/or compensation and/or damages and/or costs of any nature whatsoever and such refund shall be adjusted in the following instalment for the unit.”
- XIX. That ‘exclusive’ as per the definition means “restricted to the person” hence the complainants only had the right of access to the front and the rear lawns, for which, the complainants have paid a sum of Rs. 19,75,000,00/- which cost of PLC, has been added to the total consideration for such preferentially located unit. This means the complainants alone and only alone had reserved rights to the front and the rear area measuring 418 sq. ft. and no one else has been left with the rights, title, interest, claim or lien of any nature whatsoever in the said portion and the same has become the absolute property of the complainants, with the right to use, enjoy, sell and transfer the same more so when the complainants has paid a sum of Rs.19,75,000/- plus EDC plus IDC, plus GST, plus will have to pay the increased stamp duty because of the increase in the cost of the unit because of the PLC.
- XX. That the complainants visited the site and were surprised to notice that the rear lawn of 418 sq. ft. which was meant for exclusive use of the complainants

is no more available to them for exclusive use and instead the rear lawn of 418 sq. ft. is now undivided common area is presently being used by respondent for laying certain fire safety stairs and using for a fire tender corridor to take care of the fire safety norms as laid by the different National Building Codes including National Building Code 2005. That the same was never communicated by the respondent to the complainants nor the respondent bothered to take any No Objection Certificate from the complainants for making material alterations to the unit as per the builder buyer agreement. On the contrary, the respondent has fraudulently charged preferential location charges from the complainants. Hence the unit purchased by the complainants is no more "Preferentially Located" without an access to the 418 sq. Ft. of area in the rear lawn.

XXI. That 'PLC' or 'preferential location charges' is an additional cost that a home buyer has to pay for booking a unit which has an advantage over others in terms of location. Hence the basic ingredient for charging PLC is that the unit should have an advantage over others in terms of location. Unfortunately, there are no standard rules or guidelines that govern PLC and hence, the builders take an advantage of the same and innocent buyers like the complainants, are always taken for a ride. The respondent is liable to refund an amount of Rs.19,75,000.00/- paid as PLC by the complainants, along with interest to be calculated from the date of payment of PLC by the complainants.

XXII. That it is most humbly and respectfully submitted before this Hon'ble Authority that the complainants at the time of execution of the builder buyer agreement were also promised a car parking for which extra charges were paid by the complainants. Now, with a malafide intention, the respondent have intentionally given the complainants the basement car parking which is

not accessible from the tower where the complainants have bought the unit. Further, the escalator or even the staircase are not accessible from the tower of the complainant to the basement parking. As such, this parking space in the basement causes inconvenience to the complainant and is therefore, redundant. It is pertinent to mention here that the other towers of the same project are very well connected and accessible to basement parking.

XXIII. That in the present case, the lift for the Tower 54, in which complainants have their unit, ends at the ground floor and there is no connectivity to the basements through the lift. In the present case, the car parking has not been provided in the basement appurtenant to the Tower 54. That the complainants have to go down to the ground floor from where they walk to the ground floor of the tower under which the car parking has been provided, then take a lift and go down to the basement to their car parking. It is submitted that the complainants had paid for the car parking for their convenience, however, clearly, the car parking provided to them is of no use and benefit to the complainants. The complainants are tired of requesting the respondent regarding the same issue being faced by them but the respondent did not pay any heed to it, therefore, through the present complaint, it is prayed that the car parking may kindly be allotted in the area appurtenant to the Tower No. 54 in which the complainants have their unit.

XXIV. That the complainants have been charged an escalated basic price of the unit by Rs.1,04,501/- by the respondent, without any prior intimation to the complainants. As would be evident from the Statement of Account dated 17.06.2014 wherein the basic price was shown as Rs.1,17,18,000/- and in the final statement of account dated 17.05.2022, the amount has been mentioned as Rs.1,18,22,501/- and the difference between the two is Rs.1,04,501/-. Hence the complainants pray this Authority to order the refund of the

escalated basic price of the unit by Rs.1,04,501/- to the complainants, along with appropriate interest.

- XXV. That the respondent has not only failed to adhere to the terms and conditions of builder buyer agreement but also illegally extracted money from the petitioner by stating false promises and statements. The respondent took the advantage of the petitioner and did not meet the assurances as given in the brochure and as committed through the builder buyer agreement.

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):
- I. Direct the respondent to provide the servant quarter and toilet as promised in the BBA or to return the amount so charged i.e., Rs.5,30,762/- along with interest.
 - II. Direct the respondent to provide Early Payment Rebate amounting to Rs.51,24,454/-.
 - III. Direct the respondent to return a sum of Rs.19,75,000/- charged as PLC along with interest.
 - IV. Direct the respondent to pay for the 418 sq. ft. of land which has not been provided exclusively to the complainants i.e., 38.85 sq. mts. @ Rs.72,000/- per sq. meters. i.e., Rs.27,97,200/- as the land is now an undivided common area specifically reserved for the fire corridor to be exclusively used for the purpose of emergency fire exit for the whole lane of towers.
 - V. Direct the respondent to provide the parking lots as promised.
 - VI. Direct the respondent to return the delay payment charges collected without providing any sufficient calculations and details with interest from the date of collection till date of return.
 - VII. Direct the respondent to execute the conveyance deed in favour of the complainants.
 - VIII. Direct the respondent to return the additional amount of Rs.1,04,501/- charged in the garb of price escalation.

8. 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

9. The respondent has contested the complaint on the following grounds:-
- I. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Authority under the Act, 2016 and the Rules, 2017. The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication.
 - II. That the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.09.2010, as shall be evident from the submissions made in the following paras of the present reply. Therefore, the disputes raised in the present complaint are beyond the purview of the Authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
 - III. That the complainants have not come before the Authority with clean hands. The relief claimed by the complainants pertaining to rear lawn, alleged non provisioning of servant quarter and toilet has already been considered and rejected by the Hon'ble Supreme Court. By its order dated

08.03.2022, the Hon'ble Supreme Court called upon the counsel for the complainants to show from the agreement that a back lawn and servant quarter apart from the constructed area is something which forms part of the agreement and not on the basis of a tentative layout plan. However, the complainants (respondents in Civil Appeal No. 4986/2018 and 4987/2018) were unable to establish the same before the Hon'ble Supreme Court and accordingly, by its order dated 09.03.2022, the Hon'ble Supreme Court confined its relief to the grant of interest for delay in possession as granted by the Hon'ble NCDRC. It is most respectfully submitted that an argument put forward by the complainants before the Hon'ble Supreme Court and specifically rejected by the Hon'ble Supreme Court, cannot be urged by the complainants in the present proceedings. It is submitted that the alternate relief claimed by the complainants for compensation in lieu of servant quarter, toilet and rear lawn cannot be claimed before this Authority as complainants pertaining to compensation can only be heard and decided by the Adjudicating Officer. The complaint is liable to be dismissed on this ground alone.

- IV. That the complainants had approached the respondent sometime in the year 2010 for purchase of a unit in its upcoming residential project "Emerald Floors Premier" situated in Emerald Estate, Sector 65, and Gurugram. The complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, uninfluenced in any manner by the respondent. The complainants were



conscious and aware that the building plans were yet to be approved by the competent authority and were moreover, subject to modification/alteration /amendment.

- V. That thereafter the complainants vide application form dated 17.05.2010 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit bearing no EFP-II-54-0001 located in the said project. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bona fide of the complainants at the time. The complainants further undertook to be bound by the terms and conditions of the application form.
- VI. That the buyer's agreement dated 17.09.2010 was executed between the parties, as per clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the complainants, having defaulted in timely remittance of instalment, was thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the buyer's agreement. Nevertheless, the respondent has credited

compensation amounting to Rs.7,45,414/- against the last installment payable by the complainants. Early payment Rebate amounting to Rs.7,58,000/- has also been credited to the Complainants upon offer of possession. Furthermore, Pursuant to the order dated 09.03.2022 passed by the Hon'ble Supreme Court upholding the order passed by the Hon'ble NCDRC awarding compensation @ 8% p a, compensation amounting to Rs.40,06,087/- was paid to the complainants and earlier payment of Rs.7,45,414/- as compensation was reversed. The compensation of Rs.40,06,087/- has been accepted by the complainants in full and final settlement of all their claims against the respondent.

- VII. That the rights and obligations of complainants and the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continue to be binding upon them with full force and effect. As per clause 11 of the buyer's agreement the time period for delivery of possession was 36 months along with grace period of 3 months from the date of execution of the buyer's agreement subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. The respondent shall not be liable for delay on account of occurrence of facts and circumstances which are beyond the power and control of the respondent.
- VIII. That the complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. As per clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's

agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainants. Nevertheless, the respondent has credited compensation amounting to Rs.7,45,414/- against the last installment payable by the complainants. Early payment Rebate amounting to Rs.7,58,000/- has also been credited to the complainants upon offer of possession. Furthermore, Pursuant to the order dated 09.03.2022 passed by the Hon'ble Supreme Court upholding the order passed by the Hon'ble NCDRC awarding compensation @ 8% p.a., compensation amounting to Rs.40,06,087/- was paid to the complainants and earlier payment of Rs.7,45,414/- as compensation was reversed.

- IX. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid, in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement. That the interest for

the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

- X. That without prejudice to the contentions of the respondent, the allegations of the complainants that possession was to be given by 16.09.2013 are wrong, malafide and result of afterthought in view of the fact that the complainants had consciously and voluntarily remitted several payments to the respondent even after the alleged due date of delivery of possession of the unit in question. If there was a delay in the manner alleged by the complainants then the complainants would not have remitted any amount to the respondent after September 2013. That without prejudice to the contentions of the respondent, the complainants have already received compensation @ 8% from the promised date of possession till the actual handover of the unit amounting to Rs.40,06,087/- in terms of the orders passed by the Hon'ble NCDRC in complaint no. 664/2015 and the Hon'ble Supreme court in Civil Appeal 4986/2018.
- XI. Despite the adverse circumstances, the respondent has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. That after completing construction, the respondent had applied for occupation certificate in respect of the block/tower in which the unit of the complainants is situated on 20.07.2020. Thereafter, occupation certificate dated 11.11.2020 had been granted to the respondent by the Director, Town and Country Planning, Haryana, Chandigarh. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control or influence over the same.

Therefore, time period utilized by the concerned statutory authority in granting the occupation certificate to the respondent is necessarily required to be excluded from computation of time period utilized for implementation of the project.

- XII. That the complainants were offered possession of the unit in question through letter of offer of possession dated 30.12.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. The complainants have taken possession of the unit on 06.12.2021 after admitting and acknowledging that the complainants are fully satisfied with the unit in all respects and do not have any claim of any nature qua the respondent. Indemnity cum Undertaking on possession executed by the complainants and Unit hand over letter dated 06.12.2021. Thus, there is no justification or necessity for the institution of the present false and frivolous complaint. The respondent has duly fulfilled its obligations under the buyer's agreement. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

10. 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

11. 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

12. 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

14. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

- F.I Direct the respondent to provide the servant quarter and toilet as promised in the BBA or to return the amount so charged i.e., Rs.5,30,762/- along with interest.**

- F.II Direct the respondent to provide Early Payment Rebate amounting to Rs.51,24,454/-.
- F.III Direct the respondent to return a sum of Rs.19,75,000/- charged as PLC along with interest.
- F.IV Direct the respondent to pay for the 418 sq. ft. of land which has not been provided exclusively to the complainants i.e., 38.85 sq. mts. @ Rs.72,000/- per sq. meters. i.e., Rs.27,97,200/- as the land is now an undivided common area specifically reserved for the fire corridor to be exclusively used for the purpose of emergency fire exit for the whole lane of towers.
- F.V Direct the respondent to provide the parking lots as promised.
- F.VI Direct the respondent to return the delay payment charges collected without providing any sufficient calculations and details with interest from the date of collection till date of return.
- F.VII Direct the respondent to return the additional amount of Rs.1,04,501/- charged in the garb of price escalation
15. The above-sought relief(s) by the complainants are taken together being inter connected.
16. On the basis of the documents placed on record and submissions made by both the parties, the Authority observes that the complainants were allotted a unit bearing no. EFP-II-54-0001, located on the 54th floor, in project of the respondent named "Emerald Floors Premier" situated in Sector-65, Gurugram. An apartment buyer's agreement was executed between the parties herein regarding the subject unit on 16.09.2009. As per clause 11(a) of the buyer's agreement, the respondent company was under an obligation to handover the possession on or before 16.12.2012 including 3 months grace period. The occupation certificate was received from the competent authority on 11.11.2020 and possession of the unit was offered to the complainants/allottees vide offer of possession letter dated 19.11.2020 and the complainants have taken the actual physical possession of the subject unit vide unit handover letter dated 06.12.2021.
17. The complainants herein have filed the complaint in the year 2015 before the Hon'ble NCDRC Delhi against the respondent herein for the relief of handover

the possession of the unit and to pay compensation @ 8% per annum w.e.f. the due date of delivery of possession of the unit of the complainants. The Hon'ble NCDRC, Delhi has allowed the said complaint vide order dated 02.11.2017 and the relevant portion is mentioned below:-

The complaints are disposed off with the following directions:-

- a. *The opposite shall complete the construction of the flats allotted to the complainants excepts the complainants in CC/741/2015 and CC/40/2015, (to whom possession has already given) in all respects, obtained the requisite occupancy certificates at its own cost and responsibility and offer possession of the said flats to the complainants on 31.12.2018.*
- b. *The opposite party shall pay compensation in the form of simple interest @ 8% per annum to the complainants with effect from the committed date of possession till the date on which the possession was given or is actually offered, in terms of this order. The aforesaid compensation is acceptable to the complainants.*
- c. *Wherever applicable, the opposite party shall be entitled to a grace period of three months while computing the committed date of possession.*
- d. *The compensation payable in terms of this order shall be adjusted out of the additional amount, if any, payable to the complainants to the opposite party.*
- e. *The balance amount, if any, shall be paid to them while offering possession of the flat in terms of this order.*
- f. *In CC/741/2015 and CC/40/2015, the compensation will be paid within three months from today.*
- g. *The opposite party shall pay Rs.25,000/- at the cost of litigation in complaint, within three months today."*

18. Thereafter, the respondent has challenged the said order dated 02.11.2017 passed by the Hon'ble NCDRC, Delhi before the Hon'ble Supreme Court of India vide Civil Appeal bearing no. 4986 of 2018 and the same was disposed off vide order dated 09.03.2022. The relevant part of the same is reproduced for ready reference:-

We have heard learned counsel for parties.

There are certain peculiar facts in the present case on account of the agreement entered into.

We may notice that possession has since been handed over and all payments have been made.

In the given factual scenario, we are of the view that the direction contained in prayer 13(b) will ensure for the benefit of the respondents.

No further directions as per the impugned order are required to be sustained, more so in view of the settlements which have taken place in other matters.

The interest in this case will be worked out from the committed date of possession till the date actual possession has been handed over, more so in view of e-mail dated 21.09.2021.

As a consequence of the aforesaid, the amount deposited in Court be released to the respondents and the balance amount, if any, will be paid by the appellant within one month from today.

The appeals accordingly stand disposed of.

19. Further, the complainant has filed the complaint before the Adjudicating Officer, HARERA Gurugram on 21.07.2022, vide complaint bearing no. 4894 of 2022, praying for the same reliefs as have been sought in the present matter, and the same was dismissed vide order dated 19.12.2023. Moreover, the complainants have filed the present complaint and seeking the relief mentioned in para (F) of this order. The Authority is of the considered view that at the time when the complainant took physical possession of the allotted unit vide unit handover letter dated 06.12.2021, the Civil Appeal bearing no. 4986 of 2018 was pending before the Hon'ble SC, and the complainants could have raised an objection at that time but they did not do so, so the Authority opines that at the time when the possession was taken, the complainant was satisfied in all respects with respect to the unit. Admittedly, the complainants have signed a **PLOT*/UNIT* HANDOVER LETTER** and taken over the actual physical possession on 06.12.2021 and there exists no claim whatsoever against the said unit. The relevant para of the unit handover letter is reiterated as under:

".....

The Allottee/s, hereby, agrees, confirm, certifies, accepts and acknowledges that (i) he / she / they / it has / have taken over the peaceful and vacant physical possession of the aforementioned Plot / Unit* after fully satisfying himself / herself with regard to construction and development of the Unit* / development of the Plot*, its measurements, location, dimension etc. and the same having been carried out in accordance with the sanctioned plans; (ii) he / she / they / it has / have inspected / checked and verified all material aspects regarding the Plot* / Unit* and have no complaints / claims in this regard including but not limited to area of the said Plot* / Unit*; all amenities, specifications, designs of the said Plot* / Unit* (if any and as the case may be and to the extent applicable to the Plot* / Unit*); and, installations in respect thereof / in relation thereto (if any and as the case may be and to the extent applicable to the Plot* / Unit*); materials, fittings and fixtures used and / or provided*

there in, (if any and as the case may be and to the extent applicable to the Plot / Unit*) and he / she / they / it has / have no objection, complaint or claims with respect to same. The Allottee/s has / have satisfied himself / herself / themselves / itself that the construction as also various installations in the said Plot* / Unit* has / have been provided in accordance with the sanctioned drawings and specifications and are in good order and condition and hereafter the Allottee/s has/have no claim of any nature whatsoever against the Company with regard to the size, specification, dimension, area, location, other material aspects etc. and as otherwise stated above and legal status of the aforesaid Plot* / Unit*. The Allottee/s has / have satisfied himself / herself / themselves / itself that all the services provided with respect to Plot* / Unit* are complete and there is no deficiency in any services or amenities provided.*

....."

[Emphasis supplied]

20. In light of the aforesaid reasoned above, the Authority is of the view that the above mentioned relief(s) sought by the complainants are hereby dismissed as reasoned above.

F.VIII Direct the respondent to execute the conveyance deed in favour of the complainants.

21. The complainants are also 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 complainants had taken the physical possession of the unit on 06.12.2021. As per clause 12(c) of the buyer's agreement, the respondent company shall prepare and execute along with allottee(s) a sale deed to convey the title of the said unit in favor of the allottee(s) but after payment of stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and the relevant clause of the agreement is reproduced for ready reference: -

"12 PROCEDURE FOR TAKING POSSESSION

(a)

(b)

(c) Subject to the Allottee(s) making all payments under this Agreement, the Company shall prepare and execute along with the Allottee(s) a Sale Deed

to convey the title of the said Unit in favor of Allottee(s) but after payment of stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Buyer's Agreement or as demanded by the Company from time to time, prior to the execution of the Sale Deed. The Parties agree that after the Allottee(s) has provided all the details, documents as provided in the written notice as stated in this clause and/ or other documents required for the purpose of registration of the Sale Deed, the Company shall make all reasonable efforts to get the Sale Deed registered within a reasonable time. The Allottee(s) agrees and undertakes to make himself/ herself available for the purpose of registration on the date(s) as informed by the Company."

22. 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.
23. 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."

24. In view of the above, the respondent is further 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.

G. Directions of the Authority

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent/promoter is directed to execute the registered conveyance deed in favour of the complainants/allottees as occupancy certificate was granted to the respondent by the competent authority, upon payment of requisite stamp duty charges and administrative charges as per norms of the State Government in terms of section 17(1) of the Act of 2016.
 - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, offer of possession, total sale consideration, and amount paid by the complainant is mentioned in each of the complaints.
27. Complaint as well as applications, if any, stand disposed off accordingly.
28. Files be consigned to registry.

(Ashok Sangwan)
Member

v.l. 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.05.2025