

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

Complaint filed on: 15.09.2023

Order pronounced on: 09.10.2025

M/s Classic Infrastructure Private LimitedRegd. office: Room No. 205, Welcome Plaza, S-551,
School Block- II, Shakarpur, Delhi-110092**Complainant****Versus****1. Achla Sharma****2. Durga Prasad Sharma**

R/o: H.No. 1443, Sector-28, Faridabad, Haryana-121008

Respondents**CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

Chairman**Member****APPEARANCE:**

Shri Himanshu Singh (Advocate)

None

**Complainant
Respondents****ORDER**

1. The present complaint has been filed by the complainant/builder in Form CRA 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 promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed *inter se* them.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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	"Paras Irene" Sector 70 A, Gurugram, Haryana
2.	Total area of the project	27.7163 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	16 of 2009 dated 29.05.2009 valid up to 28.05.2025 and 73 of 2013 dated 30.07.2013 valid up to 29.07.2026
5.	Registered/not registered	Not registered
6.	Application form dated	09.05.2012 [Page 26 of complaint]
7.	Allotment letter dated	09.05.2012 [Page 39 of complaint]
8.	Unit no.	N-01/00-03, Ground Floor [Page 39 of complaint]
9.	Area of the unit	1830 sq. ft. [Page 39 of complaint]
10.	Date of execution of BBA	26.11.2012 [Page 40 of complaint]
11.	Date of Environment Clearance	04.09.2013 [Page 73 of complaint]
12.	Possession clause	Clause 3.1 <i>...XXXX whether under this agreement or otherwise, from time to time, the seller proposes to offer and handover the possession of the Apartment to the Purchaser(s) within a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licenses or</i>



		<p><i>approvals for commencement of construction, whichever is later, subject to force majeure...xxxx</i></p> <p><i>(Emphasis supplied)</i></p> <p>[Page 13 of complaint]</p>
13.	Due date of possession	<p>26.11.2016</p> <p>[Calculated 42 months from date of execution of agreement + grace period of 6 months]</p>
14.	Payment Plan	<p>Construction Linked</p> <p>[Page 33 of complaint]</p>
15.	Sale consideration	<p>Rs. 1,15,88,560/-</p> <p>[Page 33 of complaint]</p>
16.	Total amount paid by the complainant	<p>Rs. 43,64,562/-</p> <p>[As per page 102 of complaint]</p>
17.	Occupation certificate	<p>23.06.2017</p> <p>[Page 83 of complaint]</p>
18.	Demand /reminder letters dated	<p>07.08.2013, 04.09.2013, 20.09.2013, 11.11.2013, 18.11.2013, 15.12.2013, 21.01.2014, 03.03.2014, 15.04.2014, 30.04.2014, 19.07.2014, 28.08.2014, 01.08.2014, 05.11.2014, 04.12.2014, 02.01.2015</p>
19.	Pre-cancellation letter	<p>31.01.2015</p> <p>[Page 103 of complaint]</p>
20.	Offer of possession	<p>Not offered</p>

B. Facts of the complaint

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

- That the complainant developer has developed in a planned and phased manner over a period of time, on the 'Land' situated in Village Dharampur,



Gurugram, Sector 70A at Village Palra, Tehsil and District Gurugram, Haryana, India a Group Housing Colony under the name & style as "PARAS IRENE" inter alia comprising of various buildings and units therein, with suitable infrastructural facilities including multi-level basement parking. The said development has been carried out in planned and phased manner over a period of all in accordance with the Licenses and the building plans as approved by DGTCP from time to time. Apartment in favour of the respondent vide the allotment letter dated 09.05.2012 for a unit bearing no. 03, ground floor, tower/block no. 1, having tentative super area of 1830 sq. ft. (170 sq. meters.) of the said project.

- b. Subsequently, the apartment buyer agreement dated 26.11.2012 was executed between the complainant and the respondent. That while executing the apartment buyer agreement, it was agreed by the complainants and the respondent that they would be bound by the terms and conditions of the apartment buyer agreement as illustrated therein. The total sale consideration of the subject unit was fixed for Rs.1,33,06,038/- and the allottees has paid only an amount of Rs.27,71,925/- as on date and the outstanding dues of the allotted unit of Rs. 1,05,34,311/-.
- c. The apartment buyer's agreement states that the obligation to make timely payments of every instalment of the total consideration in accordance with the payment plan along with the payment of other charges such as applicable stamp duty, registration fee, IFMS, and other charges, deposits, as stipulated under this agreement or that may otherwise be payable on or before the due date or as and when demanded by the Company, as the case may be, and also to discharge all other obligations under this agreement shall be the essence of this agreement.
- d. As per clause 3.1, the promoter is under obligation to offer ~~of~~ possession within time framed in the buyer's agreement. The complainant proposed to



handover the possession of the apartment within a period of 42 (months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all licenses or subject to force majeure. The Purchaser(s) agrees and offer to hand over the possession of the apartment to the purchaser. Any application for the occupation certificate in respect of the project shall be filed in the due course. That the apartment buyer's agreement has been executed between the parties on 26.11.2012 and the issued to the environmental clearance certificate complainant bearing certificate no. SEIAA/HR/2013/627 on 04.09.2013. Further, a grace period of 6 months is also provided over and above the proposed/estimated time. The time taken by the complainant to develop the project is the usual time taken to develop such a large-scale project.

- e. Further, as per clause 3.4 the purchaser is **duty** bound to take over the possession of the allotted unit. That the parties have agreed that if the delay is on account of force majeure conditions, the time for delivery of possession will be appropriately extended beyond the grace period and event of delay for reason other than 'force majeure, the allottee shall be entitled to compensation of Rs.5/- per sq. ft. per month, which shall be adjusted at the time of handing over of possession/execution of conveyance deed provided the allottee not being in default under the terms of the agreement.
- f. That clause 2.21, which specifically provided that "In case of failure of the Allottees to make timely payments of any of the instalments as per the payment plan, along with other charges and dues as applicable or otherwise payable in accordance with the payment plan or as per the demands raised by the company from time to time in this respect, despite acceptance of delayed payment along with interest or any failure on the part of the allottees to abide by any of the terms and conditions of this agreement, the

time periods mentioned in this clause shall not be binding upon the company with respect to the handing the allottee has been a chronic defaulter.

- g. The complainant builder has obtained the occupation certificate on vide memo no. memo no. ZP-545/SD(BS)/2017/14356 dated 23.06.2017. That the complainant had issued several Demand Letter/Reminders Letters/Show Cause/Final Reminder etc. to the respondent with a request to pay its arrear instalments at an. earliest, but the complainant paid no heed to such request resulting in cancellation of the allotment of his unit on account of non-payment.
- h. That in terms of clause 2.21 of the aba the complainant has right to cancel the allotment of the unit of an allottee/respondent and is also entitled to forfeit his earnest money upon cancellation on account of non-payment of instalments.
- i. Since the respondent has committed defaults in making payment of the instalments, various demand letters, reminders and pre- cancellation notices were issued to him. That after forfeiture of the earnest money of the respondent, the complainant has even offered the refund of the balance amount upon submission of the original documents relating to the said unit, but it is the respondent who is not coming forward with its originals to claim his refund and contrary to this has filed the instant complaint that too after passing of a period of around 7.5 years from the date of such pre-cancellation just to harass the complainant and nothing else.
- j. That even under clause 5 The Haryana Real Estate Regulatory Authority Gurugram (forfeiture of earnest money by the builder) Regulation 2018, the respondent is entitled to deduct 10% of the sum consideration towards earnest money as cancellation of the allotment of unit was the result of failure on the part of the allottee to clear its outstanding dues in terms of

ABA. That before such cancellation, the allottee was even served with several reminder letters etc. but despite that he deliberately chose not to pay any further sum leaving the builder with no other option except to cancel the allotment of his Unit subject to deduction of the earnest money.

- k. The respondent is not a genuine unit purchaser or an allottee as he has purchased the Unit for commercial and investment purpose for which the jurisdiction of this Hon'ble Authority cannot be invoked, since the object of RERA Act is to protect the interest of the allottee and not of an investor. Same is also evident from the fact that the allottee ran out of cash and has not cleared its pending instalments resulting in cancellation of the allotment of his unit.
- l. The construction of the project was affected on account of unforeseen circumstances beyond the control of the complainant developer. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of "Deepak Kumar vs State of Haryana. (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That the National Green Tribunal in several cases related to Punjab and Haryana had

stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna Riverbed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed in the para-aforesaid continued, despite which all efforts were made, and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That despite the aforementioned circumstances, the complainant developer completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the allottee. Upon completion of the construction of the apartment in terms of the apartment buyer agreement an application for the receipt of the occupation certificate was obtained on 23.06.2017 with respect to the tower in which the apartment is situated with the statutory authorities.

- m. The occupation certificate with respect to the tower where the apartment is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the apartment was in a habitable and liveable condition after obtaining the OC.
- n. The complainant/promoter has further submitted that after obtaining the occupation certificate the complainant/promoter has offered the possession of the other allottee and the same take over the possession in well time. It is further submitted that total number of units in the said

project i.e., Paras Irene. 463, and the complainant/promoter has sold the unit in the above-mentioned project in 463, thereafter offered the physical possession of the eligible allottees - 463 and the possession taken by the allottees. 450, It is further submitted that there was a large number of families residing in the said project i.e., Paras Irene.

- o. The respondent did not pay any heed to the requests of complainant developer and pertinently did not even respond to the above communication by the complainant. The respondent intentionally breached the terms of the agreement without any just cause and with malafide intentions to wriggle out of her contractual obligations.
- p. Even after issuance of various reminders to the Respondents neither approached the complainant to take the possession of the apartment nor cleared the outstanding dues, the complainant was forced to send pre-cancellation notice dated 31.01.2015 to the respondent.
- q. Under section 19 of RERA Act, 2016 lays down rights and duties of the allottees and under sub-clause (6) of Section 19 the allottee is responsible to make payments in the manner and as per the time specified in the agreement between the parties but the respondent herein failed to do so.
- r. The said dictum is applicable in the present case as well since the order of performance of reciprocal performances as per the agreement mandate timely payments of instalments by the allottee which he failed as such, the builder was also not obligated to complete the construction of the project and to offer possession of the unit to the allottee within time. However, in the instant case before the due date of handing over of possession of unit is reached, the allotment of the Unit of the allottee-respondent itself was cancelled on account of his non-payment.



- s. The builder-promoter has always adhered to the terms of ABA and demanded instalments as and when the same becomes due and payable, but it is the respondent who has committed breach in terms of the agreement by defaulting in payment of its dues and for which the allottee is solely responsible for.
- t. The complainant developer has already spent enormous amount of money towards the due construction and development of the various the group blocks/segments/constituents/parts/phases housing colony of which occupation certificate(s) have been granted including the tower in which the apartment of the respondent-allottee is situated and the same being ready for occupation. The respondent has severely committed defaults in making payment of the consideration amount in accordance with the agreed payment plan. Therefore, it is the complainant developer who after having spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) and has been unable to realize the proceeds of the apartment from the respondent-allottee and the legitimate dues of the complainant developer have been withheld by the respondent-allottee and therefore, on account of such breaches and defaults of the respondent-allottee, it is the complainant developer who are entitled to claim compensation from the respondent-allottee.
- u. That despite the harsh prevailing conditions and having borrowed funds from banks and financial institutions and other entities, the complainant developer has completed the construction and development of the various blocks/segments/ constituents/parts/phases of the group housing colony of which occupation certificate(s) have been granted and more particularly PARAS IRENE' and including the tower in which the apartment of the respondent-allottee is situated.

- v. The project "PARAS IRENE" consists of total 463 apartments out of which 463 apartments have already been sold and possession offered to the eligible allottees. The project is very much habitable and already the possession of approx. 450 apartments have been taken over by the respective allottees and approx. 430 families are already staying in the project as of now and the said figure is increasing day by day with more possessions being taken over and more families moving into the project and enjoying the various facilities and amenities therein. Further, the respective allottees enjoying and making use of the various facilities and amenities as provisioned for their comfort.
- w. That considering the above facts, the respondent has defaulted in the obligation casted upon her and thus the complainants are entitled to seek the remedy as provided under the Act. The cause of action to file the present case is still continuing as respondent-allottee continue to fail to make timely payments and take the possession of the apartment in question as per the terms and conditions of the apartment buyers agreement and the payment plan opted by the respondent-allottee. Further cause of action also arose when despite repeated follow ups by the complainant and the complainant having performed their contractual obligations the respondent withheld her contractual obligations.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- a. Direct the respondent-allottee to handover all the original documents issued by the complainant promoter in respect to the allotted unit. The complainant builder is ready to make the amount balance amount after deduction of earnest money and statutory dues i.e., GST, Vat, brokerage charges etc. as prescribed under the Act, 2016 and Rules, 2017.

- b. Direct the respondent to pay a sum of Rs. 5,00,000/- towards the cost of litigation., mental agony and house rent etc.

D. Reply by the Respondent

5. The present complaint has been filed on 15.09.2023 and the reply on behalf of the respondent has not been received till date. The authority issued a notice dated 20.09.2023 to the respondents by speed post and also on the given email address at sharma.achala64@gmail.com. Despite the opportunities given to the respondent dated ,07.12.2023,21.03.2024, 05.12.2024 and 20.03.2025 and, the counsel for the respondent did not filed a reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent and proceed ex-parte against the respondents and decide the complaint on the basis of documents and pleadings filed by the complainant.
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 complainant.

E. Jurisdiction of the Authority

7. The authority has complete territorial and 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 Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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, 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.

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 complainants at a later stage.

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent-allottee to handover all the original documents issued by the complainant promoter in respect to the allotted unit. The complainant builder is ready to make the amount balance amount after deduction of earnest money and statutory dues i.e., GST, Vat, brokerage charges etc. as prescribed under the Act, 2016 and Rules, 2017**
- F.II Direct the respondent to pay a sum of Rs. 2,00,000/- towards the cost of litigation, mental agony and house rent etc.**
11. On consideration of the documents available on record, the Authority observes that the complainant herein is the builder who approached the Authority seeking relief of directing the respondent-allottee to handover the original documents to the complainant. The respondent-allottee was allotted a unit no. bearing N-01/00-03, ground floor, admeasuring 1830sq. ft. in project of the respondent named "PARAS IRENE" situated at Sector-70-A, Gurugram vide allotment letter dated 09.05.2012 and an apartment buyer's agreement was also executed between the complainant and the respondent regarding the said

allotment. The occupation certificate for the subject unit has been obtained by the respondent promoter on 23.06.2017.

12. However, upon perusal of documents placed on record it is observed that occupation certificate qua the project has been received on 23.06.2017 and the complainant-builder has not offered the possession of the unit to the respondent-allottees till date. Moreover, the complainant filed the complaint on 15.09.2023 after a lapse of approximately 6 years. Additionally, this delay in raising a grievance is highly significant and raises a presumption of mala fide intent. The complainant had ample time to raise any objections or concerns regarding original documents but chose to remain silent for a period exceeding 6 years, which casts serious doubts on the sincerity of the complaint. The complainant's failure to assert their rights within a reasonable time frame amounts to "sleeping on their rights," and as such, the complaint is barred by limitation.
13. While it is recognized that the law of limitation does not strictly apply under the Real Estate (Regulation and Development) Act, 2016, the Authority is guided by the principles of natural justice. It is a well-established legal principle that the law aids the vigilant and not those who neglect their rights. Given the circumstances, the Authority finds that a reasonable period of three years from the date of possession is appropriate for a litigant to initiate a complaint under normal circumstances. Since the complainant failed to take any action within this reasonable period.
14. The Authority is of the considered view that the complainant's claim seeking return of the original documents is not maintainable under the provisions of the Real Estate (Regulation and Development) Act, 2016. The Act does not contain any enabling provision empowering this Authority to entertain a plea for the return or release of original documents, such claim being beyond the scope conferred under the Act. Furthermore, the record indicates that the respondent-allottee had defaulted in making timely payments as per the terms



and conditions of the agreement dated 26.11.2012, thereby entitling the complainant-promoter to exercise its contractual right of cancellation/termination of the said unit. Having failed to fulfil that financial obligations and having acquiesced to such termination, the complainant cannot, at this belated stage after a lapse of more than six years seek to agitate the issue as an afterthought. Accordingly, the plea raised by the complainant is devoid of merit and stands rejected.

15. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
16. 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. Moreover, the Authority in case bearing no. ***2480 of 2023 titled as Mrs. Ritu Lal Vs M/s Emaar India Limited decided on 10.12.2024***, has also dismissed the complaint being barred by limitation on the ground that they have approached the Authority after unreasonable delay despite offer of possession.



17. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits being in possession of the property. 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 light of the above, the complaint is not maintainable and the same is declined.
18. Complaint stands disposed off.
19. File be consigned to registry.


(P.S. Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.10.2025