

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

Complaint no. : 3045 of 2024
Order pronounced on : 09.10.2025

Virender Singh Dhaka

R/o: F-64, Galaxy Apartment, HBH, Sector 43,
Gurgaon.

Complainant

Versus

1. M/s Clarion Properties Ltd.

2. M/sAjanta Builders Pvt.Ltd.

Address: - 129, Munish Plaza, 20 Ansari Road,
Darya Ganj, New Delhi-110002.

Respondents

Coram:

Shri Arun Kumar
Shri P.S. Saini

**Chairman
Member**

Appearance:

Shri Bhojraj Yadav
Shri Lokesh Bhola
Shri Lokesh Bhola

Advocate for the Complainant
Advocate for the Respondent No. 1
For Respondent no. 2

ORDER

1. The present complaint has been filed by the complainant/allottee 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 the 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, 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	"Element One", Sector- 47 & 49, Gurugram
2.	Total area of the project	3.256 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license	86 of 2011 dated 20.09.2011
5.	Unit no.	B-417 [pg. 44 of complaint]
6.	Area of the unit	671 sq. ft. [pg. 44 of complaint]
7.	Builder Buyer agreement dated	25.08.2014 [Page no. 12 of complaint]
8.	Possession clause	Clause 5.1 <i>The company shall, under normal circumstances, complete the construction of tower in which the said unit is to be located within 3 years in addition to 6 months grace period and subject to force majeure from the date of execution of this agreement or start of construction of the tower wherein the said unit is located, whichever is later and accepted by the allottee</i> (Emphasis supplied) [page 49 of complaint]
9.	Due date of possession	25.02.2018 [Calculated from date of execution of BBA as date of start of construction is not known.]
10.	Sale consideration as per payment plan	Rs. 40,26,000/- [page 45 of complaint]

11.	Total amount paid by the complainant	Rs. 44,44,309/- [As per SOA at page 99 of reply]
12.	Occupation certificate	03.11.2017 [Page No. 76 of reply]
13.	Offer of possession	11.12.2018 [Page No. 91 of reply]
14.	Conveyance Deed	14.06.2019 [page 102 of reply]

B. Facts of the complaint

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

- i. That the respondent is responsible for conceptualization and development of a Commercial Project known by the name of 'Element One' (hereinafter "the said project"). The said project is being developed on land measuring 2.7625 acres, situated in revenue estate of Fatehpur, Tehsil & District Gurgaon.
- ii. The complainant received a call, in the year 2012, from the marketing department that is from Mr. Parshant Malhotra the marketing agent of the respondent at that time for investing in the said project. It was stated by the respondent's representative that the respondent is an extremely successful builder/developer which has conceptualized, implemented and developed various projects in India.
- iii. It was further represented by the respondent that the aforesaid commercial complex would comprise of retail, hotels, serviced apartments, corporate offices etc. The respondent assured the complainant that the complex would include modern amenities like 24x7 power backup, CCTV security, recreational facilities etc. and would be instrumental in contributing to the life of the complainant. The respondent

further invited the complainant to visit its office for a detailed presentation and overview of the project.

- iv. The complainant believing the representations of the respondent to be true in good faith, visited the office of the respondent and met a sales representative/agent of the respondent. The respondent, acting through its sales representative, assured the complainant that all the sanctions pertaining to the said project had been obtained by it. The complainant was further assured that the possession of the unit would be delivered within 3 years from the date of execution of Memorandum of Understanding by the respondent. It was further stated to the complainant that the respondent would provide a pre-determined sum of money per month to the complainant for the entire period utilized in completion of the project in the form of assured return. Thus, an impression was generated by the respondent that it is striving to deliver possession of the unit in a short period of time. The respondent further represented that the units in the project are selling out rapidly and it would be in the interest of the complainant to secure allotment of a unit by paying a certain sum of money to the respondent.
- v. Lured and induced by the representations and assurances proffered by the respondent, the complainant applied for allotment of a unit in the said project. In pursuance thereof, the complainant was allotted a unit bearing no. B-417 admeasuring 671 sq. ft. super area situated on 4th Floor of Tower bearing no. B in the said project. The total sale consideration for the unit in question had been initially quantified at Rs. 36,00,000/- and the same had been duly paid by the complainant. However, later on unilaterally, without the consent of the complainant, the respondent demanded Rs. 20,00,000/- in cash. Although the complainant objected the payment in cash yet he was forced to pay the aforesaid amount in cash on the force that substantial amount has already been paid by him and in case

the cash amount was not paid by him the amount already paid by him will stuck in litigation. Shockingly in the MOU the sale consideration was mentioned to be Rs. 36,00,000 and not Rs. 56,00,000/- which is totally against the settled terms and conditions.

- vi. The complainant had booked a unit admeasuring 600 sq. ft. However, the area of the unit had been increased without informing the complainant to be 671 sq. ft. and respondent forced to deposit the excess amount in respect of area measuring 71 sq. ft. The aforesaid area was increased in the year 2014 that is much after execution of MOU without the consent of the complainant.
- vii. The complainant objected the non-reflection of cash payment in MOU. On asking by the complainant, it was claimed by the respondent that collecting a part of the sale consideration in cash is a prevalent practice in the real estate industry and the same would allow the respondent to utilize the cash amount for mobilizing labor and construction material on daily basis. The complainant proceeded to pay Rs. 20,00,000/- in cash to the respondent in good faith. The respondent insisted that the said transaction be kept informal and refrained from executing any receipts with regard to the receipt of Rs. 20,00,000/- in cash. The complainant did not have any reason to suspect the bonafide of the respondent and believed the representations of the respondent to be true in good faith. A sum of Rs. 4,00,000/- was towards the car parking charges and remaining amount was withheld by the respondent and not shown in MOU.
- viii. As per clause 5 of the aforesaid Memorandum of Understanding, the respondents have to pay assured returns of Rs. 47,012/- per month to the complainant from the date of payment. It was further agreed that the possession was to be delivered within 36 months of the date of start of construction of the said commercial complex. That aforesaid assured

return amount was agreed to be paid on both the amount that is paid vide cheque and in cash.

- ix. It was further agreed that in case the respondent fails to deliver the possession within 36 months of start of construction the respondent shall pay in addition to the assured return an additional penal charge of Rs. 5/- per sq. feet of the said premises per month.
- x. Thereafter, letter dated 1st November, 2013 was dispatched by the respondent informing about starting of construction of the project. It was specifically mentioned in the aforesaid letter that the construction work at site has already commenced. So far as timely payment is concerned, the complainant had made the payment of entire payment, therefore, nothing was outstanding or due towards complainant. Furthermore, the complainant also paid the additional payment of Rs. 4,00,000/- on 7th of January, 2014. It is pertinent to mention that along with aforesaid amount of Rs. 4,00,000/- the complainant was also forced to pay an amount of Rs. 1,54,851/- in cash. The aforesaid payment of Rs. 4 Lacs was duly received by the respondent vide acknowledge dated 7th January, 2014. However, no acknowledgement was issued towards the receipt of cash payment.
- xi. Thereafter the respondent provided a pre-printed, arbitrary, biased and unilateral builder buyer agreement to the complainant. The complainant, after perusing the said agreement, raised certain objections against the clauses incorporated in the said agreement but the respondent did not budge. As a result, the complainant had no choice but to go ahead and execute the said agreement containing biased and prejudicial terms and conditions unilaterally incorporated by the respondent.
- xii. The complainant specifically objected to the aforesaid clauses of the buyer's agreement and requested the respondent to incorporate parity between the parties. However, the concerned representative of the respondent stated that the buyer's agreement in question was a standard

document and the same is executed invariably by all the allottees. The complainant, at the relevant time, did not have any choice but to proceed with the transaction and executed the builder buyer agreement dated 25th August 2014.

- xiii. The stipulated date for delivery of possession of the unit in question was 1st of November, 2016. However, the respondent consciously failed to offer possession of the unit in question to the complainant within the stipulated time period and handed over the possession only on 14.06.2019. However, at the time and till date the project is incomplete and the same is not fit for use. It is pertinent to mention that still the work is under process with respect to fit outs as well as minor construction work. The latest video as well as photographs which shows that the work is incomplete in the tower of the complainant and it is still going on have been appended with the present complainant. Due to the noise of construction work, the unit is unfit for use. Therefore, it is clear from the facts narrated above that the respondent has cheated the complainant in the name of handing over possession with complete fit outs. There is delay of 2 years 7 months and 13 days in handing over possession of the unit to the complainant. The occupation certificate has been issued without completion of construction of the project which is illegal. It is pertinent to mention that the respondent has admitted its liability towards penal charges of delayed possession in clause 5.3 of the buyer's agreement to be Rs.10/- per sq. feet per month.
- xiv. Furthermore, as per the Memorandum of Understanding the assured return was to be paid till the handing over of the possession of the unit to the complainant. However, respondent failed to pay the assured return after 11.12.2018. The payment of assured return has been admitted by the respondent vide letter dated 15th November 2014. Even then the respondent failed to pay the assured return to the complainant. It is pertinent to mention that the respondent is also liable to pay penal charge

of Rs. 5/- per sq. feet per month along with the assured return after 1st of November, 2016 in terms of the Memorandum of Understanding as there is delay in handing over of the possession of the unit.

- xv. Complainant was forced to execute the maintenance agreement prior to handing over of possession of the unit by the respondent. The facilities agreed to be provided by the respondent as per the maintenance agreement have not been provided to the allottees till date including the complainant. The aforesaid maintenance agreement is also one sided. It is pertinent to mention that clause 3 of the aforesaid maintenance agreement is totally arbitrary so far as rate of maintenance as well as enhancement of rate is concerned. It has been arbitrarily and illegally mentioned in clause 3.2 of the maintenance agreement that user shall be liable to pay the maintenance charges from the date of execution of the maintenance agreement. That when the unit is not fit for use, how the complainant or any of the allottee is liable to pay the maintenance charges. Similar to the aforesaid illegal clause there are several other clauses which are absolutely illegal and arbitrary. However, despite objection on the part of the complainant, he was forced to execute the aforesaid maintenance agreement.
- xvi. The respondent has miserably failed to complete the project within the stipulated time period. Moreover, the respondent has wantonly stopped monthly assured return after 11.12.2018. Without admitting the correctness and validity of the letter pertaining to offer of possession, it is submitted that the respondent has evidently failed to offer possession of the unit, referred to above, to the complainant within the stipulated time period and is consequently liable to pay delay possession charges in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016. Furthermore, the respondent is contractually and legally obligated to pay a minimum amount of Rs. 10/- per sq. ft. per

month for delay in handing over of possession as has been stipulated in the buyer's agreement. The complainant has requested the respondent multiple times to discharge its aforesaid financial liabilities but to no avail. Furthermore, the complainant also requested the respondent to pay the assured return of the balanced period till handing over of possession.

- xvii. That there is inordinate delay in completion of the said project. The respondent has failed to deliver possession of the unit in within stipulated time period. Although the conveyance deed has been executed in favor of the complainant, however the same does not curtail the rights of the complainant in respect of claim of delayed possession as well as in respect of assured return. Furthermore, from the latest video and photographs of the project/tower of the complainant it is also clear that the unit of the complainant is still incapable of use and therefore, unfit for use. Therefore, the respondent is also liable to pay the charges for the same. The complainant is also not liable to pay the maintenance charges to the maintenance agency taking into reckoning the present condition of the project and non-providing of all the services agreed by the respondent and its maintenance agency. Thus, the complainant is entitled to delay possession charges, assured return and compensation in the facts and circumstances of the case. No lapse or default of any nature can be imputed to the complainant in the entire sequence of events. The complainant has fulfilled their contractual obligations arising out of Memorandum of Understanding as well as buyer's agreement. The complainant has been penalized, harassed and victimized without there being any fault whatsoever on his part. The complainant deserves to be compensated for loss of interest by the respondent and as well as for the harassment and mental agony undergone by him on account of deceitful and unfair trade practices adopted by the respondent. No cogent or plausible explanation has been tendered by the respondent as to why the respondent has

miserably failed to undertake and complete the construction within the stipulated time period under the memorandum of understanding and buyer's agreement and to remit commitment charges/guaranteed return to the complainant.

- xviii. The subject matter of the claim falls within the jurisdiction of this Hon'ble Authority. The said project is located within the territorial jurisdiction of this Hon'ble Authority. Hence, this Hon'ble Authority has got the jurisdiction to try and decide the present complaint.
- xix. That no other complaint between the complainant and the respondent is pending adjudication before any authority/court/forum regarding the subject matter of the instant complaint.

C. Relief sought by the complainant

4. The complainant has filed the present complaint for seeking following reliefs:
- i. Direct the respondent to pay delay possession charges calculated from 1st of November, 2016 at the prescribed rate of interest till the delivery of possession i.e. 14.06.2019 same.
 - ii. Direct the respondent to pay assured return at the rate of Rs. 52,142/- per month from 11.12.2018 till delivery of possession that 14.06.2019 along with interest at the rate of 12% per annum calculated from the date on which the amounts became due and payable to the complainant till payment.
 - iii. Direct the respondent to pay an addition sum of Rs. 5/- per sq. feet per month from 1st of November, 2016 till 14.06.2019 along with interest at the rate of 12% per annum calculated from 1st of November, 2016 till payment.
 - iv. Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation expenses incurred by the complainant.

- v. The respondent may very kindly be penalized for contravention of the provisions of the Act as well as for cheating and defrauding the intending allottees, including the complainant.
 - vi. The respondent may very kindly be directed to full fill the condition of maintenance agreed to be provided by the respondent and its maintenance agency.
 - vii. Direct the maintenance agency to withdraw the notice dated 15th of February 2024 forthwith.
 - viii. The maintenance agency may kindly be restrained from issued any further amount towards maintenance charges till such time the facilities agreed to be provided is not provided to the complainant.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the Respondents

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts and is is barred by limitation. The unit booked by the complainant was booked by the complainant in the year 2012 and that the builder buyer agreement was executed between the parties on 25.08.2014. Subsequently, the respondent no.1 applied for occupation certificate on 27.03.2017 and accordingly received the same on 03.11.2017. Consequently, possession of the unit was offered by respondent no. 1 on 14.01.2019 and the complainant took the possession of the unit on 14.06.2019. A registered conveyance deed for the unit was executed on 14.06.2019 and all claims of complainant and respondent no. 1 were duly adjusted. On 15.02.2024, the respondent no. 2 had issued a demand notice to the complainant, duly demanding the outstanding maintenance charges from the complainant

for the unit. As an afterthought, the complainant after more than 5 years of taking possession of the unit and using the same for its benefits has filed the present complaint to avoid his liabilities to pay maintenance charges and to claim undue benefits from the respondents.

- ii. The complainant has approached this Hon'ble Authority with malafide intention as the complainant is well aware about the statutory period of limitation of 3 years with respect to filing of complaint which as per the facts commenced in 2019, therefore in that event the complainant begin to run out of limitation period in the year 2022 itself. In view of the same the complainant has failed to make out its case within the statutory limitation period. thus, in pursuance of the limitation laws, the complaint filed by the complainant shall be dismissed on this basis alone.
- iii. In 2012, the complainant as an investor expressing his interest in purchasing commercial space approached the respondent no.1 for purchasing a commercial unit in the project namely "Element One" situated at Sectors 47 and 49, Gurgaon, Haryana, (hereinafter referred to as "the said commercial complex") that was being developed and sold by respondent no.1.
- iv. The respondent no.1 believing on the false representations and assurances of the complainant reserved a commercial area in the said commercial complex vide a memorandum of understanding, dated 08.06.2012. That only certain area was reserved for the complainant in the said commercial complex vide the memorandum of understanding and no particular unit was allotted to the complainant is the said memorandum of understanding. Furthermore, the said memorandum of understanding clearly stipulated that the terms of the builder buyer agreement, which was to be executed between the complainant and respondent no.1 would govern the terms relating to the sale of the unit.



- v. On 25.08.2014, the Buyer's Agreement (hereinafter referred to as the "Buyer's Agreement") was executed between the respondent no.1 and the complainant. In the said buyer's agreement, the complainant was allotted a service unit bearing No. B-417 having super area of 671 square feet (hereinafter referred to as "the said unit") with the total basic price of Rs.40,26,000/- alongwith other charges as defined in page 25 of the buyer's agreement in addition to the basic price of the unit.
- vi. The complainant after understanding and agreeing to the various clauses of the buyer's agreement duly executed and enter into the said agreement, and thus cannot now claim that the said buyer's agreement was arbitrary or one-sided.
- vii. The respondent no.1 had completed the construction of the said commercial complex with the time agreed upon in the buyer's agreement and had applied for occupancy certificate on 27.03.2017. Accordingly, the occupancy certificate of the said commercial complex was obtained on 03.11.2017. Once the respondent no.1 had applied for the occupancy certificate on 27.03.2017, all constructions of the said commercial complex had been completed by the respondent no.1 within the 36 months as agreed upon in the buyer's agreement. Any delay by the statutory authority in the grant of the occupancy certificate cannot be attributed to the respondent no.1. Thus, the respondent no.1 completed the construction of the said commercial complex within the time stipulated in the buyer's agreement and, thus, no delay can be attributed to respondent no.1.
- viii. The respondent no.1 issued a letter, dated 11.12.2018 to the complainant, intimating the complainant about the possession of the said unit. In the said letter the respondent no.1 informed the complainant that construction of the said commercial complex had been completed and occupancy certificate had also been received, however only minor fit out

works were remaining after completion of which the said unit shall be handed over to the complainant subject to clearance of final payment/dues.

- ix. The respondent no.1 issued possession letter, dated 14.01.2019 to the complainant, calling upon the complainant to clear all pending dues towards the said unit and take possession of the same on or before 13.02.2019 to avoid payment of holding charges as per the buyer's agreement.
- x. The aforementioned facts clearly demonstrate the commitment of respondent no.1 to fulfilling all its obligations towards its allottees and providing the highest quality of construction along with all promised amenities. That, until the date of the aforementioned possession letter, the complainant never raised a whisper of protest or any form of grievance, which clearly indicates that the complainant had no issues with the mode and manner of the construction of the said commercial complex.
- xi. The complainant chose not to pay the outstanding amounts to the respondent no.1 till 01.04.2019 and thus failed to take possession of the said unit within stipulated 30 (thirty) days of offer of possession as per the terms of the buyer's agreement. Accordingly, the complainant was liable to pay holding charges @ Rs.7 per square feet per month since 13.02.2019 till actual taking over of the physical possession of the said unit.
- xii. The complainant had requested the respondent no.1 in month of June, 2019 to waive-off the holding charges and adjust the same against the delayed penalty charges, if any to resolve the issues and requested to hand the actual vacant physical possession of the said unit. Accordingly, the parties after settling all dues and payments with respect to the said unit executed a registered conveyance / sale deed, dated 14.06.2019 bearing registration no.4521 on page no.144.25 in book no.1 volume no.42

registered at the office of the Sub-Registrar Office, Wazirabad (hereinafter referred to as "Conveyance Deed").

- xiii. That the as per clause 3 of the conveyance deed the complainant and the respondent no.1 mutually agreed that the possession of the said unit has been given to the complainant to its entire satisfaction. as per clause 6 of the conveyance deed, it was agreed by the complainant that the maintenance of said commercial complex shall be undertaken by a maintenance agency which shall be appointed either by the developer or Element One Owner's Welfare Association i.e. the association of allottees, as the case maybe and that the complainant shall pay the monthly maintenance charges to the said maintenance agency from time to time.
- xiv. The complainant also executed an undertaking, dated 14.06.2019, wherein the complainant has duly admitted that he has taken possession of the said unit after satisfying himself with the specifications and installations of the said unit. Furthermore, the complainant in the said undertaking has certified that the delay, if any in the construction of the said Unit has occurred due to bonafide/*force majeure* reasons, which he fully understood and condoned and shall not make any claim on account thereof or for any other reason in future. In view thereof, it is submitted that the complainant has given his accord and satisfaction towards all claims, including but not limited to, delay penalty or assured return, if any with respect to the said unit and further undertook not claim aforesaid amounts from the respondent in any manner whatsoever.
- xv. The present complaint is barred by the law of estoppel as the complainant have already, at the time of execution and registration of conveyance deed, deed of apartment and undertaking all dated 14.06.2019, voluntarily agreed to the terms and has expressed its full consent and satisfaction with regard to the timelines of the possession as well as not to claim any delay penalty, if any from the respondent no.1 with respect to the said unit.

Hence, as per the law of Estoppel, the complainant cannot now contradict the contents of the aforementioned documents which the complainant has previously executed as true in the eyes of law and claim chargers or interest for delay, if any, in the possession of the said unit.

xvi. In light of the forgoing, it is submitted that the alleged claim of the Complainant with respect to assured return is not sustainable and has been made against the object and covenants of the Act and thus, the present complaint is liable to be dismissed with cost on this ground alone.

7. 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

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. 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

9. 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 office 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

10. 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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complaint being barred by limitation.

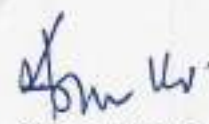
12. The respondents have filed the reply on 16.10.2024, which is taken on record and raised the preliminary objection in its reply that the complaint is not maintainable being barred by limitation. It is necessary to deal with the preliminary objection before proceeding with the reliefs sought by the complainants.
13. On consideration of the documents available on record, the authority observes that the complainant herein was allotted a unit bearing no. B-417, admeasuring 671 sq. ft., in project of the respondent named "Element One" situated at sector 47 & 49, Gurugram and an apartment buyer's agreement was also executed between the complainant herein and the respondent regarding the said allotment on 25.08.2014. The occupation certificate for the subject unit has been obtained by the respondent promoter on 03.11.2017 and the possession has been offered on 11.12.2018. The conveyance deed is also executed between the parties on 14.06.2019.

14. The complainant is seeking delayed possession charges from the respondents while the respondent no.1 on the other hand is pleading that the present complaint is barred by limitation as the complainant has got the offer of possession on 11.12.2018. The complainant has been in settled possession of their unit since 2018 and the present complaint has been filed after more than 5 years, which amply proves that the present complaint has been filed with malafide intentions to extort money from the respondent. The complainant has remained silent and had no grievances in this entire period of 5 years. Thus, it was submitted that the present complaint deserves to be dismissed at the very threshold. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the complaint on the ground of the limitation.
15. After the unit was allotted to the complainant, a buyer's agreement in this regard was executed on 25.08.2014. Though the possession of the unit was to be offered on or before 25.02.2018 after completion of the project but the same was offered only on 11.12.2018 after receipt of occupation certificate on 03.11.2017. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 01.07.2013 ultimately leading to execution of conveyance deed of the same on 14.06.2019. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

16. In the present matter the cause of action arose on 11.12.2018 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 25.06.2024 which is 5 years approx. from the date of cause of action. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.
17. 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.
18. 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 and execution of conveyance deed.

19. 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 prior to the execution of conveyance deed. 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.
20. Complaint as well as applications, if any, stands disposed off accordingly.
21. File be consigned to registry.


(P.S. Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.10.2025