

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 2155 of 2024
Date of filing of complaint: 13.05.2024
Date of Order: 09.10.2025

1. Balbir Singh Ahlawat

Complainants

2. Vishal Ahlawat

Both RR/O : 180-A/22, Vikas Nagar,
Rohtak, Haryana-124001

Versus

M/s Eminence Township India Pvt.
Ltd.

Respondent

Office: 44, Ground Floor, Sector-32
Gurgaon 122001

CORAM:

Shri Arun Kumar

Chairman
Member

Shri Phool Kumar Saini

APPEARANCE:

Ms. Medhya Ahluwalia (Advocate)
Sh. Sumit Mehta and Ms. Ritakshi
(Advocates)

Counsel for Complainants
Counsel for Respondent

ORDER

1. The present complaint dated 13.05.2024 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the

Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Eminence Kimberley Suites, Sector 112, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project Area	2.875 acres
4.	DTCP License No.	35 of 2012 dated 22.04.2012 valid up to 21.04.2025
5.	Name of Licensee	KPS Colonisers Pvt. Ltd.
6.	RERA Registered/ Not Registered	74 of 2017 dated 21.08.2017 valid up to 30.12.2018
	Extension of RERA registration	HARERA/GGM/REP/RC/74/2017/EXT/100/2019 Dated-12.05.2019 valid up to 31.12.2020
7.	Unit no.	C-0305 and 3 rd floor (As per page no. 33 of the complaint)
8.	Unit admeasuring	601 sq. ft. (super area) (As per page no. 33 of the complaint)
9.	Date of execution of buyer's agreement	02.12.2013 (As per page no. 32 of the complaint)
10.	Possession clause	<i>Schedule for possession of the said unit 27.</i> <i>The company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the allottee(s) of sale price and other charges due and payable according to the payment plan applicable to</i>



		<p>him/her/them and/or as demanded by the company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the said unit(s) shall, however, be offered only after grant of completion/occupation certificate from the competent Authority.</p> <p><i>(Emphasis supplied)</i></p> <p>(As per page no. 43 of the complaint)</p>
11.	Date of start of construction	01.06.2014 (As mentioned on page no. 2 of the reply)
12.	Due date of delivery of possession	01.12.2017 (Note: Due date to be calculated 36 months from the date of start of ground floor slab i.e., 01.06.2014 plus grace period of 6 months)
13.	Total sale consideration	Rs.26,96,320/- (As per structure of payments on page no. 58 of the complaint)
14.	Total amount paid by the complainant	Rs.19,55,569/- (As per customer ledger dated 26.08.2024 on page no. 45 of the reply)
15.	Occupation Certificate	11.07.2019 (As per page no. 65 of the reply)
16.	Offer of possession	20.07.2019 (As per page no. 64 of the complaint)
17.	Reminder letters	01.10.2019, 17.07.2020 & 24.08.2020 (As per page no. 70-72 of the reply)
18.	Legal notice for possession	08.02.2024 (As per page no. 65 of the complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That the instant complaint is filed on behalf of complainants, Mr. Balbir Singh Ahlawat and Mr. Vishal Ahlawat, residing at 180-

A/22, Vikas Nagar, Rohtak, Haryana and are the law-abiding citizens of India, who had booked a flat in the project of the respondent namely "Eminence Kimberley Suites" situated at Sector-112, Village Bajghera, Gurgaon, Haryana.

- II. That sometime in October-November, 2012, the complainants were desirous of purchasing a studio apartment along with parking space in a gated society in Gurugram.
- III. That the representatives of the promoter approached the complainants for the purchase of unit and made utterly false representations and thereby asked the complainants to approach M/s. Sangam Enterprises, situated at NM-7, 2nd floor, Old DLF Colony, Gurgaon who was serving as one of the vendors or representatives for further queries. It is stated that the further communication regarding the purchase of the unit was facilitated by the official of M/s. Sangam Enterprises who induced the complainants on behalf of the respondent to book a unit in the project in question by showcasing a fancy brochure which depicted that the project will be developed and constructed as state of the art and one of its kind with all modern amenities and facilities.
- IV. That the respondent painted an extremely rosy picture of the subject project, stating that the respondent is developing the above project with the assistance of internationally renowned architects and the project shall be a state of art premier project and would be one of its kinds. It was also stated that Eminence Kimberley Suites are exclusive studio apartment being raised on picturesque landscape along-side a tailor-made commercial hub.

The respondent/promoter induced the complainants by stating that the project shall have unmatched facilities from world class swimming pool to a Power Yoga Centre. It was represented by the respondent that all necessary sanctions and approvals had been obtained to complete the project and the said project will be developed and possession will be handed over within the promised timeframe.

- V. That the complainants were heavily influenced by the brochure issued and circulated by the respondent who is engaged in the business of Property Construction, Development and Management and the sale of the residential and commercial units within the said properties.
- VI. That after various negotiations and believing upon the false representations made by the representatives of the respondent, the complainants shortlisted a unit suited to their taste and budget, paid booking unit charges.
- VII. That based upon the representations of the respondent, the complainants were induced to sign a pre-printed flat buyer's agreement dated 02.12.2013. The complainants had opted for construction linked plan which is duly recorded in the Annexure-III (Structure of Payments) of the said buyer's agreement. It is stated that by virtue of pre-printed buyer's agreement dated 02.12.2013, the complainants were allotted unit bearing unit no. C-0305 on 3rd Floor in Tower No. C, admeasuring area of 601 sq. ft.
- VIII. That the complainants had opted for possession linked plan which is duly recorded in the buyer's agreement. The complainants had

paid an amount of Rs.19,55,569/- in accordance with the "Possession Linked Plan" for the unit in question.

- IX. That the complainants made all the payments to the respondent in accordance with the possession linked plan. The payments made by the complainants have been unequivocally acknowledged, accepted, used and utilized by the respondent.
- X. That the respondent/promoter had accepted the booking from the complainants and other innocent purchasers in year 2012, however the respondent deliberately and with mala-fide intentions delayed the execution of the buyer's agreement. Furthermore the respondent very slyly has stated in clause 32 of the buyer's agreement that the period of handing over of possession shall begin from the date when the demand for laying of ground floor roof slab shall be raised by the respondent, however neither any such demand was ever raised nor any such demand is mentioned in the payment schedule annexed with the buyer's agreement and rather demand for construction of stilt floor was raised by the respondent on 02.01.2014.
- XI. That the respondent had promised to complete the project within a period of 36 months from the date of laying ground floor slab, i.e., 01.02.2014 with a further grace period of six months. However, the respondent has failed to complete the project in the said timeframe, resulting in extreme kind of mental distress, pain and agony to the complainants. Furthermore, the respondent/promoter had collected more than 65% of the sale consideration within three years of the booking and as such the gross delay in completion of the project is solely attributable to

the respondent/ promoter. The respondent has delayed the execution of the buyer's agreement in order to safeguard itself from the compensation clause as enshrined under the buyer's agreement and hence the delay in execution of the agreement is solely attributable upon the respondent and thus the period of 36 months should begin from the date of first payment.

- XII. That the respondent made incorrect and false statement in its advertisement material in respect of the project. At the time of booking, the respondent did not have proper permissions for the construction of the project and the construction related information was also incorrect.
- XIII. That the respondent has failed to complete the project in time, resulting in extreme mental distress, pain and agony to the complainants. The respondent has deliberately delayed the execution of the buyer's agreement as it is only the buyer's agreement which contains the possession delivery clause and also the compensation clause and hence to safeguard itself from the liabilities and future litigation, the respondent delayed the execution of buyer's agreement.
- XIV. That the respondent/ promoter in the year 2017 invited objections from the all the allottees in order to comply with the directions of DTCP in regard to change in sanctioned plan. The complainants submitted their objections to the DTCP giving their no-objection with regard to the change in the sanctioned plan, however till date the complainants have neither heard a single word from the respondent nor the respondent has informed the

complainants about the change in plan and its consequences on the complainants.

XV. That the respondent upon receipt of the occupation certificate for the unit in question has immediately sent a pre-mature offer of possession dated 17.07.2019 to the complainants, despite the fact that neither the unit is complete till date nor the promised facilities and amenities. It is stated that replying on the one-sided unfair terms of the builder buyer's agreement, you imposed excessive penalties and costs.

XVI. That the complainants have approached the respondent several times and requested for timely possession of the unit, but the respondent company has failed to give any concrete schedule for the handing over of the actual physical possession of the unit.

XVII. That the complainants have made various visits at the site and observed that there are serious quality issues with respect to the construction carried out by respondent till now. The unit was sold by representing that the same will be luxurious apartment however, all such representations seem to have been made in order to lure complainants to purchase the flats at extremely high prices. The respondent has compromised with levels of quality and are guilty of mis-selling. There are various deviations from the initial representations. The respondent has compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low-grade defective and despicable construction quality.

XVIII. That on 29.01.2024, the complainants visited the site for inspection and they were shocked and petrified to find out that the amenities were not the same as to what had been portrayed in the brochure and promised in apartment buyer's agreement executed between the parties. After inspection of the unit and project, it was revealed that the unit and project was in a miserable, filthy and inhabitable condition.

XIX. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. It is stated that being aggrieved by the respondent, the complainants got a legal notice dated 08.02.2024 to the respondent calling him upon to complete the project in all aspects as shown in brochure at the time of booking of the unit and remove all the deficiencies found at time of site inspection, withdraw the alleged letter for offer of possession dated 20.07.2019 and re-issue the letter of offer of possession to our clients after completing the project in all aspects as promised at the time of execution of apartment buyer's agreement and to provide the complete status report and sanctions/approvals letters issued to respondent by the concerned government offices supporting the operation/ completion of the project and unit booked by complainants.

XX. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed the actual handover of the unit in question

for more than 7 years. The respondent has resorted to misrepresentation. The complainants therefore are entitled for interest @ 18% p.a. for every month of delay till the actual physical possession of the unit is offered to the complainants. Hence the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a. Direct the respondent to withdraw the pre-mature offer letter and re-issue the offer of possession.
 - b. Direct the respondent to pay the delay interest @ 18% per annum for every month of delay from the due date of possession till the actual handover of physical possession of the unit is offered to the complainants.
 - c. Direct the respondent to provide the schedule of construction and likely time period to be taken by the respondent in completing the project in all aspects.
 - d. Direct the respondents to pay a sum of Rs.5,00,000/- to the complainants towards the cost of the litigation.
5. 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:

6. The respondent has contested the complaint on the following grounds:
 - I. That the complainants have not approached the Authority with clean hands and have deliberately suppressed material facts, warranting the dismissal of the present complaint on the grounds

of 'Suppressio Veri'. The complainants have defaulted on the material obligations as defined under the buyer's agreement dated 02.12.2013 and have even failed to make the due payments payable by the complainants upon offer of possession i.e., 20.07.2019 and various reminders were also sent for the outstanding payment of Rs.10,25,905.97/- . Despite numerous reminders, including those sent at the time of the offer of possession dated 20.07.2019, the complainants have failed to fulfill their payment obligations. It is pertinent to state here that the complainants were the subsequent allottees of the unit and had purchased the same from a third party.

- II. That the unit of the complainants falls under the service unit of the project and as per clause 27 of the buyer's agreement, the said unit was to be delivered within 42 months (i.e., 36 months plus 06 months grace period on account of force majeure) from the date of start of stilt/ ground floor roof slab of the particular tower in which the unit is located. The casting of ground floor roof slab of the retail segment started on 01.06.2014 and thus, the period of delivery of possession of the said unit was due on 01.12.2017.
- III. That the respondent applied for the renewal of license of the project site but for the reasons best known to DTCP a reply on the same was received by the petitioner only on 03.08.18, with wrong figures of EDC/IDC and finally after long chase and follow-up only the revised demand was received from the office of DTCP on 01.02.2019, following which EDC/IDC has been paid and even the future instalments of the same has been paid in advance by the petitioner. During this period the petitioner could not apply for

occupancy certificate, even after work at project site was completed. Force Majeure continued from 19.03.2018 till 01.02.2019.

IV. That on 27.03.2019, work at the project site were completed and application for obtaining the occupancy certificate was submitted. That after long chase and follow-ups from the learned office of DTCP, Haryana, on 11.07.2019, occupancy certificate was received after a force majeure of 106 days to the respondent. The respondent even after existence of the force majeure conditions, as the respondent was excessively diligent in executing the work thus, the possession of the unit was offered well before the due date for offer of possession and the offer of possession was issued by the respondent in the name of the complainants on 20.07.2019.

V. That the complaint suffers from bar under the provisions of the limitation Act, 1963, in accordance with the version of the complainants themselves. The complainants have concealed the very fact that the "Offer of possession" of the unit was offered on 17.07.2019 and numerous reminders were also sent to the complainants however, it is on account of failure of the complainant herself that she has not taken over the physical possession of the unit for more than 5 years. As the cause of action is claimed to have been arisen on account of failure of delivery of possession, and in the light of offer of possession the complaint is bad in law and is liable to be dismissed and the complainants be directed to make the balance payment and take-over the physical possession of the unit.

VI. That despite delayed payments from the complainants, the respondent, the unit has been offered for more than 5 years back and the complainants have dues payable in respect to the due instalments and interest and the complainants purely in a fit of rage in order to evade from her liability in respect to the payment of their dues, interest applicable on the due installments and monthly maintenance amount has filed the present bogus and unfounded complaint against the respondent. It thus, the same is liable to be dismissed with heavy cost.

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

E. Jurisdiction of the authority:

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

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.

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

F. Findings on objections raised by the respondent:

F.I Objection regarding the complaint barred by Limitation Act, 1963

10. The respondent has raised a contention that the complaint is barred by limitation as the due date of possession as per the agreement was December, 2017 and the complainants have failed to exercise their rights within the prescribed timeframe. The Authority observes that although the cause of action to file the present complaint accrues in December, 2017 i.e., the date of handing over of possession as stipulated under the terms and conditions of the agreement but it is a settled situation now that after due date of possession of the unit, the cause of action is continuing till such obligation of offering the possession of the unit is fulfilled by the promoter-builder. In the present case, the subject unit was offered to the complainants on 20.07.2019. Thus, it was after date of such offer of possession when

time for limitation starts tickling. Further, in view of Covid-19, Hon'ble Apex Court vide order dated 10.01.2022 in suo-moto W.P. (C) No. 3 of 2020 has declared period from 15.03.2020 to 28.02.2022 as zero period. Further, as per the scheme of calculating the remaining limitation as provided in the order of Hon'ble Supreme Court, the present complaint has to be filed on or before 31.01.2024 but the same was filed on 13.05.2024 and hence the same is barred by limitation. In light of the above, the complaint is dismissed being barred by limitation.

11. The complaint stand disposed of.
12. File be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 09.10.2025