

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
 GURUGRAM

Date of decision: 23.12.2025

NAME OF THE BUILDER		M/S BLACKBERRY REALCON PRIVATE LIMITED	
PROJECT NAME		"PARAS SQUARE"	
S. No.	Case No.	Case title	Appearance
1	CR/1513/2024	Dinesh Chander Bahl V/S M/s Blackberry Realcon Pvt. Ltd.	Shri Hemant Phogat Advocate and Shri Himanshu Singh Advocate
2	CR/1517/2024	Dinesh Chander Bahl V/S M/s Blackberry Realcon Pvt. Ltd.	Shri Hemant Phogat Advocate and Shri Himanshu Singh Advocate

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before the 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 between 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, "Paras Square" being developed by the same respondent/promoter i.e., Blackberry Realcon Private Limited. The terms

and conditions of the buyer's agreements fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with intertest and the compensation.

- The details of the complaints, reply to status, 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: Paras Square, Sector-63 A, Gurugram						
Possession clause: Clause 7(a)(i)						
<p>The date of completion of the Project shall be Thirty-Six (36) months from the start of construction hereof, subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of the same and all amounts due and payable by the Allottee(s) under this Buyer's Agreement having been paid in time to the Developer, The Developer immediately upon the receipt of OC/CC shall give notice to the Allottee(s), in writing to take -possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee(s).</p>						
Note:						
<ol style="list-style-type: none"> Date of commencement of construction of the project- Date of commencement of construction is calculated from date of excavation as per promoter information and the same was started on 13.02.2014. Therefore, date of commencement of construction comes out to be 13.02.2014. Due date of handing over of possession- As per clause 7(a)(i) of buyer's agreement, the due date of handing over of possession is 36 months from date of commencement of construction and as specified above, date of start of commencement is 13.02.2014. Therefore, due date of handing over of possession comes out to be 13.02.2017. 						
Sr. no	Complaint no. /title/ date of filing complaint/date of reply received	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of Possession, offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought

1.	CR/1513/2024 titled as Dinesh Chander Bahl V/S M/s Blackberry Realcon Pvt. Ltd DOR- 29.04.2024 Reply received on- 12.11.2024	GF-38, Ground Floor, admeasuring 430 sq. ft. (As per page no. 27 of complaint)	07.12.2014 (As per page no. 24 of complaint)	13.02.2017 Offer of possession- 28.07.2018 (As per page no. 13 of reply)	TSC: Rs.35,79,610/- (As per page no. 54 of complaint)	1. DPC 2. Possession 3. Execution of conveyance deed. AP: Rs.23,70,473/- (As per SOA at page 234 of complaint)
2.	CR/1517/2024 titled as Dinesh Chander Bahl V/S M/s Blackberry Realcon Pvt. Ltd DOR- 29.04.2024 Reply received on- 12.11.2024	GF-40, Ground Floor, admeasuring 430 sq. ft. (As per page no. 27 of complaint)	02.12.2014 (As per page no. 24 of complaint)	13.02.2017 Offer of possession- 28.07.2018 (As per page no. 13 of reply)	TSC: Rs.40,09,610/- (As per page no. 57 of complaint)	1. DPC 2. Possession 3. Execution of conveyance deed. AP: Rs.23,27,284/- (As per SOA at page 207 of complaint)

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

Abbreviations Full form

DOOR- Date of receiving complaint

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the

possession by the due date, seeking award of delay possession charges the entire amount along with interest and compensation.

5. It has been decided to treat the said complaint(s) as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaint(s) filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1513/2024 Dinesh Chander Bahl v/s Blackberry Realcon Pvt. Ltd** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

A. Project and unit related details

7. 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:

CR/1513/2024 Dinesh Chander Bahl v/s Blackberry Realcon Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	Paras Square, Sector 63 A, Gurugram, Haryana
2.	Project area	2.20 acres
3.	Nature of the project	Commercial Unit

4.	DTCP License no. & validity status	23 of 2013 dated 17.05.2013 Valid upto 16.05.2017
5.	Name of Licensee	Yule Propbuild Pvt. Ltd.
6.	RERA Registered / not registered	Registered bearing no. 13 of 2018 dated 06.09.2018 upto 31.12.2018
7.	Unit no.	GF-38, Ground Floor (Page no. 27 of the complaint, BBA)
8.	Unit admeasuring	430 sq. ft. (Page no. 27 of the complaint, BBA)
9.	Date of excavation	13.02.2014 (As per promoter information)
10.	Allotment Letter	05.05.2014 (At page no. 12 of the reply)
11.	Date of execution of builder buyer agreement	07.12.2014 (Page no. 24 of the complaint)
12.	Possession clause	<p>Clause 7.(a)(i)</p> <p><i>The date of completion of the Project shall be Thirty-Six (36) months from the start of construction hereof, subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of the same and all amounts due and payable by the Allottee(s) under this Buyer's Agreement having been paid in time to the Developer, The Developer immediately upon the receipt of OC/CC shall give notice to the Allottee(s), in writing to take - possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee(s).</i></p>

		(Emphasis supplied) (Page no. 33 of the complaint, BBA)
13.	Due date of delivery of possession	13.02.2017 (Calculated from date of from the date of excavation i.e., 13.02.2014 as per BBA clause)
14.	Total sale consideration	Rs. 35,79,610/- (Page no. 54 of the complaint)
15.	Total amount paid by the complainant	Rs 23,70,473/- (As per SOA at page no. 234 of the complaint)
16.	Occupation certificate	23.07.2018 (Taken from CR/3511/2021 decided by HARERA Gurugram on 21.11.2023)
17.	Offer of possession	28.07.2018 (Annexure R-3 at page no. 13 of the reply)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint:-

- That after going through advertisement published by respondent in the newspapers and as per the brochures /prospectus, the Complainant had purchased a retail shop no. GF-38, on Ground Floor, having super area 430 Sq. ft. in the upcoming commercial project of the respondent named "PARAS SQUARE situated in Sector-63A, Village Behrampur, Gurugram for a sale consideration of Rs.30,10,000/- and total Unit Cost of Rs.40,09,610/-. The complainant also booked 3 (three) other units in the

said project on the same date, of same size and description and of same price bearing Units No. GF-37, GF-39 and GF-40.

- ii. The respondent executed builder buyer's agreement dated 02.12.2014 in favour of the complainant. The respondent was offering monthly payment plan on the above said unit i.e., GF-38. In this regard, the complainant and respondent, both, sat across the table and after thorough discussion and negotiations in respect of the fixed monthly income plan, it was agreed between complainant and respondent that the complainant is not willing to go with the monthly income plan in respect of the said unit GF-38 and the respondent would make a revised payment structure after decreasing the price of the units, as the complainant gave-up the fixed monthly income plan. The said payment structure was also agreed between the parties for other units also.
- iii. The respondent offered and both the parties agreed for the Revised payment structure for the unit no. GF-38 to the tune of Rs.22,40,736/- (which includes Net Basic price @ Rs.17,47,648/- and Car Parking @ Rs. 3,00,000/-, EDC @ Rs. 1,93,088/- with PLC and IDC being inclusive and IFMS was Waived Off by the respondent). At that point of time, the respondent has assured the complainant that in this regard, an amendment to the builder buyer agreement would also be executed by the respondent in favour of the complainant upon receipt of occupation certificate (oc) and before the registration of conveyance deed.
- iv. At the relevant time, the respondent has also assured the complainant that the respondent would raise demand against the aforesaid unit as per the revised payment structure. That believing upon the assurance and representation of the respondent, the complainant paid and satisfied all

the payment of instalments in accordance with the revised payment structure as per the demand of the respondent.

- v. the respondent has made demands as per the revised payment structure and the complainant paid the instalments within the stipulated time period and there were no dues on the part of the complainant till receiving of the occupation certificate by the respondent and neither was there any reminder from the side of respondent for outstanding /due payment till receiving of occupation certificate.
- vi. The respondent received /obtained the occupation certificate in the month of july 2018, which respondent intimated to the complainant. upon receipt of intimation from respondent with regard to obtaining of occupation certificate by the respondent, in the year 2019, the complainant visited the office of respondent with a request to execute the amendment to the builder buyer's agreement, as was assured and promised by the respondent to the complainant at the time of execution of the builder buyers' agreement.
- vii. The respondent presented a draft of amendment to the builder buyers agreement dated 12.03.2019 to the complainant to sign over the same citing the reason that as of now their authorised signatory is not available, who would also sign the same, as and when authorised signatory would be available. The complainant in good faith has signed the same i.e., ***amendment to the builder buyers agreement***, and original was kept by the respondent with it and xerox copy of the same was given to the complainant assuring the complainant that the respondent would get the same signed through its authorised signatory and a copy thereof will be supplied to the complainant as soon as possible.

- viii. At the time of execution of amendment to the builder buyers agreement, the respondent conveyed to the complainant that all his accounts qua payment of sale consideration have been settled for the unit no. GF-38 and requested the complainant only to pay the maintenance charges and to pay the stamp paper duties for the purpose of registration of conveyance deed of the units.
- ix. Believing upon the representation and assurance of the respondent, the Complainant issued a cheque bearing no.036911 dated 01.10.2019, amounting to Rs.57,094/- in the name of "Paras Re-Facilities Management Pvt. Ltd." on account of advance maintenance payment. That the complainant has also got deposited the amount of stamp duty charges in the account of government in State Bank of India, branch at Gurgaon on 25.11.2022.
- x. Consequently, in the month of December 2022, the respondent called the complainant to get the conveyance deed registered in his name in respect of his four units, and the complainant to get the conveyance deed registered in his name came to Gurugram in the month of December 2022. However, upon reaching at Gurugram, was shocked as the respondent told to the Complainant that the papers in respect of unit nos. GF-37 & GF-39 are ready, of which the complainant can get the conveyance deed registered in his name assuring the complainant that the respondent would also execute and get the conveyance deed registered of the remaining Units No. GF-38 & GF-40 later, in the next month, after getting the documents ready for conveyance deed.
- xi. The complainant believing upon representation and assurance of the respondent, got conveyance deed registered in his name in respect of the units no. GF-37 & GF-39 registered at the office of Sub-Registrar,

Wazirabad, Gurugram vide vasika No.18860 dated 23.12.2022 and vasika No.18859 dated 23.12.2022, respectively. The conveyance deed in respect of units no. GF-37 & GF-39 have been executed and registered in accordance with and in terms of the revised payment structure and amendment to the builder buyer's agreement, as was executed by the respondent in favour of the complainant.

- xii. After getting registered the conveyance deed in his favour in respect of units no. GF-37 & GF-39, when complainant reached at home, the complainant stood shocked and astonished when he started receiving reminder /demand letters from the respondent for the unit no. GF-38.
- xiii. On receipt of demand letter from the respondent, the complainant has approached the respondent through telephonic calls and wrote an email dated 08.05.2023 making the respondent aware of the fact that the (complainant) has already paid and satisfied the entire amount as per the amendment to the builder buyer's agreement dated 12.03.2019.
- xiv. The respondent sent an email dated 19.05.2023 to the complainant, vide which the statement of account of the complainant in respect of the unit no. gf-38 was shared by the respondent to the complainant. As per the statement of account, shared by respondent to the complainant, no amount was left to be paid by the complainant and all his payments are cleared. Furthermore, the statement of account itself discloses and reveals the fact that the complainant never defaulted in making the payment of instalment in his part.
- xv. From bare perusal of so called demand letters /reminder, it reveals that the respondent has not disclosed that how much amount is due towards complainant in respect of the unit no. GF-38 and the demand letters are vague and vexatious. The intention of the respondent is not to honour the

terms and conditions of amendment to the builder buyer's agreement dated 12.03.2019 and the respondent wants to extract /extort more money from the complainant as per the builder buyer's agreement dated 02.12.214. The complainant came to know that the respondent from the very first inception in order to deceive, cheat and play fraud upon complainant has not signed the amendment to the builder buyer's agreement with a malafide and dishonest intention, which complainant could not perceive at that point of time.

- xvi. The complainant received a letter dated 07.03.2024, in which the respondent has alleged that the complainant intentionally is avoiding the possession of the unit, on the contrary, the respondent is sending these vague and vexatious letters only to cover-up its own misdeeds and wrongdoings, whereas, in virtual reality the respondent is not handing over the physical possession of the unit no. GF-38 to the complainant and the respondent is demanding more money as per the builder buyer's agreement and completely ignoring and denying the revised payment structure as per the amendment to the builder buyers agreement dated 12.03.2019.
- xvii. The respondent is denying the revised payment structure as per the amendment to the builder buyers agreement on the ground that it was not signed by authorised signatory of the respondent and is also ignoring the fact that the respondent has already executed and got registered two conveyance deed in respect of Unit Nos. GF-37 & GF-39, as per and in accordance with the amendment to the builder buyers agreement.
- xviii. The complainant has taken all possible requests and gestures to persuade the respondent requesting the respondent to get the *conveyance deed*

registered in the name of complainant but the respondent miserably failed in complying with the same.

xix. As per clause 7(a) of the builder buyer agreement, the respondent was under legal obligation to complete the project within 36 months from the start of construction. The construction of the said project started on "17.05.2013" which is evident from the Form-REP-I submitted by the respondent with the Hon'ble RERA Authority, Gurugram on 14.01.2020. Thus, the date of completion of the project come out to be 17.05.2016. The respondent has withheld the possession of the unit immorally and unlawfully and has still not handed over the physical possession of the unit to the complainant even after receiving of OC and despite of all the payments and formalities being completed by the complainant and hence, there is a delay of 95 months for which the complainant is entitled to get the delayed possession charges.

xx. The cause of action accrued in favour of complainant and against the respondent, when complainant had booked the said unit and it further arose when respondent failed/neglected to get the conveyance deed registered in favour of the complainant and failed to handover the possession. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):

- Direct the respondent to handover the physical possession of the Unit No. GF-38 to the complainant with immediate effect.
- Direct the respondent to execute and get the conveyance deed registered in the name of complainant in respect of the unit no. GF-38 immediately as there are no dues pending in respect of the unit and the

complainant has paid entire sale price as per the amendment to builder buyers agreement dated 12.03.2019.

- c. Direct the respondent to pay the delayed possession charges to the complainant, as possession of the unit no. GF-38 is still with the respondent, which has not yet been delivered to the complainant even after obtaining occupation certificate.
10. 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:

11. The respondent has contested the complaint on the following grounds.
 - i. That One of the marquee projects of respondent company is "Paras Square" project, located in Sector 63 A, Village Behrampur, Gurugram Haryana (hereinafter for the sake of brevity) 'Project'. The complainant approached the answering respondent company, making enquiries about the project, and after thorough due diligence and complete information being provided to him, sought to book a retail shop in the said project.
 - ii. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the builder buyer agreement dated 02.12.2014. The complainant was allotted a retail shop bearing no. GF-38, having a super area of 430 sq. ft. (approx.) for a total consideration of Rs. 40,09,610/-.
 - iii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over the possession of the unit to the complainant. It would be apposite to note that the delay if at

all, has been due to the government-imposed lockdowns which stalled any sort of construction activity.

- iv. The complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- v. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project.
- vi. That with respect to the present agreement, the time stipulated for completion of construction was 36 months from the start of the construction, subject to the force majeure circumstances and compliance of the terms and conditions of this agreement. On receipt of occupancy certificate, the developer shall give notice in writing to take the possession of the unit. The developer shall be entitled for a grace period of 180 days. as per this, the developer has to offer the possession of the unit on or before 02.06.2018. The company had obtained the occupancy certificate of the project on 23.07.2018.
- vii. It is a known fact that the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time. The respondent earnestly has endeavoured to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same. It is

also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period day due to high rise in Pollution in Delhi NCR.

- viii. When the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi NCR region. It would be apposite to note that the 'Paras Square' project of the Respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.
- ix. Graded Response Action Plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19. These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.

- x. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severely hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the Respondent were forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the Respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors, has taken cognizance of the devastating conditions of the real estate sector, and has directed the Union of India to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.
- xi. As once the parties have duly contracted and locked their legal obligations by way of the builder buyer's agreement, no relief over and above the clauses of the agreement can be granted to the complainant. The Buyers agreement duly provides that for any period of delay beyond the contracted date of offer of possession, subject to Force Majeure clause.
- xii. The complainant did not comply with the terms and conditions of build buyer agreement and payment plan. The complainant did not pay the

total consideration amount to the respondent company. The complainant booked 4 units in the said project out of which the respondent has already handed over two units to the complainant and he is in possession of those unit.

- xiii. The concluding the time period for which the construction activities in the project were restrained by the orders of competent Authority/Court was 37 weeks approximately. Hence, the complainant is not entitled for any relief as claimed.
- 12. 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 submissions made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the Authority

- 13. 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

- 14. 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

15. 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.

16. 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 the objections raised by the respondents

F.I. Objection regarding force majeure conditions:

17. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court and various govt. schemes but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 13.02.2017. Hence, events alleged by the respondent do not have any impact on the project being developed by

the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to handover the physical possession of the unit no. GF-38 to the complainant with immediate effect.

G.II Direct the respondent to execute and get the conveyance deed registered in the name of complainant in respect of the unit no. GF-38 immediately as there are no dues pending in respect of the unit and the complainant has paid entire sale price as per the amendment to builder buyers agreement dated 12.03.2019.

18. In the instant case instant case, the complainant wishes to continue with the project and is seeking delayed possession charges as provided under the proviso to sec 18(1) of the Act. Sec 18(1) proviso reads as under:

"Section 18:- Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

... Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

19. On consideration of the documents available on record, the Authority observes that a unit bearing no. GF-38 on Ground Floor in project namely "Paras Square, Sector 63 A, Gurugram" was allotted to the complainant vide allotment letter dated 05.05.2014. A buyer's agreement was executed *inter se* parties on 07.12.2014 with respect to the allotted unit. As per clause 7(a)(i) of the buyer's agreement dated 07.12.2014, the possession of the subject unit was to be offered to the complainant on 13.02.2017. Admittedly, the possession of the unit has been already

offered to the complainant on 28.07.2018. So, now the question for consideration arises as to whether the complainant is entitled to delay possession charges from the due date of possession i.e., 13.02.2017 till actual handing over of possession after the receipt of occupation certificate.

20. Though, the complainant is claiming delay possession charges till handing over of possession on the basis of occupation certificate, however, it is admitted fact that the possession of the subject unit was offered to the complainant on 28.07.2018 and the present complaint has been filed by complainant on 29.04.2024, which is beyond the period of limitation of 3 years.
21. There has been complete inaction on the part of the complainant for a period of 5 years and 9 months till the present complaint was filed. The complainant remained dormant of their rights for more than 5 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. One such principle is that delay and latches 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 the principle 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.

22. 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. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.

23. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint wherein seeking delay interest on total amount paid, is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. 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 the light of above, the said relief is declined being not maintainable as barred by limitation.

G.III Direct the respondent to pay the delayed possession charges to the complainant, as possession of the unit no. GF-38 is still with the respondent, which has not yet been delivered to the complainant even after obtaining occupation certificate.

24. The complainant is seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016. The complainant was offered possession of the unit on 28.07.2018. Whereas the possession was offered by the respondent/promoter without obtaining the occupancy certificate as per clause 13 of the buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favor of the allottee but only after

receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference:

The sale deed/conveyance deed shall be executed and got registered in favor of the Allottee(s) within months from the date of receipt of occupation certificate, full Sale Consideration, including but not limited to PLC additional EDC, additional IDC, if any, delayed payment charges, interest and other charges as reserved herein in this Buyer's Agreement along with the compliances of all other terms and condition of this Buyer's Agreement by the Allottee(s). The cost of stamp duty, registration charges, and other incidental charges and expenses will be borne by the Allottee(s) in addition to the full Sale Consideration of the Unit, as and when demanded by the Developer. The Allottee(s) shall also bear all duties, taxes and charges that may be levied by the government on this Buyer's Agreement. The Allottee(s) may, with the prior approval of the Developer, raise and or avail loan from banks for this purpose only. For sake of clarity, the Developer herein specifies and the Allottee(s) hereto agrees that the stamp duty shall be payable on the total Sale Consideration, car parking charges and any amount of enhancements towards EDC and IDC, which takes place subsequent to the execution hereof. The Allottee(s) agrees that the provisions of this Buyer's Agreement are and shall continue to be subject of and subordinate to the lien or any mortgage heretofore or hereafter made/ created by the Developer and any payments or expenses already made or incurred, or which hereafter may be made or incurred pursuant to the terms thereof or incidental thereto, or to protect the security thereof, to the fullest extent. Such mortgage(s) or encumbrances shall not constitute an objection to the title of the said Unit or excuse the Allottee(s) from completing the payment of the total Sale Consideration of the said Unit or performing all the Allottee(s) other obligations hereunder or be the basis of any claim or liability against of the Developer. If Allottee fails to get the sale deed registered the Developer shall have right to execute the sale deed unilaterally and the Developer shall have right to retain the original sale deed and recover the expenses incurred (which shall be considered as unpaid part of sale consideration) including but not limited towards the stamp duty, registration, legal and administrative expenses. The Developer shall also have the right to lease out the premises to recover its dues. The Allottee subrogates all his/her/its rights in favor of the Developer for the same.

25. 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 occupation certificate.

26. 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."

27. As occupation certificate of the unit has been obtained from the competent authority on 23.07.2018, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the respondent is obligated to execute the conveyance deed in favour of the complainant after payment of stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any.

H. Directions of the Authority

28. 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):

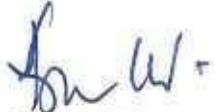
- i. The respondent is directed to execute the conveyance deed in favor of the complainant/allottee within 3 months from the date of this

order as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.

- ii. The respondent/promoter is directed not to charge anything which is not a part of the agreement executed between the parties.
- 29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
- 30. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
- 31. Files be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.12.2025