

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

Complaint received on : 20.08.2024

Order pronounced on : 23.12.2025

Rajender Kumar Somani

R/o: - B-329, Lok Vihar, Pitampura Delhi - 110034

Complainant

Versus

M/s Ajay Enterprises Private Limited

**Office at:- 8th Floor, Eros Corporate Tower, Nehru
Place, New Delhi, Delhi - 110019**

Respondent

Coram:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

Appearance:

Shri Jaswant Singh Kataria (Advocate)

Shri Shiv Sehgal (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees 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 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 and location of the project	"Eros Corporate Park, IMT Manesar, Gurugram
2.	Nature of the project	Commercial Shop
3.	Application Form	07.12.2006 (As per receipt of amount paid for booking at page 23 of complaint)
4.	Unit no.	69, Ground (As per page 31 of complaint)
5.	Area of Unit	765 sq. ft. (Page 31 of complaint)
6.	Builder-Buyer Agreement	19.12.2006 (Page 22 of reply)
7.	Possession clause	27. <i>The space agreed to be sold in this Agreement shall only be transferred in favour of the Allottee after receiving full payments and dues payable till that date.</i> (Page 28 of reply)
8.	Due date of possession	19.12.2009 (As possession clause is ambiguous, the due date has to be calculated 3 years from the date of allotment. As the allotment letter is not placed on record, therefore, due date is calculated 3 years from the date of execution of agreement i.e., 19.12.2006)
9.	Sale Consideration	Rs. 65,68,000/- (As per page 24 of complaint)
10.	Amount paid by the complainant	Rs. 86,02,780/- (As per SOA at page 30 of complaint)
11.	Occupation Certificate	26.05.2011 (Stated by respondent at page 6 of reply)
12.	Offer of possession	29.06.2011 (Page 45 of reply)

13.	Handover of physical possession	12.08.2014 (Page 31 of complaint)
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B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - i. The respondent started commercial Shop Project under the project name and style "EROS CORPORATE PARK" to be constructed and developed on the land situated at IMT Manesar, Gurugram, Haryana. Representative of the respondent allured the complainant to buy the commercial unit in the above noted project by showing its advertisement documents (pamphlets) related to the project.
 - ii. The complainant applied on dated 06.12.2006 by making a booking amount of Rs. 9,85,200/- for commercial unit no. 20, Ground Floor (measuring 821 sq. ft.) at price rate Rs. 8,000/- sq. ft. for inner front facing along with one parking space @ Rs. 2,75,000/-.
 - iii. The agreement for sale (hereinafter referred to as 'the agreement' for brevity) inter-se the parties qua the Unit in question was duly executed on 19.12.2006. According to the agreement the unit in question was offered for a total sale consideration to the tune of Rs. 65,68,000/-. On 06.09.2007, the respondent reallocated unit no. 29 measuring 923 sq. ft. and the complainant opposed the same by through his letter dated 31.03.2008. The complainant made another payment of Rs.6,74,718/- to the respondent on 07.03.2011.
 - iv. The complainant was again re-allotted unit no. 69 measuring 765 sq. ft. @ Rs. 9,000/- per sq. ft. intentionally which is wrong and not accepted by the complainant.
 - v. Initially the respondent kept the complainant in dark and the respondent at the time of entering in to the agreement assured the complainant possession period would be 28 months from the date of agreement and

intentionally did not mention the date of the possession of the unit in question in the agreement or anywhere else. Hence, as per the assurance of the respondent, the unit in question was to be handed over to the complainant by the date 19.04.2009 in every respect.

- vi. The respondent has thus failed to deliver possession of the unit on or before the due date of possession. There was delay in the construction as per assurance and plan of the respondent. The complainant made all the payments in time as and when demanded by the respondent. Hence, the complainant has made a total payment of Rs. 86,02,780/- to the respondent. According to the final statement, the respondent has received Rs. 10,12,144/- in excess from the actual sale consideration from the complainant keeping the complainant in dark.
- vii. On 12.08.2014, the complainant given offer of possession after 5 years from the due date of possession as per assurances of the respondent. The respondent gave offer of possession of unit no. 69 which is short in size instead of unit no. 20 which was earlier allotted just to make documentary record.
- viii. The complainant has not been given physical possession of the unit in question. The complainant was astonished when the respondent sent a demand notice through what's app to pay the maintenance charges amounting to Rs. 34,36,348/- even without giving possession which is wrong.
- ix. The complainant has been repeatedly and continuously expressing discontent and objecting to the malafide attitude of the respondent towards its allottee. The complainant has been requesting to the respondent and has made numerous requests and efforts seeking redressal of his grievance i.e., to give delayed possession charge and refund the amount paid in excess of the sale consideration.

- x. Being highly aggrieved and frustrated by the entire circumstances and faced by the miserable attitude of the respondent, which needless to mention, has rendered the complainant completely shattered and heartbroken, the complainant is left with no other option but to approach the Hon'ble Regulatory Authority, H.R.E.R.A., Gurugram, for issuance of the order to the respondent to give delayed possession charge and compensation.
- xi. The respondent is carrying its business within territorial jurisdiction of this Hon'ble Authority and the entire cause of action also accrued between the parties at Gurugram; therefore, this Hon'ble Authority has got the jurisdiction to entertain and try the present complainant.

C. Relief sought by the complainants

- 4. The complainant has moved an application dated 01.08.2025, seeking leave of this Authority to amend the prayer clause of the original complaint. By way of the said amendment, the complainant seeks the following modified reliefs:
 - i. Direct the respondent to hand over physical possession of the unit no. 69 admeasuring 765 sq. ft. in the project Eros Corporate Park, Manesar, Gurugram and conveyance deed with respect to the unit be ordered to be executed in favour of the complainant.
 - ii. Direct the respondent to pay excess amount to be paid to the complainant.
 - iii. Direct the respondent to delay possession charges for every month of delay at prevailing rate of interest.
- 5. Upon perusal of the application and the grounds stated therein, and in the interest of justice, the application dated 01.08.2025 is hereby allowed. The amended prayers are taken on record. The present complaint shall henceforth be adjudicated based on the aforementioned revised reliefs sought by the complainant.

6. 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 respondent

7. The respondent has contested the present complaint on the following grounds:
- i. The respondent company developed a commercial project namely "Eros Corporate Park" on the said Plot and obtained the occupation certificate dated 26.05.2011.
 - ii. The complainant vide application dated 06.12.2006 applied for allotment of a commercial shop/commercial space in the proposed project namely "Eros Corporate Park" at IMT Manesar, Haryana of the respondent. Accordingly, a unit bearing No. S-20 admeasuring 821 sq. ft. was provisionally allotted to the complainant in accordance with the then tentative plans. The basic sale price was settled @ Rs. 8,000/- per sq. ft. and thus the total basic sale price of the said unit amounting to Rs. 65,68,000/- was payable by the complainant to the respondent. In furtherance to said allotment, an agreement to sell dated 19.12.2006 was duly executed between the complainant and the respondent company wherein certain terms & conditions pertaining to said booking was agreed upon and duly accepted by both the parties.
 - iii. While sanctioning the final building plan, changes were required to be made in the building plan due to certain requirements of HSIIDC bye-laws. As per the revised plan submitted with HSIIDC, the building was revised to comprise of G+14 floors as against the earlier proposed G+7 floors. Although height of the building was increased from G+7 floors to G+14 floors but no additional area was constructed. It is noteworthy here that no extra FAR was ever availed by the respondent company. The said revision in building plans was done as per the guidelines of HSIIDC. The

said changes were primarily necessitated due to errors in the Zoning Plan initially issued by HSIIDC, the change of height was necessitated due to lesser ground coverage as was finally approved by HSIIDC. Besides, all the aforesaid changes were done well in conformity with the bye-laws and the same were well within the knowledge of HSIIDC which is evident from letter dated 08.03.2007 sent by the respondent company to HSIIDC.

- iv. As a result of the aforesaid changes, the number of the said unit got changed from S-20 to S-29 and the area of unit revised from 821 sq. ft. to 923 sq. ft. Needless to mention here that the basic sale price of said unit was also got revised accordingly in proportion to the revised enhanced area. This fact was brought to the knowledge of the complainant vide letter dated 01.08.2007 sent by the respondent company to the complainant.
- v. Thereafter on 31.03.2008, the complainant raised his concern regarding change of unit number and requested us for allotment of any other suitable unit at a suitable price, instead of Unit No. 29, whereupon we allotted unit no. 69, admeasuring 985 sq. ft. @ Rs. 9,000/- per sq. ft., in the said project, to the complainant against the said booking, upon his specific request. The same was duly acknowledged by the Complainant, in the letter dated 31.03.2008. Accordingly, two copies of the revised payment schedule were sent to the complainant on 02.05.2008 and the complainant returned one copy of the same duly signed by him, to the respondent company on 22.05.2008. These facts clearly establish that the unit no. 69 was allotted to the complainant upon his specific request and acceptance. As the area of the new unit was larger than the area of the booked shop, the basic sale price and the payment plan got revised accordingly, which were duly accepted and agreed upon by the complainant. Also, under clause 11 of the terms & conditions enumerated in the application form dated 06.12.2006, the complainant acknowledged and accepted the fact that "the plans,

designs and specifications of the building are tentative and suitable/necessary alterations and modifications can be done during the course of construction, in the layout plan/building plans/designs by the company or by the concerned authority.

- vi. Further, under Clause 6(a) of the Agreement dated 19.12.2006, the complainant specifically agreed that "the super area of the unit is tentative and the same is subject to change till the completion of construction of said building. The final area of the said unit shall be confirmed by the company only after completion of construction of the building and grant of occupation certificate by the competent authority. The total price payable for the said unit shall be recalculated upon confirmation by the company of the final super area of the said unit. Any increase or reduction in the super area of the said unit shall be payable or refundable, as the case may be, without any interest.
- vii. On 29.06.2011, after obtaining the occupation certificate dated 26.05.2011, the possession of said shop was offered to the complainant wherein it was informed to him that the area of his unit no.69 got reduced to 765 sq. ft. and the Complainant shall be entitled to refund of excess amount on this account, as per the final statement of account dated 29.06.2011. Consequently, an amount of Rs. 11,06,587/- was refunded by the respondent company vide cheque bearing no.056791 dated 11.08.2011, cheque bearing No. 056538 dated 17.08.2011 and cheque bearing no. 060051 dated 15.12.2011 to the complainant being the excess amount paid by him.
- viii. The possession of the said unit was handed over to the complainant on 12.08.2014. The complainant while taking the possession of the said unit duly signed the "Possession Receipt And/Indemnity Cum Undertaking for Taking Over the Shop/ Showroom/Commercial Space" dated 12.08.2014,

in furtherance to which a separate maintenance agreement dated 12.08.2014 was duly executed by the complainant and the respondent company. The complainant himself while taking over the possession has made the payment of Rs. 1,95,693/- towards one year advance general maintenance charges.

- ix. It is not wrong to mention here that post taking possession of the said unit, the complainant became a habitual defaulter in making payment of the maintenance and other charges as agreed by him under the terms of the agreement dated 19.12.2006 duly executed by him. An amount of Rs. 34,36,348/- (out of which Rs. 7,56,581/- stands for principal amount and Rs. 26,79,767/- is for the late payment interest charges) is outstanding on part of the complainant with regards the maintenance and other charges because of which the complainant is resorting to all frivolous and arm-twisting practices to avoid the due payment.
- x. In view of above submissions, it is apparent that the reliefs sought by the complainant in its complaint are false & misleading as the complainant has failed to support them with documentary evidence.

8. 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

9. 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

10. 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

11. 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

xxx.....

(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.

(Emphasis Supplied)

12. 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 complainants at a later stage.

F. Observations of Authority with regard to maintainability of complaint on account of complaint is barred by limitation.

13. The respondent has raised the preliminary objection vide proceedings dated 23.12.2025 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 complainant.
14. On consideration of the documents available on record, the authority observes that the complainants herein was allotted a unit bearing no. 69 on Ground

Floor, admeasuring 765 sq. ft., in project of the respondent named "Eros Corporate Park" situated at IMT Manesar, Gurugram. A apartment buyer's agreement was also executed between the complainants herein and the respondent regarding the said unit on 19.12.2006. The occupation certificate for the subject unit has been obtained by the respondent promoter on 06.05.2011 and the possession has been offered on 29.06.2011. Further, the unit handover letter was issued on 12.08.2014. The conveyance deed is also executed between the parties on 09.10.2018.

15. The complainant is seeking delayed possession charges and execution of conveyance deed other reliefs. The respondent while the respondent on the other hand is pleading that the present complaint is barred by limitation as the complainants have got the offer of possession on 29.06.2011 and the complainant has filed the present complaint after a long delay on 20.08.2024 i.e., lapsed of 13 years 1 months 22 days (4801 days) of the offer of possession. Thus, the claim of the complainants is not maintainable.
16. In line with the aforesaid facts and submissions made by the parties and documents placed on record, the Authority observes that the unit was allotted to the complainant and a buyer's agreement in this regard was executed on 19.12.2006. Though the possession of the unit was to be offered on or before 19.12.2009 after completion of the project but the same was offered only on 29.06.2011 after receipt of occupation certificate on 26.05.2011. 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.

17. In the present matter the cause of action arose on 29.06.2011 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 20.08.2024 which is 13 years 1 months 22 days from the date of cause of action. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.
18. 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.
19. 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.
20. 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.

21. Complaint as well as applications, if any, stands disposed off accordingly.
22. File be consigned to registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025

HARERA
GURUGRAM