

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

Date of filing of complaint: 25.02.2025
Date of Order: 23.07.2026

Salaj Ahlawat

R/o: - 1265, Sector – 29, Noida, G B Nagar,
U.P. – 201301

Complainant

Versus

Emmar MGF Land Limited

Office: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri B.K. Rai (Advocate)
Shri Dhruv Rohtagi (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provision 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	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Total area of the project	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	107 of 2012 dated 10.10.2012
	Validity of license	09.10.2020
	Licensee	Kamdhenu Projects Pvt. Ltd.
	Area for which license was granted	12 acres
5.	Registered/not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019] ii. 14 of 2019 dated 28.03.2019 (Phase II) [Valid up to 17.10.2018 for 4.57 acres]
8.	Unit no.	IG-04-1503 [Page 42 of reply]
9.	Area of the unit (super area)	2000 sq. ft. [Page 54 of complaint]
10.	Date of execution of buyer's agreement	11.04.2013 [page 20 of complaint]
11.	Possession clause	14. POSSESSION (a) Time of handing over the Possession Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 42 (Forty Two) months from the date of start of construction , subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3

		<u>(three) months after the expiry of said period of 42 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the Unit and/or the Project.</u> (Emphasis supplied) [annexure R3, page 72 of reply]	
12.	Date of start of construction	11.11.2013	[Taken form CR/1950/2022 decided by HARERA]
12.	Due date of possession	11.08.2017	[Note: 3 months Grace period is allowed]
13.	Sale consideration	Rs.1,41,23,000/-	[Page 54 of complaint]
14.	Total amount paid by the complainants	Rs.10,00,000/-	[As per receipt at page 74 of complaint]
15.	Reminder/ Demand letters	02.04.2013, 29.04.2013, 06.05.2013, 07.04.2014	19.04.2013, 30.04.2013, 18.10.2013,
16.	Cancellation letter	04.06.2014	[Page 75 of complaint]
17.	Occupation certificate	17.10.2019	[Taken form CR/1950/2022 decided by HARERA]

B. Facts of the complaint:

3. The complainants have made the following submissions:
 - i. The complainant had been allotted a unit no. IG-04-1503, Floor 15th, super area admeasuring 2000 Sq. Ft. in the project named "Imperial Gardens" of the company M/S. EMGF Land Limited vide buyer's agreement dated 11th April, 2013. The project is located at sector-102 Village, Kherki Majra, Dhankot, Tehsil and District Gurgaon, (now Gurugram), Haryana.



- ii. After the booking of the unit, a buyer's agreement has been executed on 11th April, 2013 between the respondent and the complainant. That as per clause 14 (a) at page no. 20 of buyer's agreement, the respondent promised to handover the possession of the unit within 42 + 6 (six months of grace period) from the date of start of the construction or agreement i.e., 11.04.2013, the respondent promise to deliver the flat till 11th January, 2017 but failed to do so.
- iii. Till date the complainant have paid a total sum of Rs.10,00,000/- against the total sale consideration of Rs.1,41,23,000/-, duly as per payment plan by November 2012. The complainant stopped making payment to the respondent due to the medical bills for the complainant's father treatment which were extremely high and was only priority at that moment. Despite the complainant best efforts to manage both medical costs and the instalments of his flat the complainant couldn't pay the further instalments.
- iv. The complainant had notified the respondent about his financial hardship. The complainant's father is undergoing critical medical treatment for heart disease and has undergone two angioplasties. The cost of these treatments along with ongoing hospital expenses have severely impacted the ability of the complainant to meet his financial obligations, because the medical bills for his father's treatment have been extremely high and these are the only priority at that moment, despite the complainant best efforts to manage both medical cost and the instalments of his flat. The complainant had been unable to pay the further instalments towards their flat due to the diversion of funds to cover his medical care.
- v. The complainant further wishes to inform the Hon'ble Court that all of their available funds have been exhausted in covering the substantial



- medical expenses for the treatment of the complainant's father, who is suffering from a heart condition and has undergone two angioplasties. As a result, the complainant is facing significant financial constraints and was relying on the merger for some relief in the current situation.
- vi. The respondent vide its cancellation intimation letter dated 04.06.2014 cancelled the unit of the complainant after denying all the genuine request of the complainant and his financial hardship.
- vii. The complainant sent an email dated 20th December, 2016 to the respondent asking for refund of its amount of Rs.10,00,000/- paid towards booked unit. The complainant made multiple communication seeking refund, but till date no action has been taken by the respondent in this regard and not a single penny has been refunded till date to the complainant.
- viii. The complainant is intimated by the respondent that if the complainant opts to surrender the booked unit, then the earnest money which is about 15 percent of the total consideration shall be deducted from the total payment amount. That the complainant duly requested to refund the amount after cancellation of the unit, but the respondent did not pay any heed to the complainant request.
- ix. Respondent by now have earned interest of Rs. 10.80 Lakh (9% simple interest for 12 years as payment was made in the year 2012) approximately on the amount deposited by the complainant towards the unit in question.
- x. The project "Imperial Gardens" as registered with HRERA on 28th March, 2019 vide registration number GGM/320/52/2019/14 DATED 28.03.2019. The OC obtained on 17.10.2018 by the respondent but there is no completion certificate (CC) of the project has been obtained by the Respondent till date. As per law, the completion certificate (CC) is a



mandatory document that confirms that all construction work has been completed according to approved plans, building codes, and safety standards, without completion certificate (CC), the property cannot be deemed fully completed or legally occupied.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

- i. Direct the respondent to refund the total amount of Rs.10,00,000/- (along with mclr+2% interest p. a. till the date of payment to the complainant.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:

- i. That instant complaint is barred by limitation. the complainant has alleged that the respondent was obligated to offer possession of the unit in question by 11.01.2017 and by way of the instant complaint have sought refund along with exorbitant rate of interest indemnifying them for the alleged delay in delivery of the unit in question. Further, the respondent sent a letter dated 04.06.2014, intimating the complainant regarding cancellation of the unit in question and terminating the buyer's agreement due to non-payment in terms of the payment plan opted by the complainant. The cause of action, if any, for seeking interest accrued in favour of the complainant on 04.06.2014 and consequently the instant complaint is barred by limitation. Therefore, without prejudice to the contentions of the respondent there has been no delay or default on the part of the respondent and without admitting in any manner any truth in the allegations made by the complainant, it is submitted that cause of action, if any, for filing the present complaint arose prior to the date of coming into force of the present Act. Hence, the



complaint is barred by limitations and liable to be dismissed on this ground alone.

- ii. The complainant has approached the respondent and expressed an interest in booking an apartment bearing unit no. IG-04-1503, 15th Floor in the residential group housing project being developed by the respondent known as "Imperial Gardens" situated in Sector 102, Village Kherki, Majra Dhankot, Tehsil & District Gurgaon. That prior to making the booking, the complainant had conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, including the approvals, licenses, permissions as well as the capacity of the respondent to undertake the project in question, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the apartment in question.
- iii. The complainant was provisionally allotted apartment number 27.02.2013 having approximately a super area of 2000 sq. ft. The complainant had opted for a payment plan which was Instalment Payment Plan (G+17/18). The buyer's agreement was executed between the parties on 11.04.2013.
- iv. That despite many payment request letters, reminders, and notices sent to the complainant, no response was ever received from him. The respondent had to move from pillar to post in order to get the instalments from the complainant. The complainant neglected/failed to deposit the payments due and payable to the respondent.
- v. In terms of clause 13(i) of the buyer's agreement, in case of delay in making any payment due to the respondent, the respondent company shall have the right to terminate the agreement and forfeit the earnest money. The complainant failed to adhere to his part of performance of



this agreement. Clause 13(i) of the buyer's agreement are reproduced hereinbelow:

13(i) Notwithstanding anything contained in Clause 20, in case of delay in making any payment reserved herein by the Allottee, the Company shall have the right to terminate the Agreement and forfeit the Earnest Money along with the Non-Refundable Amounts. However, the Company may in its sole discretion, waive its right to terminate this Agreement, and enforce all the outstanding payments and seek specific performance of this Agreement. The Company shall be entitled to charge delayed payment charges @ 24% p.a. at the time of payment as per the Schedule of Payments. In such a case, the Parties agree that the possession of the Unit will be handed over to the Allottee only upon the payment of all outstanding dues, penalties, etc., along with interest by the Allottee to the satisfaction of the Company.

- vi. The respondent, despite the issuance of many payment request letters and notices, did not receive timely instalments, hence, the Respondent was constrained to cancel the said unit in question. A cancellation letter dated 04.06.2014 was issued to the complainant terminating the buyer's agreement.
- vii. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that after the receipt of the cancellation letter, the complainant does not have any right over the unit in question.
- viii. The rights and obligations of the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement and the cancellation letter which continues to be binding upon the parties thereto with full force and effect. The complainant is conscious and aware of the said cancellation letter and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. That filing of the present complaint is nothing but an abuse of the process of law.



- ix. The respondent has duly fulfilled its obligations under the buyer's agreement and there is no default or lapse in so far as the respondent is concerned. Upon cancellation of the unit in question, the transaction between the complainant and the respondent stands concluded and the complainant is not entitled to stake any claim or raise and dispute against the respondent. Even otherwise, the complainant has failed to contact the respondent in any manner whatsoever, in case of any dispute or objection with respect to the cancellation of the unit in question.
- x. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent that there is no delay in delivering possession to the complainant, that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied by the complainant cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement and the cancellation letter. The complainant cannot claim any relief, which is not contemplated under the provisions of the buyer's agreement and forms part of the cancellation letter. The complainant cannot demand any refund, interest or compensation beyond or contrary to the agreed terms and conditions between the parties.
- xi. The complainant has filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset.



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

E. Jurisdiction of the authority:

7. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

8. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.I Direct the respondent to refund the total amount of Rs. 10,00,000/- (along with mclr+2% interest p. a. till the date of payment to the complainant.

9. The complainant was allotted a unit in the project of respondent "Imperial Gardens" at sector 102, Gurgaon. The builder buyers agreement was executed between the parties on 11.04.2023. The complainant opted for the Instalment Payment Plan and was required to make payments in accordance with the agreed payment schedule. It is also not disputed that the complainant paid only a sum of Rs.10,00,000/- against the total sale consideration of Rs.1,41,23,000/-. Now, the complainant intends to withdraw from the project and is seeking refund of the paid-up amount as provided under the section 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, —

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, **he shall be liable on demand of the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:

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.

10. The Authority further observes that the occupation certificate for the project was granted on 17.10.2019. The record further reveals that despite issuance of payment reminders/notices by the respondent (stated by the counsel for the



respondent vide proceedings dated 23.07.2026), the complainant failed to pay the outstanding instalments. Consequently, the respondent cancelled the unit vide cancellation letter dated 04.06.2014. Thus, the cancellation of the unit took place on account of non-payment of the contractual dues by the complainant.

11. The principal issue which arises for consideration is whether the present complaint, filed on 25.02.2025, seeking refund of the amount deposited by the complainant, is maintainable after a lapse of almost eleven years from the date of cancellation.
12. In the present case, the respondent has sent various reminders/ demand letters dated 02.04.2013, 19.04.2013, 29.04.2013, 30.04.2013, 06.05.2013, 18.10.2013, 07.04.2014. Thereafter, the unit was admittedly cancelled on 04.06.2014 on account of non-payment of the instalments. The complainant was thus aware of the cancellation and of the respondent's stand regarding the amount deposited by him. The complainant thereafter approached the respondent for refund, as alleged, but the present complaint seeking the same relief has been instituted only on 25.02.2025, i.e. after a lapse of almost eleven years from the date of cancellation.
13. It is also pertinent to note that the complainant has himself pleaded that the complainant had stopped making payments after paying Rs.10,00,000/- against the total sale consideration of Rs.1,41,23,000/-. The amount paid by the complainant is less than 10% of the sale consideration. Therefore, the complainant cannot seek refund as a matter of right after such prolonged inaction, particularly when the allotment stood cancelled in the year 2014 on account of his failure to discharge the payment obligations under the buyer's agreement.
14. The contention of the complainant regarding the respondent's alleged delay in handing over possession is also of no assistance. The possession-related



obligation could arise only in respect of a subsisting allotment. In the present case, the allotment itself stood cancelled on 04.06.2014, much prior to the alleged date of possession. Hence, the complainant, having failed to make the contractual payments and having lost the allotment on account of such default, cannot subsequently seek refund by relying upon the alleged delay in possession.

15. The Authority further observes that the plea regarding the complainant's financial hardship on account of the medical treatment of his father, though pleaded, cannot by itself revive a claim which remained unpursued for almost eleven years after cancellation. No sufficient basis has been placed on record to justify such extraordinary delay in approaching the Authority.
16. In view of the foregoing, the Authority is of the considered view that the present complaint, filed on 25.02.2025 seeking refund of the amount deposited against a unit cancelled on 04.06.2014, suffers from an inordinate and unexplained delay. Further, the complainant had paid less than 10% of the sale consideration and had failed to comply with the payment schedule, resulting in cancellation of the unit.
17. Accordingly, no case for grant of the relief of refund is made out in favour of the complainant. The complaint is, therefore, dismissed.
18. Complaint stands disposed of.
19. File be consigned to registry.


(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2026