BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**4373 of 2024**
Date of filing of complaint:	**05.09.2024**
Date of Order:	**13.11.2025**

1. Babulal Aggarwal
2. Sarita Aggarwal

Both R/o: C-161, East of Kailash, Delhi-110065 — **Complainants**

Versus

Emaar MGF Land Limited
Regd. Office at: ECE House, 28, Kasturba Gandhi Marg, New Delhi-110001 — **Respondent**

CORAM:

Shri Phool Singh Saini — **Member**

APPEARANCE:

Sh. Venkat Rao and Gunjan Kumar (Advocates) — Complainants
Sh. Dhruv Rohtagi (Advocate — Respondent

ORDER

1. The present complaint 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Palm Gardens, Sector 83, Gurugram, Haryana
2.	Total area of the project	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	108 of 2010 dated 18.12.2010
	Validity of license	17.12.2020
	Licensee	Logical Developers Pvt. Ltd. and 2 others
	Area for which license was granted	21.9 acres
5.	HRERA registered/ not registered	**Registered vide no. 330 of 2017 dated 24.10.2017 (1,2,6,8 to 12 and other facilities and amenities)**
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	**02 of 2019 dated 02.08.2019.**
	Extension valid up to	31.12.2019
6.	Unit no.	PGN-01-1504, 15th floor & tower no. 01 (As per page no. 60 of the complaint)
7.	Area of the unit	1720 sq. ft. (As per page no. 60 of the complaint)
8.	Provisional allotment letter issued on	20.06.2012 (As per page no. 52 of the complaint)
9.	Date of execution of buyer's agreement	12.09.2012 (As per page no. 58 of the complaint)
10.	Possession clause	***10. POSSESSION*** ***(a) Time of handing over the Possession*** *Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this buyer's agreement, and not being in default under any of*

		the provisions of this buyer's 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 36 (thirty six) months from the date of execution of agreement, subject to timely compliance of the provisions of the buyer's agreement by the allottee.*** *The allottee(s) agrees and understands that the company shall be entitled to a grace period of three months for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.* **(Emphasis supplied)** (As per page no. 73 of the complaint)
11.	Due date of possession	12.12.2015 (**Note:** Due date to be calculated 36 months from the date of execution of buyer's agreement i.e., 12.09.2012 plus grace period of three months)
12.	Basic sale consideration	Rs.94,60,000/- (As per payment schedule on page no. 53 of the complaint)
13.	Total consideration	Rs.1,22,14,307/- (As per payment schedule on page no. 53 of the complaint)
14.	Total amount paid by the complainants	Rs.94,68,616/- (As per receipt information on page no. 123-138 of the complaint)
15.	Criminal complaint against respondent	08.03.2018 (As per page no. 150 of the complaint)
16.	Occupation certificate	17.10.2019 (As per page no. 113 of the reply)
17.	Offer of possession	23.10.2019 (As per page no. 117 of the complaint)

B. Facts of the complaint:

3. That the complainants has made following submissions:

   I. That the present complaint is being filed before the Authority by Babu Lal Aggarwal & Sarita Aggarwal who are citizens of India against the M/s Emaar MGF Land Limited. The complainants had invested their entire hard earned life savings into the project of the respondent and booked a unit in the project namely "Palm Garden" situated at Sector-83, Gurugram, Haryana being

   II. That around 2012, the respondent launched the above said project post obtaining/receiving the statutory sanctions/approvals from the competent authority and had actively promoted the project to attract the public at large.

   III. That the respondent through its marketing representatives and agents represented that they are developers of great repute. That the complainants were looking for good residential space and hence, approached by the respondent, whereby the respondent assured that the instant project is going to be one of the finest and best complex in the region and the possession of the same be handed over within the timeframe and as early as possible.

   IV. That during the period of 2011-12, complainants were searching for a unit/apartment which satiates their dream of having their own home and in pursuant to their search, the colossal alluring advertisement of the respondent's project was duly acknowledged. Considerably, the complainants approached the officials of respondent enquiring the whereabouts of the project and to which officials of the respondent presented a magnanimous picture of the units/apartments and timely completion of the project which influenced the decision of the complainants.

V. That the complainants were highly influenced by the representation of the respondent which led to their decision of purchasing and investing their hard-earned money into the project of the respondent and thereby preferred a booking through application dated 13.06.2012 for the provisional allotment of the unit no. PGN-01-1504 admeasuring 1720 sq. ft. having total sale consideration of Rs. 1,22,14,307/-.

VI. That complainants against the above said booking application also furnished the booking amount of Rs.7,50,000/- vide cheque dated 13.06.2012 towards the above said unit and also upon the assurances rendered by respondent of completing the concerned unit within the period of 36 months from the start of construction. Apparently, the details of the project as furnished by the respondent within the content of registration application preferred before the Authority under the provisions of Act of 2016, duly disclosed that starting date of construction was 01.06.2012, thereby it could be emphasized herein that corresponding rosy picture of completion of the project was also depicted to the complainants while representing about the project.

VII. That post the booking application form submitted by the complainants, the respondent issued welcome letter dated 20.06.2012 to the complainants. After issuance of the welcome letter by the respondent, a provisional allotment letter dated 20.06.2012, was issued to the complainants for the allotted unit for a basic sale price of Rs.94,60,000/-.

VIII. That the complainants always adhered to the payment schedule that was issued by the respondent. It is appurtenant to mention herein that the complainants were influenced by the respondent and thereby compelled to furnish another payment instalment of Rs.12,49,268/- on 08.08.2012 towards the said unit, thereby the total amount paid by the complainants was brought up to Rs.19,99,268/- which is almost 16% of the total sale consideration whereby this arbitrary action of the respondent is violative of the Section 13 of the Act of 2016 which specifically provides that the promoter shall not accept a sum of more than ten per cent of the cost of the apartment/unit, as an advance payment without executing the written agreement for sale with the allottee.

IX. That the complainants have abided by the payment schedule as annexed to the allotment letter and has made payments as and when demanded by the respondent and has never failed to make any payment, showing good faith and forthright in this present matter.

X. That after much follow up by the complainants for the execution of the agreement for the allotted unit, the respondent agreed to enter into the buyer's agreement. The complainants received a builder buyer's agreement for the purpose of execution. That upon reading the terms and conditions of the BBA the complainants raised several objections to the terms and conditions being one-sided and arbitrary thereof. However, the respondent being in a dominant position had forcefully imposed the terms and conditions on the complainants. The respondent also assured the complainants that they will not take any step which would be detrimental to the complainants in the future. That since the complainants had already paid the booking amounts, they had to depose their faith upon the respondent. Also, in order to safeguard the hard-earned money paid by the complainants towards the booking of the unit, the complainants were left with no other option but to sign the one-sided and arbitrary agreement to get the possession of the unit and the same was executed on the 12.09.2012.

XI. That the letter of offer of possession was given by the respondent on 23.10.2019, whereas the same was supposed to be given on 12.09.2015, which is much after the due date of possession as incapsulated in the BBA and is violative of the rights of the complainants under the provisions of the Act of 2016.

XII. That the respondent despite receiving the payments failed to deliver the possession of the unit as agreed in BBA or refund the entire amount with interest at the prescribed rate. The complainants cannot wait forever to get the possession of the unit therefore the complainants intend to withdraw from the project. As per the obligations of the respondent/promoter under section 18(1) of the Act of 2016, the promoter has an obligation to refund the deposited amount and pay the complainants an interest at the prescribed rate from the date of the booking of the unit.

XIII. That the complainants have furnished the total payment of Rs.94,68,616/- which constitutes more than 77% of the total sale consideration. Further, the complainants had visited the project site during the period of October, 2013 and therein it was duly discovered & acknowledged by the complainants that the respondent had only developed the project to its basic structure, and thereby the complainants wrote a letter dated 10.10.2013 addressing their objections of raising demands as the structure of the project was at its preliminary stages. Furthermore, till the period of 2013, the complainants had already furnished the major portion of the payment, however, the respondent did not provide any response to the objection.

XIV. That during the period of 2014, the complainants had consistently honoured the demands as raised by the respondent. The complainants wrote another letter dated 06.11.2014 addressing the respondent while seeking the status of progress of the project. The Complainants reiterated that vide Buyer's Agreement (henceforth referred to as "**BBA**") dated 12.09.2012, the due date of delivery of possession was to be done within 36months and 3 months (in addition to it) from the date of execution of BBA, i.e., 31.12.2015. Additionally, it was stated therein that if the Respondent failed to revert to the letter then the complainants would cancel their allotment.

XV. That in pursuance to the aforementioned, the respondent wrote an email dated 18.12.2014 and reassured the complainants that an application for rendering of occupation certificate shall be made in 3rd Quarter of 2015 in a phased manner, and the same shall be updated to the complainants.

XVI. That the complainants wrote another letter dated 08.06.2015 wherein the assurances of the respondent were reiterated regarding the commitments of handing over of possession by 30th June, 2014 and also the respondent extended its own commitment in which it was assured to handover the possession by 01.12.2015. Apparently, the complainants had opted for the construction link payment plan and furnished the payments, however, the respondent consistently demanding without adhering to the payment plan as agreed with the complainants and precisely in consideration of this fact, the complainants stopped making payments.

XVII. That further the respondent had acted in sheer disregard and utter failure to implement its assurances & contractual obligations with respect to the concerned unit. And it would be sufficed from the perusal of the conduct of the respondent as reiterated & narrated within the preliminary passages of this complaint that respondent had malice intent of extracting the monies from the complainants and do not deliver the unit in consonance with the agreed timelines. Furthermore, the respondent demanded the payments without adhering to the construction payment link plan, which is evident from the payments furnished by complainants from the period of 13.06.2012 to 22.04.2017 wherein the complainants were compelled to make the payments of more than 76% of total sale consideration.

XVIII. That the complainants vide letter dated 07.10.2017 enquired about the status of the project and justifications regarding the development of the project. The complainants also asked in the letter as to the clarification with respect to the delayed payment charges of Rs.15,69,728/-, which was unlawfully being charged, as the complainants had always made the payments in accordance with the payment plan.

XIX. That the respondent sent a letter dated 23.10.2019, offering the possession of the unit and claimed therein that occupation certificate has been issued by the competent Authority, in effect to the above, demanded the outstanding payment of Rs.61,85,973/-. The complainants have already furnished the payment of Rs. 94,68,616/- which is more than 76% of total sale consideration and as apparent the final demand as raised by the respondent was beyond the total sale consideration of the unit.

XX. That the respondent has sent another letter dated 31.10.2019 asking for the payment of outstanding amount to the tune of Rs.35,30,812/- in relation to outstanding dues, delayed payment charges, and demand payments. That in letter dated 23.10.2019, the respondent demanded a payment of Rs.61,85,973/-and in the letter dated 31.10.2019, the demand of payment changed to Rs.35,30,812/-. Conclusively, it might well be stated that the respondent has demanded amounts from the complainants to their whims and fancies and the letters from the respondent are unclear, coercive in nature and is utterly unlawful. That following the said letter dated 31.10.2019, the respondent again sent a letter dated 28.11.2019, wherein the respondent claimed for the payment of outstanding dues to the tune of Rs.55,03,822/-.

XXI. That the complainants in this matter are senior citizens and had expressed at times the desire to get the refund of the money they had already invested in the project of the respondent. That due to health problems and illness occurring due to old age, the respondent acting callously in handing over possession, the complainants have asked for the refund of their invested amount along with an interest. The complainants have also issued a letter dated 15.05.2019 to the respondent with regard to the same.

XXII. That at such outset, it is imperative to bring the attention of this Authority that as per Section 18 of the Act of 2016 if the respondent fails to grant the possession of the unit within the terms of the agreement or, as the case may be, then the complainants are entitled to seek the refund of the amount paid along with the interest. In consideration of the aforesaid facts, the complainants are entitled to seek the refund in the violation and malpractices adopted by the respondent. Hence, the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

   i. Direct the respondent to refund the entire amount paid by the complainants along with interest @ 18% p.a. from the date of respective deposits till its actual realisation.

D. Reply by the respondent:

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

   I. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Hon'ble Authority and can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground as well.

   II. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 12.09.2012, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Hon'ble Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainants thereunder.

III. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

IV. That possession of the unit booked by the complainants was offered to the complainants by the respondent on 23.10.2019. The complainants have instituted the present complaint after an unexplained period of about almost five years. Hence the complaint is barred by limitation and is liable to be dismissed.

V. That the complainants had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Palm Gardens" situated in Sector-83, Gurgaon, Haryana. Prior to making the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after the complainants were fully satisfied about all aspects of the project, that the complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

VI. That unit bearing no PGN-01-1504 was provisionally allotted in favour of the complainants vide provisional allotment letter dated 20.06.2012. The buyer's agreement dated 12.09.2012 was willingly and voluntarily executed by the complainants after duly understanding and accepting the terms and conditions thereof.

VII. That the respondent completed construction of the unit/tower and applied to the competent authority for issuance of the occupation certificate on 11.02.2019. Occupation Certificate was received by the respondent on 17.10.2019. Upon receipt of the occupation certificate, possession of the unit was offered to the complainants vide offer of possession letter dated 23.10.2019. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit to them.

VIII. That the complainants were extremely irregular in payment of instalments as per the applicable payment plan. Consequently, the respondent was compelled to address demand notices, emails and reminders for payment. However, the same were ignored by the complainants. Statement of account reflecting the payments made by the complainants and the delayed payment interest accrued as on 05.09.2024.

IX. That the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement dated 12.09.2012 which continues to be binding upon the parties thereto with full force and effect.

X. That the complainants have misinterpreted and misconstrued the terms and conditions of the buyer's agreement. It is wrong and denied that the buyer's agreement contemplates hand over of possession of the unit in the manner claimed by the complainants in the complaint. It is submitted that reliance upon selective clauses of the contract while disregarding other provisions of the contract, is not permissible in law and the contract has to be read in its entirety and in a holistic manner.

XI. That as per clause 10 of the buyer's agreement, the time period for delivery of possession was 36 months along with grace period of 3 months from the date of execution of the buyer's agreement, subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including timely remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement and subject to delays caused due to reasons beyond the power and control of the respondent. The complainants have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement.

XII. That the allegations of the complainants that possession was to be given by 12.09.2015 are illogical and wrong as the complainants have failed to take into account the grace period of three months and also continued to make payment to the respondent even after so called due date of possession. Thus, the complainants have waived the time lines for delivery of possession as set out in the buyer's agreement. The complainants have wantonly and needlessly leveled false, defamatory and vexatious allegations against the respondent. The complainants purchased the unit in question as a speculative investment and with an intent to obtain profit by reselling the same. The complainants are taking undue advantage of the situation and are intending to obtain wrongful gain by mounting undue pressure upon the respondent by prosecution of the instant complaint. The contention of the complainants that the respondent has delayed delivery of possession of the unit in question is legally unsustainable in the facts and circumstances of the case.

XIII. That the respondent had applied to the statutory authority for grant of occupation certificate in respect of the tower in which the unit in question is located on 11.02.2019 and the same was granted on 17.10.2019. It is reiterated that once an application for issuance of occupation certificate is submitted before the concerned competent authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from computation of the time period utilised in the implementation of the project in terms of the buyer's agreement. As far as the respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

XIV. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainants and without prejudice to the contentions of the respondent, it is submitted that an offer for possession marks termination of the period of delay, if any, the complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.

XV. That the construction work was entrusted to Infrastructure Leasing and Finance Ltd. for the project. However, the amount of workforce deployed at the project site and the pace of work being carried out by IL & FS was not as agreed upon. Therefore, this was taken up by the respondent, with IL & FS by way of various email and letters communications, between the years 2013 till 2018 pertaining to their lack of / inadequate performance due to which the project was getting delayed. That the reasons for this became clear when Insolvency Proceedings were admitted against IL&FS by the competent authority being the Hon'ble NCLT, Mumbai in CP/4506/2018.

XVI. That several allottees have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the tower in which the unit in question is situated has been completed by the respondent. The respondent has already offered possession of the unit in question to the complainants as far back as on 23.10.2019. Therefore, there is no default or lapse on the part of the respondent and there in no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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 respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. 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 complainants at a later stage.

F. Findings on objections raised by the respondent:

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

9. The respondent is that the complaint is barred by limitation as the due date of possession as per the agreement was 12.12.2015 and the complainants has failed to exercise his rights within the prescribed timeframe. The Authority observes that although the cause of action to file the present complaint accrues on 12.12.2015 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 23.10.2019. 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 which was filed on 05.09.2024 is well within the limitation. Thus, the contention of promoter that the complaint is time barred by proviso of Limitation Act stands rejected.

F.II Objection regarding the complaint being barred by estoppel.

10. The respondent has raised an objection that the instant complaint is barred by estoppel as the unit has already been offered to the complainants vide offer of possession letter dated 23.10.2019 and the complainants are now estopped from raising these belated claims/demands.

11. The Authority observed that though the unit has already been offered on 23.10.2019 but as per proviso to section 18 of the Act of 2016, if the

allottee does not intend to withdraw from the project, they shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed. In the present complaint, as per the possession clause of the buyer's agreement, the due date of possession of the unit was 12.12.2015 but the same was offered on 23.10.2019 after a delay of more than 4 years. Therefore, the complainants are entitled for delay possession charges for the delayed period as statutory right of the complainants-allottee as per the provisions of section 18 of the Act of 2016. Thus, in view of the agreed terms and conditions duly agreed between the parties and the provisions of the Act of 2016, the contention of the respondent stands rejected.

F.III Objection regarding force majeure conditions:

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as default of contractor, insolvency proceedings on contractor and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to default of contractor, insolvency proceedings levied on the contractor in 2018 which is much later than the due date of possession i.e., 12.12.2015 but the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to refund the entire amount paid by the complainants along with interest @ 18% p.a. from the date of respective deposits till its actual realisation.

13. The complainants were allotted a unit in the project of respondent "Palm Gardens" in Sector-83, Gurgram for a total sale consideration of Rs.1,22,14,307/-. The buyer's agreement was executed between the parties on 12.09.2012 and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.94,68,616/-.

14. As per clause 10(a) of the buyer's agreement dated 12.09.2012, due date of possession is to be calculated 36 months from the date of execution of agreement with a grace period of three months after the expiry of 36 months. The possession clause is reproduced below for the ready reference:

> ***10. POSSESSION***
>
> ***(a) Time of handing over the Possession***
>
> *Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this buyer's agreement, and not being in default under any of the provisions of this buyer's 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 36 (thirty six) months from the date of execution of agreement, subject to timely compliance of the provisions of the buyer's agreement by the allottee.*** *The allottee(s) agrees and understands that the company shall be entitled to a grace period of three months for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.*
>
> ***(Emphasis supplied)***

15. Therefore, the due date for possession is to be calculated 36 months from the date of execution of agreement i.e., 12.09.2012 with a grace period of 3 months. Thus, the due date for possession of the unit comes to 12.12.2015.

16. The counsel for the complainants vide proceedings of the day dated 22.05.2025 brought to the notice of the Authority that the complainants are seeking refund of the paid-up amount along with the interest and the

request for the same was made on 15.05.2019 which is prior to the obtaining of occupation certificate and requests for allowing full refund along with the interest. However, the counsel for the respondent vide proceedings dated 22.05.2025 mentioned that vide letter dated 15.05.2019, the complainants have sought refund conditionally and threatened to continue only if interest at the rate of 24% per annum is paid otherwise the complainants will approach for liquidation of the company.

17. The Authority has gone through the letter dated 15.05.2019 and observed that in the said letter the complainants have requested for refund of paid-up amount along with interest @ 24% per annum. Further, the complainants have mentioned they will continue only in case the respondent agrees in writing to compensate the compensate the complainants with interest of 24% per annum from date of registration till possession otherwise they will approach necessary Authority for liquidation of company. Thus, it can be concluded that vide letter dated 15.05.2019, no clear intention was expressed by the complainants to withdraw from the project of the respondent and refund of the paid-up amount.

18. The Authority after considering the documents placed on record that the occupation certificate of the unit of the complainants has been obtained by the respondent on 17.10.2019 and the offer of possession has been made on 23.10.2019 and the present complaint seeking refund of paid-up amount along with interest was filed on 05.09.2024 which is almost after passage of 5 years from the date of offer of possession that was made on 23.10.2019. Therefore, the respondent is entitled for deduction of earnest money.

19. Now when the complainants approached the Authority to seek refund, it is observed that under clause 1.2(h) of the buyer's agreement, the respondent-builder is entitled to forfeit the 15% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

> *"The Allottee(s) understands and agrees that the payment of earnest money is to ensure the fulfilment of terms and conditions of the agreement. Out of the amount(s) paid/ payable by allottee(s) towards the total consideration, the company shall treat 15% of the total consideration, the company shall treat 15% of the total consideration as earnest money to ensure fulfilment of the terms and conditions as contained in this agreement, by the allottee(s)."*

20. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** *(decided on 29.06.2020)* and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** *(decided on 12.04.2022)* ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022,*** held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was dfferent. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and this Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money ***shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may*** *be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

21. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainants-allottee or cancellation by the builder but that was not done. So, the respondent is directed to refund the amount received from the complainants i.e., Rs.94,68,616/- after deducting 10% of the basic sale consideration along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of complaint i.e., 05.09.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority:

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i) The respondent/promoter is directed to refund the amount i.e., **Rs.94,68,616/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs.94,60,000/- as earnest money along with interest at the rate of 10.85% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of complaint i.e., 05.09.2024 till the actual date of refund of the amount.

ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

23. Complaint stands disposed of.

24. File be consigned to the registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.11.2025