

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

Complaint no. : 1885 of 2024
Date of order : 09.07.2025

Kamal Singhal

Address: 5523, Ground Floor, Orcid Crescent,
DLF Phase IV, Gurugram, Haryana. .

Complainant

Versus

M/s Emaar MGF Land Limited

Office at: - ECE House, 28-Kasturba Gandhi Marg,
New Delhi-110001.

Respondent

CORAM:

Shri. Ashok Sangwan

Member

APPEARANCE:

Sushil Yadav (Advocate)

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 thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012
	Valid till	30.07.2020
	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
5.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019.
	Extension valid up to	31.12.2019
6.	Unit no.	GGN-14-0702, Floor-7 th , Building/Tower no.-14 (As on page no. 18 of complaint)
7.	Unit measuring (super area)	1650 sq.ft



		(As on page no. 18 of complaint)
8.	Provisional allotment letter in favor of original allottee	25.01.2013 (As on page no. 28 of reply)
9.	Date of execution of buyer's agreement [Between the original allottee and respondent]	04.04.2013 (As on page no. 15 of complaint)
10.	Endorsement letter in favor of the complainant	26.06.2020 (As on page no. 66 of complaint)
11.	Possession clause	14. POSSESSION (a) Time of handing over the Possession <i>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 <u>36 (Thirty Six) months from the date of start of construction</u>, 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 <u>grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the</u></i>

		<u>Project.</u> (Emphasis supplied) (As on page no. 31 of complaint)
12.	Date of start of construction as per statement of account dated 29.04.2024 at page 95 of reply	14.06.2013
13.	Due date of possession	14.11.2016
14.	Total sale consideration	Rs.89,34,983/- [Including BSP-Rs.74,36,583/- , PLC -Rs.4,95,000/-, Car parking- Rs.3,00,000/-] (As on page no. 19 of complaint)
15	Total amount paid	Rs.95,25,560/- (As per S.O.A dated 29.04.2024 on page no. 95 of reply)
16.	Occupation certificate	16.07.2019
17.	Offer of possession	12.12.2018 (As on page no. 67 of complaint)
18.	Unit handover letter	28.09.2020 (As on page no. 70 of complaint)
19.	Conveyance deed	17.12.2021 (As on page no. 75 of complaint)

B. Facts of the complaint

1. The complainant has made the following submissions: -

- I. That the respondent gave advertisement in various newspapers about their forthcoming project named "Gurgaon Greens", situated at Sector 102, Gurgaon promising various advantages, like world class amenities



- and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent, the original allottee booked an apartment/flat measuring 1650 sq.ft. in aforesaid project for a total sale consideration of Rs.89,34,983/- and the same was later endorsed in favour of Mr. Bhushan Kumar Singhal (Husband of the complainant) on 17.09.2013, the said unit was again endorsed in the favour of the complainant and her husband (name of complainant was added) on 16.06.2020 thereafter the name of Mr Bhushan Kumar Singhal was struck off and on 19.06.2020, the unit remained only in the name of complainant.
- II. That the complainant made payment of Rs.97,00,562/- to the respondent. The Builder Buyer's Agreement was executed on 04.04.2013 and as per the Agreement, the respondents had allotted a Unit/Flat bearing no. GGN-14-0702, 7th Floor, Tower 14 having super area of 1650 sq. ft. to the complainant. As per para no.14(a) of the Agreement, the respondent had agreed to deliver the possession of the unit within 36 months from the date of start of construction. i.e 14.06.2013.
- III. That as per the BBA, the respondent had to hand over the possession of the unit by 13.06.2016 to the complainant. It is pertinent to mention here that respondent handed over the physical possession on the said unit on 28.09.2020, after a delay of almost more than 4 years. Conveyance deed was executed for the said unit on 17.12.2021.
- IV. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going on in full mode and accordingly asked for the payments which the complainant gave on time. On visiting the site, the complainant was shocked and surprised to see that

construction work is not going on and no one was present at the site to address the queries of the complainant.

- V. That the respondent has played fraud upon the complainant. The only intention of the respondents was to take payments for 'the flat without completing the work and not handing over the possession on time. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant. Despite receiving more than 100% payments on time for all the demands raised by the respondent, the respondent has failed to deliver the possession of unit within the stipulated period.
- VI. That the construction of the block in which the complainant's unit was booked was not completed within promised time as per BBA for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
- VII. That on the ground of parity and equity, the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the unit is actually delivered to the complainant.
- VIII. That the complainant has requested the respondent several times to pay delay possession charges till the actual handing over the possession of the unit but the respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay delayed possession charges on the amount paid by the complainant.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

- I. That the possession was offered to the complainant on 12.12.2018 and the complainant took the possession on 28.09.2020 and thereafter, executed a conveyance deed dated 17.12.2021 and the complainant has been enjoying the unit without any demur/protest. The lack of bonafide of the complainant is apparent from the fact that after conclusion of the entire transaction on the execution of the Conveyance Deed and the completion of all obligations of the respondent, he chose to remain silent for such a long period and has approached the Authority to extort money.
- II. That the complainant chose to never raise any claim towards Delay Possession Charges and was agreeable to the compensation so awarded by the respondent in terms of the Buyer's Agreement. Hence, it is clear from the lack of any documentary proof, whereby the complainant may have raised any such additional claim.
- III. The present complaint is not maintainable in view of the fact that the Conveyance Deed has already been executed and the respondent is absolved of all or any liability towards Delay Possession Charges, even in terms of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016.

- IV. That upon the handover of possession and execution of the Conveyance Deed, the complainant has accorded his satisfaction to the services provided by the developer and voluntarily discharged the developer of all its liabilities under the Buyer's Agreement. The Unit Handover Letter dated 28.09.2020, executed by the complainant clearly records ***"Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/ Agreement executed in favour of the Allottee stand satisfied"***. Thus, the respondent is discharged of all liabilities, including the claim of Delay Possession Charges, which are being claimed by way of present complaint.
- V. That the present complaint is barred by limitation. The complainant has received the offer of possession on 12.12.2018, on which the cause of action for claiming the delay compensation has arisen. The present complaint has been filed on 23.04.2024, after a gross delay of more than 5 years. The complainant cannot be allowed to sleep over its rights indefinitely and wake up at any time as he pleases. The respondent cannot be held at gunpoint for indefinite period of time.
- VI. That the Original Allottee had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent known as "Gurgaon Greens" situated in Sector - 102, Village Dhankot, Tehsil & District Gurgaon. Prior to making the booking, the original allottee conducted extensive and independent enquiries with regard to the project and it was only after he was fully satisfied about all aspects of the project, he took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- VII. That thereafter the original allottee was allotted an independent unit bearing no GGN-14-0702, Tower-14 admeasuring 1650 sq. ft., in the project vide provisional allotment letter dated 25.01.2013. The original allottee consciously and willfully opted for an "Instalment Payment Plan" for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the Original Allottee and proceeded to allot the unit in question in his favor.
- VIII. That thereafter, Buyer's Agreement dated 04.04.2013 was executed between the original allottee and the respondent.
- IX. That the complainant is not "Allottee" but is an Investor who has booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainant as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainant.
- X. That the Original Allottee as well as the complainant consciously and maliciously chose to ignore the letters issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the Buyer's Agreement. Furthermore, when the proposed allottees, such as the complainant, 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 and further causes enormous business losses to the respondent.
- XI. That the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants

incorporated in the Buyer's Agreement which continues to be binding upon the parties thereto with full force and effect. Clause 14 of the Buyer's Agreement provides that subject to the allottees having complied with all the terms and conditions of the Buyer's Agreement, and not being in default of the same, possession of the unit would be handed over within 36 months plus grace period of 5 months, from the date of start of construction.

XII. That Clause 16 of the Buyer's Agreement provides that compensation for any delay in delivery of possession shall only be given to such Allottees who are not in default of their obligations envisaged under the Buyer's Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Buyer's Agreement. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation shall be payable to the allottees. The complainant, having defaulted in payment of instalments, are also thus, not entitled to any compensation or any amount towards interest under the Buyer's Agreement. It is submitted that the complainant by way of instant complaint is demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the Buyer's Agreement.

XIII. That vide a request in September 2013, the original allottee, transferred the unit in favour of the husband of the complainant. In furtherance of the same, they executed transfer documents such as Agreement to Sell, indemnity cum undertaking, joint request letter, affidavit etc, to effect this transfer. Accordingly, the respondent issued Nomination letter dated

20.09.2013 in respect of the unit in question in favour of the husband of the complainant.

- XIV. That subsequently, upon a request of the complainant and her husband, the name of the complainant was added along with her husband in respect of the unit in question and thereafter, on their request, the name of the husband of the complainant was deleted.
- XV. That the respondent had applied for Occupation Certificate on 13.04.2018. Occupation Certificate was thereafter issued by the concerned statutory authority in favour of the respondent on 05.12.2018.
- XVI. 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 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. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the Buyer's Agreement.
- XVII. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainants.
- XVIII. That the complainant was offered possession of the unit in question through letter of offer of possession dated 12.12.2018 and subsequently, several reminders were sent to the complainant to take the possession. That an indemnity cum undertaking for possession dated 08.07.2020 was also executed by the complainant. The complainant was called upon to remit balance payments including

delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainant. However, the complainant approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the Buyer's Agreement. The respondent explained to the complainant that he is not entitled to any compensation in terms of the Buyer's Agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the Buyer's Agreement. The respondent earnestly requested the complainant to obtain possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent and threatened the respondent with institution of unwarranted litigation.

- XIX. That the complainant approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 28.09.2020 was executed by the complainant, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied. The complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favour of the complainant to institute or prosecute the instant complaint.
- XX. That after execution of the unit handover letter dated 28.09.2020 and obtaining of possession of the unit in question, the complainant is left with no right, entitlement or claim against the respondent. It needs to be

highlighted that the complainant has further executed a conveyance deed dated 17.12.2021 in respect of the unit in question. The transaction between the complainant and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainant against the other. That in addition thereto, the complainant has admitted their obligation to discharge their HVAT liability there under. It is pertinent to take into reckoning that the complainant has obtained possession of the unit in question and has executed conveyance deed in respect thereof, after receipt of the waiver of delay payment charges payable by the complainant amounting to Rs.3,59,849.

XXI. That the complainant has preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainant has filed the instant false and frivolous complaint in order to mount undue pressure upon the respondent in order to make it succumb to their unjust and illegitimate demands.

7. 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

8. 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

9. 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

10. 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)(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;

11. 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.

F. Findings on the objections raised by the respondent.

F.I. Whether the complaint is barred by limitation or not?

12. In the present complaint, the Builder Buyer's Agreement was executed on 04.04.2013 between the original allottee and the respondent and the same was later endorsed in favour of Mr. Bhushan Kumar Singhal (Husband of the complainant) on 17.09.2013. The said unit was again endorsed in favour of the complainant and her husband (name of complainant was added) on 16.06.2020 thereafter the name of Mr. Bhushan Kumar Singhal was strucked off and on 19.06.2020, the unit remained only in the name of complainant.

13. As per clause 14 of the agreement, the respondent was to offer the possession of the unit to the allottee within 36 months from the date of start of construction. The date of start of construction as per the Statement of Accounts dated 29.04.2024 is 14.06.2013. The respondent is also entitled to a grace period of 5 months, being unqualified. Thus, the due date comes out to be 14.11.2016.
13. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that the Buyer's Agreement between the original allottee (Husband of the complainant) and the respondent was executed on 04.04.2013. The unit was endorsed in favour of the complainant on 26.06.2020 i.e., after the due date. As and when the complainant entered into the project, the due date had already passed and the complainant was very much aware of the delay on the project. The respondent had obtained the occupation certificate in respect of the project, before the endorsement of the unit in the name of the complainant.
14. The respondent has raised an objection that the present complaint is barred by limitation. The complainant has received the offer of possession on 12.12.2018, on which the cause of action for claiming the delay compensation has arisen. The present complaint has been filed on 23.04.2024, after a gross delay of more than 5 years. The complainant cannot be allowed to sleep over its rights indefinitely and wake up at any time as he pleases. The respondent cannot be held at gunpoint for indefinite period of time.
15. 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



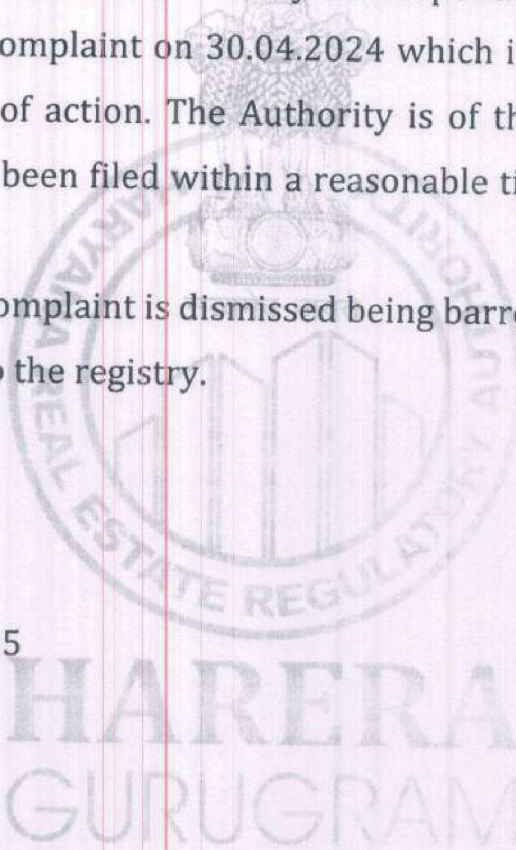
and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

16. In the present matter the cause of action arose on 12.12.2018 when the offer of possession of the unit was made by the respondent. The complainant has filed the present complaint on 30.04.2024 which is 5 years 4 months from the date of cause of action. 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.

17. Consequently, the complaint is dismissed being barred by limitation.

18. File be consigned to the registry.

Dated: 09.07.2025



(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram