

PROCEEDINGS OF THE DAY		14
Day and Date	Tuesday and 09.01.2024	
Complaint No.	CR/2770/2021 Case titled as Col. Kanwar Ripu Sain Jaiswal and Mahak Jaswal VS Emaar India Limited	
Complainant	Col. Kanwar Ripu Sain Jaiswal and Mahak Jaswal	
Represented through	Shri K.K. Kohli Advocate	
Respondent	Emaar India Limited	
Respondent Represented	Shri Ishaan Dang Advocate	
Last date of hearing	31.10.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
The present complaint was filed on 14.07.2021 and the reply on behalf of respondent was filed on 27.08.2021.		
Succinct facts of the case as per complaint and reply are as under:		
Sr. No.	Particulars	Details
1.	Name of the project	Emerald Floors Premier, Sector 65, Gurugram, Haryana
2.	Total area of the project	25.49 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	06 of 2008 dated 17.01.2008
	Validity of license	16.01.2025
	Licensee	Active Promoters Pvt. Ltd. and 2

		others
	Area for which license was granted	25.499 acres
5.	Registered/not registered	Registered vide no. 162 of 2017 dated 29.08.2017 (For 55.962 acres)
	Validity of registration	28.08.2022
6.	Unit no.	EFP-04-0102, 1 st floor [page 66 of complaint]
7.	Area of the unit (super area)	1650 sq. ft. [page 66 of complaint]
8.	Buyer's agreement executed between the original allottee (Remy Sethi) and the respondent on	27.01.2010 [page 69 of reply]
9.	Possession clause	11. POSSESSION (a) Time of handing over the Possession <i>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 months from the date of execution of buyer's agreement.</i>

		<i>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.</i> (emphasis supplied) [page 84 of reply]
10.	Due date of possession	27.01.2013 [Note: Grace period is not included]
11.	Complainants are subsequent allottees	In pursuance of Sale Agreement - dated 08.03.2011 (page 125 of reply) executed between the complainants and the original allottee, the complainants' name was endorsed on the buyer's agreement in terms of affidavit dated 08.03.2011. Thereafter, the respondent has issued nomination letter in favour of the complainants on 24.03.2011 (Page 146 of reply). Note: The name of complainant no.2 was added as co-allottee vide letter dated 28.08.2020
12.	Total consideration	Rs.72,19,387/- (as per the SOA dated 14.07.2021 at page 123 of reply)
13.	Total amount paid by the complainant	Rs.72,26,135/- (as per SOA dated 14.07.2021 at

		page 123 of reply)
14.	Occupation certificate on	05.03.2019 [page 51 of reply]
15.	Offer of possession	13.02.2020 [Page 167 of reply]
16.	Unit handover letter dated	18.09.2020 [page 174 of reply]
17.	Conveyance deed executed on	30.10.2020 [Page 178 of reply]
18.	Delay compensation paid by the respondent in terms of the buyer's agreement	Rs. 9,67,542/- (Rs. 6,73,471/- + Rs. 2,94,071/-) (as per SOA dated 14.07.2021 at page 123 of reply)

The complainant is seeking delayed possession charges and valid offer of possession of the unit. In this matter the conveyance deed has been executed on 30.10.2020. Further stated that the respondent has charged illegal demands like HVAT and advance maintenance charges which are not payable by the complainant.

The counsel for the respondent states that the conveyance deed of the unit has already been executed in favour of the complainant on 30.10.2020. The transaction between the parties stands concluded upon the execution of conveyance deed and the respondent is absolved of all or any liabilities, except for as in terms of section 11(4) of the Act. Hence the present complaint is time barred by limitation and hence is liable to be dismissed.

Further stated that as per section 37 of the Contract Act, 1872, the execution of the conveyance deed is a transfer of right in property and it is not within the jurisdiction of the Ld. Authority to entertain a grievance after execution of conveyance deed. He draws attention towards the judgement dated 24.8.2020 passed by the Hon'ble Supreme Court of India in case Civil Appeal No.6239 of 2019 titled as Wg.Cdr.Arifur Rehman Khan and Aleya Sultana and



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

others Vs DLF Southern Homes Pvt. Ltd. wherein it was held that allottee has a right to claim compensation for delay in delivery of possession after execution of conveyance deed. Further submitted that the said judgement was based on a set of facts and passed under Consumer Protection Act, which is another special law. Once the allottee chooses the RERA forum, the Ld authority cannot ignore the provisions of the Act and allow payment of delay interest even after execution of conveyance deed. Further submitted even the Hon'ble Appellate Tribunal upon being satisfied by the submissions was pleased to admit several appeals and formed a primary issue in its order dated 14.7.2023 with regard to effect of conveyance deed prior to filing of complaint and acceptance of compensation by the allottees before the execution of conveyance deed, in Appeal No.94 of 2022 titled as Emaar India Ltd. Vs Ruchika Ahuja.

Arguments heard.

Order reserved.

Both the counsels to submit written submissions within a period of 15 days with an advance copy to each other.

Matter to come up on 12.3.2024 for pronouncement of orders.

Ashok Sangwan
Member

Vijay Kumar Goyal
Member

Arun Kumar
Chairman
09.01.2024