

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

Complaint no. : 4281 of 2021
Complaint filed on : 09.11.2021
Date of decision : 31.05.2022

Emaar India Ltd.
Address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Complainant

Versus

Mr. Kaushik Bellani
Mrs. Priya Bellani
Address:- House no. 904, Block-C-1, Uniworld City,
Sector-30, Gurugram

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE

Shri Harshit Batra
None

Advocate for the complainant
On behalf of the respondents

ORDER

1. The present complaint has been filed by the complainant/promoter in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of

two months of the occupancy certificate issued for the said unit. Also, the obligation of allottee to make necessary payments in the manner and within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondents, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	The Palm Terraces Select, Sector 66, Gurugram.
2.	Project area	37.708 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	1. 93 of 2008 dated 12.05.2008 Valid/renewed up to 11.05.2020 2. 50 of 2010 dated 24.06.2010 Valid/renewed up to 23.06.2020
1.	Name of licensee	1. Arjun Dev and another C/o Emaar MGF Land Ltd. 2. Brijbasi Projects Pvt. Ltd. C/o Emaar MGF Land Ltd.
3.	HRERA registered/ not registered	19 of 2018 dated 01.02.2018

	HRERA registration valid up to	30.04.2018
4.	Occupation certificate granted on	25.01.2018 [annexure C3, page 27 of complaint]
5.	Provision allotment letter dated	10.08.2010 [annexure C4, page 32 of complaint]
6.	Unit no.	PT-05-1101, 11 th floor, Tower-05 [page 39 of complaint]
7.	Unit measuring	3670 sq. ft. [Page 39 of complaint]
8.	Date of execution of buyer's agreement	28.10.2010 [page 37 of complaint]
9.	Payment plan	subvention payment plan [Page 73 of complaint]
10.	Total consideration as per the schedule of payment on page 33 of the complaint	Rs. 2,58,000,40/-
11.	Total amount paid by the respondents as per the statement of account dated 14.03.2018 page 104 of complaint	Rs. 2,48,84,539/-
12.	Date of start of construction as per the statement of account dated 14.03.2018 at page 104 of complaint	31.07.2012
13.	Possession clause	14. POSSESSION <i>Subject to terms of this clause and the Allottee(s) 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 upon</i>



		<p><i>complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six (36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</i></p>
15.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of start of construction i.e. 31.07.2012	31.07.2015
16.	Date of offer of possession to the respondents	14.03.2018 [annexure C7, page 99 of complaint]

B. Facts of the complaint

3. The complainant/promoter has made following submissions in the complaint:

- i. That the complainant was formerly known under the name and style of M/s Emaar MGF Land Ltd., however, had changed its name to "Emaar India Limited" w.e.f. 07.10.2020 as is evident from the certificate issued by the Government of India, Ministry of Corporate Affairs, New Delhi.
- ii. That after having completed the construction of the project, in all respects, the occupancy certificate was applied on 01.07.2017 and was consequently obtained on 25.01.2018. It is to be noted that the construction of approximately 326 booked apartments has been completed, out of which 250 units were handed over and consequently many families are residing in the project at the time of filing this complaint. The project has also been duly registered with the authority.
- iii. That the project has been duly completed after having obtained all the necessary approvals and fulfilling all the requirements as per the existing bye laws. that at the outset, without prejudice to the contents of this complaint, it must be noted that the complainant holds a good face value in the market and is a renowned real estate developer of international repute. that the allottees approached the complainant expressing an intention of booking an allotment in the project and a willingness to pay for the same upon which a provisional allotment dated 10.08.2010 was made in the name of the allottee. that thereafter a buyer's agreement dated 28.10.2010

(hereinafter referred to as the "agreement") was executed between the complainant and the allottees for unit no. PTS-05-1101 admeasuring 3670 sq. ft. (super area) on eleventh floor, tower no. 5 in the Project (hereinafter referred to as the "unit") for the sale price of Rs. 2,52,01,636 which comes to be Rs. 2,68,97,196 inclusive of HVAT upto 31.03.2014 IBMS/IFMS and unit service Tax/GST charges.

- iv. That the respondents assented to pay the monies against the unit, however, have defaulted in the payment against the unit since the very beginning. That the respondents were conveyed and explained about time being the essence with respect to the allottees' obligations and thus, the timelines of delivery of possession were liable to be altered accordingly.

14(b) Subject to force majeure events as set out in Clause 31, the date of possession shall get extended accordingly:

(vi) That the Allottee(s) agrees and accepts that in case of any default/delay in payment as per the Schedule of Payments as provided in Annexure II, the date of handing over the possession shall be extended accordingly solely on the Developer's discretion till the payment of all the outstanding amounts to the satisfaction of the Developer.

- v. That the complainant has acted in the utmost transparent manner and has timely offered the possession of the unit to the complainant. That as per clause 14(a) of the agreement, possession was to be given within a period of 36 months from the date of commencement of construction and 3 months of grace period; subject to the compliance of the provisions of the agreement by the allottee. The complainants had applied for occupancy certificate on 01.07.2017 and consequently received the occupancy

certificate on 25.01.2018 after which, the legal possession was offered on 14.03.2018 timely without any delay on part of the complainant. It is vehemently submitted that any delay caused by the competent authority in granting the occupancy certificate is not attributable to the complainant. that the complainant should not be prejudiced by any delay caused by the competent authority. That the functioning of the competent authority is beyond the preview and control of the complainant. It should be further categorically noted that no objection was observed in the occupancy certificate i.e., the application for the occupancy certificate was complete in all respects. that the development of the project is completed since 2017.

- vi. That the timeline of possession clause mentioned above is subject to *force majeure* circumstances and fulfilment by the allottee of all the terms and conditions of the agreement including but not limited to timely payment by the allottee of the total price payable in accordance with the payment plan. That even after the issue of letter of offer of possession and the occupancy certificate, the respondents have not cleared the pending dues against the unit, till date, i.e., even after 3 years and 6 months. That the period of delay caused by the respondents is almost equivalent to a period taken for development of a new unit. That this inordinate delay is inexcusable and inexplicable. that the allottee still stands in default in making the payments as a total amount of Rs. **45,78,138.16** is due and payable by the respondents, a bifurcation of which is as under:

S. No	Particular	Amount (INR)
1.	Balance amount (As per calculation sheet)	12,09,063/-
2.	DPC (without GST) as per calculation sheet	4,97,885/-
3.	HVAT upto 31.03.2014	2,04,105/-
4.	HVAT Security	3,24,208/-
5.	Stamp Duty	14,31,480/-
6.	Administrative, Registration Charges and Registration Charges 1	12,000 + 17,501+ 35,000= 64,501
7.	CAM and CAE as on 19.10.2021	8,46,896.16
Total Amount:		45,78,138.16

- vii. The Hon'ble Supreme Court noted in case **Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18** held that the payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.

- viii. That despite of the defaulting conduct of the respondents, the complainant has always acted in good faith. that even after having defaulted in the timely payment, the complainant kept reminding the respondents. That, accordingly, all the claims of the respondents had been settled along with. that without prejudice to the contents of this complaint, it must be noted that the respondents have been given credit memos: Rs. 4,19,999, Rs. 3,04,771 towards subvention, Rs. 7,08,318 on account of compensation Rs. 2,65,319 against EDC, interest, various credit memos against TDS and also the one-time rebate payment reflected in letter dated 28.02.2011.
- ix. That however, despite the complainant's conduct of going over and beyond and reminding the respondents time to time, the respondents continued making defaults, as is evident from the various reminders and notices sent, as mentioned above. That, it has been more than three years since the possession has been offered by the complainant, but the possession has not been taken by the respondents and no conveyance deed has been executed till date and nor have the balance payments against the unit been made.
- x. Additionally, at the sake of repetition, it is pointed out that the unit is 100% completed and thus the respondents should be bound to make the due payments and should, under no circumstances, be allowed to wriggle out of its obligations by mere forfeiture. That should that be directed or allowed by this authority, the complainant would be adversely affected despite having performed its obligations in a timely, efficient and effective manner. Hence, the authority is requested to take note of the matter and direct the respondents to comply with its contractual and legal obligations.

C. Relief sought by the complainant/promoter

4. The complainant has filed the present complaint for seeking following reliefs:
 - i. Direct the respondents to pay the outstanding dues of Rs. 45,78,138.16/-
 - ii. To direct the respondents to take the possession of the unit and get it registered before Sub-registrar, Gurugram;
 - iii. To direct the respondents to pay the interest @ MCLR plus 2% on the pending payments as per the payment plan;
 - iv. To direct the respondents to actively participate in the execution and registration of conveyance deed.
5. On the date of hearing, the authority explained to the respondents/allottees about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.
6. Registry has sent the notice along with a copy of the complaint through email on the following email address i.e., kb2ndinnings@gmail.com and the same is shown to has delivered on the above email address as per the report available in the file. It is proper service of the notice.
7. On 15.12.2021, none appeared on behalf of the respondents-allottees, and an opportunity was given to the respondents for filing of reply by 30.12.2021. Thereafter, vide order dated 18.02.2022, the respondents were again directed to file reply by 04.03.2022. Thereafter, the notice along with previous orders dated 15.12.2021, 18.02.2022 and 15.04.2022 passed by the authority, were served to the respondent no.2

through whatsapp on the mobile no. 9818151107 and the proof regarding the same having been delivered is placed on the record. However, despite the said opportunity, the respondents have failed to file reply to the said complaint. The authority is left with no other option but to proceed ex-parte.

8. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

D. Jurisdiction of the authority

9. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

D.II Subject matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per

provisions of section 11(4)(a) of the Act and duties of the allottee as per section 19(6), (7) and (10) of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

E. Finding on the relief sought by the complainant/promoter

10. **Relief sought by the complainant:** The complainant has sought the following reliefs:

- i. Direct the respondents to pay the outstanding dues of Rs. **45,78,138.16/-**
- ii. To direct the respondents to take the possession of the unit and get it registered before Sub-registrar, Gurugram;
- iii. To direct the respondents to pay the interest @ MCLR plus 2% on the pending payments as per the payment plan;
- iv. To direct the respondents to actively participate in the execution and registration of conveyance deed.

11. The complainant/promoter submitted that the respondents/allottee has failed to abide by the terms and conditions of the buyer's agreement by not making the payments in timely manner as per the payment plan opted by the allottee and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further cause of action also arose when despite repeated follow-ups by the promoter and having performed its contractual obligations, the respondents/allottees withheld to perform their contractual obligation. The respondents/allottees shall make the requisite payment as per the

provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under:

"Section 19: - Right and duties of allottees. -

.....

*19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*

19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

12. As per clause 1.2 (b) of the buyer's agreement, the respondents/allottee was liable to pay the Instalment as per payment plan opted by the respondents/allottee. Clause 1.2 (b) reproduced as under:

(b) Payment Plan

The Allottee(s) agrees and undertakes to pay the balance amount of the Total Consideration in accordance with the payment plan detailed in "Schedule of Payment" annexed at Annexure II hereto. In the event the Allottee(s) fails, neglects and/or delays the payment of installments then, notwithstanding the right of the Developer to cancel such allotment at its sole discretion at any time after such default in payment occurs, the Developer at its sole option and discretion, without prejudice to any other rights provided to it under this Agreement, waive such failures, neglects and/or delays in the payment of installments but only on the condition that the Allottee(s) shall pay interest on the installment due, in addition to the installment due, to be calculated from the due date of outstanding installment @ 24% per annum till the date on which such installment is paid by the Allottee to the Developer. It is made clear and so agreed by the Allottee(s) that the exercise of such discretion to waive such

failures, neglects and/or delays in the payment of installments by any one allottee shall not be construed to be a precedent and/or binding on the Developer to exercise such discretion in case of other allottee(s).

13. The authority observed that the possession of the unit was offered to the respondents/allottees on 14.03.2018 and despite repeated reminders to the respondents/allottee but they are not coming forward to clear the outstanding dues and to take the possession after execution of conveyance deed. Section 19(6) of the act 2016, provides that every allottee shall be responsible to make necessary payments as per agreement for sale and to take physical possession of the apartment/building as per section 19(10) of the act and accordingly the respondents/allottees directed to clear the outstanding dues along with interest at the prescribed rate of 9.40% per annum and to take the possession of the unit within two months. The delayed possession charges, if any, be also adjusted while making the payment of outstanding dues and equitable rate of interest.
14. The respondents/allottees shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of two months from the date of this order failing which the complainant/promoter shall be free to proceed with cancellation of the subject unit allotted to the respondents/allottees as per the terms of the buyer's agreement and as per provisions of law.

F. Directions of the authority:

15. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
16. The respondents/allottees shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of two months. The delayed possession charges, if any, be also adjusted while making the payment of outstanding dues and equitable rate of interest.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2022


(Dr. K.K. Khandelwal)

Chairman