

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

Complaint no. : 1784 of 2021
Date of decision : 08.09.2022

Charanpreet Singh Chanana
Address: - House No 688, Block -B, Palam Vihar
Gurugram 122017

Complainant

Versus

Emaar MGF Land Ltd.
Registered address: Emaar Business Park,
MG Road, Sikanderpur, Sector 28,
Gurugram 122002

Respondent

CORAM:

Dr K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

In person with shri M.S. Sehrawat
Shri J.K. Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 22.04.2021 has been filed by the complainant 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. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Palm Premier at Palm Hills, Sector 77, Gurugram, Haryana
2.	Unit no.	PH3-EPP-B-G0-02, ground floor, tower no. B [annexure C5, page 52 of complaint]
3.	Provisional allotment letter dated	28.03.2018 [annexure C4, page 36 of complaint]
4.	Date of execution of buyer's agreement	12.10.2018 [annexure C5, page 39 of complaint]
5.	Possession clause	7. POSSESSION AND SALE DEED <i>(a) Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied</i>

		<p><i>with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 28.02.2022 or any time as may be extended by the Authorities.</i></p> <p>(Emphasis supplied)</p>
6.	Due date of possession	28.02.2022
7.	Total consideration as per statement of account dated 11.06.2021 at page 46 of reply	Rs. 1,27,16,057/-
8.	Total amount paid by the complainant as per statement of account dated 11.06.2021 at page 46 of reply	Rs.1,01,17,885/-
9.	Occupation certificate	24.12.2020 [annexure R8, page 112 of reply]
10.	Offer of possession	18.01.2021 [annexure C7, page 98 of complaint]

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That Mr. Charanpreet Singh Chanana was staying in rented accommodation and was looking to buy, his own house in the Millenium City. He after a thorough research, finally selected "Emaar Palm Premier at Palm Hills Sector 77, Gurgaon, being developed by Emaar MGF Lands limited.
- ii. That the complainant, submitted an application for registration and allotment of the dwelling unit in the project "Palm Premier at Palm



Hills "Sector 77, Gurgaon, on 13-03-2018, details of which are : Flat No -PH3-EPP-B-GD-02, Type- 3 bhk, Area- 2025Sq.ft unit price- Rs.1,08,47,044/- Payment Made- Rs 11,00,000/-vide cheque No 658852 &658853, dated 28-02-2018 and 07-03-2018. That the allotment letter was issued by the respondent on 28-03-2018 confirming the unit details as per application.

- iii. That the BBA was signed on 12-10-2018. That the builder-buyer agreement was presented to complainants on 12-10-2018, by the respondents. This builder buyer agreement was totally one sided, designed to benefit the respondent, got printed by the respondent. In effect signing was a total surrender by the complainant, for fear of losing 12,31,268/-.
- iv. That the Clause-7 (d) of the builder buyers agreement is allottee required to take possession within 30 days from offer of possession after making all payments and submitting all documents correctly. That till now the Total payment made by complainant to the builder/respondent is Rs. 1,01,17,885/- which is slightly more than 89 % of the total consideration amount. That a Notice dated 18-01-2021, for Possession the respondent has demanded the complainant to pay Rs 35,83,760/- (including Rs 7,59,360/ for stamp duty for registration charges). On receipt of this amount and documentations, the respondent would within 30 days of this letter, respondent would initiate the process of handing over possession.
- V. That the first cause of action arose when in spite of persistent queries, respondent failed to pinpoint complainant car parking

and explaining that same would be done on physical possession. Second cause of action arose when some 3 months ago respondent started filling and covering the open space next to complainant windows and verandas thus blocking the view and covering the designated green spaces which is shown in advertisements, Zonal Plan and BBA. Third cause of action arose when respondent refused to reverse the PLC @10% inherent in unit pricing, when complainant unit does not remain a PLC Unit. Timely Payment Rebate (TPR) benefit of Rs. 2 lacs agreed earlier was refused outrightly by Emaar at the time of offer of possession without any valid reason.

C. The complainant is seeking the following relief:

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

- (i) Direct the respondent not to charge anything extra over and above the buyer's agreement/settled amount from the complainants. Excess collected amount of Rs.4,00,719/- be refunded/adjusted along with 18% p.a. to be compounded quarterly.
- (ii) Brokerage reduction @ 2.5% as promised has not been reduced.
- (iii) Complainant unit is no more a PLC unit, PLC- @10% inherent in the total sale price be reversed along with prescribed rate of interest.
- (iv) Respondent is directed to handover possession to the complainant without any further delay along with copy of OC and other clearances granted by competent authority.



- (iv) Timely payment rebate benefit of Rs.2 lakhs agreed earlier was refused outrightly by Emaar at the time of offer of possession without any valid reason.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:
- i. That it is submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking, inter alia, possession of the unit booked by the complainant and refund of several amounts paid by the complainant to the respondent. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the real estate (regulation and development) Act, 2016 (hereinafter referred to as the 'Act') read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as the 'Rules') and not by this authority. The present complaint is liable to be dismissed on this ground alone. moreover, the adjudicating officer derives his jurisdiction from the central statute which cannot be negated by the rules made thereunder.
 - ii. That the present complaint is devoid of any cause of action. It is submitted that there is no delay in delivery of possession of the unit in question to the complainant. In fact, the respondent has offered possession of the unit in question much prior to the date of delivery of possession stipulated in the buyer's agreement. the respondent was obligated to deliver possession of the unit in question on or before 28.02.2022. It is submitted that the



respondent having offered possession of the unit in question on 18.01.2022 has duly completed its contractual obligations and duties. Therefore, no cause of action can be construed to have arisen in favour of the complainant in the facts and circumstances of the case.

- iii. That even otherwise, the complainant has no locus stand 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 12.10.2018, as shall be evident from the submissions made in the following paragraphs of the present reply.
- iv. 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 this hon'ble authority and can only be adjudicated by the adjudicating officer/civil court. The present complaint deserves to be dismissed on this ground alone.
- v. The complainant approached the respondent sometime in the year 2018 for purchase of an independent unit in its upcoming residential project "palm premier at palm hills" (hereinafter "the project") situated in sector 77, Village Shikohpur, Gurgaon. It is submitted that the complainant prior to approaching the

respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

- vi. That thereafter the complainant vide application form dated 27.02.2018 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no ph3-epp-b-g0-02, located on the ground floor, in the project vide provisional allotment letter dated 28.03.2018. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. the respondent had no reason to suspect the bonafide of the complainant.
- vii. That however, right from the beginning, the complainant was extremely irregular in payment of instalments. the respondent was constrained to issue payment request letters, reminders etc. to the complainant requesting him to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by him. However, the complainant consciously and wilfully refrained from timely remitting the instalments to the respondent. Statement of accounts dated

11.06.2021 correctly maintained by the respondent in due course of its business reflecting the delay in remittance of the instalments by the complainant.

- viii. That since the complainant was not forthcoming with the outstanding amount, the respondent was constrained to issue notice dated 13th of December 2018 intimating the complainant that the complainant has defaulted in timely remittance of the instalments. It was further brought to the notice of the complainant that in case the complainant fails to make the payment of the outstanding amounts mentioned in the notice, in that event the respondent would proceed to cancel the allotment of the unit in question in favour of the complainant. The complainant upon receipt of the aforesaid notice approached the respondent requesting it to not act upon the said notice and further requested for some time for remittance of the outstanding amounts. The respondent, even though under no obligation to accede to the requests of the complainant, refrained from cancelling the allotment of the unit in question as a gesture of goodwill. The complainant has concealed this fact from this honourable authority and therefore the instant complaint is liable to be dismissed at the threshold.
- ix. That it is respectfully submitted that the rights and obligations of complainant as well as 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 7 of the buyer's agreement provides that possession of the unit would be handed over on or



before 28.02.2022, subject to force majeure conditions and fulfilment by the allottee of all the terms and conditions of the buyer's agreement including but not limited to timely payment of the total price payable in accordance with payment plan incorporated in the buyer's agreement. It is submitted that the respondent has offered the possession of the unit in question much prior to the date stipulated in the buyer's agreement. The complainant, on the other hand, has consciously refrained from obtaining possession of the unit in question. Therefore, there is no equity in favor of the complainant. The Complainant is conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- x. That Clause 7(f) of the Buyer's Agreement further provides that in the event of an allottee failing to complete the payment of the overdue amounts and obtain possession of the unit in question within the time stipulated in the letter of offer of possession, the allottee shall continue to pay maintenance charges as may be decided by the respondent alongwith holding charges of Rs. 500/- per day along with applicable taxes for the entire period of delay in obtaining possession by the allottee. The complainant is conscious and aware of his liability to pay holding charges for the entire period of delay in obtaining possession of the unit in question. The complainant has preferred the instant complaint in order to evade his obligations and duties enumerated in the buyer's agreement.



The institution and prosecution of the instant complaint constitutes gross misuse of the process of law.

- xi. That the respondent had submitted an application for grant of occupation certificate in respect of the project in question to the concerned statutory authority on 14.09.2020. The occupation certificate, thereafter, had been granted by the competent authority on 24.12.2020. It is respectfully submitted that once an application for grant of occupation certificate is submitted before the concerned statutory 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 same. Therefore, the time taken by the concerned statutory authority for issuing the occupation certificate in respect of the project in question needs to be excluded from the time taken by the respondent to implement the project.
- xii. 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 cannot undo or modify the terms of an agreement duly executed between the parties. The provisions of the act relied upon by the complainant for seeking interest or refund cannot be called in to aid, in derogation and ignorance of the provisions of the buyer's agreement. The complainant cannot demand any refund or any amount beyond the terms and conditions incorporated in the buyer's agreement.



- xiii. That the complainant was offered possession of the unit in question through a letter of offer of possession dated 18.01.2021. The complainant was called upon to remit balance payment 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 consciously refrained from obtaining possession of the unit in question for reasons best known to him. It appears that the complainant does not have adequate funds for payment of amounts due and payable by him to the respondent. The complainant has preferred the instant complaint in order to needlessly linger on the matter and to mount undue pressure upon the respondent. The instant complaint is liable to be dismissed at the threshold.
- xiv. That the project of the respondent had been registered under RERA Act, 2016 and HRERA Rules, 2017. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-1279/2018/29 dated 01.01.2018 has been appended with this reply as **Annexure R10**. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the complaint preferred by the complainant is devoid of any cause of action. It is submitted that the registration of the project is valid till 28.02.2022 and the respondent has offered possession of the unit in question to the complainants in January, 2021. Therefore,



no cause of action has accrued in favor of the complainant in the facts and circumstances of the case.

- xv. That it is pertinent to note that the complainant has preferred the instant complaint seeking refund of preferential location charges (PLC) allegedly remitted by him to the respondent. It is submitted that the respondent has not charged or collected any amount towards PLC from the complainant. The complainant is intentionally and maliciously evading the obtaining of possession of the unit in question of false and specious pretexts. It is pertinent to take into reckoning that an amount of Rs. 36,98,689/- is due and payable by the complainant to the respondent. The instant complaint has been preferred by the complainant with the intent of needlessly lingering on the matter. It appears that the complainant does not have adequate funds for completing the transaction and obtain possession of the unit in question. The allegations of the complainant are wholly fabricated, misconceived and unfounded.
- xvi. That it is further submitted that the complainant has miserably failed to point out as to how the unit has ceased to be a preferentially located unit. The unit cannot cease to be preferentially located on account of personal and subjective whims and fancies of the complainant especially in the light of the fact that no amount was charged or collected by the respondent from the complainant towards PLC. In any event, the complainant has not challenged the revised layout plans and consequently the relief sought in the false and frivolous complaint is erroneous and unfounded. The complaint preferred by the complainant is

meritless and misplaced. Moreover, no interest or compensation or damages or costs of any nature whatsoever can be legally claimed by the complainant from the respondent on account of the alleged collection of PLC from him. The complaint preferred by the complainant is absolutely illegal, unfounded and meritless. The same warrants dismissal at the threshold.

- xvii. That the present complaint is bad for non-joiners of Punjab National Bank (PNB) as a party. Complainant had availed a housing loan from PNB by mortgaging the unit in question. Tripartite agreement evidencing this fact is appended hereto as **annexure R11**. The complainant is stopped from claiming any amounts from the respondent in view of the loan availed of by the complainant. The complainant had specifically subrogated all his rights for refund/compensation/interest with respect to the apartment in question, in favour of PNB. Therefore, prosecution of the instant complaint without making PNB a party is bad in law.
- xviii. It is submitted that several allottees, including the complainant, have defaulted in timely remittance of payment of instalments 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. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

8. Section 11(4)(a) of the Act 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) The promoter shall-

- (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;*

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainants/allottee.

- F.1 Direct the respondent not to charge anything extra over and above the buyer's agreement/settled amount from the complainants. Excess collected amount of Rs.4,00,719/- be refunded/adjusted along with 18% p.a. to be compounded quarterly.
10. The respondent/promoter is directed not to charge anything which is not part of the buyer's agreement. With regard to the alleged excess collected amount of Rs. 4,00,719/-, it is clearly evident from the statement of account dated 11.06.2021 (annexure R5, page 46 of reply) that the said amount has already been adjusted by the respondent promoter. In light of the above-mentioned facts the said relief becomes infructuous.

respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

F.V Timely payment rebate benefit of Rs.2 lakhs agreed earlier was refused outrightly by Emaar at the time of offer of possession without any valid reason.

14. The authority observes that the payment plan incorporated in the buyer's agreement expressly states that Timely Payment Rebate (TPR) is only applicable if all the instalments and applicable taxes are remitted by the complainant on time in accordance with the payment plan. It is evident from the statement of account dated 11.06.2021 (annexure R5, page 46 of reply) that the complainant has defaulted in timely remittance of the instalments to the respondent and consequently has to pay interest on the delay payments. Therefore, the complainant is not entitled to claim the benefit of timely payment rebate.

G. Directions of the authority:-

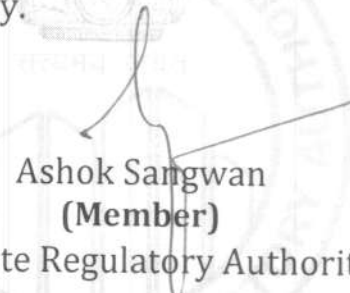
15. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:


- i. The respondent is directed to get the conveyance deed executed as per section 17 of the Act 2016 within a period of three months from the date of this order.
- ii. The complainant/allottee 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 60 days.



- iii. Interest on the delay payments from the respondent shall be charged at the prescribed rate of interest @10% p.a. by the promoter.
- iv. The respondent shall not levy/recover any charges from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
16. Complaint stands disposed of.
17. File be consigned to registry.


Sanjeev Kumar Arora
(Member)


Ashok Sangwan
(Member)


Dr. K.K. Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.09.2022