

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

Date of decision: 27.10.2022

NAME OF THE BUILDER		Emaar India Limited	
PROJECT NAME		Emerald Hills	
S. No.	Case No.	Case title	APPEARANCE
1	CR/3317/2021	Emaar India Limited V/S Ashish Sharma	Shri Dhurv Rohtagi Advocate and none has appeared on behalf of respondent
2	CR/3322/2021	Emaar India Limited V/S Ashish Sharma	Shri Dhurv Rohtagi Advocate and none has appeared on behalf of respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 19(6), (7), and (10) and (11) of the Act.

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2. The core issues emanating from them are similar in nature and the respondent(s)/allottee in the above referred matters are complainant/promoter of the project, namely, "Emerald Hills" (commercial complex) being developed by the same complainant/promoter i.e., M/s Emaar India Limited. The terms and conditions of the booking application form, allotment letter, and the buyer's agreement fulcrum of the issues involved in all these cases pertains to failure on the part of the respondent/allottee failed to take possession of the allotted unit in question and pay outstanding dues if any under the provisions of the Act of 2016.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Emaar India Limited, at "Emerald Hills" Sector 65 Gurugram, Haryana
<p>Possession Clause: - 16. POSSESSION</p> <p>(a) Time of handing over the possession</p> <p><i>That the possession of the office /spaces in the commercial complex shall be delivered and handed over to the allottee(s) within 24 (twenty four-months) months of the execution hereof, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not be in default under any provision of the agreement and all the amounts due and payable by the allottee(s) under this agreement having being paid in the time to the company, the company shall give to notice to the allottee, offering in the writing, to the allottee to take provision possession of the office spaces for his occupation and use("notice of possession").</i></p> <p style="text-align: right;">(Emphasis supplied)</p>	
<p>Occupation certificate received on 08.01.2018</p>	

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Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants	Offer of possession
1.	CR/3317/2021 Emaar India Limited V/S Ashish Sharma Date of Filing of complaint 27.08.2021	Reply not received	EPS-SF-005, 5th floor.	12.06.2014 [Page 52 of complaint]	12.06.2016	TSC: - Rs.24,10,190.64/- AP: - Rs. 9,29,132/-	30.01.2018 [page 120 of complaint]
2.	CR/3322/2021 Emaar India Limited V/S Ashish Sharma Date of Filing of complaint 27.08.2021	Reply not received	EPO-02-010, 2 nd floor.	13.05.2010 [Page 56 of complaint]	13.11.2013	TSC: - Rs.25,71,585.04/- AP: - Rs.7,30,567/-	06.02.2018 [page 143 of complaint]

Relief Sought: -

- i. Direct the respondent to pay outstanding dues in respect of the subject unit along with interest at the prescribed rate as per the rules.
- ii. Direct the respondent to pay common area maintenance charges along with the common area electricity charges.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

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4. The aforesaid complaints were filed against the allottee/respondent on account of violation of the booking application form, allotment letter, and the buyer's agreement fulcrum of the issues involved in all these cases pertains to failure on the part of the respondent/allottee failed to take possession of the allotted unit in question, and pay outstanding dues if any under the provisions of the Act of 2016.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the allottee/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the allottee, the promoter(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of both the complaints filed by the complainant(s)/promoter(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/3317/2021 Emaar India Limited V/S Ashish Sharma** are being taken into consideration for determining the rights of the promoter(s) qua respondent/allottee to take possession and pay outstanding dues if any under the provisions of the Act of 2016.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the allottee/respondent(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

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CR/3317/2021 Emaar India Limited V/S Ashish Sharma.

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Hills, Sector 65 Gurugram, Haryana
2.	Unit no.	EPS-SF-005, 5th floor
3.	Unit measuring	7500 sq. ft.
4.	Date of execution of buyer's agreement with the original allottee	12.06.2014 [Page 52 of complaint]
5.	Possession clause	16. POSSESSION (a) Time of handing over the possession <i>That the possession of the office /spaces in the commercial complex shall be delivered and handed over to the allottee(s) within 24 (twenty four-months) months of the execution hereof, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not be in default under any provision of the agreement and all the amounts due and payable by the allottee(s) under this agreement having being paid in the time to the company, the company shall give</i>

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		<i>to notice to the allottee, offering in the writing, to the allottee to take provision possession of the office spaces for his occupation and use("notice of possession").</i> (Emphasis supplied)
6.	Due date of possession	12.06.2016
7.	Total consideration as per schedule of payment page 82 of complaint	Rs.24,10,190.64/-
8.	Total amount paid by the respondent as per the statement of account dated 30.01.2018 at page 126 of the complaint	Rs. 9,29,132/-
9.	Occupation certificate	08.01.2018 (Page 114 of the complaint)
10.	Offer of possession	30.01.2018 [page 120 of complaint]

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- a. That the complainant/promoter has developed a multi storied commercial complex by the name of "Emerald Plaza" on the 'land' admeasuring 3.963 acres, situated within a plotted colony known as "Emerald Hills" in the revenue estate of Village Nangli, Umarpur,



Badshahpur, Maidawas, Tehsil and District Gurugram, within the boundaries of Sector-65, Urban Estate, Haryana. The said development of the commercial complex has been carried out in planned and phased manner over a period of time comprising of certain blocks/segments /constituents/parts/phases which have been developed, all in accordance with the license and the building plan as approved by DTCP from time to time and other approvals, sanctions, permissions by the concerned authority.

- b. That pursuant to the construction and development of the said project 'Emerald Plaza', the competent authority, after due inspection and verification, have granted occupation certificate dated 08.01.2018.
- c. That respondent/allottee in the month of May 2014, after making independent enquiries and only after being fully satisfied about the project, approached the complainant/promoter for booking of a commercial/ retail unit in the said project.
- d. The respondent had also duly signed and understood the indicative terms and conditions of the allotment along with the application form. All the terms and conditions including the cost of the commercial/ retail unit, size/super area of the unit etc., were clearly mentioned in the said application. The respondent had opted for completion linked payment plan. The respondent/allottee made a payment of Rs.2,41,347/- to the complainant/promoter for the said booking. The complainant/promoter issued a receipt dated 05.05.2014 to the respondent/allottee against the said booking.
- e. That in view of the commitments made by the respondent/allottee to make timely payments, the complainant/promoter provisionally

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allotted unit no. "EPS-SF-005" of the said project. The respondent /allottee was provisionally allotted a commercial unit admeasuring approx. 300.56 sq. ft. of the super area on the 2nd floor in the said project vide provisional allotment letter dated 14.05.2014.

- f. That the complainant/promoter forwarded two copies of the buyer's agreement to the respondent/allottee vide letter dated 23.05.2014 and thereafter sent reminder for the execution of the buyer's agreement vide letter dated 12.06.2014 to the respondent/allottee for execution. As per the instructions in the said letter, the respondent/allottee was under an obligation to sign return original sets of the signed buyer's agreement to the complainant/promoter.
- g. That the buyer's agreement was executed between the parties on 12.06.2014. The said agreement was duly signed by the respondent /allottee after properly understanding each and every clause contained in the agreement. The respondent/allottee was neither forced nor influenced by the complainant/promoter to sign the said agreement. It was the respondent/allottee who after understanding the clauses, signed the said agreement in his complete senses. It is pertinent to mention that the buyer's agreement duly covers all the obligations, liabilities and rights of both the parties and the consequences of any breach of the agreed terms.
- h. That the respondent/allottee as per his own decision and after fully understanding his obligations opted for completion linked payment plan as per the buyer's agreement. It is submitted that the complainant /promoter raised all the demands as per the payment plan so opted for by the respondent/allottee. However, the respondent/allottee

defaulted in making do and timely payments, for which the complainant/promoter issued various reminder letters and also made repeated follow-ups.

- i. That a substantial amount of finances for the construction of a project comes from the payments made by the respective allottees in terms of the buyer's agreement. Any delay or lapses in the timely payment by the respective allottees, not adhering to the payment schedule and/or demands made by the developer, severely impacts the construction progress of the project. That a perusal of the above-mentioned communications clearly spells out the huge delays on the part of the respondent/allottee in making the timely due payments to the complainant/promoter as per the payment schedule. Despite this, the complainant/promoter made all diligent efforts for construction and development of the said project and completed the construction.
- j. That no payment has been made by the respondent/allottee since 2014. The last payment forwarded by the respondent/allottee dates back to 08.08.2014. This clearly shows the *mala fides* exercised by the respondent/allottee as the allottee is a speculative investor.
- k. Despite of default by the allottee in fulfilling his obligations, the promoter/developer did not default and completed the construction of the project without having regular payment of monies by the respondent/allottee. That as is known and practically understood that regular and timely payments by the allottee are pertinent towards the completion of the real estate project, yet, without the same being done in the present case, the promoter has shown an exemplary conduct as a real estate promoter which should be duly taken into account. That it



also needs to be noted that the complainant/promoter was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet, the complainant/promoter completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the respondent/allottee.

- l. The construction of the commercial complex wherein the allotted unit of the respondent/allottee is situated was completed and the promoter applied to the competent authority (being the office of Director General, Town & Country Planning Haryana, Sector-17, Chandigarh) for the grant of occupancy certificate on 22.05.2017. That despite best efforts and regular follow-ups, the complainant/promoter received the occupation certificate only on 08.01.2018 i.e., after a period of almost 8 months. That this delay of the competent authorities in processing and granting the occupancy certificate cannot be attributed to and/or considered to be delay on the part of the complainant/promoter in delivering the possession of the said commercial unit, since on the day when the complainant/promoter applied to the competent authority for the grant of the occupancy certificate, the said commercial unit was complete in all respect.
- m. That upon the receipt of the occupancy certificate the complainant/promoter issued letter of offer of possession dated 30.01.2018, which



was dispatched on 31.01.2018 to the respondent/allottee. The complainant /promoter vide the said notice of offer of possession advised and requested the respondent/allottee to clear the outstanding dues and take the possession of the said unit after completing the possession related formalities and paperwork.

- n. That aggrieved by the non-responsive attitude of the respondent /allottee, the promoter sent reminder letters for offer of possession dated 05.03.2018, 07.06.2018, 12.07.2018, 19.08.2018, 23.11.2018 , 22.10.2018, 27.12.2018, 28.01.2019, 28.02.2019, 01.10.2019, 01.11.2019, 01.12.2019 and final notice dated 20.06.2019 to the respondent/allottee, calling upon him to comply with the offer of possession, to clear the outstanding dues, complete the necessary formalities and to take possession of the unit allotted to him. However, the respondent/allottee has paid no heed to the said reminders and continues to be in default, thereby causing loss to the promoter. It is pertinent to mention that respondent/allottee has paid only Rs.9,29,132/-
- o. That as per the calculation sheet and statement of account of common area maintenance charges/common area electric charges, there is an outstanding due of Rs.29,89,405/- against the said unit booked by the respondent/allottee. The said amount is inclusive of Rs.17,60,252/- towards the balance sale consideration and Rs.11,06,638/- towards the delay payment charges as on 05.08.2021 and Rs.1,22,515/- calculated till 29.07.2021 towards common area maintenance charges and common area electricity charges. Over and above the said amounts, the respondent/allottee, in order to get the conveyance/sale deed

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executed is further liable to pay the stamp duty @ 7% i.e., Rs. 1,57,850/- along with other ancillary charges towards E-Challan and HVAT Security.

- p. That the complaint is filed under section 19(6) read with section 19(7) of the Act, 2016 in order to seek the delayed interest as prescribed under the Act. That the complainants fall under the definition of promoter as defined under the Act.
- q. That the complainant/promoter is entitled to file the complaint under section 19 of the Act of 2016 which provides for the rights and duties of the allottees, read with section 31 of the Act of 2016.

C. Relief sought by the complainant/promoter: -

9. The complainant has sought following relief(s)
 - a. Direct the respondent to pay outstanding dues in respect of the subject unit along with interest at the prescribed rate as per the rules.
 - b. Direct the respondent to pay common area maintenance charges along with the common area electricity charges.
10. Despite due service and none was appearance, the respondent/allottee failed to file any written reply and giving several opportunities, therefore, the respondent shall be proceeded ex parte.
11. 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 based on these undisputed documents and submission made by the complainants.

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

13. 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

14. 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 allottee as per section 19(6), (7), and (10) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the relief sought by the complainant

E.I Direct the respondent to pay outstanding dues in respect of the subject unit along with interest at the prescribed rate as per the rules.

15. The complainant/promoter submitted that the respondent/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/respondent and by not taking the possession of the unit in question as per the terms and conditions of the buyer's agreement. Further

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cause of action also arose when despite repeated follow-ups by the complainant/promoter and the developer having performed its contractual obligations, the respondent/allottee withheld to perform her contractual obligation. The respondent/allottee 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).

16. As per clause 14 of the buyer's agreement, the respondent/allottee was liable to pay the Installment as per payment plan opted by the respondent/allottee. Clause 14 reproduced as under:

Clause 14. It is specifically and categorically understood and agreed by the Allottee(s) that time is the essence with respect to the Allottee(s) obligations to perform or observe all the other obligations of the Allottee(s) under this Agreement and / or to pay the entire Sale Consideration along with other payments such as applicable stamp duty, registration fee and other charges stipulated under this

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Agreement to be paid on or before due date or as and when demanded by the Company as the case may be..

17. The respondents/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 from the date of this order failing which the complainant shall be free to proceed with cancellation of the subject unit allotted to the respondents/allottee as per the terms of the buyer's agreement and as per provisions of law.

E. II Direct the respondent to pay common area maintenance charges along with the common area electricity charges.

18. The complainant-promoter is right in demanding maintenance charges at the time of offer of possession dated 30.01.2018 which would be applicable after 30.03.2018 that is the statutory period provided for taking possession of the subject unit by a respondent/allottee. However, the complainant shall not demand the advance maintenance charges from the respondent/allottee for more than a period of one year.

F. Directions of the authority: -

19. 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):


- i. The respondent/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 failing which the complainant/promoter shall be free to proceed with cancellation of the subject unit allotted to the respondent/allottee as per the terms of the buyer's agreement and the Haryana Real Estate

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Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

20. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
21. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
22. Files be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 27.10.2022