

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

Complaint no. : 4529 of 2022
Order reserved on : 26.07.2023
Date of Pronouncement : 04.10.2023

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

Complainant

Versus

Ramesh Tiwari
Address:- R 584, New Rajinder Nagar, New
Delhi 110060

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE
Shri Harshit Batra
None

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 14.07.2022 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(6) (10) and (11) 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/allottees, 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	The Palm Square, Sector 66, Gurugram, Haryana
2.	Total area of the project	3.475 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no.	237 of 2007 dated 20.10.2007
	Validity of license	19.10.2017
	Name of licensee	Active Promoters Pvt. Ltd. C/o Emaar MGF Land Ltd.
5.	HRERA registered/ not registered	Not Registered
6.	Unit no.	FF-016
7.	Unit measuring	355.47 sq. ft.
8.	Date of execution of buyer's agreement	30.12.2008 [Page 29 of complaint]
9.	Possession clause	16. POSSESSION a) Time of handing over the Possession <i>(1) That the possession of the Office/Retail Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s), within (36) months of the execution hereof,</i>



		<p><i>subject however to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any provisions of this Agreement and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s), offering in writing to the Allottee to take possession of the Office/Retail Spaces for his occupation and use ("Notice of Possession").</i></p> <p><i>(ii) The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of one hundred and twenty (120) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the Commercial Complex.</i></p> <p>(Emphasis supplied)</p>
10	Due date of possession	30.12.2011
11.	Total consideration as per the schedule of payment on page 66 of complaint	Rs. 46,21,109/-
12.	Total amount paid by the respondent	Rs. 50,48,941/-
13.	Occupation certificate	22.12.2014
14.	Offer of possession	09.01.2015 [Page 93 of the complaint]

B. Facts of the complaint

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

- i. That the Respondent, with its own willingness approached the Complainant expressing an intention of booking a unit in the Project and a willingness to pay for the same, upon which an application form dated 30.11.2007 was executed by the Respondent. Upon the Respondent's expression of interest in the Project, the Complainant allotted a unit no. PSQ R1-FF-16 to the Complainant. Consequently, a Buyer's Agreement dated 30.12.2008 was executed on a construction-linked plan. However, Respondent has miserably defaulted in the payment against the Unit. Due to such default of part of the Respondent, a sum of Rs. 14,59,517/- which includes outstanding balance, delayed payment charges, CAE & CAM charges, and holding charges as per the calculation sheet has become pending and payable by the Respondent to the complainant. In order to ensure was executed between the parties.
- ii. That the terms and conditions of the Agreement are sacrosanct and binding between the Parties. Under the said Agreement, the Respondent assented to make complete payment against the Unit; upon not fulfilling that obligation, a number of request letters had been sent to the Respondent for payment of dues.
- iii. That on the contrary, the Complainant Builder has obliged with the terms and conditions of the Agreement. It is



pertinent to highlight that the Project has been duly completed after having obtained all the necessary approvals and fulfilling all the requirements as per the existing by laws. 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.

iv. That after having completed the construction of the Project to the habitability of the units, the Complainant received the Occupancy Certificate for the Project on 22.12.2014. It is to be noted that the majority of booked Office/Restaurant/Retail spaces units were handed over to respective allottees at the time of filing this Complaint. That thereafter, the Complainant lawfully and fairly offered the possession on 09.01.2015, which the Respondent had failed to take, till date. The Complainant has always acted in utmost *bonafide*, which is evident from the fact that at the time of the offer of possession, the Complainant has credited a sum of Rs. 4,80,405) as compensation on 09.01.2015 for the delayed delivery of possession.

v. That the Complainant had offered the possession ensuring the due compliance of the terms and conditions of the Agreement. As per the Agreement, the proposed due date of offer of possession under clause 16(a). It was further subjected to the force majeure circumstances that the Complainant was facing under clause 33 of the Agreement. It must be brought to light that the Complainant 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 groundwater by the High Court of Punjab & Haryana, etc. and other force majeure circumstances, yet, the Complainant completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Respondent and demanding the prices only as and when the construction was being done, as is evident from the statement of accounts annexed herewith.

- vi. That moreover, vide order dated 13.09.2012, The Hon'ble High Court of Punjab and Haryana in **CWP No. 20032 of 2008** titled as **Sunil Singh v/s MoEF & others** vide orders dated 16.07.2012 directed that no building plans for construction shall be sanctioned unless the applicant assures the authority that carrying out the construction underground water will not be used and also show all the sources from where the water supply will be taken for construction purposes. The period of prohibition was till 12.10.2012. It was due to the ban on the usage of underground water, construction activity was brought to a standstill as there were no arrangements by the State government to fulfill the demand for water to be used in construction activity.

- vii. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the Complainant builder. It must also be noted that the Complainant had the right to suspend the construction of the Project upon happening of circumstances beyond the control of the Complainant as per Clause 16(b)(ii), however, despite all the hardships faced by the Complainant, the Complainant did not suspend the construction and managed to keep the Project afloat through all the adversities.
- viii. That it needs to be categorically noted that in **Shuchi Sur v Venetian LDF Projects LLP 3890 of 2021**, under similar circumstances beyond the control of the Complainant builder, as occurring before the proposed due date of delivery of possession, were noted to be valid grounds to grant the builder with the grace period and hence, similarly, the same should be done in the present case.
- ix. Additionally, it needs to be categorically noted that it was the obligation of the Respondent allottee to make the due payments under the Agreement and in case of default of the same, the proposed timelines for delivery of possession were bound to be increased as under Clause 16(b)(vi), which is reiterated as under:

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



- x. That it is a matter of fact and law it is the obligation of the Respondent under the Act to make the due payments, as agreed, to take possession of the allotment within two months from the issuance Occupancy Certificate and to thereafter execute the Conveyance deed. The Respondent has a corresponding obligation as per the Agreement to make the due payments against the Unit, to take possession within 30 days of the letter of offer of possession, and to have the sale deed executed upon full and final payments of outstanding amounts. The relevant provisions of the Agreement are reiterated hereinbelow:

"Clause 22 Events of default and consequences

22.1 It is specifically made clear to the Allottee that the Allottee shall perform, comply, abide by and adhere to all covenants and obligations required to be performed or complied with under this Agreement. Any default, breach or non-compliance of any of the terms and conditions of this Agreement shall be deemed to be an event of default liable for consequences stipulated therein. The following are the events of default which include but are not limited to the following:

...

(a) Failure to perform and observe any or all of the Allottee(s) obligation as set forth in this Agreement or to perform any other occupancy obligation, if any, set forth in this or any other related Agreement.

(b) Failure to take over the Office/ Retail/ Restaurant Space for occupation and use within the time specified by the company.

(c) failure to execute the Conveyance/ Sale Deed within the time stipulated by the Company or relevant authorities.

- xi. That the defaulting conduct of the Respondent is not new and reflects its malafide intentions towards the non-payment of the Unit in the Project. It must be noted that the



Respondent is bound by the Agreement which has been executed between the Complainant and the Respondent. The Respondent cannot be allowed to wriggle out from its responsibilities due to any reason whatsoever. It is categorical to note that upon the non-payment of dues by the Respondent allottee, the Respondent is liable to pay the delayed payment charges along with interests.

xii. That accordingly, as on date, out of the total demand of Rs. 55,81,164/- a sum of Rs. 78,409/- is pending to be paid by the Respondent allottee which also includes the delayed payment interest charged upon non-payment, a bifurcation of all the pending amount including the statutory taxes.

xiii. This outstanding amount also includes the proportionate share of EDC/IDC and HVAT, which was categorically noted by the Respondent allottee as his obligation, and consequently, an indemnity cum undertaking notarized on 17.11.2015 was executed in this regard. That after having wilfully and voluntarily agreed to the terms and conditions of the indemnity cum undertaking and recognizing his obligation as payment of the amount due, the same has not been done, and hence, the Respondent stands in sheer default of the same.

xiv. That for the reasons mentioned above, even though the Complainant is liable for due extension in timeline for delivery of possession, nonetheless, as per the agreed terms and conditions of the Agreement, the Complainant has credited a sum of Rs. 4,80,405 as compensation on



09.01.2015 for the delayed delivery of possession. That in such a circumstance, the Respondent allottee cannot run away from his obligations and must be made to adhere the same.

- xv. That the real estate sector is not merely dependant on the promoters like the Complainant for its upliftment – it is the corresponding and equally weighed obligation of the allottees like the Respondent to perform their part of timely payment inter alia other responsibilities. That timely payment against the allotment is the essence of a real estate development and cannot be turned a blind eye against.
- xvi. That moreover, the possession has not been taken by the Respondent allottee. Those multiple reminders were sent to the Respondent for taking possession and to clear the outstanding dues to facilitate the possession.
- xvii. That despite the issuance of the reminders for taking possession and making payment, the same has not been done by the Respondent, till date. The Complainant has also written a number of emails to the Respondent in this regard, but to no avail. The acts and conduct of the Respondent allottee are violative of the terms and conditions of the Agreement and Act, as noted above; and the Respondent allottee is liable to make the payment against the unit and take possession. This is in line with the holding of the Hon'ble Supreme Court in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna and Ors., decided on



xviii. 11.01.2021 - MANU/SC/0013/2021 where, Phase 1 of the project had been issued the occupancy certificate, consequently, the developer offered the possession to the respective allottees. The Supreme Court directed such allottees to take possession of their respective allotments.

Additionally, in a recent case of **Emaar India Limited v Ghyanshyam Bhardwaj 3900 of 2021**, Haryana RERA, Gurugram bench, this Hon'ble Authority had directed the allottee to take possession after making the due payments against the Unit along with prescribed interest @ 9.3% p.a. In the interest of equity, justice, and fair play, it must be noted that the Complainant has always tuned to its obligations and has waited for an inordinate period of time for clearing of dues and taking of possession by the Respondent. Hence, the Complainant cannot be made to wait for a longer period of time and the Respondent should be bound to adhere as under the law and the Contract.

xix. Additionally, for the sake of repetition, it is pointed out that the Project has attained the occupancy certificate and is habitable for living thus the Respondent should be bound to make the due payments and should, under no circumstances, be allowed to wriggle out of its obligations. Hence, the Authority is requested to take note of the matter and direct the Respondent to comply with its contractual and legal obligations.

C. Relief sought by the complainant/promoter



4. The complainant/promoter has filed the present complaint for seeking the following reliefs:
 - i. Direct the respondent to pay the outstanding dues along with delayed interest as per section 19 of the Act.
 - ii. Direct the respondent to take possession and execute the conveyance deed before the sub-registrar.
5. Registry has sent the notice along with a copy of the complaint through email to the following email address i.e., tewariglobal@yahoo.com and the same is shown to have been delivered on the above email address as per the report available in the file. It is proper service of the notice. Despite proper service of notice the respondent has failed to comply with the orders of the authority, by not filing a written reply within the time allowed. In view of the above, the respondent proceeded against the ex-parte on 26.07.2023.
6. 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 filed by the complainant/promoter.

E. Jurisdiction of the Authority

7. 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

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

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.

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

8. Relief sought by the complainant/promoter:

- i. Direct the respondent to pay the outstanding dues along with delayed interest as per section 19 of the Act.
- ii. Direct the respondent to take possession and execute the conveyance deed before sub-registrar.

9. 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 a 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 complainant and the complainant having performed its contractual obligations, the respondent/allottee withheld to perform its 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).



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

Clause 14(a). Time is the Essence

(a) It is specifically and categorically understood and agreed by the allottee that time is of the essence with respect to allottee(s)' obligations to perform or observe all the other obligations of the allottee under this agreement and/or to pay the total consideration along with other payments such as applicable stamp duty, registration fee and other charges stipulated under this agreement to be paid on or before due date or as and when demanded by the company as the case may be.

11. The respondent/allottee shall make the requisite payments and take possession of the subject apartment as per the provisions of sections 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 respondent/allottee as per the terms of the buyer's agreement and as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

G. Directions of the authority:-

12. 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/allottee shall make the requisite payments at the prescribed rate of interest i.e. 10.75% and take possession of the subject unit as per the provisions of sections 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 the cancellation of the subject unit allotted to the respondent/allottee as per the terms of the buyer's agreement and as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

13. Complaint stands disposed of.

14. File be consigned to the registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date: 04.10.2023

HARERA
GURUGRAM