

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

Complaint no. : 4515 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

Anil Kumar
Address:- R-691, 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 | "Emerald Plaza", Sector 65, Gurugram. |
| 2. | Total area of the project | 102.741 acres |
| 3. | Nature of the project | Commercial Complex |
| 4. | DTCP license no. | 10 of 2009 dated 21.05.2009 |
| | Validity of license | 20.05.2019 |
| | Licensee | Logical Developers Pvt. Ltd, Accordion Buildwell Pvt. Ltd., Active Promoters Pvt. Ltd., Chasing Properties Pvt. Ltd, Brijbasi Projects Pvt. Ltd, True Value Buildcon Pvt Ltd, Serial Buildtech Pvt. Ltd., Hammock Buildwell Pvt. Ltd and Legand Buildcon Pvt. Ltd |
| 5. | HRERA registered/ registered | not Not Registered |
| 6. | Unit no. | EPS-FF-025A |
| 7. | Unit measuring | 258.67 sq. ft. |
| 8. | Date of execution of buyer's agreement | 11.07.2010 [Page 25 of complaint] |
| 9. | Agreement to sell dated | 12.07.2010 |



| | | |
|-----|--|---|
| 10. | Possession clause | <p>16. POSSESSION</p> <p>a) Time of handing over the Possession</p> <p><i>(i) That the possession of the Retail Spaces in the Commercial Complex shall be delivered and handed over to the Allottee(s), within thirty (30) 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 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> |
| 11. | Due date of possession | 11.01.2013 |
| 12. | Total consideration as per schedule of payment at page 44 of complaint | Rs. 20,86,269/- |
| 13. | Total amount paid by the respondent | Rs. 22,42,483/- |
| 14. | Occupation certificate | 08.01.2018 |

| | | |
|-----|---------------------|---|
| 15. | Offer of possession | 29.01.2018 [Page 101 of the complaint] |
|-----|---------------------|---|

B. Facts of the complaint

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

- i. That 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 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 after having completed the construction of the Project, in all respects, the Occupancy Certificate was obtained on 08.01.2018. It is to be noted that the majority of the units has been handed over to the respective allottees at the time of filing of this complaint.
- ii. That the Original allottee, one Mrs. Preeti Chawla, had approached the Complainant expressing an intention of booking a unit in the Project and willingness to pay for the same, accordingly, executed and an application form dated 10.06.2010, upon which a Provisional Allotment was made in the name of the Original Allottee on 05.07.2010. That thereafter, a Retail Space Buyer's Agreement dated 11.07.2010 (hereinafter referred to as the "Agreement") was executed between the Complainant and



the original allottee for unit no. EPS-FF-025A admeasuring 258.67 sq. ft. (saleable area) on First Floor in the Project for a total sale consideration/demand of Rs. 22,54,094 inclusive of taxes.

iii. That the original allottee informed the complainant that they had made the respondent "the nominee" for the unit via an agreement to sell dated 12.07.2010. The original allottee and the Respondent had also written letters to the Complainant in this regard along with affidavits of the buyer and the seller dated 12.07.2012. The original allottee had irrevocably allotted all their rights to the unit in the favour of the respondent; the respondent had given an undertaking in this regard.

iv. That the complainant accepted the request of the original allottee and allotted the unit in the favour of the respondent via letter dated EPS/710041/FF-025A dated 11.08.2010. That respondent assented to pay the amount against the unit through a construction-linked plan. However, the respondent had defaulted in the payment against the unit. Upon the default of the respondent, he was served with reminder for payment, as per the terms and conditions of the agreement. It is due to the delay in making the payments against the Unit that the Respondent had paid delay payment charges amounting to Rs. 8,767/-. That the conduct of the complainant must be highlighted here: the complainant issued a number of payment request letters and reminders to ensure timely payments for the timely construction of the project. A record of the same is noted below:



| S. No. | PARTICULAR | REF. NO. | DATED |
|--------|---------------------------------|---|------------|
| 1. | Payment Request Letter | ESP/710041-PR-030 | 30.11.2010 |
| 2. | Payment Request Reminder2 | REMINDER2/710041 | 05.03.2011 |
| 3. | Payment Request for Service Tax | EPS/710041/ 20110506124026676 | 06.05.2011 |
| 4. | Payment Request Letter | EPS/710041-PR-040/ 20120821183957162 | 21.08.2012 |
| 5. | Payment Request Letter | EPS/710041-PR-050/ 20121003182106319 | 03.10.2012 |
| 6. | Payment Request Reminder1 | REMINDER1/710041 | 27.10.2012 |
| 7. | Payment Request Letter | EPS/710041-PR-060/ 20130214174446004 | 14.02.2013 |
| 8. | Payment Request Letter | EPS/710041-PR-070/ 20130306143607605 | 06.03.2013 |
| 9. | Payment Request Letter | EPS/710041-PR-080/ 20130403171807001 | 03.04.2013 |
| 10. | Payment Request Reminder1 | REMINDER1/710041 | 26.04.2013 |
| 11. | Payment Request Letter | EPS/710041-PR-090/ 20130514132929984 | 14.05.2013 |
| 12. | Payment Request Letter | EPS/710041-PR-0/ 20130604141051176 | 04.06.2013 |
| 13. | Payment Request Letter | EPS/710041-PR-0/ 20130805155440111 | 05.08.2013 |



| | | | |
|-----|-----------------------------------|---------------------------------------|------------|
| 14. | Payment Request Letter | EPS/710041-PR-0/ 20130905150320609 | 05.09.2013 |
| 15. | Payment Request Letter | EPS/710041-PR-0/ 20131017173207171 | 17.10.2013 |
| 16. | HVAT Payment Request Letter | EPS/710041 | 01.05.2017 |
| 17. | Payment Request Letter | EPS/710041-PR-0/ 21070713140422487 | 13.07.2017 |
| 18. | Payment Request Letter | EPS/710041-PR-0/ 20170829184845941 | 29.08.2017 |
| 19. | Revised Stamp Duty Request Letter | EPS-FF-025A | 13.02.2018 |

That the continuous defaults, from the very beginning on the part of the Respondent *prima facie* shows the wilfulness in causing the defaults.

- v. That the construction of the Project is completed to the extent of being habitable and the occupancy certificate has been received after which, the Complainant had lawfully offered the valid legal possession on 29.01.2018, which the Respondents have failed to take, till date. That, moreover, no delay has been caused by the Complainant. That the time for handing of the possession was PROPOSED to be 30 months from the date of execution of the Agreement and 120 days grace period. It was further subjected to the *force majeure* circumstances that the Complainant was facing under clause 33 of the Agreement, which is reiterated hereunder:

33. FORCE MAJEURE

The Company shall not be held responsible or liable for not performing any obligation or undertaking provided for in this Agreement if such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions, change in law or any Acts of Government (including Local & Municipal Authorities) or other cause (whether similar or dissimilar to the foregoing), not within the reasonable control of the Company.

- vi. 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 or financial 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.
- vii. 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, that the construction activity was brought to a standstill as there were no arrangements by the State government to fulfil the demand of water to be used in construction activity.

viii. That all these circumstances come within the purview of the force majeure clause and hence a reasonable time should be allowed to the Complainant/builder. That 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 faced by the complainant.

ix. That it is a matter of fact and law that 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 of the issuance of the occupancy certificate and to thereafter execute the conveyance deed. That accordingly, it is also the obligation of the Respondent to make the complete payment of stamp duty and accordingly, to register the conveyance deed. The relevant provisions of the Act are reiterated hereinbelow:

Section 19(6) 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, 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.

Section 19(10) Every 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 apartment, plot or building, as the case may be.

Section 19(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

- x. That the defaulting conduct of the Respondent is not new and reflects his malafide intentions towards not taking the possession 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.
- xi. That even after the possession being offered by the Complainant, the Respondent failed to take the possession of the Unit within the stipulated time limit and accordingly, stood in the event of



sheer default. The Complainant reminded the Respondent to take the possession of unit on several occasions vide the Reminders mentioned herein below:

| S. No. | Particulars | Ref. No. | Dated |
|--------|---------------------|-----------------|------------|
| 01 | Possession Reminder | REMINDER/710041 | 05.03.2018 |
| 02 | Possession Reminder | REMINDER/710041 | 01.10.2019 |
| 03 | Possession Reminder | REMINDER/710041 | 01.11.2019 |
| 04 | Possession Reminder | REMINDER/710041 | 01.12.2019 |

- xii. That furthermore, the Respondent has a corresponding obligation as per the Agreement and the Act to make the payment of stamp duty and to have the sale deed executed upon full and final payments of the outstanding amounts. The relevant provisions of the Agreement are reiterated hereinbelow:

7. SALE DEED

...The cost of stamp duty, registration charges and other incidental charges and expenses will be borne by the Allottee in addition to the total consideration of the Unit...

- xiii. The Complainant had also recently issued a notice to the Respondent for the payment of stamp duty and execution of conveyance deed on 13.09.2021, however, to no avail. Accordingly, the violations on part of the Respondent need to be categorically noted by the Authority. That 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 taking of possession and executing the conveyance deed by the respondent. Hence, the complainant cannot be made to wait for a longer period of time and the respondents should be bound to adhere as under the law and the contract.

- xiv. Additionally, at the sake of repetition, it is pointed out that the Unit is 100% completed and thus the Respondent should be bound to take the possession and execute the Conveyance deed. 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 following reliefs:
- Direct the respondent to pay the outstanding dues along with delayed interest as per section 19 of the Act.
 - Direct the respondent to take the possession and execute the conveyance deed before sub-registrar.
5. Registry has sent the notice along with a copy of the complaint through email on the following email address i.e., exportsjust@yahoo.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. Despite proper service of notice the respondent has failed to comply with the orders of the authority, by not filing written reply within the time allowed. In view of the above, the respondent is 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 timely manner as per the payment plan opted by the allottee and by not taking possession of the unit in question as per the terms and conditions of the buyer's agreement. A 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 their 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 12 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 12 is reproduced as under:

Clause 12(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.

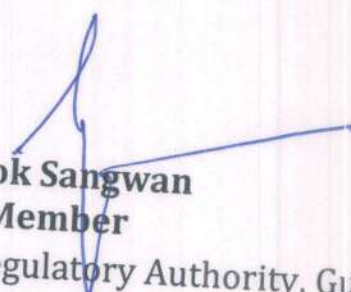
11. The respondent/allottee shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of 60 days from the date of this order failing which the complainant shall be free to proceed with cancellation of the subject unit allotted to the 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 the possession of the subject unit 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 as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018.

14. Complaint stands disposed of.
15. File be consigned to registry.


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 04.10.2023



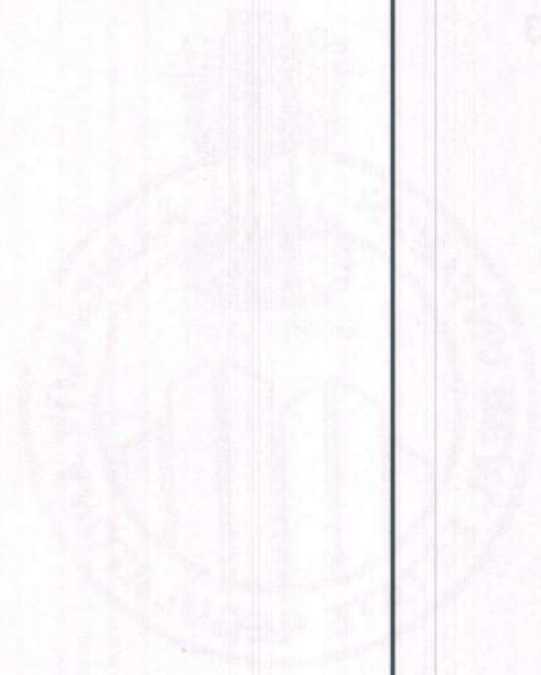
HARERA
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Complimented 10/12/2023

14. Compliment stand of
15. Life be conserved

Ashton
Member
Haryana Real Estate Regulatory Authority, Gurgaon

Date: 04.10.2023



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