

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

Complaint no. : 7195 of 2022  
Date of decision : 16.02.2024

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

**Complainant**

Versus

Neeta Saini  
**Address:-** L-11/6, DLF Phase – II, Gurugram,  
Haryana

**Respondent**

**CORAM:**  
Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE**

Shri Dhruv Rohatgi  
None

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 16.11.2022 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: -

S.N.	Particulars	Details
1.	Name and location of the project	"The palm square - retail" Sector 66, Gurugram
2.	Nature of the project	Commercial
3.	DTCP license no. and validity status	237 of 2007 dated 20.10.2007 Valid up to 19.10.2017
4.	Name of the Licensee	Active Promoters Pvt. Ltd
5.	RERA registered/ not registered and validity status	<i>Not Registered</i>
6.	Unit no.	PSQ R1-GF-016A (Page 45 of complaint)
7.	Unit admeasuring	165.89 sq.metre. (Page no. 45 of complaint)
8.	Allotment/Welcome Letter	14.05.2015 (Page no. 39 of complaint)
9.	Date of agreement	29.05.2015 (Page no. 44 of complaint)
10.	Total Price	16,85,769/- (as per schedule of payment at page 67 of complaint) Rs. 17,11,796/- (page 29 of the complaint)

11.	Total amount paid by the complainant	Rs. 17,11,796/- (page 29 of the complaint excluding holding charges, stamp duty, HVAT)
12.	Possession clause	<p><b>16. POSSESSION</b></p> <p><b>a) Time of handing over the Possession</b></p> <p><i>(i) That the company endeavours to offer the possession of the Office/Retail Spaces in the Commercial Complex within (12) 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 herein-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in</i></p>

		<i>respect of the Commercial Complex.</i> (Emphasis supplied)
13.	Due date of delivery of possession	<b>29.05.2016</b>
14.	Occupation certificate	22.12.2014 (Page107 of complaint)
15.	Offer of possession	22.07.2015 (Page107 of complaint)

### **B. Facts of the complaint**

3. The complainant/promoter made the following submissions in the complaint:
  - i. That the complainant developer has developed a commercial colony ("said project") by the name of "The Palm Square-Retail", situated in Sector-66, Gurgaon Manesar Urban Complex, Village Badshahpur, Tehsil & District Gurgaon, Haryana, *inter alia* comprising of various office/retail/restaurants spaces therein, with suitable infrastructural facilities including multi-level basement parking. That the respondent after making independent enquiries and only after being fully satisfied about the project, approached the complainant company for booking of a commercial unit in the said project.
  - ii. That in view of the commitments made by the respondent to make timely payments, the complainant provisionally allotted unit no. "PSQ R1-GF-016A" ('commercial unit') in the said project. That it forwarded two copies of the buyer's

agreement to the respondent vide letter dated 15.05.2015 to the respondent for execution. That the buyers agreement was executed between the parties on 29.05.2015. The said agreement was duly signed by the respondent after properly understanding each and every clause contained in the agreement.

- iii. That it must be noted by the Hon'ble Authority that despite of default by the allottees in fulfilling her obligations, it did not default and completed the construction of the project without having regular payment of monies by the respondent.
- iv. That upon the receipt of the occupancy certificate the complainant issued letter of offer of possession dated 22.07.2015 to the respondent. It vide the said notice of offer of possession advised and requested the respondent to clear the outstanding dues and take the possession of the said unit after completing the possession related formalities and paperwork. That aggrieved by the non-responsive attitude of the respondent, it sent Reminder letters for offer of possession dated 11.09.2015, 20.11.2015, 18.03.2016, 01.03.2019, 02.04.2019, 01.05.2019, 01.06.2019, 01.07.2019, 01.08.2019, 01.09.2019, 01.10.2019, 01.11.2019, 01.12.2019 to the respondent, calling upon her 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 her. However, the respondent has paid no heed to the said reminders and continues to be in default, thereby causing loss to the complainant.
- v. That as per the statement of account, there is no outstanding due towards the sale consideration. However, an amount of Rs. 4,80,841/- is outstanding from the respondent towards the common area maintenance and common area electricity charges against the said unit. Over and above the said amounts, the respondent, in order to get the conveyance/sale deed executed is further liable to pay the Stamp Duty @ 5% i.e. Rs. 79,400/- along with other ancillary charges towards E-Challan and HVAT Security.
- vi. That it is relevant to mention that the complainant developer has already spent enormous amount of money towards the construction and development of the said complex, of which occupation certificate(s) has been granted, in which the said unit of the respondent is situated and the same being ready for use and occupation, the notice of offer for possession was issued to the respondent on 22.07.2015 followed by subsequent reminders, thereby calling upon the respondent to pay the outstanding amounts and clear all the possession related formalities and paperwork.
- vii. That it is submitted that the complainant company even contacted the respondent several times even through by sending emails dated 22.12.2018, 18.09.2020, 04.08.2021,

10.11.2021, 24.03.2022 requesting the respondent to take the possession of the said unit in question by remitting all the outstanding dues.

- viii. That the conveyance deed of approx. majority of apartments have been executed and maximum families have already moved therein and are residing therein. It is pertinent to mention here that the project is very much habitable. It is submitted that the price of the said unit is Rs. 17,11,796/- plus stamp duty, registration charges etc. It is submitted that the holding charges of Rs 1,54,337/-, CAM & CAE charges of Rs.5,05,588/-, and statutory taxes i.e. Vat security of Rs.1,05,045/-, E -Challan of Rs. 10,003/- and stamp duty of Rs. 79,400/- are still pending which are to be paid before the registration of conveyance deed.

**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., [neetasaini@gmail.com](mailto:neetasaini@gmail.com) and the same is shown to have been delivered on the above email address

as per the report available in the file. Even the complaint is delivered through whatsapp the same is shown to be delivered as well. 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 defence of the respondent-allottee is struck off on 27.10.2023.

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. 10.85% 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.

  
**Sanjeev Kumar Arora**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram  
Date: 16.02.2024

  
**HARERA**  
**GURUGRAM**