

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

Complaint no.: 6734/2022
Date of filing : 13.10.2022
Date of order : 21.05.2024

Sanjeev Kumar Sharma
Address: 221, Deed Plaza Complex,
Opp. Civil Court, Gurugram, Haryana-122001

Complainant

Versus

Emaar MGF Land Ltd.
Regd. Office: Emaar Business Park, MG Road
Sikanderpur Chowk, Sector 28,
Gurugram, Haryana-122002

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Complainant in person with
Shri Venket Rao (Advocate) and
Shri Pankaj Chandola (Advocate)
Sh. Dhruv Rohatgi (Advocate)

Complainant
Respondent

ORDER

1. The present complaint 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	"Emerald Plaza at Emerald Hills" at Sector 65, Gurgaon, Haryana
2.	Nature of the project	Commercial Complex
3.	Project area	3.963 acres
4.	DTCP License No. and validity status	10 of 2009 dated 21.05.2009 Valid up to- 20.05.2019
5.	RERA registered/ not registered	Not registered
6.	Unit no.	EPS-GF-028 (page 21 of complaint)
7.	Unit area admeasuring	973.93 sq. ft. (page 21 of complaint)
8.	Date of provisional allotment letter	12.10.2010 [page 38 of reply]
9.	Date of builder buyer agreement	29.12.2010 (page 20 of complaint)
10.	Possession clause	16. POSSESSION



		<p>(a) Time of handing over the Possession</p> <p>(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 Retail Spaces for his occupation and use ("Notice of Possession").</p> <p>(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.</p> <p>(emphasis supplied)</p> <p>[Page 87 of reply]</p>
11.	Due date of possession as decided by the authority in CR/402/2018	29.06.2013 [Note: Grace period is included]
12.	Total sale consideration as per statement of account dated 02.12.2022 at page 154 of reply	Rs. 72,76,904/-
13.	Amount paid by the complainant as per statement of account dated 02.12.2022 on page 155 of reply	Rs. 69,62,319/-

14.	Occupation certificate	08.01.2018 (Page 132 of reply)
15.	Offer of possession	24.01.2018 (Page 134 of reply)
16.	Earlier complaint bearing no. 402 of 2018 was filed by the complainant against the respondent and it was disposed of on	05.09.2018 [Page 78 of complaint]
17.	Settlement agreement executed between the complainant and the respondent in	July 2019 [Page 148 of reply]
18.	Appeal no. 73 of 2018 was filed by Emaar MGF Land Ltd. against Sanjeev Kumar Sharma and the same was disposed of as dismissed as withdrawn on	22.10.2019 [Page 153 of reply]
19.	Delay compensation paid by the respondent in terms of the settlement agreement as per statement of account dated 02.12.2022 at page 154 of reply	Rs. 16,19,524/-

B. Facts of the complaint:

3. The complainant has made following submissions:

- i. That upon the representation by the respondent and advertisement done in said behalf, the respondent was to construct a commercial complex namely "Emerald Plaza" was to be developed on land measuring only 3.963 acres located at Sector-65, Gurgaon, Haryana.



- ii. That the complainant is the original allottee wherein the complainant showed the interest in purchasing a commercial unit with the respondent and consequently, a buyer's agreement was executed between the parties on 29.12.2010. The complainant was allotted unit no. EPS-GF-026 admeasuring 973.93 sq. ft. in the said project for a total sale consideration of Rs. 72,56,905/-.
- iii. That as per clause 16(a)(i) of the buyer's agreement, the vacant, peaceful and physical possession of the unit in question was to be handed over within 30 months from the date of execution of the buyers agreement and thus, the due date for handing over the possession of the unit in question accrues to be 29.06.2013. The complainant has made a total payment of Rs. 62,82,266/- as and when demanded by the respondent without any delay.
- iv. That though the respondent had offered the illegal possession of the unit in question to the complainant vide offer of possession dated 24.01.2018, the intention of the respondent was never to actually hand over the possession of the said unit as the said offer of possession was completely illegal, as the same was issued without offering the delay possession charges and settlement of issues such as the said project was not registered as per the Haryana RERA rules, illegal charging of the parking charges, compensation for inordinate delay by the respondent in handing over the possession of the unit, etc.

- v. That thus, the complainant approached the Hon'ble Authority and filed a complaint relating to various issues vide complaint no. 402 of 2018 which was decided by the Hon'ble Authority on 05.09.2018 observing the following:
- “(i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 29.12.2013 till the letter of offer of possession date 24.01.2018.*
- “(ii) The complainant is also directed to take possession as the offer of possession has been made by the respondent even before the filing of the complaint to this authority.”*
- vi. That instead of complying with the order of Hon'ble Authority, the respondent filed an appeal before the Hon'ble Haryana Real Estate Appellate Tribunal (herein referred to as HREAT) and withdrew the appeal in lieu of an amicable settlement made between the parties vide order dated 22.10.2019 in appeal no. 73 of 2018.
- vii. That though the parties enter in the settlement agreement, the said agreement has not been handed over to the complainant till date and thus, the respondent should be refrained from using the settlement agreement as a shield in the present case as the said agreement was entered into with a complete malafide intention by the respondent.
- viii. That it is further submitted that the respondent instead of handing over the legal, vacant, physical and actual possession of the unit in question to the complainant, after paying the delay possession charges, the respondent started levying holding charges upon the complainant which is completely against the principles of natural justice in civil appeal no.3846-



3889/2020 on 14.12.2020 wherein it is held that the developer is not entitled to claim holding charges from the allottee at any point of time even after being part of the builder buyer agreement. The respondent has levied an amount of Rs. 24,38,902/- being the amount of holding charges up to June 2022.

- ix. That the complainant again seek indulgence of the Hon'ble Authority to direct the respondent to hand over legal, actual, physical and vacant possession of the commercial unit along with delay possession charges by the respondent.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
- i. Direct the respondent to handover the actual, legal, physical and vacant possession of the unit.
 - ii. Direct the respondent pay delay possession charges till the actual handover of the unit.
 - iii. Direct the respondent to declare the settlement agreement as null and void.
 - iv. Penalise the respondent for non-registration of the project.

D. Reply by respondent:

5. The answering respondent by way of written reply made the following submissions.
- i. That the complainant had approached the respondent and expressed an interest in booking an apartment in the



commercial colony developed by the respondent and booked the unit in question, bearing no.EPS-GF-026, ground floor admeasuring 973.93 s. ft. in the project "Emerald Plaza Retail at Emerald Hills" at Sector 65, Gurugram, Haryana. The complainant vide application form dated 09.03.2010 applied to the respondent for provisional allotment of a unit bearing number EPS-GF-026 in the said project and the respondent issued the provisional allotment letter dated 12.10.2010 to the complainant.

- ii. That the complainant was not forthcoming with the outstanding amounts as per the schedule of payments. The respondent was constrained to issue payment letters and reminders to the complainant. That the respondent had categorically notified the complainant that he had defaulted in remittance of the amounts due and payable by him. It was further conveyed by the respondent to the complainant that in the event of failure to remit the amounts mentioned in the said notice, the respondent would be constrained to cancel the provisional allotment of the unit in question.
- iii. That subsequently, the respondent sent the buyer's agreement to the complainant and the same was executed between the parties on 29.12.2010. The buyer's agreement was consciously and voluntarily executed by the complainant after reading and understanding the contents thereof to his full satisfaction. Clause 16(a)(i) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in



default of the same, possession of the apartment would be handed over within 30 months from the date of execution of the said agreement. It has further been specified in clause 16(a)(ii) that the respondent will be entitled to a grace period of 120 days and the same is liable to be included in terms of the judgment of the Hon'ble Appellate Tribunal in **Fantasy Buildwell Pvt. Ltd. Vs Gaurav Manohar Negi**, bearing **Appeal No.299 of 2022**, decided on **09.12.2022**.

- iv. That the respondent completed construction and had submitted an application on 22.05.2017 for grant of occupation certificate before the concerned statutory authority. The occupation certificate was granted by the concerned department vide memo dated ZP-560-A/SD(BS)/2017/528 dated 08.01.2018. The respondent on receipt of the occupation certificate, offered possession of the said unit to the complainant vide the letter of offer of possession dated 24.01.2018 and subsequent reminders for making payments and submission of necessary documents. The complainant has failed to comply with its obligations to take the possession of the unit in question.
- v. That the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainant refrained from obtaining possession of the unit in question. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession.



The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- vi. That it is submitted that despite valid possession offered by the respondent within stipulated time, the complainant didn't bother to take the possession of the said unit and instead approached the Hon'ble Authority with frivolous complaint. That the Hon'ble Authority in the complaint filed by the complainant titled Sanjeev Kumar Sharma vs Emaar MGF Land Limited bearing no. RERA/GRG/402/2018 passed an order dated 05.09.2018 directing the respondent to pay interest to the complainant. The respondent being aggrieved by the order dated 05.09.2018 passed by the Hon'ble Authority approached the Hon'ble Appellate Tribunal. That an appeal titled Emaar MGF Land Limited vs Sanjeev Sharma bearing appeal no. H-REAT-73-2018 was filed before the Hon'ble Appellate Tribunal. During the pendency of the said appeal, the parties agreed to settle the said matter amicably and thereafter, a settlement agreement of July 2019 was executed between both parties as per the mutual terms and conditions, without any force, coercion, undue influence or misrepresentation. The said settlement agreement was duly executed by the complainant voluntarily under no fear and duress. Pursuant to the execution of the settlement agreement between the complainant and the respondent, the



said appeal was withdrawn by the respondent. That the Hon'ble Appellate Tribunal vide its order dated 22.10.2019 was pleased to dismiss the said appeal as withdrawn in lieu of the amicable settlement of the parties.

- vii. That the respondent has duly performed its part of performance as per the settlement agreement and duly credited an amount towards interest in the account of the complainant but on the contrary, the complainant has failed to clear his outstanding dues and to take the possession of the said unit. The complainant after taking due benefits cannot now resile from the settlement agreement. The complainant has failed to make out any case of challenging the validity of the said settlement agreement, nor can he challenge the settlement agreement in the present proceedings and that too after more than 3 years.
- viii. That a perusal of the several emails filed by the complainant himself, it is evident that the respondent has reached out to the complainant on several occasions to clear his outstanding dues and take over the possession. A reference is drawn to the email dated 17.06.2019, whereby the complainant was asked to remit the outstanding amounts and take possession of the unit. Further as late as on 05.07.2022, the respondent again sent an email to the complainant calling upon him to clear the outstanding dues against the said unit and to take over the possession. The said email categorically mentions the outstanding amounts due, which are Rs. 12,60,375/- as principal dues, Rs. 4,37,080 as E-Stamp Amount, Rs. 35,003/-



as E-challan amount, maintenance dues of Rs. 5,53,669/-. It is relevant to note that the said e-mail clearly does not reflect any outstanding against the alleged holding charges. However, the complainant in order to mislead the Hon'ble Authority only wants to refer to the Statement of Accounts, which admittedly is a system generated document and the same automatically calculates the same. In order to clear any such confusion, the respondent had categorically mentioned the due amounts in the body of the email and has not claimed the holding charges therein.

- ix. That, the respondent had credited a sum of Rs. 34,847/- as benefit on account of anti-profiting. Further, without prejudice to the contentions of the respondent, as a pre-requisite to the settlement agreement, the respondent has credited an amount of Rs. 16,19,524/- as compensation as per the terms and conditions of the settlement agreement. It is submitted that the total sale consideration of the said unit is Rs. 72,76,905/- excluding stamp duty, registration charges etc. That as per the calculation sheet and statement of account, there is an outstanding due of Rs. 9,94,639/- towards the principal sale consideration. Further, an amount of Rs. 3,05,701/- is outstanding towards delayed payment charges. Over and above the said amount, the complainant, in order to get the conveyance/sale deed executed are further liable to pay the stamp duty @ 7% i.e., Rs. 4,37,080/- along with Rs. 35,003/- as other ancillary charges towards E-Challan. It is submitted that the respondent issued multiple



payment request letters but no heed was given to them and all in vain.

- x. That the complainant was issued multiple reminders for payments, possession letters to pay the balance outstanding dues against the unit and to obtain the possession. Due to the non-compliance of terms and conditions of the buyer's agreement and the settlement agreement and despite issuing letter of offer of possession, payment requests letters, notices, reminders, the complainant didn't come forward to clear the outstanding dues and to take the possession of the said unit in question, hence, the respondent was constrained and left with no other option but to issue the legal notice. That the legal notice dated 06.05.2022 was issued to the complainant calling upon him to complete the documentation process and necessary formalities for taking the possession of the said unit and to execute the conveyance deed but the complainant failed to abide by the legal notice. Thus, the complainant is not entitled to any relief and the present complaint is liable to be dismissed with costs.

E. Written submission by the complainant

6. The complainant has submitted as under:

- That the settlement agreement annexed by the respondent alleged to be executed between the parties was merely a performa taken on plain paper being agreed conditions, without arithmetical calculations. For this purpose, no stamp paper settlement agreement was entered between the parties without figure at that time.



- That even the alleged settlement agreement produced by the respondent has not been adhered to and holding charges are demanded in every demand made by the respondent.
- That all the compliant numbers against which alleged settlement agreement had been made are not correct and it belongs to some other complaint titled as Joshi and anr. Vs. Umang Realtech Pvt. Ltd.
- That there is no legal offer of possession till date after adjustment to be made as per the settlement agreement.
- That all invalid offers of possession before or after mailed communications by complainant were made by the respondent and did not adjust the alleged settlement agreement.

F. Written submissions by the respondent

7. The respondent has submitted as under:

- That the present complaint is not maintainable in view of the fact that the disputes between parties already stood settled by virtue of settlement deed dated July 2019. The complainant by way of the present complaint is trying to wriggle out of the already executed settlement agreement of July 2019, whereby he was granted a lump sum benefit of Rs.16,19,524/- and cast a reciprocal obligation on the complainant to take possession of the unit in question. However, despite taking all the benefits, the complainant has failed to take over the possession of the unit in question for his malafide gains on false pretexts.
- That it is the case of the complainant that the respondent, despite having settled the matter, has levied holding charges (in the Statement of Accounts) and therefore, he is not bound by settlement agreement and is entitled to delay possession charges.
- That it is submitted that the said settlement agreement was duly executed by the complainant voluntarily under no fear and duress.
- That the default of the complainant started immediately, as he failed to take the possession or pay the outstanding amounts. In fact, the complainant chose to remain silent, despite several



reminders (emails dated 17.06.2019, 08.09.2020, 12.10.2021, 23.03.2022, 12.04.2022, 05.07.2022 (pages 58 to 73 of complaint) and reminders for possession.

- The respondent has relied upon the computer-generated statement of accounts, whereby due to the computer software, the holding charges are calculated, to assert that the respondent was not honouring the settlement. However, the said fact is untrue and an afterthought to wriggle out of the settlement, for the following reasons:
 - a) The respondent sent several reminders and reached out to complainant for payment of outstanding sales consideration and take the possession, (emails filed by complainant as Annexure III, Page 58 to 73).
 - b) The complainant has not filed a single communication to suggest that he ever reached out to the respondent for any discrepancy in the last 5 years.
 - c) The respondent's email with Statement of Accounts, clearly mentions "statement of accounts is computer generated" (Page 63 of Complaint).
 - d) If there was any bonafide doubt to the complainant, he ought to have written any communication raising his grievance, but he did not as he had turned dishonest and wanted to claim more money under the garb of delay possession charges.
 - e) In order to clarify things and to avoid the discrepancy due to a System Generated Statement of Accounts, the Respondent vide Email dated 05.07.2022 (page 58 of complaint), the respondent in the body of the email, specified clearly the amounts that were required to be paid. Thus, there was no doubt and that the respondent was only seeking Principle Dues of Rs.12,60,375/-, E-Stamp Amount, E-Challan Amount and Maintenance Dues. There was no mention of any Holding Charges, which was amply clear that respondent was honoring the terms of the settlement agreement dated July 2019.



- That it has been held in the Judgment of the **Amandeep Singh & Ors. Vs State & Anr.** Reported in **2018 SCC Online Del 13125**, that *"A party cannot be allowed to wriggle out of a Mediated Settlement unless vitiated by misrepresentation, etc. In the instant case, there are no allegations of misrepresentation, etc., against petitioners and so, respondent/complainant is bound by the joint statement made by her before the concerned family court. Today, respondent/complainant has stated that she has received the entire settled amount of Rs. 7.5 lacs."*
 - A similar view has been taken by the Hon'ble High Court of Delhi in **M/s Dynamic Movers India Pvt. Ltd. Vs Akhil Poddar, having Crl. M.C. No. 1948 of 2020**, wherein the Court referring to numerous precedents of various Courts has held that *"Construction of both the second and third floor is complete. Petitioners have performed their part of the obligation, however, respondent Nos. 2 & 3 are attempting to wriggle out of their obligation under the said Settlement Agreement, which cannot be permitted."*
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Written submissions have been filed by both the parties and the same have been taken on record. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

G. Jurisdiction of the authority:

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

G.I Territorial jurisdiction

10. 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.

G.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 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.”

12. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

H. Maintainability of the complaint

13. The complainant herein had earlier filed a complaint bearing no. 402 of 2018 in respect of the subject unit seeking delay possession charges and other reliefs and the same was disposed of by the authority on 05.09.2018. Being aggrieved by the order passed by the authority on 05.09.2018, an appeal bearing no. 73 of 2018 was preferred by M/s Emaar MGF Land Ltd. against Sanjeev Kumar Sharma and the said appeal was disposed of on 22.10.2019 as dismissed as withdrawn. The relevant para of the order dated 22.10.2019 is reproduced below:

"Ld. Counsel for the appellant states that the matter has been amicably settled with the respondent. He does not want to proceed further with the present appeal. The same may be dismissed as withdrawn,

Ordered accordingly.

File be consigned to the record."


14. The settlement deed executed in July 2019 has been placed on record by the respondent.
15. Now, the complainant is before the authority for handing over of possession, DPC and the terms of the settlement agreement be treated as null and void.
16. The counsel for the complainant stated that as per the settlement agreement on page 150 of reply, the respondent cannot ask for holding charges as the same were waived off towards the said retail space, but the same was charged through statement of account dated 22.06.2022.
17. The counsel for the respondent stated that as per the settlement agreement, the complainant has received the amount of


compensation. As far as the issue with regard to holding charges are concerned, they never wrote to the respondent vide any email in this regard that the statement of account is mentioning the holding charges. As per page 63 of the complaint, the respondent wrote an email to the complainant where it is clearly written in the disclaimer that the attached statement of account is system generated and the respondent never charged holding charges from the complainant. If he had any concern, he would have written an email but he failed to do so at that time and now is mentioning the same. The respondent clearly mentioned that while asking for dues, the respondent wrote an email where he clearly mentioned to clear the dues and proceed with the physical possession but they failed to do so.

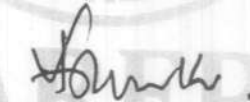
18. The authority observes that it is not disputed that prior to filing of the present complaint before the authority on 13.10.2022, the complainant had already filed a complaint before the authority bearing no. 402 of 2018 in respect to the same subject unit. The said complaint was disposed of by the authority vide order dated 05.09.2019 directing the respondent to pay interest at the prescribed rate i.e., 10.45% for every month of delay from the due date of possession i.e., 29.12.2013 till letter of offer of possession i.e., 24.01.2018 and the complainant was also directed to take possession as the offer of possession has been made by the respondent even before the filing of the complaint. Thereafter, an appeal was preferred by the respondent herein before the Hon'ble Appellate Tribunal and to settle the said appeal, the parties entered into a settlement in July 2019 reduced the same into

writing which led to the said appeal being dismissed as withdrawn in view of the amicable settlement arrived at between the parties.

19. Therefore in view of the settlement deed already entered by both the parties before Hon'ble Appellate Tribunal in July 2019 and if any legal injury is caused to any party on account of the ibid settlement deed, this Authority lacks jurisdiction to decide on merits as well as on limitation and complainant is at liberty to raise the issue before the Appellate Court, where the parties entered into the settlement deed.
20. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable before this Authority.
21. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.05.2024