

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

Complaint no.: 6129 of 2022
Order pronounced on: 07.08.2024

Sh. Muthunayagom Gaudama Vasani
R/o: - N-24, Panchsheel Park,
New Delhi.

Complainant

Versus

M/s Emaar Mgf Land Ltd.
Registered Office at: - Ece House, 28,
Kasturba Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Satyender Kr Goyal (Advocate)

Complainant

Sh. Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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	Marbella, Sector 65 & 66, Gurugram, Haryana	
2.	Total area of the project	107.9 acres	
3.	Nature of the project	Residential plotted colony	
4.	DTCP license no.	97 of 2010 dated 18.11.2010	41 of 2011 dated 03.05.2011
	Validity of license	18.11.2022	03.05.2024
	Licensee	Foyer Propbuild Pvt. Ltd. and ors.	Foyer Propbuild Pvt. Ltd. and anr.
	Area for which license was granted	106.86 acres	1.063 acres
5.	Registered/not registered	Registered in two phases i. 307 of 2017 dated 17.10.2017 for 41.86 acres [Valid up to 16.10.2022] ii. 8 of 2021 dated 01.03.2021 (Phase II) for 66.059 acres [For 12.609 acres- Valid up w.e.f. 01.03.2021 till 31.12.2023 For 53.45 acres- Valid up w.e.f. 01.03.2021 till	

		31.12.2027]
6.	Occupation certificate granted on	N/A
7.	Provisional allotment letter	19.11.2010 (Page 21 of the complaint)
8.	Unit no.	MAR-BL-038
9.	Area of the unit	418 sq. ft.
10.	Date of execution of buyer's agreement	24.03.2011 (Page 28 of complaint)
11.	Possession clause	<p>10. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Villa within 30 (thirty) months from Start of Villa Construction. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the occupation certificate in respect of the Villa.</i></p> <p>(Emphasis supplied)</p>

12.	Due date of possession	24.09.2013 (Calculated from the date of execution of agreement)
13.	Basic sale price	Rs. 7,80,29,298/- (Page 22 of the complaint)
14.	Amount paid by the complainant	Rs. 1,30,00,000/-
15.	Offer of possession	N/A

B. Facts of the complaint

3. The complainant has pleaded the following facts:

- I. That in the year 2010, the respondent advertised the proposed township project called Marbella, in Sector-65, Gurugram, Haryana. That the respondent specifically stated that the possession of the villa shall be delivered within 30 months of signing of the buyer agreement. The property dealers/agents hired by the respondent for marketing the project approached the complainant for booking a villa in the project.
- II. That the complainant was induced by the advertisements and assurances of the respondent, the complainant booked a villa in the project. The application form for booking the said villa was submitted and the respondent was allotted villa no. MAR-BL-038, ad-measuring 8120 sq.ft. on 500 sq. yards plot in accordance with building plans to be approved by DTCP Haryana Gurugram. The respondent issued allotment letter dated 19.11.2010 for total sale price of Rs.7,27,65,000/- and the complainant deposited a sum of

Rs.30,00,000/- at the time of booking for allotment in august 2010 vide receipt dated 19.11.2010. The complainant further deposited a sum of Rs.50,00,000/- vide cheque dated 17.02.2011 and the respondent issued receipt dated 22.02.2011.

- III. That a buyer's agreement was executed between the complainant and the respondent on 24.03.2011 with respect to the said villa wherein the respondent categorically agreed to handover the possession of the villa within 30 months from the commencement of development work. The complainant also paid a sum of Rs.50,00,000/- on the same date and the respondent issued receipt dated 24.03.2011.
- IV. That however thereafter the respondent never intimated the complainant about the progress of the project, nor ever communicated for further payment. That the complainant was introduced with the respondent by his relationship manager Mr. Sudipto Sinha with Kotak wealth and he was instrumental in getting the villa purchased by the complainant from the respondent. All the terms and conditions were finalized by the relationship manager due to the fact that the complainant was travelling and he never met with any officials of the respondent. The complainant even made total payments of Rs.1,30,00,000/- to the respondent as per the instruction of the relationship manager. However, he informed the complainant that there is no progress of the project on the spot by the respondent and stopped making further payments. Since the complainant was travelling for his official work and stayed out for a

longer period, the relationship manager was not available, therefore the complainant could not contact him.

- V. That however subsequently the relationship manager promised the complainant that he would arrange the meetings with the official of the respondent, but the same could not be fulfilled as he was transferred.
- VI. That the complainant is a senior citizen and his wife was suffering from cancer and passed away in February 2017 due to ill health and swine flu after suffering a lot which was a great shock to the complainant and the complainant was not able to manage his movable and immovable properties as he remained alone and was under the trauma of death of his wife.
- VII. That subsequently the chartered accountant of the complainant apprised him about the allotment of the villa and the payment of Rs.1,30,00,000/- in the year 2021 and the complainant met with the officials of the respondent in February 2021. The official of the respondent assured him to find out the actual state of affairs stating that due to long gap the allotment of the villa must have got cancelled.
- VIII. That the complainant sent an email dated 29.07.2021 to the respondent apprising them about all the facts and requested to return the amount along with interest, but the respondent never replied to the said email, nor communicated in any manner.
- IX. That prior to meeting with the officials of the respondent in February 2021, the respondent never had any notice or knowledge about the



status of the villa and the project. The complainant never received any notice of demand and/or cancellation in any manner.

- X. That even the project of the respondent was delayed a lot and the respondent failed to fulfil its promise of completing the same and the cancellation, if any, was illegal and unauthorized. The respondent was not even competent to demand any further amount in the absence of development and/or to cancel the allotment. The cancellation, if any, is without any notice and/or knowledge of the complainant and has been manipulated at the back of the complainant. The complainant never received any intimation and/or cancellation letter from the respondent at any point of time prior to February 2021.
- XI. That even thereafter the complainant had been requesting the officials of the respondent to refund the total amount as the complainant, who is a senior citizen and continuously under the treatment of doctors due to the many severe diseases require the money to save his life since the complainant has no source of income the leading the retired life.
- XII. That however the respondent never cared for the requests of the complainant and never apprised the complainant about refund of his hard earned money despite receiving the mail dated 29.07.2021.
- XIII. That the complainant booked the villa keeping in view the fact and believing that the respondent would hand-over the possession of the villa within the stipulated period. However, the inordinate delay committed by the respondent in handing over the possession of the villa had diminished all the hopes of the complainant and the

complainant lost interest in the project and requested the respondent for refund. Hence the present complaint is being filed for refund of the total amount of Rs.1,30,00,000/- along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:
 - a. Direct the respondent to refund the entire amount paid by the complainant along with interest.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:
 - I. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the particulars of the respondent are wrong and hence denied. The respondent was formerly known under the name and style of M/s Emaar MGF Land Ltd., however, had changed its name to "Emaar India Limited" w.e.f. 07.10.2020 and got incorporated under the Companies Act, 1956 (CIN: U45201DL2005PLC133161) having its Regd. Office at 306-308, Square One, C-2, District Centre, Saket New Delhi South Delhi DL 110017 and corporate office at Emaar Business Park, Sector 28, Gurgaon 122002.
 - II. That the complainant has not approached the Authority with clean hands as he has nowhere divulged the Authority with the fact that he has been in constant defaults in making good on his part of the obligations. That the complainant is determined and persistent

defaulter in making the payments and has willfully concealed that fact thereof. That approaching this forum with half cooked and manipulated stories is a grave violation of the doctrine of clean hands and hence, this complaint is liable to be dismissed on this ground alone.

- III. That the present complaint deals with the villa no. MAR-BL-038 in the project known as "Marbella" at Sector 65, Gurugram. The total sale consideration of the unit (at the time of allotment to the complainant, as per the Buyer's Agreement) was Rs. 7,80,29,298/-. That the complainant had paid a total sum of Rs. 1,30,00,000/- only, i.e., 16% of the total sale price only. As per the declaration given by the complainant himself, the last payment was made on 22.11.2011.
- IV. That it is a matter of record that no further payment was made by the complainant. The complainant has himself accepted in his complaint that he had been inactive and did not make further payments towards sale consideration of the unit to the respondent.
- V. That the unit in question was rightfully cancelled by the respondent in the year 2012 due to non-payment of the sale consideration of the unit by the complainant. That after the cancellation of the unit, the complainant was not left with any right/lien over the unit and the contractual relationship between the parties came to an end. Thereafter the unit was bought by one Mr. Deepak Jain who also failed to make payments towards sale consideration of the unit and thus, the respondent was constrained to cancel the unit in the name of Mr. Deepak Jain as well. After the termination of the relationship between with Mr. Deepak Jain and the respondent, the unit was further sold to Pradeep Kumar Pandey and Manju Pandey, who

became the absolute owners of the unit by virtue of execution of the conveyance deed dated 14.02.2022.

- VI. That upon the perusal of the above-mentioned true facts and circumstances, it is most humbly submitted that the present complaint is grossly barred by limitation and deserves to be dismissed. That three years from the last date of payment towards sale consideration of the unit by the complainant ended on 22.11.2013 and the present complaint was registered (performa B was generated on) 01.09.2022, hence, the complaint is grossly barred by limitation. That the present complaint has been filed after 10 years, 9 months, 10 days (3937 days) from the date of last payment. That no individual should be allowed to take recourse of law at its own whims and fanc.
- VII. That agreed terms and conditions under the Buyer's Agreement dated 24.03.2011 in case of termination by the builder, shall prevail. In this regard Clause 1.2(c) of the Agreement need to be categorically noted:

"Clause 1.2(c)..... In case of delay in making payment by the Allottee(s) to the Company as per the Schedule of Payments as stated in Annexure 3, the Company shall have the right to terminate the Agreement and forfeit the Earnest Money along with interests paid or due on delayed payment, interests paid or due on installments, brokerage, Pre-EMI Interest paid by the Company in case Allottee has opted for subvention scheme etc ("Non Refundable Amounts").....

As per Clause 1(g), 15% of the total sale consideration was to be treated as Earnest Money."

- VIII. That only 16% of the total sale price was paid by the complainant, therefore, after deduction of 15% of earnest money, interest on

delayed payments, brokerage, and statutory dues, no amount remains payable by the respondent and hence, this complaint should be dismissed.

- IX. That after cancellation of the unit, the non-refundable amounts were rightfully forfeited by the company and no claim of the complainant persist at this stage. That hence, the present complaint is bound to be dismissed.
7. 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.

E. Jurisdiction of the authority

8. 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

9. 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

10. 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;

11. 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 complainants at a later stage.
12. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others** SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand

the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent:

F.I. Objection regarding complaint being barred by limitation.

14. The respondent objected that the final payment towards the sale consideration of the unit was made by the complainant on 22.11.2011, and that the present complaint was filed on 07.09.2022, which is more than 10 years after the date of the last payment. Therefore, the present complaint is barred by the limitation period.
15. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. The Authority observes that while the complainant did file the complaint after a delay of 10 years from the date of the last payment, the respondent has also failed to communicate with the complainant during this period. Additionally, when the complainant sought updates on the status of the unit, the respondent did not provide a response. Consequently, the respondent is also at fault and cannot be permitted to benefit from its own lapse.

G.I Findings on the relief sought by the complainant.

- G.I. Direct the respondent to refund the entire amount along with interest.**

16. In the present complaint, the complainant had booked a villa in the "Marbella" project located in Sector-65, Gurugram, Haryana. A buyer's agreement was executed between the complainant and the respondent on March 24, 2011, concerning the villa in question. According to Clause 10(a) of the agreement, the respondent was obligated to hand over possession of the villa within 30 months from the commencement of development work. The complainant paid Rs. 1,30,00,000/- out of the total sale consideration of Rs.7,80,29,298/- as per the respondent's demands. The complainant asserts that he did not receive any further demands or any cancellation notice from the respondent. On 29.07.2021, the complainant requested a refund of the paid amount via email, but received no response. In the reply the respondent submitted that the unit was cancelled due to non-payment of outstanding dues by the complainant and the unit was subsequently sold to a third party. During the proceedings dated 03.07.2024, the Authority directed the respondent to provide evidence of the demands made concerning the villa, the cancellation letter issued, and the procedure followed in cancelling the unit. However, the respondent failed to produce any such documents. Consequently, the Authority finds that the respondent did not adhere to the proper procedure in cancelling the unit, and no demands or reminders were sent to the complainant. In the absence of any such demands, it is unreasonable to expect the complainant to have made any payments or to assume that he was aware of the cancellation or the status of the unit.
17. The complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him along with interest prescribed rate of interest as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.



20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
21. On consideration of the documents and the submissions made by both parties concerning the alleged contravention of the provisions of the Act, the Authority concludes that the respondent did not adhere to the prescribed due process in cancelling the unit. Furthermore, the respondent has failed to provide any documentary evidence to substantiate that the cancellation was carried out. Consequently, the complainant is entitled to a refund of the entire amount paid, along with applicable interest at the prescribed rate of interest i.e., @ 11% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date the demand of refund was made by the complainant till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

29. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- The respondent/promoter is directed to refund the amount of Rs.1,30,00,000/- paid by the complainant along with prescribed rate of interest @ 11% p.a. as prescribed under rule 15 of the rules

from the date request of refund vide e-mail dated 29.07.2021 till the date of actual realization of the amount.

- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
30. Complaint stands disposed of.
 31. File be consigned to registry.

Date: 07.08.2024



(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM