

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

Date of Decision: 10.10.2024

NAME OF THE BUILDER		EMAAR INDIA LIMITED	
PROJECT NAME		"EMAAR BUSINESS DISTRICT"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6059/2022	Sanjeev Kumar V/S Emaar India Limited	Shri Ashish Kumar Sinha and Prince Kumar Advocates Shri Ishaan Dang Advocate
2.	CR/6291/2022	Markandey Mishra V/S Emaar India Limited	Shri Dalvinder Kumar Advocate Shri Ishaan Dang Advocate

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Emaar Business District" (Plotted Colony) being developed by the same respondent/promoter i.e., M/s Emaar India Limited. The terms

and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to provide physical possession of the unit and to grant stay on the letter of offer of possession dated 15.07.2022.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in a table below:

Project Name and Location	Emaar India Limited at "Emaar Business District" situated in Sector- 114, Gurugram.	
7. Possession clause:		
7.14 Possession by the Allottee		
After obtaining the approved zoning-cum-demarcation plan/standard design and upon laying of the services as approved as per the service plan estimate, in respect of a project/commercial colony, as the case may be and handing over the physical possession of the SCO plot to the allottee, it shall be the responsibility of the developer to handover the necessary documents and plans, and common areas to the Association of Allottees/RWA or the competent Authority, as the case may be as provided under Rule 2(1)(f) of HRERA Rules, 2017.		
Part completion certificate: 16.11.2023		
Complaint No., Case Title	CR/6059/2022 Sanjeev Kumar V/S Emaar India Limited	CR/6291/2022 Markandey Mishra V/S Emaar India Limited
Reply status	11.07.2023	11.07.2023
Unit no.	EBD-114-C-09 & Block-C [As per page no. 36 of the complaint]	EBD-114-C-19 & Block-C [As per page no. 41 of the complaint]
Area admeasuring	129.17 sq. yds. [As per page no. 36 of the complaint]	129.17 sq. yds. [As per page no. 41 of the complaint]
Date of execution of agreement	14.01.2022 [As per page no. 28 of the complaint]	17.12.2021 [As per page no. 31 of the complaint]
Due date of handing over of possession	11.03.2026 (As per RERA registration)	11.03.2026 (As per RERA registration)
Offer of possession	15.07.2022 [As per page no. 125 of the	05.07.2022 [As per page no. 91 of the

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	reply]	complaint]
Total Consideration / Total Amount paid by the complainant(s)	TSC: Rs.3,30,19,351/- (As per page no. 38 of the complaint) AP: Rs.1,83,85,523/- (As per SOA dated 22.08.2022 at page no. 93 of the complaint)	TSC: Rs.3,30,19,348/- (As per page no. 41 of the complaint) AP: Rs.1,83,85,428/- (As per SOA dated 05.07.2022 at page no. 134 of the reply)

4. The aforesaid complaints were filed by the complainant against the promoter on account of failure on the part of the promoter to provide physical possession of the unit, to provide a copy of completion certificate and to grant stay on the letter of offer of possession dated 15.07.2022
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6059/2022, case titled as Sanjeev Kumar V/S Emaar India Limited** are being taken into consideration for determining the rights of the allottee(s) qua physical possession of the unit and to grant stay on the letter of offer of possession dated 15.07.2022.

A. Unit and project related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the

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possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Emaar Business District (EBD)", sector- 114, Gurugram
2.	Project area	6.40625 Acres
3.	Nature of the project	Plotted Colony
4.	DTCP License no. & validity status	14 of 2021 dated 12.03.2021 up to 11.03.2026
5.	Name of Licensee	Bailiwick Builders Pvt. Ltd. and others
6.	RERA Registered/ not registered	Registered vide no. 19 of 2021 dated 19.04.2021 valid up to 11.03.2026
7.	Plot no.	EBD-114-C-09, Block -C (As per page no. 36 of the complaint)
8.	Unit admeasuring	129.17 sq. Yds. (As per page no. 36 of the complaint)
9.	Allotment letter	03.01.2022 (As per page no. 45 of the reply)
10.	Date of execution of Agreement for sale	14.01.2022 (As per page no. 28 of the complaint)
11.	Possession clause	<p>7. POSSESSION OF THE SCO PLOT</p> <p>7.1 Schedule for possession of the said SCO Plot: - the developer agrees and understands that timely delivery of possession of the SCO plots to the allottee is the essence of the agreement.</p> <p>7.14 Possession by the Allottee After obtaining the approved zoning-cum-demarcation plan/standard design and upon laying of the services as approved as per the service plan estimate, in respect of a</p>



		<p><i>project/commercial colony, as the case may be and handing over the physical possession of the SCO plot to the allottee, it shall be the responsibility of the developer to handover the necessary documents and plans, and common areas to the Association of Allottees/RWA or the competent Authority, as the case may be as provided under Rule 2(1)(f) of HRERA Rules, 2017.</i></p> <p>(As per page no. 51 of the complaint)</p>
12.	Due date of possession	<p>11.03.2026</p> <p>(As mentioned in the HARERA registration certificate)</p>
13.	Total sale consideration	<p>Rs.3,30,19,351 /-</p> <p>(As per page no. 38 of the complaint)</p>
14.	Total amount paid by the complainant	<p>Rs.1,83,85,523/-</p> <p>(As per SOA dated 22.08.2022 at page no. 93 of the complaint)</p>
15.	Offer of possession	<p>15.07.2022</p> <p>(As per page no. 125 of the reply)</p>
16.	Grant of part Completion certificate	<p>16.11.2023</p> <p>(As per additional documents submitted by the respondent on 08.12.2023, at page no. 3 of the reply)</p>

B. Facts of the complaint:

8. The complainant has made the following submissions:

- I. That the complainant booked a shop cum office (SCO) in a commercial plotted colony under the project name 'Emaar Business District (EBD)-114' at Sector 114, Gurugram Manesar Urban Complex, Gurugram, Haryana of the respondent with the help of

- Emaar's authorized sales agent Mr. K. K. Singh from booking amount of Rs.10,00,000/- dated 02.12.2021 and on 27.12.2021 the respondent confirmed the allotment of the said SCO commercial plot of 129.17 sq. yds.
- II. That thereafter, the complainant executed an "agreement for sale/ builder buyer's agreement" on 14.01.2022 with the respondent and the agreed total consideration amount is Rs.3,30,19,351/- as per the builder buyer's agreement entered into between the parties herein. As per the statement of account dated 22.08.2022 an amount of Rs.1,83,85,523/- have been paid by the complainant.
- III. That on 15.07.2022, the respondent sent the "letter of offer of possession" with illegally increased amount of Rs.2,69,261/- in addition to the total agreed amount as per the above-mentioned builder buyer's agreement and also without completing the services as per existing law in force with respect to the subject matter and also without adhering to the rule of law.
- IV. That thereafter, the complainant sent several emails from 22.07.2022 to 28.08.2022 for want of the desired mandatory documents [i.e., the certificates {water connection (drinking as well as for domestic use), sewerage connection, electricity connection, occupation certificate} issued by the government Authority in relation to the subject matter with respect to the basic facilities and amenities as per the BBA and the Act of 2016 and regulations which is the condition precedent/ mandatory for giving/taking of the possession] with respect to the services completed as per the BBA and RERA rules and regulations to take the possession.
- V. That the complainant sent various emails from 22.07.2022 regarding the completion certificate of the basic services that ought

to be completed by the respondent as per the law while demanding the full and final amount against the BBA for offering the possession.

- VI. That after several emails and the reply of the respondent, the complainant came to know that the basic provision of services as per the existing law with respect to the subject matter is not completed and the respondent/ builder didn't allow the complainant to visit the site and also failed to give any completion certificate or satisfactory response to the same.
- VII. That feeling aggrieved by the said act of developer, the complainant is approaching the Authority for the possession of the agreed commercial plot or refund of his invested amount with interest, the cost and expenses of the legal proceedings and damages for harassment, physical injury and mental agony.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Grant stay of the operation of the "letter of offer of possession" dated 15.07.2022 issued by the respondent/builder to the complainant till the obtaining of the approved mandatory certificates as per the builder buyer's agreement entered into between the parties herein and as per the provisions of Act of 2016 as well as the Rules, 2017.
 - ii. Restrain the respondent to charge any amount as delayed payment till the final adjudication of this matter.
 - iii. Direct the respondent to deliver the possession of the shop cum office commercial plot purchased by the complainant/buyer with all the approved mandatory certificates as per the law.

- iv. Alternatively pass an order of refund of the amount invested by the complainant/ buyer in purchasing the aforesaid shop cum office (SCO) commercial plot no. EBD 114-C-09 with the penal interest of at the rate of 18% per month as charged by the respondent builder on any delay payment of his installment against the cost of the aforesaid commercial plot as per the builder buyer's agreement entered into between the parties herein and as per the provisions of Act of 2016 as well as the Rules, 2017.
- v. Direct the respondent to pay a sum of rupees Rs.500,000/- towards compensation for the physical harassment and mental agony caused to the complainant/buyer by the respondent/builder.
- vi. Direct the respondent to pay a sum of rupees Rs.110,000/- towards the costs and expenses of litigation.

D. Reply by the respondent:

10. The respondent contested the complaint on the following grounds:

- a. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 14.01.2022, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Hon'ble Authority to refer and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant.

- b. That the complainant, through his property dealer, had approached the respondent and expressed an interest in booking an SCO (Shop cum Office) plot in the project being developed by the respondent known as "Emaar Business District" situated in Sector-114, Gurugram Manesar Urban Complex, Gurugram, Haryana, prior to making the booking, the complainant had conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, including the approvals, licences, permissions as well as the capacity of the respondent to undertake the project in question, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the apartment in question.
- c. That the complainant made an application for and was provisionally allotted SCO plot no. EBD 114-C-09 having plot size of 129.17 sq. yds. vide allotment letter dated 03.01.2022, containing the payment plan and the terms and conditions of allotment. Agreement to sell between the parties was registered on 14.01.2022.
- d. That as per the payment plan applicable to the complainant, which was a development plan, the complainant was required to make payments of instalments on or before the due dates of payment indicated therein. However, the complainant defaulted in timely payment of sale consideration and consequently the respondent was compelled to issue reminders for payment to the complainant.
- e. That clause 7.5 of the agreement to sell dated 14.01.2022 provides that the developer, upon obtaining the approved demarcation - cum - zoning plan/standard design and upon provision of services

by the developer, in respect of the project shall offer in writing the possession of the SCO plot within three months from the date of above to the allottee as per the terms of the agreement, subject to (1) payment of the total price by the allottee; (2) delayed payment charges (if applicable thereon); (3) other charges; (4) and to execute necessary indemnities, undertakings, maintenance agreement and other documentation as the developer may prescribe.

- f. That by letter dated 15.07.2022, possession of the unit was offered to the complainant after completion of provision of services. The complainant was called upon to make payment of balance amounts as per the applicable payment plan and to come forward for completion of the necessary documentation and formalities required in order for the respondent to hand over possession of the unit to the complainant. Instead of making the demanded payment, the complainant started issuing frivolous correspondence in order to delay taking possession of the unit. It appears that the complainant does not have sufficient funds to make payment of balance amount and take possession of the unit. It appears that the complainant has booked the unit in question as an investment and not for his own use. The complainant is not an "allottee" under RERA.
- g. That the complainant is in breach of the agreement to sell dated 14.01.2022. The respondent has duly fulfilled its obligations under the agreement by offering possession of the developed plot to the complainant in accordance with the agreement between the parties. The respondent has duly made an application to the

competent authority on 14.03.2022 for issuance of the completion certificate in respect of the project.

- h. That it is evident from the entire sequence of events, that no illegality or lapse can be attributed to the respondent. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by this Hon'ble Authority. It is submitted that the institution of the present false and frivolous complaint is absolutely unjustified and unwarranted. The present complaint is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

12. The objection raised by the respondent regarding rejection of complaint on ground of subject matter jurisdiction stands rejected. The authority observes 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

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

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(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.

13. 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.

F. Findings on the objection raised by the respondent:

F.I Objection regarding the complainant being investor.

14. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, he is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector.

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It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the documents placed on record, it is revealed that the complainant is buyer and paid a price of Rs.1,83,85,523/- to the promoter towards purchase of a plot in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference.

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement for sale, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:

G.I Grant stay of the operation of the "letter of offer of possession" dated 15.07.2022 issued by the respondent/builder to the complainant till the obtaining of the approved mandatory certificates as per the builder buyer's agreement entered into between the parties herein and as per the provisions of Act of 2016 as well as the Rules, 2017.

16. In the present matter the complainant was provisionally allotted a shop cum office (SCO) on 03.01.2022 plot bearing no. EBD-114-C-09, Block-C in the project namely "Emaar Business District" located in sector 114, Gurugram. The buyer's agreement was executed on 14.01.2022 and the complainant started paying the amount due against the allotted plot and paid a sum of Rs.1,83,85,523/- for a total sale consideration of Rs.3,30,19,351/-.
17. Further, the respondent obtained the part completion certificate on 16.11.2023 and offered the possession of the subject unit to the complainant on 15.07.2022. Despite receiving the part completion certificate on 16.11.2023, the respondent had previously offered possession of the subject unit to the complainant on 15.07.2022. Since, this offer was made before the issuance of the part completion certificate, it is considered invalid. Possession can only be offered after the proper regulatory approval is obtained, which in this case, was after 16.11.2023. The part completion certificate was received on 16.11.2023 which is available on the website of the DTCP and the same is accessible to everyone.

G.II Restrain the respondent to charge any amount as delayed payment till the final adjudication of this matter.

18. In the present complaint, the total sale consideration of the plot in question is Rs.3,30,19,351/- out of which the complainant has paid an amount of Rs.1,83,85,523/- i.e., 55% of the total sale consideration. The complainant has opted for time linked payment plan and the complainant has to pay an amount of Rs.1,83,79,186/- before offer of possession and last instalment of Rs.1,46,40,165/- on intimation of possession or service completion, whichever is earlier. The respondent has obtained the part completion certificate on 16.11.2023 itself,

therefore as per section 19(6) and 19(7) of the Act of 2016, the complainant is duty bound to pay the outstanding dues as per the payment plan agreed between the complainant and the respondent.

G.III Direct the respondent to deliver the possession of the shop cum office commercial plot purchased by the complainant/buyer with all the approved mandatory certificates as per the law.

19. As detailed out in para 16, the due date for possession of the allotted plot in question is 11.03.2026. In the present complaint, the complainant intends to continue with the project. As per section 19(6) and 19(7) of the Act of 2016, the allottee has an obligation to pay the outstanding dues against the allotted unit/plot and the respondent shall handover the physical possession of the unit/plot within 30 days from the payment of such outstanding amount.
20. The counsel for the complainant during proceedings of the day dated 22.08.2024 brought to the notice of the Authority that though the part completion certificate was received on 16.11.2023 but the amenities are not completed till date. Further, he stated that the complainant is willing to take the possession with all the amenities promised as per BBA. However, the counsel for the respondent stated that it is a commercial plotted colony and part CC has already been placed on record which was granted by the competent authority after fulfilment of all the requisite confirmation of completion of services and amenities as per sanctioned plan by the respondent. Therefore, the Authority is of the view that if the complainant-allottee has any objection regarding part CC he can approach the competent Authority. Thus, the Authority hereby directs the respondent to handover the possession to the complainant within 30 days from the payment of outstanding dues by the complainant.

G.IV Alternatively pass an order of refund of the amount invested by the complainant/ buyer in purchasing the aforesaid shop cum office (SCO) commercial plot no. EBD 114-C-09 with the penal

interest of at the rate of 18% per month as charged by the respondent builder on any delay payment of his installment against the cost of the aforesaid commercial plot as per the builder buyer's agreement entered into between the parties herein and as per the provisions of Act of 2016 as well as the Rules, 2017.

21. As the complainant intends to continue with the project and seeking physical possession of the allotted plot, therefore, the above sought relief by the complainant becomes redundant.

G.V Direct the respondent to pay a sum of rupees Rs.500,000/- towards compensation for the physical harassment and mental agony caused to the complainant/buyer by the respondent/builder.

G.VI Direct the respondent to pay a sum of rupees Rs.110,000/- towards the costs and expenses of litigation.

22. The complainant is seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to handover the possession of the plot within 30 days from payment of outstanding dues by the complainant.

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- ii. The respondent is directed to provide a copy of part completion certificate/completion certificate to the complainant/allotees.
 - iii. The complainants are directed to pay the outstanding dues as per the agreed payment plan between the parties.
 - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default.
 - v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and no holding charges shall be levied as per law settled by ***Hon'ble Supreme Court in Civil Appeal no. 3864-3899/2020 decided on 14.12.2020.***
24. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
25. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
26. Files be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2024