

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

Complaint no. : 1656 of 2022
Order reserved on : 29.10.2024
Order pronounced on: 10.12.2024

1. Mrs. Mili Jain W/o Sanjay Jain
R/o: EA-159, 1st Floor, Inder Puri, New Delhi- 110012
2. Mrs. Rakha Khandelwal W/o Vivek Khandelwal
R/o: EA-1/62, 1st Floor, Inder Puri, New Delhi- 110012

Complainants

Versus

M/s Emaar India Limited.
(Formerly Known as Emaar MGF Land Limited)
Registered office at: Emaar MGF Business Park,
Sikandarpur Chowk, Sector- 28, Gurugram - 122002,
Haryana.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Pranjal Jain
Shri Ishaan Dang

Advocates for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit 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, 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) situated in Sector- 114, Gurugram. |
| 2. | Project area | 6.40625 acres |
| 3. | Nature of project | Plotted COMMERCIAL COLONY |
| 4. | DTCP license | 14 of 2021 dated 12.03.2021 valid up to 11.03.2026 |
| 5. | Name of licensee | Bailiwick Builders Pvt. Ltd. and 3 others |
| 6. | RERA registered/ or not | Registered vide registration no. 19 of 2021 dated 19.04.2021 Valid up to 11.03.2026 |
| 7. | SCO Plot no. | EBD114-B-22 (Page no. 52 of the complaint) |
| 8. | Plot admeasuring area | 107.64 Sq. Yards. (Page no. 52 of the complaint) |
| 9. | Booking application form | 26.10.2021 (Page no. 23 of the reply) |
| 10. | Allotment Letter dated | 10.11.2021 (Page no. 18 of the complaint) |
| 11. | Date of execution of builder buyer agreement | 23.12.2021 (Page no. 37 of the complaint) |
| 12. | Possession clause | 7. POSSESSION OF THE SCO PLOT 7.1 Schedule for possession of the said SCO plot: - The Developers agrees and understands that timely delivery of possession of the SCO plot to the allottee is the essence of the agreement. 5. Time IS ESSENCE:- |

| | | |
|-----|----------------------------------|---|
| | | <p>5.1 The Developer shall abide by the timely schedule for completing the Project as disclosed at the time of registration of the project with HARERA and towards offer of handing over the SCO plot to the allottee and to the common areas to the association of allottees/RWA or the competent Authority, as the case may be, subject to Force Majeure and Subject to the Allottee complying with all its obligation. (Page no. 62 and 64 of complaint)</p> |
| 13. | Due date of possession | 11.03.2026 |
| 14. | Total sale consideration | Rs.3,24,00,292/- (As per payment plan annexed with the buyer's agreement at page no. 90 of complaint) |
| 15. | Amount paid by the complainant | Rs.1,49,14,938/- (As alleged by the complaint at page no. 11 of complaint) |
| 16. | Occupation certificate | Not obtained |
| 17. | Offer of possession letter dated | Not offered |

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:
 - i. That the representatives and sales people of respondent approached the complainants and impressed upon the complainants that the respondent is best in class developer and is developing a project in sector 114, Gurugram which is registered with HARERA certification. Due to high pitched offers of the respondent, the complainants were lured to purchase a shop cum office (SCO) plot and were directed towards a property dealer of the respondent. On 25.10.2021 the complainants paid a sum of

- Rs.10,00,000/- towards advance booking amount to the respondent.
- ii. That the complainants after making the payment of Rs.10,00,000/- were allotted a unit bearing no. EBD 114-B-22 admeasuring 107.64 sq. yards for a total sale consideration of Rs.3,24,00,292/- vide allotment letter dated 10.11.2021.
 - iii. That the complainants vide demand letter dated 14.12.2021 raised a demand for Rs.18,66,497/-. The demand was duly paid by the complainants on 23.12.2021. That subsequent to payment of Rs.18,66,497/- a agreement to sell was duly signed and registered between the complainants and the respondent. It is pertinent to mention herein that Annexure IV of the said agreement to sell dated 23.12.2021 details the pricing and payment plan of the said unit.
 - iv. That in early January, 2022, the complainants while surfing through the details of the project of the respondent, got access to the registration certificate issued by this Authority to the respondent. However, after going through the contents of the registration certificate bearing no. 19 of 2019, the complainants were shocked and in dismay. As per the terms and conditions of the registration certificate, the respondent was not allowed to charge EDC/IDC separately from the allottees except the basic sale price. Contents of the registration certificate are as under:

"ADDITIONAL TERMS AND CONDITIONS OF REGISTRATION

2. No separate EDC/IDC are payable by the allottees except the basic sale price on carpet area basis.

Attention is invited to model agreement for sale provided in the Haryana Real Estate (Regulation and Development) Rules, 2017. (Term 1.2)

Explanation:

- i. *The Total Price as mentioned above includes the booking amount paid by the allottee to the Promoter towards the Plot/Unit/Apartment for*

Residential/Commercial/Industrial/IT/ any other usage (as the case may be) along with parking (if applicable);

- ii. *The Total Price as mentioned above includes Taxes {GST and Cess or any other taxes/fees/charges/levies etc. which may be levied, in connection with the development/construction of the Project(s)} paid/payable by the Promoter up to the date of handing over the possession of the Plot / Unit/Apartment for Residential/Commercial/Industrial/IT /any other usage (as the case may be) along with parking (if applicable) to the allottee(s) or the competent authority, as the case may be, after obtaining the necessary approvals from competent authority for the purpose of such possession:*

Provided that, in case, there is any change / modification in the taxes / charges/fees/levies etc., the subsequent amount payable by the allottee to the promoter shall be increased/decreased based on such change /modification."

- v. That the husband of complainant no. 1 wrote an email dated 14.01.2022, to the respondent on behalf the complainants describing their anguish from the illegal amounts being charged by the respondent from innocent and simple allottees.
- vi. That before any explanation was given by the respondent, a demand for 50% of the EDC along with 15% of the unit price was called upon by the respondent and the complainants were forced to make a payment of Rs.60,22,539/-.
- vii. That the respondent vide its email dated 27.01.2022 tried to distort the facts and mislead the complainants by reading bits and pieces of the terms and conditions of the registration certificate to their choosing and benefit. That the complainants sent few emails further detailing the unjustified demands and illegal charges being taken from the complainants by the respondent.
- viii. That the complainants saw no hope of getting answers from the respondents, got issued a legal notice dated 03.03.2022 to the respondent at its correct address, which the respondent miserably failed to reply.

- ix. That in the meanwhile, the respondents issued another illegal demand for balance 50% of the EDC and 15% of the unit price amounting to Rs.60,22,539/- which the complainants had no option but to pay. That the respondent has illegally taken an amount of Rs.34,75,588/- under the garb of EDC/IDC which was not to be charged by the respondent separately, as detailed in the project registration certificate issued by this Authority. That the respondent has flouted the terms and conditions of the registration certificate issued to it by this Authority for its illegal and immoral monetary benefit and duped the innocent complainants of Rs.34,75,588/-. The respondent has no regard for law and is adamant on its unlawful ways to extract money from simple allottees.
- x. That the suit property lies within the jurisdiction of this Authority, hence, the Authority has the right to decide the present matter under dispute.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:

- i. Direct the respondent to refund the excess the amount of Rs.34,75,588/- illegally taken by the respondent from the complainants under the grab of EDC and IDC with interest @ 9.20% up to the date of payment. Further, the amount should not be refunded, the excess amount taken by the respondent may kindly be directed to be adjusted towards future demands raised by the respondents.
- ii. Direct the respondent not to charge/demand anything that is not part of the BBA nor charge/demand anything that is outside the

scope of HARERA certificate nor anything that is illegal, unethical and against the norms of HARERA.

D. Reply filed by the respondent

5. The respondent has contested the complaint on the following grounds:

I. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Authority under the Act, 2016 and the Rules, 2017. The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.

II. That the complainants have 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 29.12.2021, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of the hearing of the present complaint, so as to

bring out the mutual obligations and the responsibilities of the respondent as well as the complainants, thereunder.

- III. That the complainants 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, and Haryana. Prior to making the booking, the complainants had conducted extensive and independent enquiries with regard to the project and it was only after they were 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 complainants took an independent and informed decision, uninfluenced in any manner by the respondent, to book the apartment in question.
- IV. That the made an application for and were provisionally allotted SCO plot no. EBD 114-B-22 having plot size of 90 sq. mtrs. or 107.64 sq. yards., vide allotment letter dated 10.11.2021, containing the payment plan and the terms and conditions of allotment.
- V. That the project has been registered under the provisions of the Act of 2016. As clause 1.2 of the agreement to sell dated 23.12.2021 provides that the total price of the SCO plot based on the plot area is Rs.32,400,292/- and that the description of total price is provided in as per annexure III to the agreement. Explanation (iv) to clause 1.2 provides that the total price of the SCO plot for commercial usage includes recovery price of land, development of the SCO plot but also of the common areas (if

applicable), internal development charges, infrastructure augmentation charges, EDC/IDC, taxes and Cesses/fees/levies etc., cost of providing electric wiring, electrical connectivity to the SCO plot, water line and plumbing and firefighting equipment in the common areas, to be provided within the project.

VI. That annexure III of the agreement to sell provides that the total price shall comprise of the following:

- A. Basic sale price: Rs.2,85,64,965/-;
- B. EDC/SIDC/IDC/ and any interest thereon as applicable: Rs.34,75,588/- as on date;
- C. Taxes and Cesses: As applicable;
- D. Operational charges for miscellaneous facilities: Approx. Rs.3,04,862/- as on date and subject to revision.

Other charges not forming part of the total price are:

- Interest free maintenance security: Rs.6146/-
- Maintenance charges: payable monthly as applicable
- Parking area maintenance charges: payable monthly as applicable.
- Electrification, switching station charges, if any, as applicable.
- Other payments for any infrastructural facility and/or any other amenities which cannot be ascertained presently shall be payable by the Allottee(s) over and above the Total Price, as and when demanded by the Developer.

It is further, inter alia, provided that any revision in EDC, SIDC, IAC, Statutory charges, Taxes, GST, Labour Cess etc, if any, shall be charged as applicable from time to time as per the applicable taxes and as permissible under the Applicable law.

VII. That as per annexure IV of the agreement to sell sets out the pricing and payment plan in terms of which the allottee is required to make payment of the sale price in 6 instalments. The EDC component of the sale price is to be paid at the time of instalments no 3 and 4. That thus, it is submitted that the EDC/IDC component amounting to Rs34,75,588/- is already included in the total price of the SCO unit and that the instalment wise breakup

Provided that, in case there is any change/modification in the taxes/charges/fees/levies etc., the subsequent amount payable by the allottee to the promoter shall be increased/decreased based on such change/modification: Provided further, if there is any increase in the taxes/charges/fees/levies etc. after the expiry of the scheduled date of completion of the project as per registration with the Authority, which shall include the extension of registration, if any, granted to the said project by the Authority, as per the Act, the same shall not be charged from the allottee;

- (iii) *The promoter shall periodically intimate in writing to the allottee, the amount payable as stated in (i) above and the allottee shall make payment demanded by the promoter within the time and in the manner specified therein. In addition, the promoter shall provide to the allottee(s) the details of the taxes/fees/charges/levies etc. paid or demanded along with the acts/rules/notifications together with dates from which such taxes/fees/charges/levies etc. have been imposed or become effective;*
- (iv) *The Total Price of Plot/ Unit/ Apartment for Residential/Commercial/ Industrial/IT/any other usage (as the case may be) along with parking (if applicable) includes recovery of price of land, development/ construction of [not only of the Apartment/ Unit/Plot] but also of the Common Areas (if applicable), internal development charges, infrastructure augmentation charges, external development charges, taxes/ fees/ levies etc., cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges as per para 11 etc. and includes cost for providing all other facilities, amenities and specifications to be provided within the Plot/ Unit/Apartment for Residential/Commercial/Industrial/IT/any other usage (as the case may be) along with parking (if applicable) in the project.*

X. That thus, it is evident from explanation (iv) that the total price includes EDC/IDC as has been done by the respondent. Merely because the Respondent is providing the breakup of each instalment for the sake of transparency does not mean that the respondent is separately charging EDC/IDC from the complainants. It is wrong and denied that the respondent has violated the terms and conditions of registration. That in the case of plots, the sale price is not calculated on the basis of carpet area but on the plot area. The complainants are needlessly trying to generate controversy out of a non-existent issue. The respondent craves leave of this Authority to refer to and rely upon

the clauses of the agreement to sell dated 23.12.2021, relevant clauses of the model buyer's agreement, RERA registration certificate as well as the provisions of the Act and the Rules, at the time of addressing arguments, in support of its submissions.

- XI. That the respondent already clarified to the complainants by way of email dated 27.01.2022 that the respondent has not charged EDC and IDC separately and that the total consideration payable by the complainants includes these charges. It was further communicated by the respondent by the said email that the respondent has only tried to be more transparent by giving a breakup of the total consideration payable. It was further clarified that EDC and IDC are Government charges and the developer is not precluded from proportionately recovering these charges from allottees. However, despite the clarification provided by the respondent, the complainants are needlessly vilifying the respondent and making baseless allegations against them. It is further submitted that license granted to the respondent for the said project is subject to various conditions which includes the condition for time bound payment of EDC and IDC.
- XII. 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 complainants qua the respondent are totally baseless and do not merit any consideration by this Authority. In 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.

6. The respondent has filed the written submissions on 05.11.2024, which is taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.
- 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

9. Section 11(4)(a) of the Act 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.

10. 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 as per provisions of section 11(4)(a) of the Act 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 relief sought by the complainants

- F.I Direct the respondent to refund the excess the amount of Rs.34,75,588/- illegally taken by the respondent from the complainants under the grab of EDC and IDC with interest @ 9.20% up to the date of payment. Further, the amount should not be refunded, the excess amount taken by the respondent may kindly be directed to be adjusted towards future demands raised by the respondents.**
- F.II Direct the respondent not to charge/demand anything that is not part of the BBA nor charge/demand anything that is outside the scope of HARERA certificate nor anything that is illegal, unethical and against the norms of HARERA.**
11. The aforesaid complaint was decided by the authority vide daily order dated 12.01.2023, wherein the respondent was held *right in charging of Rs.34,75,588/- in lieu of EDC and IDC*. Thereafter, the aggrieved complainants /allottee challenged the said order before the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh. The appeal filed by the complainants was disposed of by the tribunal vide order dated 03.07.2024 observing that it would be appropriate if a detailed order is passed in this regard as it is likely to affect large number of allottees/promoters and accordingly the matter was again remitted to authority for fresh decision. The relevant para of the order dated 03.07.2024 are reproduced hereinbelow for the ready reference:

"6. Having heard learned counsel for the parties and given careful thoughts to the facts of the case, this Bench feels that the effect of notification and terms of agreement entered into between the parties need to be considered and adjudicated upon afresh. It would, thus, be appropriate if a detailed order is passed in this regard as it is likely to affect large number of allottees/promoters.

7. *In view of the aforesaid observation, this Bench deems it fit to remit the matter to the same Authority for **decision afresh at the earliest preferably within three months.***
 8. *The appeal is disposed of.*
 9. *Copy of this order be communicated to both the parties/counsel for the parties and the learned Authority.*
 10. *File be consigned to the records."*
12. The authority in pursuance to the said directions passed by the tribunal, listed the matter for detailed hearing on 03.09.2024. Both the parties put in appearance before the authority. The matter was heard at length on 29.10.2024 and was further adjourned to 10.12.2024 for pronouncement of order.
13. In the present matter the complainants were allotted a SCO plot bearing no. EDB-114-B-22, admeasuring 107.64 sq. yds., in project of the respondent named "Emerald Business District" (EBD) at Sector-114, Gurugram vide provisional allotment letter dated 10.11.2021. An apartment buyer's agreement was also executed between the parties on 23.12.2021 and as per clause 7.1 of the agreement the respondent was obligated to handover the possession of the unit by 11.03.2026. The complainants have paid an amount of Rs.1,49,14,938/- against the total cost of Rs.3,24,00,292/-.
14. The complainant herein intends to continue with the project and are seeking refund of Rs.34,75,588/- being charged in excess & illegally by the respondent for EDC and IDC with interest @ 9.20% up to the date of payment.

The Authority observes that as per clause 1.2, the price for the SCO plot based on the plot area is Rs.3,24,00,292/- and the description of the total price is provided in annexure-III herein. The payment plan annexed with the agreement dated 23.12.2021, the complainant agreed to pay EDC/IDC to the tune of Rs.34,75,588/-. The authority has gone

through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference:-

'ANNEXURE-III'

DETAILS OF TOTAL PRICE

"Total price" shall mean the total price for the plot which shall comprise of the following.

- A. Basic sale price: **Rs.2,85,64,965/-**;
- B. EDC/SIDC/IDC/ and any interest thereon as applicable: **Rs.34,75,588/-** as on date;
- C. Taxes and Cesses: As applicable;
- D. Operational charges for miscellaneous facilities: Approx. Rs.3,04,862/- as on date and subject to revision.

Other charges not forming part of the total price are:

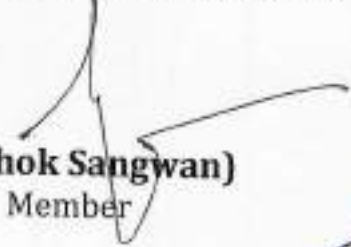
- Interest free maintenance security: **Rs.6146/-**
- Maintenance charges: payable monthly as applicable
- Parking area maintenance charges: payable monthly as applicable.
- Electrification, switching station charges, if any, as applicable.
- Other payments for any infrastructural facility and/or any other amenities which cannot be ascertained presently shall be payable by the Allottee(s) over and above the Total Price, as and when demanded by the Developer.

15. Therefore, the Authority is of the view that the agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Accordingly, the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments /competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature and the respondent is right in charging Rs.34,75,588 in lieu of EDC/IDC. In view of the above, the reliefs sought by the complainant are



denied by the Authority in toto and the complaint stands dismissed as reasoned above.

16. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 10.12.2024



HARERA
GURUGRAM