

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

Complaint no. : 6600 of 2022

Date of decision : 25.03.2025

M/s Emaar India Limited

(Formerly known as Emaar MGF Land Ltd.) Through its
Authorized representative Sh. Sayantan Mondal.

Address:- Emaar Business Park, M.G. Road, Sikandarpur,
Sector-28, Gurugram-122002, Haryana

Complainant

Versus

1. Sh. Vivek Sharma

2. Sh. Hira Lal Sharma

Both RR/o: - E-44, Kilokari Village, Oppo. Maharani
Bagh, New Delhi- 110014

Respondents

Coram:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sanhwan

Chairman

Member

Member

Appearance:

Shri Ishaan Dang

Shri Kamal Sharma

Advocate for the complainant

Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/promoter 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 18(1)(b) of the Act which provides for inability of the promoter to continue with the project read with section 31 of the Act of 2016. The complainant/promoter has contended that the project of the complainant on account of certain unavoidable circumstances and force majeure condition had to halt the construction of the said project.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the allottees, 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	"Commerce Park", Sector-61, Village Ghata, Gurugram, Haryana.
2.	Project area	5.65 acres
3.	Nature of project	IT park colony
4.	RERA registered	Registered vide no. 58 of 2017 dated 17.08.2017 valid up to 31.03.2021 The Promoter/Developer has surrender the registration certificate on 07.10.2022.
5.	DTCP licence	Licence no. 34 of 2008 dated 23.02.2008 valid up to 22.02.2026
6.	Name of licensee	Active Promoters Pvt. Ltd.
7.	Unit no.	CP-ST-10-014, 10 th Floor, Tower-south (Page 41 of complaint)
8.	Unit area	1626.14 sq. ft. (Page 41 of complaint)
9.	Date booking application form	24.12.2023 (Page no. 25 of the compliant)
10.	Provisional Allotment letter	02.01.2014 (Page no. 33 of complaint)
11.	Date of execution of buyer's agreement	25.03.2014 (Page no. 38 of complaint)
12.	Possession clause	16. POSSESSION (a) Time of handing over the Possession <i>(i) The Company shall endeavor to deliver the possession of the Unit to the Allottee within 36 (thirty six) months from the date of start of construction, subject, however, to the Force Majeure conditions as stated in clause 33 of this Agreement and further subject to the Allottee 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</i>

		<p><i>under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee, offering in writing, to the Allottee to take possession of the Unit for his occupation and use ("Notice of Possession").</i></p> <p>(Emphasis supplied)</p> <p>(Page no. 53 of complaint)</p>
13.	Due date of possession	<p>26.09.2017</p> <p>(Calculated 36 months from date of start of construction i.e., 26.09.2014)</p>
14.	Total sales consideration	<p>Rs.1,63,97,303 /-</p> <p>(As per S.O.A dated 26.08.2022 on page 91 of complaint)</p>
15.	Amount paid by the complainants	<p>Rs.59,21,955 /-</p> <p>(As per S.O.A dated 26.08.2022 on page 91 of complaint)</p>
16.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant/promoter has made the following submissions in the complaint:-

- That the name of the complainant has been changed from Emaar MGF Land Limited to EMAAR India Limited w.e.f. 07.10.2020 as is evident from the certificate issued by the Government of India, Ministry of Corporate Affairs, New Delhi. That the complainant is a company duly incorporated and registered under the provisions of the Companies Act, 1956, having its registered office at 306-308, Square One, C-2, District Centre, Saket, New Delhi - 110 017 and corporate office at Emaar Business Park, Mehrauli Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurgaon-122002. Mr. Sayantan Mondal is fully conversant with the facts of the present case and has been duly authorized by virtue of Board Resolution dated 08.08.2022 passed by the Board of Directors of the complainant.



- ii. That the complainant is a well reputed company with international standing and engaged in the business of real estate and infrastructure and was in the process of developing an IT park colony under the name and style of "Commerce Park" on a parcel of land admeasuring 5.65 acres situated at sector -61, Village Ghata, Gurugram, and Haryana, India.
- iii. That the respondents after making independent enquiries and only after being fully satisfied about the project, approached the complainant for booking a commercial unit in the said project.
- iv. That the respondents had booked a commercial unit in the said project bearing unit no. CP-ST-10-014 admeasuring 1626.14 sq. ft. vide application form dated 24.12.2013. Thereafter, the said unit had been allotted vide allotment letter dated 02.01.2014. Subsequently, a buyer's agreement had been executed on 25.03.2014 for the aforesaid unit setting out terms and condition for the purchase of the unit. The said terms were duly accepted by the respondent at the time of execution of the buyer's agreement.
- v. That the respondents made a payment of Rs.10,00,000/- to the complainant as booking amount. The complainant issued the receipts dated 27.12.2013 to the Respondents against the said booking. Thereafter, the buyer's agreement was executed between the parties on 25.03.2014. The said agreement was duly signed by the respondents after properly understanding each and every clause contained in the Agreement. The respondents were neither forced nor influenced by the complainant to sign the said agreement and the agreement had been executed voluntarily by the respondents. The buyer's agreement duly covers all the obligations, liabilities and rights of both the parties and the consequences of any breach of the agreed terms.



- vi. That the respondents had opted for possession linked payment plan as per the terms of buyer agreement in pursuance of which the respondents had paid an amount of Rs.59,21,955/-out of the total sale consideration of unit amounting to Rs.1,63,97,303/-. The complainant had started construction of the said project in the year 2014. Subsequently, as per the payment plan, demand was raised on 14.02.2014 on booking and within 45 days of booking by the complainant. Thereafter, another demand had been raised by the complainant on 31.03.2014 as against amount to be paid within 90 days of booking.
- vii. Thereafter, the complainant on account of certain unavoidable circumstances and force majeure condition had to halt the construction of the said project. After 31.03.2014, the complainant has not raised any demand from the respondents for further payments as per the payment plan opted by the respondents. The same has been done owing to certain unavoidable circumstances and force majeure situation on account of which the complainant is unable to continue with the construction of the said project. Furthermore, there is a land dispute as far as the land in question is concerned, litigation for which is pending before Hon'ble Supreme Court and other forums.
- viii. That as per clause 33 of the Buyers agreement clearly states that the complainant shall neither be liable nor responsible for not performing any of its obligations or undertaking as provided in the agreement if such performance is prevented or delayed due to a force majeure situation. The contents of clause 33 in the Buyers Agreement are reproduced herein below for the convenience of the Hon'ble Authority:-

"33. FORCE MAJEURE

The Company shall not be held responsible or liable for not performing any obligation or undertaking provided inter alia for in this Agreement if such performance is prevented, delayed or hindered by delay on

account of non-availability of steel and/or cement and/or other building materials, water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the Company or any act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions, change in law or of Government (including Local & Municipal Authorities) or other cause (whether similar or dissimilar to the foregoing), now within the reasonable control of the Company."

- ix. That as per clause 22.3 (iii) of the Buyer's Agreement clearly states that upon cancellation of this agreement, the allottee authorizes the company that the unit in the project may be sold to any other party by the company or dealt in any other manner, as the company may, in its sole discretion, deem fit as if this agreement had never been executed and in the event of the company electing to cancel this agreement, the company will refund the amount received from the allottee. The content of Clause 22.3 (iii) are reproduced herein below for the convenience of this Authority:-

"22. EVENTS OF DEFAULTS AND CONSEQUENCES

22.3 (iii). The Allottee agrees that upon such cancellation of this Agreement, the Company will be released and discharged of all liabilities and obligations under this Agreement and the Allottee hereby authorises the Company that the Unit in the Project may be sold to any other party by the Company or dealt in any other manner, as the Company may, in its sole discretion, deem fit as if this Agreement had never been executed and without accounting, to the Allottee, for any of the proceeds of such sale. In the event of the Company electing to cancel this Agreement, the Company will refund the amount received from the Allottee after deducting the amounts as afore-said, but only after realizing such refundable amount on further sale/resale to any other party. It is clarified here that after refund, by the Company to the Allottee, of the above-said amount, the Allottee shall have no right or interest under this Agreement in any manner whatsoever."

- x. That the complainant on previous occasions had tried to reach out to the respondent for the refund of the paid consideration owing to the discontinuance of the construction of the said project. However, the

respondent is not coming forward to take the refund of the total paid consideration intentionally in order to blackmail the complainant.

- xi. That the complainant reached out to the respondents somewhere in the year 2020 for settlement and for refund of the entire sale proceeds paid by the respondents till date as prescribed under the Act. However, the respondents willingly and knowingly refrained from accepting the refund amount as prescribed under the Act on one pretext or another, thereby delaying the whole process of settlement and in order to keep the interest clock ticking to their advantage.
- xii. That there is also an ongoing litigation pending adjudication with respect to project land in question before different forums on account of which the complainant was unable to proceed with the construction as planned during the initial stages of the project.
- xiii. That the complainant is ready to refund the amount paid by the respondent in the said project in terms of the provisions of the Act, 2016. However, the respondents are not coming forward to take refund of the amount paid by them despite several follow ups and reminders from the complainant. In fact, the respondents are demanding an exorbitant amount along with interest from the complainant. Hence, the complainant was constrained to file the present complaint.
- xiv. That the present complaint is filed under Section 31(1). The complainant falls under the definition of promoter as defined under the Act. Thus, the complainant is at liberty to file the present Complaint under section 18 (1)(b) of the said Act which provides for inability of the promoter to continue with the project, along with Section 31 of the Act of 2016.
- xv. That being aggrieved and frustrated by the present circumstances and exasperated by the malafide acts and black mailing by the respondents,

the complainant is left with no other option but to approach the Authority, praying for adequate reliefs.

- xvi. That the cause of action to file the present complaint is still subsisting as the respondents have not accepted the refund of the total paid consideration in the said project even after making repeated requests on part of the complainant.
- xvii. That this Authority has jurisdiction to entertain the present complaint since the project is situated in Gurugram within the territorial jurisdiction of this Authority. The complainant has not filed any other complaint or suit of similar nature in any court of law.

C. Relief sought by the complainant/promoter

4. The complainant/promoter has filed the present complaint for seeking following reliefs:
- Direct the respondents to accept the refund of total paid consideration of Rs.59,21,955/- as provided under the Act of 2016.
 - To compensate the complainant for the legal costs incurred in instituting the present complaint.
5. On the date of hearing, the Authority explained to the respondents/allottees about the contravention as alleged to have been committed in relation to provisions of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/allottees

6. The respondent/allottees have contested the present complaint on the following grounds:
- 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 provisions of 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.

- ii. That the present reply is being filed by Sh. Kanwal Kushik, Advocate on behalf of the respondents. The requisite power of attorney favouring the counsel to file the reply on behalf of the respondents. All averments, claims, allegations and contentions raised in the complaint of the complainant are denied as false and incorrect unless specifically admitted to be true by the respondents. The contents of the complaint that not being specifically admitted may be deemed to have been denied and traversed.
 - iii. That the complainant has got 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 booking, as shall be evident from the submissions made in the following paras of the present reply. The respondents craves leave of this Authority to refer to and rely upon the terms and conditions set out in the application form as well as the terms and conditions for payments, 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 respondents as well as the complainant thereunder.
 - iv. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainant has failed to disclose the complete factual background of the case.
7. 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.
8. The complainant has filed the written submissions on 17.03.2025 which is taken on record and has been considered by the Authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the Authority

9. 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

10. 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 office 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

11. The Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of the allottee as per section 19 of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

F. Finding on the relief sought by the complainant/promoter

F.I Direct the respondents/allottees to accept the refund of total paid consideration of Rs.59,21,955/- as provided under the Act of 2016.

F.II To compensate the complainant for the legal costs incurred in instituting the present complaint.

12. In the present case, the complainant/promoter has allotted the unit bearing no. CP-ST-10-014, 10th floor, in Tower- South, for an area admeasuring 1626.14 sq. ft. to the respondents/allottees in the project of the complainant/promoter namely, "Commerce Park", Sector-61, Village- Ghata, Gurugram Haryana vide provisional allotment letter dated 02.01.2014. Thereafter, the buyer's agreement was executed inter se parties on 25.03.2014. As per clause 16(a) of the buyer's agreement, the possession was proposed to be handed over on or before 26.09.2017. The respondents/

allottees have paid an amount of Rs.59,21,956/- against the total sale consideration of Rs.1,63,97,303/-. The complainant/promoter has surrendered the registration certificate of the project on 07.10.2022.

13. Now, the complainant/promoter has filed the present complaint seeking the respondents/allottees to accept the refund of total paid consideration of Rs.59,21,955/- under section 18(1)(b) of the Act of 2016 which provides for inability of the promoter to continue with the project read with section 31 of the Act of 2016. The complainant/promoter has contended that the project of the complainant on account of certain unavoidable circumstances and force majeure condition had to halt the construction of the said project.
14. During proceeding dated 03.01.2024, the counsel for the complainant /promoter has brought to the notice of the Authority that the complainant has started the construction of the project in the year 2014. Subsequently, as per the payment plan, demand was raised on 14.02.2014 on booking and within 45 days of booking by the complainant. Thereafter, another demand had been raised by the complainant on 31.03.2014 as against amount to be paid within 90 days of booking. Thereafter, the complainant on account of certain unavoidable circumstances and force majeure situation had to halt the construction of the said project. After 31.03.2014, the complainant /promoter has not raised any demand for further payments. Furthermore, there is a land dispute as far as the land in question is concerned, litigation for which is pending before Hon'ble Supreme Court and other forums. The counsel for the complainant/promoter further states that the Authority on earlier occasions has also allowed refund with prescribed rate of interest in such projects and is placing on record a copy of order passed by the Authority in CR No. 173 of 2021 and 27 others and requests for passing of similar orders in respect of above unit of the respondent/allottee.

15. However, the counsel for the respondent/allottee stated that the unit was booked way back in 2013 and is not willing to accept the offer of refund with interest and settlement talks in this regard have failed and is interested in either the above unit or any other alternative unit. However, the counsel for the complainant/promoter states that the alternative unit at the same rate is not possible and at the most the respondent can consider allotment of an alternative unit of current rate after adjustment of paid up amount along with interest. Further, during proceeding dated 24.12.2024 and 25.03.2025, the counsel for the respondents/allottees clarified that they do not intend to withdraw from the project and are willing to take possession of the allotted unit and if the allotted unit is not available, the complainant/promoter is obligated to provide the alternative unit as per the terms and conditions of the buyer's agreement dated 25.03.2014.
16. On the documents and submissions made by both the parties the Authority observes that any 'aggrieved person' may file a complaint with the authority or the adjudicating officer. Section 31 empowers an aggrieved person to file a complaint before the authority or the adjudicating officer on account of any violation or contravention of the provisions of the Act or rules and regulations. The complainant/promoter has filed the complaint under section 18(1)(b) read with section 31 of the Act 2016, 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)

(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

agreement dated 25.03.2014. Keeping in view the aforesaid facts, the present complaint is not maintainable and is hereby dismissed.

19. Complaint as well as applications, if any, stand disposed off accordingly.
20. File be consigned to registry.

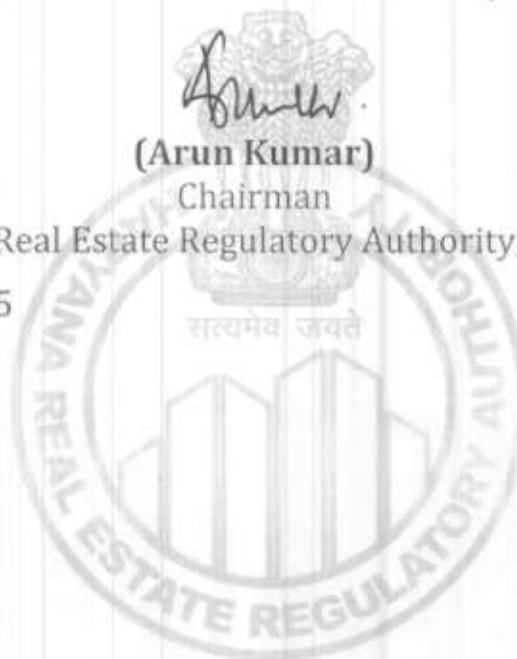

(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.03.2025



HARERA
GURUGRAM