

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

Complaint no.: 2002 of 2023
Date of filing: 17.05.2023
Order pronounced on: 28.03.2025

Renu Rekhi
R/o: -363 C, Sushant Lok-1,
Gurgaon, Haryana 122009.

Complainant

Versus

Emaar India Limited
(Formerly Known as Emaar MGF Land Limited)
Emaar business park, Sikanderpur sector 28,
Gurugram, Haryana 122001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri K.K. Kohli (Advocate)
Shri Dhruv Rohatgi (Advocate)

Complainant
Respondent

ORDER

1. This 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 under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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A. Unit and project related details.

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

S. No.	Heads	Information
1	Project name and location	Emaar DigiHomes, Sector-62, Gurugram
2	Project area	14.025 acres
3	Nature of the project	Group Housing Colony
4	HRERA registered/ not registered	Registration no. 337/69/2019/31 dated 24.05.2019
	HRERA registration valid up to	31.03.2024
5	Unit no.	DGH-A-1503,
6.	Area of the unit	121.5 sq. ft.
7	Application form dated	02.09.2018
8	Sale consideration	Rs. 2,34,91,372/- [page 33 of reply]
9	Paid up amount	Rs. 5,09,000/- [As per page 45 and 46 of the complaint]
10	Cancellation letter on	20.01.2020 [page 40 of the reply]

B. Facts of the complaint.

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



- i. That the complainant, Renu Rekhi is a peace loving and law-abiding citizen of India, who has been running from pillar to post since booking commercial unit in the project namely "Emaar Digi Homes" situated in Sector-62, Gurugram.
- ii. That the complainant was approached by the representatives of the respondent and prompted to invest his hard-earned money in the project of the respondent. They informed the complainant that all licenses and approvals of the project were in place and the project was duly RERA registered. The complainant believing the words of the representatives of the respondent filled the application form and paid Rs.5,00,000/- vide cheque dated 05.09.2019.
- iii. That thereafter the unit no. DGH-A-15 on 03 floor of super area 2588 sq. ft. was allotted to the complainant and the respondent promised that buyer's agreement would be executed at the earliest.
- iv. That after waiting for many months the complainant seeing that respondent failed to proceed further with the booking, the complainant sent email dated 25.02.2020 for refund of booking amount.
- v. That the complainant repeatedly visited the office of the respondent requesting for signing of the BBA or for refund as he could smell something fishy about the way the respondent company conducted its affairs and by seeing that no construction activity is being done at the project site.
- vi. That till date the complainant has paid an amount of Rs.5,00,000/- to the respondent however the fact that the whole project is a sham and scheme to cheat innocent buyers, the complainant has no option

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but to get refund of his hard-earned money. That the complainant is being stone walled by the respondent and its representatives and hence have come before the Authority requesting and praying to get refund along with interest from the date of deposit till the date of realisation.

- vii. The respondent through cancellation notice dated 20.01.2020 cancelled the booking of the unit DGH-A1503 citing that the complainant failed to execute Buyers' agreement after reminding through a letter dated 30.12.2019 and thus would forfeit Rs. 23,49,137/- in addition to cancellation of the aforesaid unit.
- viii. The complainant had never received a letter dated 30.12.2019 which the respondent has claimed in their cancellation notice dated 20.01.2020. The complainant through email dated 25.02.2020 informed the respondent that he has not received any cancellation notice with reference no. CHC/723206. That the cause of action for filing the present complaint is a subsisting and continuing one as the respondent company has committed gross breach of their obligations. That no other complaint or legal proceedings are pending before any court of law or forum between the parties.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- a. Direct the respondent to refund the amount of Rs.5,09,000/- at the prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 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 the Application Form dated 02.09.2018, 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 to and rely upon the terms and conditions set out in the application form 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 complainant.
- ii. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the Complainant since the execution of the Application Form has defaulted in making timely payments and even after multiple requests failed to comply with the terms and conditions of the booking. It is further submitted that the Complainant is not entitled to any refund as per the terms and conditions of the Application Form, duly signed by the Complainant. It is pertinent to note that the Complainant is rather, liable to pay excess amounts to the Respondent, as the amount paid by the Complainant at the time of booking is much lesser than the earnest

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money, that is liable to be forfeited. The reliefs sought in the false and frivolous complaint are barred by estoppel.

- iii. That the complainant is not an "allottee" but an investor who had booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. This is evident from the prayer and/ or relief sought in the complaint. The Complainant failed to honour the agreed payment terms and, yet never chose to cancel the allotment for a substantial time. This clearly shows the intent of the Complainant and the present complaint should not be categorized as a recovery tool.
- iv. That the Complainant has time and again failed to pay the outstanding demands raised by the Respondent as per the terms of the Application Form and the annexed Payment Plan. The Complainant opted for a "Possession Linked Payment Plan". Adequate time and opportunities were given by the Respondent as per the provisions of RERA for payment of remaining dues. However, no heed was paid by the Complainant to the requests of the Respondent, wherein, neither did the Complainant pay the payments, nor signed the Buyer's Agreement. Instead, the Complainant filed the present complaint for fulfilment of her illegal demands.
- v. That it is pertinent to note that out of a total sale consideration of Rs.2,34,91,372/- to be paid against the unit in question, the Complainant paid only a meagre sum of Rs. 4,99,000/- and thereafter, stopped paying the remaining demands raised as per the payment plan opted by the Complainant.

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- vi. That the Complainant had approached the Respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the Respondent and booked the unit in question, bearing number DGH-A-1503admeasuring 1508.26 sq. ft. situated in the project developed by the Respondent, known as "Emaar Digi homes Phase-I" at Sector 62. That thereafter the Complainant vide application form applied to the Respondent for provisional allotment of a unit bearing number DGH-A-1503 in the project. It is submitted that the Complainant prior to approaching the Respondent, had conducted extensive and independent enquiries regarding the project and it was only after the Complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the Respondent to undertake development of the same, that the Complainant took an independent and informed decision to purchase the unit, uninfluenced in any manner by the Respondent. The Complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the Respondent that the Complainant shall remit every instalment on time as per the payment schedule.
- vii. The Respondent had no reason to suspect bonafide of the Complainant. That it was categorically agreed and undertaken by the Complainant that in the event of her default in signing the Buyer's Agreement within 30 (thirty) days and payment of due amounts, the application shall be treated as cancelled and the earnest money

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along with delay payment charges shall be forfeited. The relevant clause of the Application Form is reproduced herein below:-

“(xv) I/ we undertake, to sign and execute the Buyer’s Agreement within 30(thirty) days from the receipt of the Buyer’s Agreement. I/ we further undertake to be present for the registration of the Buyer’s Agreement as and when initiated by the Company. If I/ we fail to execute and register the Buyer’s Agreement or do not remit the amounts due and payable in terms of the Payment plan then the Company shall be entitled to cancel the Application of the Applicant after serving a notice of 60(sixty) days to rectify the defect, after which this Application shall be treated as cancelled and the Earnest Money along with the Delay Payment Charges and other amounts as may be agreed in the Terms of independent schemes as mentioned in Schedule 1, if any, (as defined below) shall be forfeited and balance amount if any, shall be refunded to the Applicant within the stipulated time period under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.”

- viii. That subsequently, the Respondent sent several correspondences to the Complainant for registration of the Buyer’s Agreement, however, the same remained unanswered or ignored deliberately by the Complainant.
- ix. That the Complainant is conscious and aware of the fact that he is not entitled to any right or claim against the Respondent. The Complainant have intentionally distorted the real and true facts and has filed the present complaint in order to harass the Respondent and mount undue pressure upon it. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.
- x. That the Complainant needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated



in the Application Form. Therefore, there is no equity in favour of the Complainant.

- xi. That pursuant to the reluctance of the Complainant in making timely payments and despite of issuance of notices, reminder letters, the Respondent was constrained to issue a cancelation notice to the Complainant as per the Clause 15 of the Application Form. That Complainant was called upon to rectify her defaults, whereafter, it was specifically informed that the booking of the Unit shall stand automatically cancelled without any further notice. Since, the Complainant failed to rectify the defaults within the prescribed time, the booking of the unit was automatically cancelled and the unit in question has thereafter been re-allotted to some other allottee. The amounts so paid by the Complainant are validly and legally forfeited by the Respondent, and there lies no equity in favour of the Complainant. The Complainant is not entitled to any refund, rather, is liable to pay the deficit amount of earnest money, which the Respondent is entitled to legally recover. The Total Sale Consideration of the unit in question was Rs.2,34,91,372/- and the Complainant paid only a meagre sum of Rs. 4,99,000/-. The earnest the instant complaint is a gross misuse of process of law. The contentions advanced by the Complainant in the false and frivolous complaint are barred by estoppel.
- xii. The Complainant is not entitled to any relief as prayed for. The present Complaint is nothing but abuse of the process of law without prejudice to the aforesaid preliminary objections and the contention of the Respondent that unless the question of maintainability is first

decided, the Respondent ought not to be called upon to file the reply on merits to the Complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the Complaint is held to be maintainable.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 allottees 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.

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 complainant 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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 amount paid by him.

F. Findings on objections raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being investor.

14. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 application form, it is revealed that the complainant is buyer's, and she has paid a considerable amount to the respondent-promoter towards purchase of unit 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 the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred to 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 the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent company to refund the amount of Rs. 5,09,000/- at the prescribed rate of interest.

16. The complainant in his complaint has mentioned that she has applied for booking of a unit on 02.09.2018 and the same was allotted a unit no. D-GH-A-1503 for a sale consideration of Rs.2,34,91,372/-. In furtherance of the provisional allotment, the complainant has paid an amount of Rs.5,09,000/-. Thereafter, till date neither any allotment letter has been provided to the complainant nor the buyer's agreement has been executed. Thereafter, the complainant has filed the present complaint seeking refund of the paid-up amount.
17. While going through the application form for provisional allotment issued by the respondent, the Authority observed that the respondent-



promoter is liable to intimate to the complainant for rectifying the defect which if not rectify within 60 days from the date of receipt of the buyers agreement, then the company shall be entitled to cancel the booking and forfeit the earnest money along with delay payment charges. The relevant clause 15 of the application form is reproduced below for the ready reference:

*"15. In case of cancellation of allotment for any reason(s) whatsoever in the event of the failure of the applicant to sign, **written the buyers agreement in its original form to the company and registration of the buyers agreement within 30 days from the receipt of the buyers agreement then the company shall serve a notice to the allottee for rectifying the default, which if not rectify within 60 days from the date of the receipt by the allottee.** The company shall be entitled to cancel the booking and forfeit the entire earnest money along with the delay payment charges and other amount as agreed in the terms of independent scheme, if any, and thereafter refund the balance amount, if any, to the applicant within time stipulated under the Real Estate Act."*

(Emphasis supplied)

18. In view of the above-mentioned clause of the application form, it can be said that the respondent was liable to serve a notice to the allottee for rectifying the default, which if not rectify within 60 days from the date of the receipt by the allottee. The company shall be entitled to cancel the booking and forfeit the entire earnest money. The respondent cancelled the unit of the complainant on 20.01.2020. The respondent cancelled the unit of the complainant without any notice and reminders. So, the respondent has failed to act in accordance with the terms of the application from.
19. As neither any allotment letter has been issued nor any draft of the buyer's agreement had been sent by the respondent after taking the booking amount. Thus, in the absence of allotment of unit no further



payment is required to be made by the complainant in terms of the application form dated 02.09.2018.

20. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

"In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."


21. In view of the facts and reasons stated above, the respondent was not within its right to retain amounts received from the complainant. Thus, the complainant is entitled for refund of the entire booking amount of Rs.5,09,000/-. Thus, the Authority hereby directs the respondent/promoter to refund Rs.5,09,000/- paid by the complainant



towards the booking amount in terms of the application form issued by the respondent within 90 days from the date of this order.

H. Directions of the Authority:

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - i. The respondent/promoter is directed to refund the paid-up amount of Rs.5,09,000/- received by it from the complainant within 90 days from the date of this order, failing which that amount would be payable with interest @ 11.10% p.a. till the date of actual realization.
23. Complaint stands disposed of.
24. Files be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2025