



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण गुरुग्राम

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

Complaint No.13 of 2024

Date of Decision : 20.11.2024

**Mr. Raghav Manocha & Abhinav Manocha
134, Ground Floor, Tagore Park,
New Delhi**

Complainants

Versus

**M/s. Emaar MGF Land Limited
Emaar Business Park, MG Road,
Sikanderpur, Sector-28,
Gurugram-122001**

Respondent

APPEARANCE

**For Complainants:
For Respondent**

**Mr. Nitish Manchanda, Advocate
Mr. Dhruv Rohtagi, Advocate**

ORDER

1. That this complaint is filed by Mr. Raghav Manocha and Mr. Abhinav Manocha (allottees) under section 31 read with section 71 of the Real Estate (Regulation and Development), Act 2016, against M/s. Emaar MGF Land Limited (promoter).

2. According to complainants, the respondent is a Company incorporated under the Companies Act, 196. It claims to be one of the leading Real Estate Company. The respondent is engaged in the construction and development of the real estate project under the name and style of **"Emerald Estate"** at sector 65, Gurugram, Haryana (hereinafter referred to as the "Project") and is a promoter within the meaning of section 2 (zk) of the Act of 2016.

3. That in the year 2012, the representatives of the respondent approached them (complainants) made tall claims in respect of the said Project. They allured them (complainants) ^{to purchase unit by showing} with the brochure and special characteristics of the project, which subsequently turned out to be false claims and had deceived them for booking a unit in respect of project of the respondent. They further assured, represented and warranted the highest quality of services and timely delivery of offer of possession without any delay whatsoever. The complainants were thus lured by the respondent and invested in the project.

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4. That they (complainants) are simple^{सामान्य} trusting people. Believing representation and claims of the respondent made through its authorized representatives, they (complainants) purchased a unit in the project of the respondent from Mrs. Murti Chhikara and Mr. Siddharth on 05.10.2012 and accordingly, the unit bearing No. EEA-B-F01-06 admeasuring 1070 sq. ft. super area was endorsed in the name of the complainants. The copy of the agreement to sell executed between the complainants and the First Owners along with the endorsement in favour of the complainants is **Annexure C1**. The complainants had paid Rs. 47,10,808/-. The conduct of the respondent has been very utterly malafide since the very beginning.

5. That as per clause 11(a) of the Agreement, the complainants were entitled to get possession of the Unit within 36 months from the date of commencement of construction i.e. 26.08.2010. The due date for offer of possession was 26.02.2014. However, no possession was offered to the complainants till 23.04.2018, despite fulfilling all their obligations. There was a delay of more than 4 years in handing over of possession to the complainants.

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6. That the payment plan opted by the complainants was construction linked plan. However, the respondent failed to reach the construction milestones of the project timely but still raised the demand. The complainants visited the site of the Project and were shocked to see that there was no tenable progress in the construction work of the project, and it was stalled ^{from} ~~since~~ very long time.

7. That the respondent finally offered the possession to them (complainants) on 23.04.2018. A sum of Rs. 47,10,808/- which is the total sales consideration, has been paid by the complainants.

8. That they (complainants) faced continuous mental, psychological harassment and financial burden in payment of per month EMI on the home loan with possession of the unit. They (complainants) took a housing loan for Rs. 33,15,000/- from the State Bank of India, which disbursed the loan amount of Rs. 31,49,000/- for which the complainants were obliged to pay the EMI and interest on monthly basis. They paid a sum of Rs. 23,27,418/- as interest towards the said loan. They were under

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great financial stress and were finding ^{it} hard to make both ends meet. They used all of their savings, finally paid off the loan in 2019 and finally closed the loan account with the State Bank of India. They had been finding it hard to make both ends meet as they were burdened with the liability to pay EMI amount of Rs. 29,460/- per month to Aditya Birla Finance.

9. That they (complainants) had high dreams and hope of living in ^{their} his own house instead of a rented accommodation. However, due to the conduct of the respondent and non-delivery of the unit as per the possession schedule of 36 months, they have continued to pay rent of Rs. 35,000/- since April 2014 till April 2018 towards their rented accommodation and has paid a sum of Rs.16,80,000/-.

10. That the complainants were still residing in the rented accommodation, when the possession was finally offered to them in 2018. The ^y complainants had no option but to approach the Hon'ble RERA Authority. They filed a complaint before the Hon'ble Authority (complaint No. 573 of 2018) seeking delay possession charges of the unit along with interest. Hon'ble Authority on 11.12.2018 pronounced the order and the respondent was directed



to pay interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainants from due date of possession till the date of actual ^{handing} ~~having~~ over of possession or till offer of possession plus 2 months, after obtaining occupation certificate, whichever is earlier.

11. Contending that they (complainants) have been suffering from malafide acts of the respondent, same have sought following reliefs:-

- i. To direct the respondent to pay Rs. 5,00,000/- to complainant on account of deficiency in service of the respondent by not offering timely possession of the unit to the complainant.
- ii. To direct the respondent to pay Rs. 5,00,000/- to complainant for mental harassment and agony faced by the complainant on account of illegally cancelling the unit while the adjudication against the unit was pending.
- iii. To direct the respondent to compensate the complainant with Rs. 16,80,000/- for loss of opportunity due to inflation in property market in the past 11 years and the inflation in cost of purchasing a proportionate size of unit.
- iv. To direct the respondent to award the legal expenses Rs.1,00,000/- to the complainants for complaint filed in the



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HRERA authority for delay possession charges in complaint No. 573 of 2018.

v. To direct the respondent to award the legal expenses Rs. 1,00,000/- to the complainant for complaint filed with the Adjudicating Officer for execution of order passed by the authority on complaint No. 573 of 2018.

vi. To direct the respondent to pay Rs. 5,00,000/- as compensation for financial, mental harassment and mental agony faced by the complainant in going through hardship of litigation.

12. The respondent contested claim of complainants by filing a reply. It is averred that the complainants are estopped by their own acts, conduct etc. They (complainants) have been offered possession as early as on 23.04.2018 and the unit was handed over to them on 09.07.2018. Thereafter, it (respondent) executed a conveyance deed on 30.01.2019. The lack of bonafides of the complainants is apparent from the fact that till conclusion of the entire transactions i.e. on the execution of the conveyance deed and the completion of all the obligations of the respondent, they chose to remain silent for such a long period and have approached the authority to extort money. The complainants chose never to raise

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any claim until now. They agreed to the compensation, so awarded by the respondent.

13. That it needs to be highlighted that ^{it} ~~the~~ (respondent) has already credited compensation of Rs. 79,971/- on account of IOP and further paid a sum of Rs. 13,95,967/- on 26.09.2022 and Rs. 11,88,364/- as compensation for the delay in offering the possession of the unit. All this is evident from the SOA annexed as Annexure-R-13.

14. That the complainants preferred a complaint bearing No. 573 of 2018, wherein they were granted delay possession charges by the Authority vide order dated 11.12.2018.

15. That the complaint is belated and barred by limitation period of 3 years. The offer of possession was issued on 23.4.2018, while the present complaint has been filed on 01.01.2024. The limitation for filing the present complaint expired on 31.12.2021.

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16. That the complainants have been granted delay interest for every month's delay in handing over the possession of the unit in terms of the Buyer's Agreement, which itself is in the nature of a compensation.

17. That the original allottees had booked the unit in question bearing No. EEA-B-F01-06, situated in the project developed by the respondent known as "Emerald Estate", Sector-65, Gurugram, Haryana. Thereafter, the original allottee vide application form applied to the respondent for provisional allotment of the unit in the project. The original allottees, prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after they were fully satisfied with regard to all aspects of the project, they took an independent decision and informed it to purchase said unit, uninfluenced in any manner by the respondent.

18. That the original allottees consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent



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that they shall remit every instalment on time as per the payment schedule. The respondent issued the provisional allotment letter dated 06.10.2009 to the original allottees.

19. That the present complaint is not maintainable in law or on facts. It (complaint) raises several such issues which cannot be decided in summary proceedings. 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 Adjudicating Officer. The present complaint deserves to be dismissed.

20. That the respondent sent the Buyer's agreement to the original allottees, which was executed between the parties on 17.03.2010. The original allottees sold the said apartment to Mr. Dinesh Singh (subsequent allottee) vide agreement to sell dated 11.05.2012. Thereafter, the subsequent allottee sold the unit in question to the complainants herein by virtue of agreement to sell

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dated 05.09.2012. Accordingly, the unit was endorsed in favour of the complainants vide Nomination Letter dated 07.11.2012.

21. That it is further submitted that the original allottees, subsequent allottee as well as the complainants were not forthcoming with the outstanding amounts as per schedule of payments. The respondent was constrained to issue reminders to them (complainants). They had defaulted in remittance of the amounts due and payable by them. In the event of failure to remit the amounts mentioned in the said notice, respondent would be constrained to cancel the provisional allotment of the unit in question. Hence, the complainants are themselves in breach of the timely payments under the contract, they cannot claim compensation, being a party to the breach itself.

22. That in view of above circumstances, it is clear that there is no default or lapse on the part of the respondent. Therefore, the complainants do not deserve any relief whatsoever. It is prayed that the complaint may be dismissed in the interest of justice.

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23. Both of the parties filed affidavits in support of their claims.

24. I have heard learned counsels for both of the parties and perused the file.

25. Learned counsel for respondent contended vehemently that present complaint is hopelessly barred by limitation. Learned counsel re-asserted that letter offering possession was sent to allottees/complainants on 23.04.2018. Moreover complainants have already received compensation. Even as per the complainants, possession was received by them on 09.07.2018. Complaint in hands was filed on 01.01.2024.

26. Although the complaint is dated 09.01.2023 but receipt of fee prescribed by the authority was paid on 09.01.2024, ^{And} online payment receipt has been annexed with the complaint. The complaint has been given No. as RERA-GRG-13-2024. In this way, complaint can be taken to have been filed, not before 09.01.2024.

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27. According to respondent, the complainants wanted to extort money. They kept mum for several years but opted to file this complaint despite an order was passed by the authority through which same were allowed delay possession compensation (DPC).

28. No explanation is given by the complainants as why so much delay in filing complaint. Public-policy requires that a case/complaint should be filed at the earliest. Damocles' sword cannot be allowed to be hanging upon a party indefinitely. In this way, complainants slept over their right of compensation, without any explanation. Complaint in hands is liable to be dismissed on this ground alone.

29. Even on merits, according to learned counsel for respondent, when complainants have already been awarded DPC by the authority, execution of which is still pending, same cannot be granted compensation separately.

30. On the other hand, it is submitted by learned counsel for complainants that despite having received order for DPC, his clients

(complainants) are entitled for the compensation. Learned counsel relied upon following cases:-

- (i) ***NBCC (India) Ltd vs Shri Ram Trivedi (2021) 5 Supreme Court Cases 273***
- (ii) ***Neelam Tandon and another vs Emaar MGF Land Limited 2023 SCC Online NCDRC 975***

31. Section 18(1) of Act of 2016 provides that

(a) if promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or as the case may be, duly completed by the date specified therein.

(b) He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the projection.....to return the amount received by him along with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

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

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32. From this provision, it is very much clear that in case where allottee does not intend to withdraw from the project, same is entitled to interest for every month of delay till handing over possession. It does not provide for the payment of compensation, as in case when allottee wishes to withdraw i.e. wants to refund of paid up amount.

33. Admittedly, on a complaint filed by present complainants, the authority has allowed delay possession compensation to the same (complainants) along with interest. It is well settled that the awarding of interest is to compensate an allottee, it stands to no reason to allow compensation also when the DPC has been granted along with interest.

34. On reasons as mentioned above, complainants are not entitled to any compensation. Complaint in hands, is thus dismissed. Both of parties are left to bear their own costs.

35. File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer
Haryana Real Estate
Regulatory Authority,
Gurugram. 20.11.2024



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