



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana नया

पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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

Complaint No. : 2081/2019

Date of Decision : 08.09.2021

**Dr. Suresh Kumar Arora & Dr Reema Arora
R/o B-78, Sharda Puri,
Ramesh Nagar, New Delhi-110015**

Complainants

V/s

**M/s Emmar MGF Land Ltd.
306-308, IIIrd Floor, Square One
C-2, District Centre, Saket, New Delhi-110017**

Respondent

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Present:

Complainant:

Dr. Suresh Kumar Arora

For Respondent:

Mr. Ishaan Dang, Advocate

ORDER

This is a complaint filed by Dr. Suresh Kumar Arora and Dr. Reema Arora, (also referred as buyers) under Section 31 of The Real

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Estate(Regulation and Development) Act, 2016 (in brief 'The Act') read with rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s Emmar MGF Land Ltd.(also called as promoter) seeking, directions for refund of Rs.47,15,269/- alongwith interest @18%p.a.

2. According to the complainants, they applied for booking of a residential unit in the project of the respondent known as "Emerald Hills" Sector 65, Gurugram. Initially they paid a sum of Rs.15,00,000/- on 06.03.2011 towards booking of unit bearing No. EFS-B-T-GF-202, Ground Floor including basement on a plot measuring 350- sq yds (3630 sq ft.).They wrote repeatedly to respondent-company through email dated 21.04.2011, 16.05.2011 and 03.07.2011 asking to issue allotment letter but no response. After a gap of 11 months and sending several letters/reminders, respondent allotted unit No.T-202 ground floor including basement in project stated above. Respondent arbitrarily changed booking date from 06.03.2011 to 10.01.2012 and demanded interest on the booking account of Rs.15,00,000/- for 11 months.

3. Respondent sent two copies of Buyer's agreement, which the complainants got modified and signed it in Ist week of June, 2012, under protest. It was sent to respondent by speed post but the latter failed to send back one signed copy of that agreement. During next five years i.e. from 2012 to 2016, respondent stopped correspondence and gave no response to queries made by complainants, instead kept assuring the (complainants) that they will be compensated for the delay, caused in completion of project. On 26.12.2016, the respondent-company admitted the delay in handing over possession and assured the complainant to compensate them in due course of time. On 05.11.2017, the complainants wrote to the respondent but they got unsatisfactory response. Finding no

satisfactory solution, the complainants again wrote a mail on 08.04.2018 but instead of giving any positive response, respondent sent cancellation notices dated 10.05.2018, 20.09.2018 and 24.10.2018. Respondent cancelled the unit and forfeited booking amount of Rs.15,00,000/-.

4. Compelled in this way, the complainants have approached this forum for refund of their amount.

5. Details of the complaint's case in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"Emerald Hills"
II.	Location of the project	Sector 65, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	EFS-B-T-GF-202
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 3630 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	06.03.2011
XI	Date of Allotment(original)	01.02.2012
XII	Date of execution of BBA (copy of FBA be enclosed)	1st week of June, 2012
XIII	Due date of possession as per BBA	

XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per clause	
Payment details		
XVI	Total sale consideration	Rs.1,80,00,00/- plus taxes etc.
XVII	Total amount paid by the complainants	Rs.47,15,269/-

6. Respondent in its reply, raised preliminary objection about jurisdiction of this forum, to try and adjudicate present complaint. It is case of respondent that before purchasing the unit in question, complainants had conducted extensive and independent enquiries, regarding the project. Only after fully satisfying themselves in all respects, they booked unit in question and opted for construction linked payment plan. They, signed the Buyer's agreement. By virtue of clause 1.2 of said agreement, it was clearly mentioned that 15% of total sale consideration of the property will be treated as earnest money. The complainants regularly defaulted in making timely payments, despite several reminders, sent to them. According to statement of account sent to the complainants, an amount of Rs.1,74,00,422/- was outstanding and payable.

7. As the complainants were not forthcoming to make demanded payments, it(respondent) was left with no option, but to send cancellation notice dated 24.10.2018, clearly mentioning therein that complainants were not left with any right, title or interest of any nature in the said property and balance amount would be refunded to them as and when the unit in question was resold to 3rd party. It(respondent) even prepared and

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sent the cheques to the complainants towards refund of the amount, pursuant to cancellation alongwith letter dated 16.04.2019. They were called upon to surrender original documents of allotment, within a period of five days. The respondent requested for dismissal of complaint.

8. So far as jurisdiction of this forum to try and adjudicate present complaint is concerned, Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd.** Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are ^{required} ~~acquired~~ to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019, Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.

9. When the order of Hon'ble Punjab & Haryana high Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status quo ante i.e. when the complaints seeking refund, compensation and interest were entertained by

the Adjudicating Officer. No reason to infer that this forum has no jurisdiction to try and adjudicate complaint in hands.

10. The respondent referred BBA, having been executed between the parties. According to complainants, draft BBA was received by them but terms and conditions were unilateral and not agreed by them. After making modifications, they sent draft BBA back, for signatures of respondent. The latter never returned BBA, after signing the same.

11. In this way, no [✓]contact was concluded between the parties. When there was no contract between the parties, respondent could not deduct any such amount. It is not plea of respondent that there was any verbal agreement in this regard. Application filed by complainants seeking allotment of a residential unit, cannot be termed as a contract between parties.

12. Similarly, if respondent allotted some unit, without agreement on terms and conditions, it was also not enough to conclude a contract. Same may be an after on part of respondent. In such circumstances, the respondent was not within its rights to retain amounts received from the complainants.

13. Similar problem arose before Maharashtra Real Estate Appellate Tribunal in case titled as **Mr. Dinesh R Humane and Anr Vs Piramal Estate Private Ltd. Relevant**. No BBA was executed between the parties. The buyer requested for refund. The complaint was allowed by the Tribunal, holding as follow:

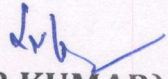
"In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and 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 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".

14. On the same analogy, complainants in this case are entitled to get refund of their amount. Complaint in hands is thus allowed and respondent is directed to refund entire amount received from complainants i.e. Rs.47,15,269/- alongwith interest @ 9.30% p.a. from the date of receipt of amount till actual realisation. The respondent is also burdened with cost of Rs.1,00,000/- to be paid to the complainants.

15. File be consigned to the Registry.

08.09.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 17.09.2021.