

<b>PROCEEDINGS OF THE DAY</b>		<b>44</b>
Day and Date	Wednesday and 17.08.2022	
Complaint no.	CR/4101/2021 Case titled as Ved Prakash Sharma and Sunita Sharma Vs Emaar MGF Land Ltd.	
Complainants	Ved Prakash Sharma and Sunita Sharma	
Complainant represented by	Shri Jagdeep Kumar Advocate	
Respondent	Emaar MGF Land Ltd.	
Respondent represented through	Shri Dhruv Rohatgi Advocate	
Last date of hearing	28.04.2022	
Proceeding recorded by	Naresh Kumari and HR Mehta	

**Proceedings**

The present complaint was filed on **03.11.2021** and reply was received on 21.12.2021.

Succinct facts of the case as per complaint and reply are as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	The Enclave, Sector- 66
2.	Unit no.	TEN-Q-F15-03, 15 <sup>th</sup> floor, tower-Q [ page 56 of reply]
3.	Provisional allotment letter dated	06.04.2011 [annexure R3, page 49 of reply]
4.	Date of execution of buyer's agreement	30.04.2011 [page 54 of reply]
5.	Possession clause	<b>14. POSSESSION</b>

		<p><b>(a) Time of handing over the Possession</b></p> <p><i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit <b>within 24 months from the start of construction.</b> The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of <b>6 months, for applying and obtaining the completion certificate/ occupation certificate</b> in respect of complex</i></p> <p style="text-align: right;">(emphasis supplied)</p> <p>[page 70 of reply]</p>
6.	Due date of possession	11.08.2012 [Note: Grace period is not included]
7.	Total consideration as per statement of account dated 30.11.2021 at page 125 of reply	Rs. 1,18,70,217/-
8.	Total amount paid by the complainants as per statement of account dated 30.11.2021 at page 125 of reply	Rs. 1,18,70,217/-
9.	Occupation certificate	25.01.2018 [page 116 of reply]
10.	Offer of possession	14.03.2018 [annexure R6, page 118-124 of reply]
11.	Unit handover letter signed by the complainant on	09.04.2018 [annexure R8, page 128 of reply]

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New PWD Rest House, Civil Lines, Gurugram, Haryana

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12.	Conveyance deed executed on	15.05.2018 [page 132 of reply]
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The complainant is seeking the following reliefs:

**i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering of possession.**

Considering the above-mentioned facts, the authority calculated due date of possession according to clause 14(a) of the agreement i.e., within 24 months from the start of construction and disallows the grace period of 6 months as the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore, the authority allows DPC w.e.f. due date of handing over possession i.e., 11.08.2012 till 09.04.2018 alongwith interest at the rate of 10% per annum from the due date of possession till hand over of possession i.e. 09.04.2018.

**ii. Direct the respondent to return of Rs. 1,46,747/- charged by the respondent in the name of other charges which includes, electric meter charges, electrification charges, sewerage charges, administrative charges and registration charges unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between respondent and complainant.**

**Electric, and sewerage connection charges:** The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection and sewerage connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

**• Administrative charges**

The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has

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held that the registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

In the present complaint, the respondent has charged an amount of ₹ 12,000/- towards administrative charges which is less than 15,000/- therefore, the complainant is liable to pay the same.

• **Electrification charges**

The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

**iii. Direct the respondent to return entire amount of Rs. 1,50,000/- plus taxes charged for open car parking.**

The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act. However as far as issue regarding covered car parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement subject to that the allotted parking area is not included in super area.

In the present complaint, the respondent has charged Rs.1,50,000/- towards one stilt car parking as per clause 1.2(a) and 1.3 and the same are reproduced below:

**1.2 Sale Price for Sale of Unit**

**(a) Sale Price**

(i) The sale price of the Unit ("Total Consideration") payable by the Allottee(s) to the Company includes the basic sale price ("Basic Sale Price/BSP") of Rs. 102102480/-, EDC of Rs. 55718.4/-, PLC of Rs. 288000/- and exclusive right to use one stilt car parking which shall be Rs. 1,50,000/-

**1.3 Parking Space**

a) The Allottee(s) agrees and understands that the exclusively reserved one car parking space assigned to the Allottee shall be understood to be together with the Unit and the same shall not have any independent legal entity detached or independent from the said Unit. The Allottee(s) undertakes not to sell/ transfer/deal with such exclusive reserved car parking space independent of the said Unit. In case the Allottee has applied for additional parking space, same shall be subject to availability at the then prevailing rates and the same shall also be subject to this condition. However, such additional parking space can only be transferred to any other allottee in the building/project.

In the instant matter, the subject unit was allotted to the complainants vide allotment letter dated 06.04.2011 and as per the said allotment letter, the respondent had charged a sum of Rs.1,50,000/- on account of car parking charges. As per clause 1.2(a)(i) of the buyer's agreement 30.04.2011 the allottee had agreed to pay the parking charges for covered car parking. The cost of parking of Rs.1,50,000/- has been charged exclusive to the basic price of the unit as per the terms of the agreement. The cost of parking of Rs.1,50,000/- has already been included in the total sale consideration and the same is charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

  
Vijay Kumar Goyal  
Member

  
Dr. KK Khandelwal  
Chairman  
17.08.2022