



Complaint No. 89 of 2018

# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 89 OF 2018

Vandana Mittal and Sachin Mittal

....COMPLAINANT(S)

VERSUS

M/s Emerald Home Developers Pvt. Ltd.

....RESPONDENT(S)

**CORAM:** Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag

**Chairman**  
**Member**  
**Member**

**Date of Hearing:** 26.03.2019

**Hearing:** 4<sup>th</sup>

**Present:** - Sh. S.K. Yadav, Counsel for Complainant

Sh. Rajesh Goswami, Counsel for Respondent

**ORDER (RAJAN GUPTA- CHAIRMAN)**

1. This complaint has been heard thrice before. Today is the fourth hearing. All the previous orders shall be read as part of this final order. The counsel for respondent today stated that in the order dated 26.02.2019 it was observed that one Sh. J.C. Manju appeared on behalf of respondent and sought adjournment for amicable settlement between the parties, however, neither such person Sh. Manju was authorised by the respondent, nor any settlement was intended to be made by the respondent. Accepting, the request the matter was heard on merits.
2. In brief the case of complainants (hereinafter referred to as complainant) is that the complainant booked a 3 BHK flat measuring 1795 Sq. Ft. on 4<sup>th</sup> floor of Tower C, in respondent's project located in Faridabad by paying a booking amount of Rs. 4,00,000/- on 24.04.2014. An apartment buyer agreement was executed between the parties on 04.08.2014. The complainant further paid Rs. 14,59,025/- as 1<sup>st</sup> and 2<sup>nd</sup> instalment on 03.09.2014. Delivery of possession was to be made within 42 months from the date of execution of agreement i.e. by February 2018. Thus, the complainant had paid a sum of Rs. 18,59,025/- up to September, 2014 against the total sale consideration of Rs. 65,49,506/-. Learned counsel for complainant alleged that no further demand after September, 2014 was raised by the respondent. The complainant looking at the pace and progress of the construction and having not received any demand for



payment, was apprehensive that the company intends to shelve the plan of developing 3 BHK flats and is no longer willing to abide by the agreement compelled the complainant to ask for refund of the money paid.

3. Various communications were made by the complainant vide emails dated 04.12.2017, 14.01.2018 and 18.02.2018 asking for refund of the money along with interest. The complainant further stated that the respondent in their reply dated 29.12.2017 to the email did not apprise the complainant of the status of Tower-C in which the apartment of the complainant was located, but limited their reply to status of Towers A, B and F only. In response to the email dated 14.01.2018, the respondent admitted the fact of delay in handing over possession but again made no mention of the development status of Tower -C or the time line of handing over the possession. The complainant states that he has paid only 25% of the total payable sum and now is not in position to pay rest of the amount. Judging from respondent's conduct the complainant has become doubtful about the completion of the project and its delivery thereof, hence, he seeks refund along with interest.

4. The respondent rebutted the averments made by the complainant and states that it is incorrect that the plan for building Tower-C has been shelved. Rather construction at the site is being done in accordance with revised approved building plans, the intimation of which has been sent to the complainant vide letter dated 01.06.2015 and the complainant was invited to present his objections



if any. He further contended that the complainant had visited the office of the respondent company to discuss in detail the changes in Construction Plans being made by the respondent and was informed that the earlier proposed fourteen storied high-rise tower is being converted into multiple five storied low-rise towers. He was further informed that his apartment in Tower-C fourth floor will be at the same place but with new design and shall be facing the club and green area for which the respondent is not going to charge any preferential location charges, instead it will be available to him at a slightly lower cost as the flat will now consist of 1740 sq.ft. which is 55 sq.ft. less than the originally booked area. Since the complainant's flat is situated on the 4<sup>th</sup> floor the interest of complainant is not being compromised in any manner. Respondent further states that construction of the said Tower – C, where the complainant has booked the flat is going on in full swing and its possession will be handed over by the end of December, 2019.

5. After hearing both the parties and perusal of written submissions, it is observed that delay in handing over possession of the apartment by the respondent is admitted. The deemed date of possession was February, 2018. The complainant sincerely made payments uptill September, 2014. Thereafter, apprehension in the mind of the complainants regarding failure on part of the respondent to hand over possession appears justified as the respondent did not raise any demand after 2014. Also, the respondent in their correspondence



through emails (forming part of the complaint as Annexure VI and VIII) have chosen not to address the specific concern of the complainant regarding the status of Tower-C or any likelihood of its possession being handed over in near future.

6. The Authority observes that the complainant had booked the apartment in the year 2014 and was expected to get the possession of the apartment by 2018. In the year 2014 itself an amount of Rs.18,59,025/- out of the total sales consideration of Rs.65,49,506/- was paid which amounts to about 25% of the total sales price. The respondents failed to raise any demand after 2014 for the reason that, admittedly, the respondent was planning drastic changes in the approved plans of the colony. Admittedly revised plans on the basis of which the colony is now being developed were approved in December, 2017. In this context, anxiety of the complainant is quite understandable that between the year 2014, after making 25% payment of the apartment till December, 2017, there was no progress at all on the ground. It was natural for the complainant to consider that the project is not going to be developed because his repeated enquiries received a Nil status about construction of the tower-C in which his apartment was to be located. Accordingly, the complainant was well within his rights to demand refund of the money paid by him when he did not see any progress of the project on the ground for good 3 years.

It is observed that for purchasing real estate any individual has to mobilise all the resources at its command to arrange funds. Such mobilised



resources may not remain available for indefinite period of time. The arrangements made in 2014 are not expected to be available even after lapse of a period of 4-5 years. The complainant now is well within his rights to ask for refund because at this late stage this Authority cannot force him to arrange huge sum of over Rs.47 lakhs for payment to the respondents. Even if the averments of the respondents are taken as correct, the project will still take a long time to complete. While seeking registration of project from this Authority, the respondent has declared in paragraph 3 of affidavit -cum- declaration of Form REP-II, that construction of tower-C shall be completed within 42 months, which will fall in the year 2021. The said paragraph is reproduced below:

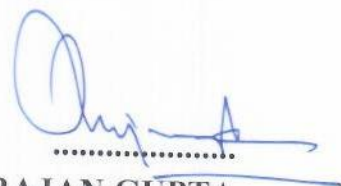
*"3. That the time period within which the project shall be completed by (me/promoter) is 66 months (5.5 years). However, the construction of tower A upto the level of grant of occupancy certificate shall be completed in 24 months. In the same period construction of EWS flats and convenience shopping center shall be completed. Construction of Tower B and C, upto the level of grant of occupancy certificate shall be completed in 42 months and construction of tower D upto the level of grant of occupancy certificate shall be completed in 60 months."*

In the face of afore-mentioned facts and circumstances, the Authority would deem it just and fair to order the respondents to refund the entire money paid by the complainants along with interest at the rate prescribed in Rule




15 of the HRERA Rules. The sum payable shall be paid by the respondent within a period of 90 days of which 50% shall be paid within first 45 days from the date of uploading this order and the remaining within next 45 days.

7. Disposed of. Files be consigned to record room and this order be uploaded on the website of the Authority.



RAJAN GUPTA  
[CHAIRMAN]

.....  
ANIL KUMAR PANWAR  
[MEMBER]



.....  
DILBAG SINGH SIHAG  
[MEMBER]