



**HARERA**  
GURUGRAM

**HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Thursday and 01.08.2019
Complaint No.	1550/2019 Case titled as ANIL BHAN and ANITA DHAR vs Emaar MGF Land Ltd.
Complainant	ANIL BHAN and ANITA DHAR
Represented through	Ms. Ankur Beri and Shri Yashvir Singh Bhallara, Advocates for complainants
Respondent	Emaar MGF Land Ltd.
Respondent Represented through	None for the respondent
Last date of hearing	First hearing
Proceeding Recorded by	Pawan

### **Proceedings**

Notice of the complaint has been issued to the respondent by speed post and also on given email address at [coordination@emaarmgf.com](mailto:coordination@emaarmgf.com), and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put appearance and to file the reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent. Copy of one offer of possession letter has been filed on the record on behalf of the complainant.

Arguments heard.

Vide separate detailed order place on the file the following orders has been passed.





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New PWD Rest House, Civil Lines, Gurugram, Haryana

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

It is directed that the complainants shall give three days' written notice to the respondent for making a site visit of the subject villa and they both fix a date for site inspection. After making a site inspection the complainants shall take the physical possession of the subject villa and shall be at liberty to prepare an inventory of the deficient fittings and fixtures etc in the subject villa and may, thereafter, proceed in accordance with section 14(3) of the Act. The respondent shall not claim holding charges till the date of taking over the physical possession of the subject villa by the complainants after making the site inspection. The Authority exercising its power under section 37 of the Act hereby also directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.60% per annum with effect from the committed date of delivery of possession i.e. 27.01.2015 till the date of this order to the complainants within 90 days from the date of this order.

*N.K. Goel*  
(N.K.Goel)

1-8-19  
Administrative Officer (Petitions-  
cum-Registrar) 1.8.2019



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

Complaint no. : 1550 of 2019  
Date of First hearing: 01.08.2019  
Date of decision : 01.08.2019

1. Dr. Anil Bhan S/o Late Sh. Govind Joo Bhan  
2. Dr. Anita Dhar W/o. Dr. Anil Bhan  
Both R/o D-28, Block-D, 2<sup>nd</sup> Floor, Saket,  
New Delhi

**Complainants**

VERSUS

M/s Emaar MGF Land Ltd.,  
Address: 306-308, Square One, C-2, District  
Centre, New-Delhi-110017  
Also at: ECE House, 28, Kasturba Gandhi  
Marg, New-Delhi-110001

**Respondent**

**CORAM:**

N.K.Goel

(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July  
2019)

**APPEARANCE:**

Dr. Anil Bhan and Dr. Anita

Dhar

Shri Yashvir Singh

None

Complainants in person

Advocate for the complainant  
for the respondent

**EXPARTE ORDER**

1. The present complaint relates to a buyer's agreement dated 26.09.2011 executed between the complainants and the

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1-8-19



respondent promoter, in respect of a villa bearing no. MAR-MD-058 consisting of basement, ground + 2 floors having super built up area of approximately 6520 sq. ft on 350 sq. yd plot in the project, namely, "Marbella" situated in Sectors 65-66, Gurugram (in short, the subject villa) for a sale price of Rs. 6,12,74,057/- [including taxes] and the complainants opted for subvention scheme. Project is registered with this Authority vide registration no. 307 of 2017 dated 17.10.2017.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Marbella", Sectors 65-66, Gurugram.
2.	DTCP license no.	97 of 2010 dated 18.11.2010
3.	Nature of real estate project	Residential plotted colony
4.	Villa/unit no.	MAR-MD-058
5.	Area of villa	6520 sq. ft approx. <b>(as per page 40 of complaint)</b>
6.	Total area	109.063 acres (subject to change)
7.	RERA Registered/ unregistered	307 of 2017 dated 17.10.2017
8.	Date of execution of buyer's agreement	26.09.2011 <b>(Page 39 of complaint)</b>
9.	Payment Plan	Subvention plan <b>(Pg.75 of the complaint)</b>
10.	Total consideration	Rs. 6,31,37,940/- <b>(as per statement of account as on 23.03.2019, Pg.117 of the complaint)</b>



11.	Total amount paid by the complainants till date	Rs. 5,58,35,028/- (as per statement of account as on 23.03.2019, Pg.118 of the complaint and as per averments made in the complaint)
12.	Due date of delivery of possession as per possession clause 10(a) of the agreement dated 26.09.2011	27.01.2015  (Note - company proposes to hand over the possession of the villa within 30 months from commencement of development work plus 3 months' grace period for applying and obtaining the occupation certificate in respect of the villa)
13.	Date of commencement of development work	27.04.2012
14.	Delay in handing over possession	More than 4 years approx.

3. As per clause 10(a) of the agreement, the respondent had agreed to handover the possession of the subject villa to the complainants by 27.01.2015 as detailed hereinabove.
4. Complainants have stated that the buyer's agreement was executed on 26.09.2011 for the subject villa and till date they have paid Rs.5,58,35,028/- inclusive of interest and other allied charges. Complainants have submitted that the payments were made under the fear of deduction of earnest money i.e. 15% of total sale consideration as per clause 1.2(g) of the said agreement. According to the complainants, in



addition to deductions of earnest money the agreement further empowered the respondent as per clause 1.2(c) to charge interest @ 24% per annum for delayed payment. However, the respondent in case of failure to deliver possession is subjected to penalty amounting to Rs.10/- per sq. ft. per month as per clause 12(a). Penalty imposed upon one party in the agreement cannot be higher than the penalty imposed upon the second party. The complainants have submitted that more than 8 years have passed and still they have not received the possession. According to the complainants, there is failure to deliver the possession of the subject villa by the respondent.

5. Hence, this complaint for interest for every month of delay till handing over of possession.

6. The following issues have been raised to be decided by the

Authority: -

"1. Whether the respondent company has violated the terms and conditions of the buyer's agreement between the parties?

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*1-8-19*



2. Whether the complainants have right to get possession of the unit in question?
3. Whether there is any reasonable justification for delay in handing over possession of the unit in question?
4. Whether the complainants are entitled to interest @ 24% per annum in view of the terms of the buyer's agreement imposing such interest rates upon one party?
5. Whether the complainants are entitled for payment of compensation on account of mental agony and harassment? If yes, what amount?
6. Whether the complainants are entitled to receive penalty from the respondent for delayed possession? If yes, what amount?
7. Whether the complainants are entitled to get interest on account of delay in delivery, from the date of first payment made against the purchase of unit in question and/or, from the date of execution of the agreement?
8. Whether costs should be imposed upon the respondents?

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*1-8-19*



9. Whether the complainants are entitled for any other relief?"

The reliefs sought are detailed as under: -

1. "Direct the respondent to deliver the possession and to pay the monthly interest at the prescribed rate for every month of delay till possession is handed over.
2. Direct the respondent company to pay interest @24% per annum on the delay in handing over the possession till realization of the same.
3. Direct the respondent to pay interest 24% per annum on the total amount paid by the complainants to the respondent company from the date of first payment till the offer of possession.
4. Direct the respondent company to pay a sum of Rs.5 lakhs towards damages, for the physical and mental torture, agony, discomfort and undue hardship caused to the complainants as a result of the above acts and omissions on the part of the respondent company.
5. Direct the respondent to pay an amount of Rs.1 lakh as litigation expenses."

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7. Notice of the complaint has been issued to the respondent by speed post and also on given email address at [coordination@emaarmgf.com](mailto:coordination@emaarmgf.com), and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put appearance and to file the reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.

8. Arguments have been heard on behalf of the complainants.

**Issue wise findings of the Authority: -**

9. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the buyer's agreement, there is every reason to believe that vide the buyer's agreement dated 26.09.2011 the respondent had agreed to handover the possession of the subject villa to the complainants within 30 months from the date of start of development work (i.e.27.04.2012) with the additional grace period of 3 months which, in other words, means that the respondent was bound to offer the physical possession of the subject villa to the

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1-8-19



complainants on or before 27.01.2015. However, according to the complainants no offer of possession has been given to them till date. Hence, it is held that there is a continuing delay in handing over the possession of the subject villa to the complainants and this is in violation of the terms and conditions of the buyer's agreement and also violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) because on the date of coming into force of the Act the project in question was not complete and it was an "on-going" project and, thus, governed by the provisions of the Act and the Rules framed thereunder. Hence, the complainants are entitled for delayed possession charges for every month of delay at the prevalent prescribed rate of interest @10.60% per annum w.e.f. 27.01.2015 in terms of proviso to section 18(1) of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

10. In view of above discussion, the Authority holds that the respondent is liable to pay delayed possession charges to the complainants w.e.f. 27.01.2015 till the date of handing over of possession of the subject villa to the complainants. The

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1-8-19



complainants may approach the Adjudicating Officer for claiming compensation etc, if they so desire.

**Findings of the Authority: -**

11. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes for promoter projects situated in Gurugram. 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.

**Decision and directions of the Authority: -**

12. During the course of arguments, a copy of letter of possession bearing reference no. MAR/713671-PR-07/20190607184045434 dated 07.06.2019 has been filed on behalf of the complainants and the same is taken on record. It is argued that the letter of offer of possession has been given to them by the respondent on

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1-8-19



21.06.2019 in their office at Gurugram and the complainants are ready to take over possession of the subject villa after making a visit of the site. Prayer of the complainants is also that the respondent may be directed not to charge any holding charges till possession is taken by them. The prayer by the complainants with regard to site visit is justified and genuine. Therefore, in exercise of powers under section 37 of the Act it is directed that the complainants shall give three days' written notice to the respondent for making a site visit of the subject villa and they both shall fix a date for site inspection. After making a site inspection the complainants shall take the physical possession of the subject villa and shall be at liberty to prepare an inventory of the deficient fittings and fixtures etc in the subject villa and may, thereafter, proceed in accordance with section 14(3) of the Act. The respondent shall not claim holding charges till the date of taking over the physical possession of the subject villa by the complainants after making the site inspection. The Authority exercising its power under section 37 of the Act hereby also directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.60% per annum with effect from the committed date of delivery of possession i.e. 27.01.2015 till the



date of this order to the complainants within 90 days from the date of this order.

13. The complaint stands disposed of accordingly.
14. The case file be consigned to the registry.

*N.K.Goel*  
1-8-19

N.K.Goel  
(Former

Additional District and Session Judge)

Registrar-cum-Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority,  
Gurugram)

(Authorised by resolution no.  
HARERA,GGM/Meeting/2019/Agenda  
29.2/Proceedings/16<sup>th</sup> July 2019)

Dated: 01.08.2019

Judgement uploaded on 02.08.2019

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