

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

Complaint no. : 1063 of 2019
Date of First hearing: 09.08.2019
Date of decision : 09.08.2019

1. Mr. Naresh Kumar S/o Jagdish Prasad Gupta
2. Ms. Rekha Gupta W/o Naresh Kumar
Both R/o 24, Vishnupuri Behind Sanghi Farm,
Tonk Road, Jaipur, Rajasthan-302018

Complainants

VERSUS

M/s Emaar MGF Land Ltd.,
306 to 308, Square One, District Centre, C-2,
Saket, New Delhi-110010037

Respondent

CORAM:

Shri 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/16th July
2019)

APPEARANCE:

Shri Nilotpall Shyam

Advocate for complainants

Ms. Manika Balhara

A/R for respondent

EXPARTE ORDER

1. From a very close scrutiny of the complaint and the documents filed therewith including buyer's agreement dated 11.04.2008, offer of possession letter dated 20.03.2017 and unit nomination letter 10.08.2011 it transpires that the present

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complaint relates to a buyer's agreement dated 11.04.2008 executed between Ms. Ashoo Malik and Mr. Umesh Malik (both original allottees) and the respondent promoter, but later on vide sale agreement the property in question was sold to the complainants and endorsed in their favour by the respondent. The respondent promoter is not registered with this Authority in respect of the project in question. The buyer agreement is in respect of villa measuring 2125 sq. ft. (197.47 sq. mtr.) which was changed to 2202.09 sq. ft. (204.58 sq. mtr.) by offer of possession letter dated 20.03.2017 bearing no. TPD K-F13-1303, in the project "Premier Terraces at Palm Drive" situated in Sector 65, Gurugram (in short, the subject unit) for a total sale price of Rs. 1,30,11,584/- including charges such as IFMS, car parking, club membership etc. and the complainants opted for construction payment plan.

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

1.	Name and location of the project	"Premier Terraces at Palm Drive", Sectors 65, Gurugram.
2.	DTCP license no.	228 of 2007 dated 27.09.2007
3.	Nature of real estate project	Group housing complex
4.	Flat/unit no.	TPD K-F13-1303
5.	Measuring area of the booked flat	2125 sq. ft.

6.	Final area of flat	2202.09 sq. ft (as per page 24 of complaint)
7.	RERA Registered/ unregistered	Not registered.
8.	Date of allotment letter	19.03.2008 (Page 22 of complaint)
9.	Date of execution of buyer's agreement	11.04.2008 (Page 30)
10.	Payment Plan	Instalment payment plan (Pg.66 of the complaint)
11.	Total consideration	Rs. 1,30,11,584/- (Pg.81 of the complaint)
12.	Total amount paid by the complainant till date	Rs. 1,30,23,311/- (as per Pg.81 of the complaint)
13.	Due date of delivery of possession as per possession clause 14 of the agreement dated 11.04.2008	March 2011 (Note - company proposes to hand over the possession by December 2010 + 90 days' grace period)
14.	Date of offer of possession letter	20.03.2017 (Page 24 of complaint)
15.	Delay in handing over possession	8 years 8 months approx.

3. As per clause 14 of the agreement, the respondent had agreed to handover the possession of the subject flat to the complainants by December 2010, with the additional grace period of 90 days for applying and obtaining the occupation certificate.

4. It is stated that vide letter dated 20.03.2017 i.e. after a delay of approximately 8 years 8 months from the committed date of



possession, the respondent offered the possession of the subject flat along with the statement of accounts cum invoice and in the offer of possession letter dated 20.03.2017 super area of the flat was found to be unilaterally increased by the respondent from 2125 sq. ft. to 2209 sq. ft. Possession of the subject unit was handed over to the complainant by the respondent only by June, 2017. It is stated that the respondent had demanded Rs.2,38,464/- as service tax which was protested by complainants but was later paid. The complainants have relied on the judgment of Delhi High Court in Suresh Kumar Bansal Vs. UOI 2016[43]S.T.R.3(Del.) and Punjab and Haryana High Court in Balvinder Singh Vs UOI in CWP No. 23404 of 2016, stating the service tax is not payable for the period before July 2012.

5. According to the complainants it is a fit case for payment of interest for the delay in handing over the possession and this Authority may make order against the respondent in this regard. Hence, this complaint.
6. The following issues have been raised to be decided by the Authority: -

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- “1. Whether the respondent has breached their obligation to deliver the possession in accordance with agreement to sale?
2. Whether the respondent who is continuous and recurring defaulters are liable to be prosecuted under Section 18 read with Section 19(4) of the RERA Act?
3. Whether the respondent has failed to provide services to the complainants along with the construction of impugned flat as promise at the time of booking?
4. Whether the respondent is liable for penalty under Section 38 of the RERA Act?
5. Whether the respondent is liable for penalty under section 61 of the RERA Act for their violations of the Regulations made by the Authority?
6. Whether exemplary cost shall be imposed upon the respondent for their vexatious attitude of not abiding by the terms of the agreement?”
7. The reliefs sought are detailed as under: -

- “1. To direct the respondent to pay interest @24% per annum for the delay in handing over the possession i.e. for the period between 1st December,2010 to June 2017. *Handwritten signature and date 9-8-19*



2. Direct the respondent to provide community services including construction of Golf driving range as promised within a period of 3 months.
 3. To direct the respondent to refund the service tax amount of Rs.2,38,464/- charged to the complainants.
 4. To direct the respondent to refund the amount of Rs.97,364/- towards extra VAT paid in view of the delay in construction on the part of respondent.
 5. To direct the respondent to refund the amount of Rs.1,00,762/- charged towards electrification and electric meter charges.
 6. To direct the respondent to refund the amount of Rs.4,02,795/- charged for increased in super area of the impugned project.
 7. To impose appropriate penalty on the respondent for non-fulfilment of facilities as promised in the brochure to the complainants.
 8. To direct the respondent to pay a cost of Rs.1,00,000/- towards the cost of litigation."
8. Notice of the complaint has been issued to the respondent by speed post and also on given email address at



coordination@emaarmgf.com and the delivery reports have been placed in the file. Despite service of notice the respondent has failed 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.

9. Arguments are heard.

Issue wise findings of the Authority: -

10. **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 11.04.2008 the respondent had agreed to handover the possession of the subject flat to the complainants by December 2010, with the additional grace period of 90 days, which, in other words, means that the respondent was bound to offer the physical possession of the subject flat to the complainants on or before March 2011. However, the offer of possession letter has been placed on the file which clearly proves that the offer of possession of the subject flat was offered to the

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complainants on 20.03.2017 which further clearly shows that the respondent had caused delay of more than 8 years in offering possession of the subject flat to the complainants. Hence, it is held that there was a delay of about 8 years 8 months in offering the possession of the subject flat to the complainants.

11. Section-2, Sections-20-39, Sections-41-58, Sections-71-78 and Sections-81-92 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) came into force w.e.f. 01 May 2016 vide Notification no. S.O.1544(E) issued by the Ministry of Housing and Urban Poverty Alleviation, Government of India published in Gazette of India: Extra ordinary part-II of Section 3(ii) dated 26.04.2016. The rest of the provisions of the Act came into effect on 01.05.2017.
12. Therefore, the direction to establish the Real Estate Regulatory Authorities in the States were issued by the Central Government on 01.05.2016. In pursuance to the said legislation the Haryana Government framed the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) and the same came into effect on 28.07.2017 vide Notification no. MISC-107(A)/ED(R)/196.

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13. Therefore, in the considered opinion of the Authority the project which had already been handed over the possession of the flats/apartments/plots to the buyer(s) before the said date cannot be directed to pay delayed possession charges under the provisions of Rule 15 of the Rules. In the present case, according to complainants the possession of the subject flat was handed over to the complainants by the end of June 2017 i.e. before 28.07.2017. Hence, this Authority is constrained to hold that the complainants are not entitled for delayed possession charges under the provisions of the Act and Rules.
14. Similarly, the Authority should not issue direction to the Respondent to refund the service tax/VAT or other charges already charged by respondent from complainants. Even otherwise it is a matter of common knowledge that the service tax/VAT etc. paid or to be paid by the allottees is credited to the government account and it does not go in the pockets of the builder/service provider.
15. We also observe that the complainants did not raise objection w.r.t increased super area earlier and seems to have made the payment on this account without any protest. Therefore even

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otherwise they are not entitled to raise this objection at this belated stage.

16. The complainants shall, however, be at liberty to approach this Authority under section 14(3) of the Act in case they find any structural defect or any other defect in the subject unit allotted within a period of 5 years from the date of handing over the possession and with these observations the complaint is liable to be dismissed.

Findings of the Authority: -

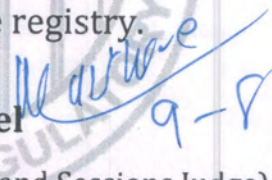
17. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. 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:-

The Authority exercising its power under section 37 of the Act hereby dismisses the complaint but gives liberty to the complainants to approach this Authority under section 14(3) of the Act in case they find any structural defect or any other defect in the subject unit within a period of 5 years from the date of handing over the possession.

18. The case file be consigned to the registry.


N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petitions)

Haryana Real Estate Regulatory Authority, Gurugram

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