

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

GURUGRAM

Complaint no. : 6700 of 2019
Date of decision : 31.05.2023

Mr. Mayank Mehta & Ms. Megha Mehta
ADDRESS: 73, Gautam Apartments,
New Delhi-110049

Complainant

Versus

M/S Emaar MGF Land Limited
(Now M/s Emaar India)
ADDRESS: Emaar Business Park,
Mehrauli- Gurugram Road, Sikandarpur Chowk,
Sector 28, Gurugram, Haryana -122002

Respondent

APPEARANCE:

For Complainant —


Mr. Ashish Kothari Advocate

For Respondent:

Mr Ishaan Dang Advocate

ORDER

1. This is a complaint filed by Mr. Mayank Mehta and Ms. Megha Mehta (buyers) with a prayer for direction to the respondent/builder to refund certain amounts and compensation.
2. According to complainants, they applied for purchase of office at "Emerald Plaza Offices" Emerald Hills, Sector 65, Golf Course Extension Road, Gurugram, Haryana, being developed by respondent.


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Despite complying with all demands raised by respondent, the latter failed to hand over possession of allotted unit and also refused to pay compensation.

3. That soon after their application, a letter dated 01.07.2010, was issued by respondent, asking them to pay additional payment of Rs. 3,61,286.91/- making cumulative amount of Rs. 8,61,286.91/- before signing of BBA. The schedule of payment clearly specified that the project was having three level basement parking, retail shops, offices, and other amenities, which were to be completed and possession was to be given within 30 months. Draft of a Builder Buyer Agreement (BBA) was sent to them i.e. complainants. They had no option but to sign the same, on dotted lines as desired by the respondent.

4. That apart from total amount of sale consideration, the respondent illegally, and unreasonably extracted a substantial amount of money, on one pretext or the other. They (complainants) were told that area of their office unit stood revised to 760.97 sq. ft. from the earlier area of 720.26 sq. ft. This arbitrary and illegal increase in saleable area led to an additional financial burden upon them of Rs. 2,93,742/-.

5. Further that after 8 years of inordinate delay, offer of possession dated 25.01.2018, was issued to them. In the letter offering possession, the respondent demanded GST of Rs. 94,678/- which they were not liable to pay, if possession of their unit was handed over, in agreed time.

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6. The respondent further demanded amounts in the name of administrative charges, interest, HVAT, electricity charges, revised registration and stamp duty etc. without providing any basis for the same. They (complainants) deposited additional amounts towards revised area, GST, interest etc. under protest.
7. The respondent compelled them to give an indemnity bond, as a pre-condition for giving possession of their unit. Which they submitted due to fear of cancellation of unit.
8. The respondent reduced basement parking area to two levels, which was not in conformity with the approved floor plans and representation given by it (respondent). The respondent demanded payment of Rs. 3,32,963/- from them (complainants), on the pretext that third basement roofs slab was put. All this clearly establishes that fraud was committed by the respondent. In this way, there occurred 33% decrease in parking spaces.
9. That they (complainants) gave several representations through emails dated 27.09.2013, 07.10.2013, 15.03.2014, 01.02.2017, 15.05.2018, 06.03.2018, 19.03.2018, and 2.03.2018, protesting against demands raised by respondent, they pointed out deficiencies in unit. The respondent failed and neglected to respond to said notices.
10. Contending all this, the complainants sought following reliefs:-
 - (i) Refund of amounts, extracted on account of GST charges @12% that would not have had to be paid if the possession

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of the unit would have been granted within the stipulated time.

- (ii) Refund of amounts extracted on false and frivolous pretext of monthly maintenance charges without even handing over the possession of the unit.
- (iii) Refund of amounts extracted on account of HVAT of @ 5.6% that would not have had to be paid if the possession of the unit would have been granted within the stipulated time.
- (iv) Refund of additional amount paid by complainants under the impression that the area was 760.97 sq. ft.
- (v) Direction to pay interest towards further delay in handing over possession of unit EPC-07-003 to the complainants w.e.f January 2018, till actual handing over of possession of the said unit to the complainant by the respondent.
- (vi) Direction to compensate them (complainants) with Rs. 15,00,000/- for loss of livelihood, mental harassment and agony etc. due to the negligent, high handed and illegal actions of the respondents.
- (vii) Direction to grant Rs. 75,000/- towards the cost of litigation.

11 The respondent contested claim by filing written reply. At the outset, the respondent challenged maintainability of present complaint, alleging that :-

- (i) This forum (Adjudicating Officer) has no jurisdiction to try and entertain present complaint.

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- (ii) Project of it (respondent) is not an ongoing project as per Rule (2)(o) of Act of 2016.
- (iii) Complainants are not genuine buyers, rather purchased unit in question to earn profit.
- (iv) The complainants have submitted an undertaking/agreement and assured that they will not raise any dispute or make claim in this regard, at latter stage.

12 Even on merits, the respondent denied its responsibility to pay any compensation. It is averred that same (respondent) has already applied for occupation certificate. The letter of offer of possession was sent to the complainants on 25.01.2018, along with statement of account but the complainants did not make payment of outstanding dues. The same (complainants) being defaulters, having deliberately failed to make payment of outstanding dues, are not entitled to any relief.

13 It is further the plea of respondent that the complainants booked subject unit on 30.06.2010, and no such complaint seeking compensation was filed for last more than seven years i.e. before filing complaint no. 297/18 before the authority. Due to delay in filing complaint, the complainants are not entitled to any relief.

14 Replying the plea of increase in super area, the respondent relied upon Clause 6 of office space buyers' agreement. According to which, in case of any alteration/modification, resulting in increase in the super area

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of the space, the respondent was entitled to raise additional demand at the original rate and allottees were liable to pay the same. According to it, (respondent) as per Clause 10 of said agreement, the complainants had assured that they will not raise any dispute and will not make any claim in that regard, at latter stage. In this way, no such claim could be made at this time.

15 As per Clause 23 of FBA (Flat Buyers Agreement), buyers/complainants had agreed to pay maintenance charges. About 3rd basement parking, it is claimed by the respondent that 3rd basement was never intended to be used for parking. It houses a pump room, underground water tank etc.

16 Citing all this, respondent requested for dismissal of complaint, with heavy costs.

17 I have heard learned counsels representing both of parties and also complainant (Mr. Mayank Mehta) in person.

18 During deliberations, it is pointed out that another complaint filed by present complainants (complaint no. 297/2018) has already been allowed by the authority, vide order dated 16.01.2019. The authority has directed the respondent to pay interest at rate 10.75% per annum from 07.06.2013 till the date of offer of possession i.e. 25.01.2018. The complainants have been advised to take possession of their unit and after possession, if they have any grievance, they were allowed to approach proper forum, seeking compensation. At the same time,


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respondent has also been directed not to levy holding charges, about the period the matter remained sub-judiced.

19 As mentioned above, the respondent has challenged jurisdiction of the authority and also of the AO to entertain this complaint, contending that the project in question was not ongoing project. As per learned counsel for complainants, this issue has already been decided by the authority, in favour of his clients through order dated 16.01.2019, in complaint No. 297/2018 as referred above. No need to give any findings on this issue, again.

20 So far as plea of respondent that the complainants are not genuine buyers but are speculative investors, same have purchased unit in question, (office space) to earn profit and hence not entitled to any relief, is concerned, I find no substance in this plea. Although it is not proved on record that the complainants are speculative investors having some other property also, as is claimed by the respondent, even if it is presumed that the complainants have another property, stated to be a residential unit, there is no legal bar to apply/purchase office space. Simply to say that the complainants have one more property, does not bar them to purchase office space and it does not make them speculative investors.

21 It is not denied that the complainants have given undertaking that same will not raise any dispute or will not make any claim against the respondent. As per complainants, they were constrained to sign such undertaking under duress, fearing that their unit may be cancelled, by


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respondent. Keeping in view that respondent/builder was in dominating position over the buyers/complainants, I find wait in this plea of complainants. Section 19 A of Indian^h Contract Act, makes a contract, voidable at the option of the aggrieved party, where consent of a party is obtained by undue influence. Even otherwise, rights bestowed upon buyers (complainants) by the Act of 2016 cannot be denied merely due to signing of any such agreement. Preliminary issues as raised by respondent are thus decided against it.

22 GST & HVAT Charges:-

It is contended by learned counsel for the complainants that GST came into force in year 2017. The respondent was obliged to hand over possession of unit in question, after completing the project by 07.06.2013. In this way, if the project was completed in time, his clients i.e. complainants were not liable to pay any GST. Similarly, the respondent did not share in^h-put tax credit on purchase need for the transfer of material used in construction of project, which was in violation of Section 171 of CGST & HGST Act, 2017. It is further plea of learned counsel that HVAT charged by the respondent is illegal. The Govt. of Haryana floated an amnesty scheme where, VAT at the rate 1% was to be deposited by the developer against his liability on total turnover where as the developer is charging[@] 5.25%^h which is against law.

23 Above stated facts are not refuted on behalf of JD, during arguments. Considering all this, in my opinion, the respondent has no right to charge GST or HVAT from the complainants. Respondent is directed to

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refund the amount collected from complainants in this regard, to the ^{latter's} (complainants) .

24 Maintenance charges:-

It is not denied that respondent has levied maintenance charges, to be paid by allottees/complainants for the period when possession of unit in question was not handed over to them. It stands to no reason to levy maintenance charges unless and until unit in question has been delivered to the allottees. The respondent was not entitled to levy maintenance charges till unit was not complete and possession of same was handed over to them i.e. complainants. The amount of maintenance charges is directed to be refunded to the complainants.

25 Charges in name of increase in area:-

As described above, according to complainants they were sold a unit comprising 720.26 sq. ft. of area, but they were told that the unit area has been revised and increased to 760.97 sq. ft. Neither their consent was taken in this regard nor they were informed at the appropriate time. All this added financial burden upon them i.e. complainants, amounting Rs. 2,93,742/-. The complainants request for refund of this amount.

26 Section 14 of Act of 2016 obliges the promoter to adhere to sanctioned plans and project specifications. At the same time, it is barred from making any additions or alterations in the sanctioned plans, lay out plans and specifications without previous consent of the person(buyer). Proviso added to clause (1) Section 14(2) authorizes the promoter to make such minor additions or alterations as may be

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required by the allottee or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

According to Clause II of same sub Section (2), promoter is not allowed to make any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without previous written consent of at least two thirds of the allottees, other than the promoter, who have agreed to take apartments in such building. It is not claim of the respondent that same made these alterations with the consent of allottees or two third of the allottees, if applicable. In such a circumstance, the respondent was not within its right to impose additional financial burden upon the allottees i.e. complainant like levy of Rs. 2,93,742/-. Same (respondent) is directed to refund this amount to the complainants.

27 **Respondant to pay interest towards delay in handing over possession:-**

As it was mandated by the Apex Court in case *M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors. Etc. case and Civil appeal No(s). 6745-6749 of 2022*, ^{that} the complainant ^{is} seeking payment of interest for delay in handing over possession can be filed before the Authority and not to the Adjudicating Officer. Moreover, as described above, a complaint filed by present complainants i.e.

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complaint no. 297/2018 has already been allowed by the authority in this regard. Prayer for such interest is thus declined.

28 Compensation for loss of livelihood, mental harassment and agony:-

The complainants have sought compensation of Rs. 15,00,000/- from the respondent, claiming loss of livelihood, mental harassment and agony etc., due to negligence high handedness and illegal action on the part of respondent.

It is not in dispute that as per Clause 16 of the agreement the respondent was obliged to hand over possession of unit within 30 months from the date of execution of agreement plus 120 days of grace period which comes to 07.06.2013. It is informed that possession of said unit was offered to the complainants on 25.01.2018 i.e. ^{after} ~~from~~ about 4 years 7 months approximately of due date. There is no gain saying that all this deprived the buyers (complainants) from enjoyment of their unit, which was purchased by them by spending hard earned money. The subject unit is stated to be an office space. According to complainants, they wanted to do their own business. Delay in handing over possession caused them, loss of livelihood, mental harassment and agony.

I find weight in this contention, Section 72 of ~~the HARERA~~ ^r Act of 2016 provides factors to be taken into consideration, for adjudging quantum of compensation, in this regard. Apparently, buyers/complaints suffered loss of their income due to delay in getting possession of their unit, despite having paid sale consideration. Although, there is nothing on record, to

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verify that respondent got disproportionate gain. Apparently, same used money, paid by the allottees and did not fulfil its commitment. Similarly, the complainant^z did not adduce any evidence to prove as what financial loss, they actually suffered, due to this delay. As mentioned above, subject unit was a commercial unit, considering same as well as facts of this case and circumstance of complainants, in my opinion Rs. 5,00,000/- will ~~gain~~^{be} appropriate amount of the compensation for loss of livelihood, mental harassment and agony, suffered by complainants, for not getting possession of their unit for about four and seven months. Respondent is directed to pay this amount to complainants.

29 Cost of litigation:-

No receipt for payment of fee to the advocate is put on file. It is clear from the record that complainants were represented by an advocate during trial of this matter. Considering all this, complainants are allowed a sum of Rs. 25,000/- as cost of litigation to ~~be~~^{be} paid by respondent^z. Complaint is thus allowed. The respondent is directed to pay the amounts of compensation as described above within 30 days of this order, failing which same will be liable to pay interest at rate 10% per annum, till realization of the amount.

Announced in open Court today i.e. 31.05.2023.

File be consigned to the Records.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram