

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

Complaint no. : 4894 of 2022
Date of decision : 19.12.2023

Sh. Rishabh Kumar and
Smt. Rama Budhiraja
Both R/o: C-9, Shakti Nagar Extension, Ashok Vihar
Phase 3, New Delhi 100052

Complainants

Versus

Emaar India Ltd.
Address : 306-309, 3rd Floor, Square One, C-2, District
Centre Saket, New Delhi - 110017

Respondent

APPEARANCE:

For Complainant:

Mr. Kuldeep Kohli Advocate

For Respondent:

Mr. Ishaan Dang Advocate

ORDER

1. This is complaint filed by Rishabh Kumar and Rama Budhiraja(allottees) through power of attorney Sh. Ravi Kumar under section 31 read with section 72 of the Real Estate (Regulation and Development) Act 2016, against respondent viz. Emaar India Ltd.

2. According to complainants, on being lured by respondent, they booked flat no. EFP- II-54-001 on ground floor of building no 54 in Emerald Floor Premier II at sector 65, Gurgaon admeasuring 1975 sq. ft. It was being constructed by the respondent. BBA was executed between both of parties on 16.09.2010. That the respondent did not meet the assurances as given in the brochure and also committed through the Builder Buyer Agreement.
3. That as per BBA, due date of possession was 16.09.2013 but offer of possession was given on 30.12.2020 and possession was taken on 06.12.21. At the time of handing/taking over possession, no servant quarter was provided, whereas full payment against this the flat including the servant quarter was made by complainants as per BBA.
4. They(complainants) were intimated by the respondent through email on 23.06.2021 that they were not in a position to provide for a servant quarter along with common toilet for servants and proportionate terrace rights, as was provided for in the site plan of the BBA. Whereas, these facilities have been provided for all the

other flats of other towers within the same project. During the complainant's discussion with the respondent, the complainants had projected a claim of Rs. 10,00,000/- along with 12% interest thereon as per the EPR Scheme on pro rata basis.

5. That the entire area of the flat assured was 48sq ft @ Rs.4410.00 = 211680 (8709750/1975=4410) .IN addition EDC @ 240 per sq ft x 48 = 1152 has to be returned .Apart from this, IDC @30 per sq ft x 48 = Rs 1440 is to be returned that means a total of Rs.2,24,640 + GST on 2,24,640 @18% = 40435.20 is to be returned , which comes to Rs.2,65,075.20. In addition to this, the complainants had to pay an additional stamp duty @ of 6% of Rs.2,65,075 = Rs.15,904.51 Therefore, in all a sum of Rs.2,80,979.71 is to be returned to them (complainants) on account of the Servant quarter.

6. As per clause 4(c) and (e) of BBA, any alteration /modification resulting in more than 10% increase or decrease in super area of the unit, the company (respondent) shall intimate the allottee in writing of such increase or decrease in super area and the excess amount towards the

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total consideration shall be adjusted by the company at the time of final accounting before giving possession to allottee(s). The respondent altered the whole super area and constructed 5th floor, rather than constructing the servant quarter and a toilet which is violative of BBA.

7. That through an email dated 18.01.2013, they(complainants) were invited to make early payments, to obtain an Early Payment Rebate (hereinafter called EPR) of 12% and it will be calculated up to the date of the actual handing over of physical possession of units. They(complainants) requested the respondent for the EPR break-up amounting to Rs.7,58,000/- through an e-mail dated 16.01.2021 to which respondent failed to revert back. The respondent has not paid even till date. The respondent has therefore to pay a sum of Rs.51,24,454.25/- to them(complainants) on account of EPR.

8. The e-mails dated 5.12.2012, 9.12.2012, 21.03.2013, 22.03.2013, 12.06.2013, 17.06.2014 of the respondent confirmed that the construction of the property purchased by them(complainants) is getting delayed ,which goes to prove beyond doubt that the respondent had collected

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early payment from the complainants on the pretext of delivering the property to the allottee but subsequently could not deliver on time.

9. That the respondent having assured an exclusive area of 418 sq. ft feet in the rear of the ground floor flat, considering it as a Preferential location and charging the complainants a sum of Rs.19,75,000/- as the Preferential location charges, allotted to the complainants, is now retracting from the commitment of providing exclusivity to the area of 418 sq ft feet. The complainants need to be refunded an amount of Rs.19,75,000/- paid as PLC together with the interest till the time of return of the amount. Respondent itself admitted through email dated 09.02.2021 that the front lawn area is 191.81 sq ft and rear lawn area is 584.64 sq ft. The total area of front and rear lawn has been increased from 550 sq.ft.
10. That the complainants have been given basement parking which is not accessible from the complainant's tower. Further, the escalator or even the staircase are not accessible from the complainant's tower to the basement parking. As such, this parking space in the basement is



redundant. It is pertinent to mention here that other towers of the project are accessible to basement parking. That the lift for tower 54 , in which the complainants have a unit, ends at the ground floor and there is no connectivity to the basements through this lift.

11. That car parking has not been provided in the basement appurtenant to the tower 54. Allottees have to go down to the ground floor from where they have to walk to the tower under which the car parking has been provided, then takes a lift and goes down to the basement to their car parking. They(complainants) want that the parking may be allotted in the area appurtenant to the tower in which their unit is situated.

12. That the respondent without providing any details and for no rhyme or reason, while giving the possession, apart from other dues as payable under the Builder Buyer Agreement, also collected many amounts, which same is not legally entitled to collect, the major being an interest of Rs 5,20,925.00 as shown in the statement of account dated 17.05.2022. Details of this interest were never provided to them(complainants), despite of specifically asking through

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letters dated 04.03.2022 and 12.04.2022.

They (complainants) had no option but to pay the same, they wanted to take the possession of their unit.

13. The complainants have been charged an escalated basic price of the Unit by Rs. 1,04,501.00 by the respondent, without any prior intimation. As would be evident from the Statement of Account dated 17.06.2014, wherein the basic price was shown as Rs.1,17,18,000.00 and in the final statement of account dated 17.05.2022, the amount has been mentioned as Rs.1,18,22,501. The difference between the two amounting to Rs. 1,04,501 needs to be returned to them (complainants) with interest.

14. Citing all this, the complainants sought following reliefs :

i. To direct the opposite party to provide the servant quarter and toilet assured in the BBA alternatively return the amount so charged with compensation amounting to Rs.5,30,762.11/-.

ii. To direct the opposite party to provide early payment rebate calculated up to the date of the actual handing over of physical possession of units which the respondent have not paid amounting to Rs.58,31,178.67



- iii. To direct the opposite party to provide the parking slot as have been promised by the respondent at the area appurtenant to tower 54 in which the complainants have the unit or alternatively compensate for the same.
 - iv. To direct the opposite party to return the delay payment charges collected illegally without providing any details with interest from the date of collection till the date of return with interest.
 - v. To direct the opposite party to return the additional amount of Rs.1,04,501/- collected in the garb of price escalation of the basic price against the conditions laid in the BBA.
 - vi. To pass any other order as may deem just and proper in the interest of justice.
15. The respondent contested the complaint by filing a written reply. Apart from disputing the complaint on merits, the respondent challenged very maintainability of this complaint.
16. It is contented by learned counsel for respondent that, this forum(Adjudicating Officer) has no jurisdiction to try and entertain this complaint. The complainants even if

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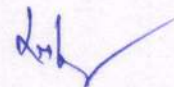
wanted any such relief , could have approached the Real Estate Regulatory Authority, Gurugram.

17. True, Act of 2016 has specifically provided about jurisdiction of the Adjudicating Officer. Same is has power to determine the compensation, in view of sections 12, 14,18 and 19 of the Act of 2016. Rest of the matters fall within the jurisdiction of Real Estate Regulatory Authority (in brief the Authority). Hon'ble Supreme Court of India, in the case of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (C), 357*, has upheld aforesaid scheme of jurisdiction between Adjudicating Officer and Authority.

18. Considering the facts mentioned above, in my opinion, this forum has no jurisdiction to grant reliefs as sought by complainants. The complainants may approach the proper forum.

19. Complaint in hand is thus dismissed.

20. File be consigned to the Registry.



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