



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY**

Complaint No.2196/2018
Date of Institution:10.12.2018
Date of Decision: 01.04.2021

Ambuj Kumar Singh
R/o Flat No.A-1404, Golden Palm,
Sector-168,NOIDA, UP-201304

Complainant

Vs

M/s Emmar MGF Land Limited Ltd.
ECE House, 28, Kasturba Gandhi Marg,
New Delhi-110001
Also at Emmar Business Park, MG Road,
Sikandarpur Sec 28, Gurugram

Respondent

II

Complaint No.2268/2018
Date of Institution:13.12.2018
Date of Decision: 01.04.2021

Punit Arora
R/o 1530, Chicory Way Alpharetta GA USA-30005
Through its special power of attorney
V K Arora, R/0 34, Housing Board, Sector 7 Ext
Gurugram

Complainant

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M/s Emmar MGF Land Limited Ltd.
ECE House, 28, Kasturba Gandhi Marg,
New Delhi-110001
Also at Emmar Business Park, MG Road,
Sikandarpur Sec 28, Gurugram

Respondent

III

Complaint No.12/2019
Date of Institution:02.01.2019
Date of Decision: 01.04.2021

Rahul Tak & Neha Tak
R/o 11, Merril Drive,Winnersh, Wokingham
RG415RS, Berkshire, United Kingdom
Also at B-324,R K Colony, Bhilwara, Rajasthan

Complainants

Vs

M/s Emmar MGF Land Limited Ltd.
ECE House, 28, Kasturba Gandhi Marg,
New Delhi-110001
Also at Emmar Business Park, MG Road,
Sikandarpur Sec 28, Gurugram
Respondent

IV

Complaint No.49/2019
Date of Institution: 04.01.2019
Date of Decision: 01.04.2021

Sangeeta Sharma W/o Dheeraj Buardwaj
R/o67, Chastilian Road, Dartford,DA-13JY Kent
United Kingdom
Through its special power of attorney
Vijay Anand Sharma S/o Late Shri A.R. Sharma
R/o Plot No.597,Sector 4, Vaishali, Ghaziabad, UP-201010

Complainant

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V

Complaint No.3096/2020)
Date of Institution: 05.10.2020
Date of Decision: 01.04.2021

Balbir Singh Wadhwa S/o Late Shri H S Wadhwa
R/o C-2C, 186, Pocket-2,
Janakpuri, New Delhi-110058

Complainant

Vs

M/s Emmar MGF Land Limited Ltd.
Unit No. 306-308, Square One C2, District
Centre, Saket, New Delhi-110017

Respondent

Complaints under Section 31
of the Real Estate(Regulation
and Development) Act, 2016

Argued by:

For Complainants-Ambuj Kumar Singh,
Punit Arora, Sangeeta Sharma, Rahul Tak &
Neha Tak

For Complainant-Balbir Singh Wadhwa
For Respondent:

Sh. Sushil Yadav, Advocate
Sh. Anshul Gupta, Advocate
Sh. Ishaan Dang , Advocate

ORDER

Since common questions of fact and law are involved in all the above mentioned ~~the~~ matters, so the same are being disposed off by this common order.

2. The above mentioned complaints filed under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and

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Development) Rules, 2017 (hereinafter referred as the Rules of 2017) by Ambuj Kumar Singh, Mr. Punit Arora, Rahul Tak and Neha Tak & Ms Sangeeta Sharma and Shri Balbir Singh Wadhwa seeking refund of amount as mentioned in their respective tabulated form below deposited against the booking of residential units in the project known as "IMPERIAL GARDENS" situated in Sector 102, Gurugram besides taxes etc on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the cases of the complainants, the reproduction of the following details is must and which are as under:

I

Project related details Complaint No.2196 of 2018		
I.	Name of the project	IMPERIAL GARDENS" situated in Sector 102, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	IG-07-1003
V.	Tower No. / Block No.	10 th Floor
VI	Size of the unit (super area)	Measuring 2025 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	26.02.2013

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XI	Date of provisional allotment(original)	
XII	Date of execution of BBA	23.04.2013
XIII	Due date of possession as per commitment made at the time of booking	11.08.2017
XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 16(a) of BBA compensation @Rs.7.50 per sq ft per month for the period of delay.

Payment details

XVI	Total sale consideration	Rs. 1,58,60,072/-
XVII	Total amount paid by the complainant	Rs. 1,49,81,266/-

II

Project related details Complaint No.2268 of 2018

I.	Name of the project	IMPERIAL GARDENS" situated in Sector 102, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	IG-01-1202 12 TH floor 2000 sq ft.
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 2000 sq ft.

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VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	26.02.2013
XI	Date of provisional allotment(original)	
XII	Date of Execution of BBA	16.05.2017
XIII	Due date of possession as per BBA	11.08.2017
XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 16(a) of BBA <u>compensation @Rs.7.50</u> per sq ft per month for the period of delay.

Payment details

XVI	Total sale consideration	Rs. 1,51,34,800/-
XVII	Total amount paid by the complainant	Rs.1,43,63,871/-

III

Project related details Complaint No.12 of 2019

I.	Name of the project	IMPERIAL GARDENS" situated in Sector 102,Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	IG-06-1204

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V.	Tower No. / Block No.	12 th Floor
VI	Size of the unit (super area)	Measuring 2000 sq mtr
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	26.02.2013
XI	Date of provisional allotment(original)	
XII	Date of execution of BBA	23.05.2013
XIII	Due date of possession as per commitment made at the time of booking	11.08.2017
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 16(a) of BBA compensation @Rs.7.50 per sq ft per month for the period of delay.

Payment details

XVI	Total sale consideration	Rs. 1,64,12,150/-
XVII	Total amount paid by the complainant	Rs. 1,55,04,630/-

IV

Project related details Complaint No.49 of 2019

I.	Name of the project	IMPERIAL GARDENS" situated in Sector 102, Gurugram
II.	Location of the project	-do-

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III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	IG-09-0403
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 2000 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	26.02.2013
XI	Date of provisional allotment(original)	
XII	Date of execution of BBA	29.04.2013
XIII	Due date of possession as per commitment made at the time of booking	11.08.2017
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 16(a) of BBA <u>compensation @Rs.7.50</u> per sq ft per month for the period of delay.

Payment details

XVI	Total sale consideration	Rs. 1,51,34,800/-
XVII	Total amount paid by the complainant	Rs. 1,41,20,490/-

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Project related details Complaint No.3096 of 2020		
I.	Name of the project	IMPERIAL GARDENS" situated in Sector 102, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	IG-07-0703
V.	Tower No. / Block No.	7 th Floor
VI	Size of the unit (super area)	Measuring 2025 sq mtr
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	Feb. 2013
XI	Date of provisional allotment(original)	28.02.2013
XII	Date of execution of BBA	20.06.2013
XIII	Due date of possession as per commitment made at the time of booking	
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 16(a) of BBA <u>compensation @Rs.7.50 per sq ft per month for the period of delay.</u>
Payment details		

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XVI	Total sale consideration	Rs. 1,51,34,800/-
XVII	Total amount paid by the complainant	Rs. 1,51,43,445/-

3. A project known by the name of "IMPERIAL GARDENS" situated in Sector 102, Gurugram was to be developed by the respondent-builder. The complainants coming to know about the same, booked residential units in it for a total sale consideration of Rs. 1,51,34,800/- and deposited different amounts detailed above. It led to execution of Builder Buyer Agreements between the parties on 16.05.2013, 29.04.2013, 20.06.2013, 23.05.2013 and 23.04.2013 respectively. It is the case of the complainants that as per terms and conditions of allotment and the builder buyer agreements, they started paying amount towards the total sale consideration of the units and deposited a sum of Rs.1,49,81,266/-, Rs. 1,43,63,871/-, Rs.1,55,04,630/-, Rs.1,41,20,940/- and Rs.1,51,43,445/-, against the total sale consideration of Rs.1,58,60,072/-, Rs. 1,51,34,800/-, Rs.1,64,12,150/-, Rs.1,51,34,800/- and Rs.1,51,34,800/- respectively. Despite paying more than 90% of the sale consideration, the respondent failed to complete the project and offer possession of the allotted units. It is their case that they visited the project site a number of times and the construction at the spot was very slow. They deposited a major portion of the sale consideration with the hope that the possession of the allotted units would be offered to them by the due date but without any positive result. So, on these broad averments, they filed the complaints seeking refund of Rs.1,49,81,266/-, Rs. 1,43,63,871/-, Rs.1,55,04,630/-, Rs.1,41,20,940/- and Rs.1,51,43,445/- respectively from the respondent-builder besides interest and compensation.

4. But the case of the respondent-builder as set up in the separate

written-replies is that though the complainants deposited the above
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mentioned amount in its project known as Imperial Gardens, Sector 102, Gurugram against booking of residential units but the construction of the project has already been completed and the allotted units have also been offered to the respective complainants including various other allottees. It was admitted that though the due dates as mentioned in the BBA have already been expired but the possession of the allotted units have also been offered to the complainants. So, it is now for the allottees to come forward and take possession of the allotted units. Though there was some delay in completion of the project and offer of possession of the allotted units but that was due to the fault committed by the contractor. The project was not complete as agreed upon within the time limit for construction of the project and which led to issuance of various notices including reminders **Annexure R/7A, 7A2, R7G**. Lastly, it was pleaded that though the construction of the project as well as allotted units was complete by the due date but there was delay in issuance of occupation certificate. So, it also led to some delay in offering possession of the allotted units. It was denied that the claimants are entitled for refund of the amount deposited with it.

5. All other averments made in the complaints were denied in toto

6. I have heard the learned counsel for both the parties and have also perused the case files.

7. It is not disputed that on the basis of request received from the complainants, the units in question detailed above were allotted in their favour by the respondent against total sale consideration mentioned above. There was execution of BBAs between the parties. The due date of possession as agreed upon between the parties has already expired. It is the case of the complainants that they paid a major part of the sale consideration as agreed upon but the respondent failed to offer possession

of the allotted units to them. So, they withdrew from the project and are

entitled to seek refund of the amount besides interest as well as compensation. A reference in this regard has been made to the ratio of law laid down in case of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725** decided on 02.04.2019 and wherein it was held by the Hon'ble Apex Court of law that when the builder fails to fulfil its contractual obligations and obtain occupation certificate and offer possession of the flat to the purchaser within the time stipulated in the agreement or within the reasonable period, then the latter could not be compelled to take possession of the flat though it was offered two years after the grace period has already expired. There is no dispute about the ratio of law laid down in the above mentioned case. In the cases referred to at Sr.No. 2,4 & 5 titled as Punit Arora, Sangeeta Sharma and Balbir Singh Wadhwa Vs Emmar MGF Land Ltd, the complaints against the respondent seeking refund besides interest and compensation were filed on 13.12.2018, 04.01.2019 and 05.10.2020 respectively. It has come on the record that the respondent-builder obtained an occupation certificate of the project known as Imperial Gardens, Sector 102,Gurugram on 17.10.2018 and offered possession of the allotted units to various allottees including the complainants on 24.10.2018 29.10.2018 and 25.10.2019 vide Annexure R-3,R-7 and R-23 respectively. So, after the possession of the allotted units has been offered to the allottees, then they are obligated to take possession and cannot seek refund from the builder. In case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, the same issue arose as in the present case and it was held that the allottees who have been offered possession of the allotted units after receipt of occupation certificate are obligated to take possession of the apartments since the construction was complete and possession was offered. It was also observed that every developer is obligated to pay

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delayed possession charges for the period of delay which has occurred from the due date till the date of offer of possession was made to the allottee. So, in view of law laid down by the Hon'ble Apex Court of the land in the case detailed above, the complainants, namely, Punit Arora, Sangeeta Sharma and Balbir Singh Wadhwa are obligated to take possession of the allotted units after paying the amount due besides interest at the prescribed rate of 9.30% p.a. from the date the same became payable. Similarly, the respondent is also under an obligation to pay delayed possession charges to these allottees from the due date till the date of offer of possession i.e. 24.10.2018, 29.10.2018 and 25.10.2019 respectively. Even otherwise, the complaints filed by them seeking refund of the amount deposited with the respondent-builder are not maintainable as they approached this forum after an offer of possession of the allotted units was made in their favour on the above mentioned dates ^{and} ~~as~~ the complaints seeking refund besides interest and compensation were filed by them on 03.12.2018, 04.10.2019 and 05.10.2020 respectively.

8. It is pleaded on behalf of the complainants Ambuj Kumar Singh, Rahul Tak & Neha Tak that the complaints filed by them seeking refund of the amount besides interest and compensation are maintainable. Though the respondent received an occupation certificate of the project on 17.10.2019 but ^{an} ~~offer~~ offer of possession was made during the pendency of the case on 20.11.2019. The complaints seeking refund were filed by them on 10.12.2018 and 02.01.2019 respectively. Therefore, though they were offered possession of the allotted units but in view of ratio of law laid down in case of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725**, they are not obligated to take possession of the allotted units and are entitled to seek refund of the deposited amount.

There is no dispute about the ratio of law laid down in the above mentioned

case. But in case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019(supra)** decided on 11.01.2021, a different view was taken by the Hon'ble Apex Court of the land and wherein it was held that when construction is complete and possession has been offered of the allotted unit after issuance of occupation certificate, then the allottee is obligated to take possession of an apartment with a rider that builder is also liable to pay delayed possession charges for the period of delay occurred from the due date till the date of offer of possession. No law to the contrary has been shown or cited at the bar. So, in view of the fact that the project known by the name of Imperial Garden situated in Sector 102, Gurugram is complete and its occupation certificate has been received and the offer of possession has already been made to various allottees including the complainants, then their plea with regard to refund is not maintainable and they are obligated to take possession of the allotted units after paying the amount due besides interest@ 9.30% p.a. Similarly, the respondent is also obligated to pay delayed possession charges to the complainants from the due date as agreed upon till the date of offer of possession on 19.11.2019.

9. Thus, in view of my discussion above, the complainants filed above seeking refund of the amount of Rs.1,49,81,266/- Rs. 1,43,63,871/-, Rs.1,55,04,630/- Rs.1,41,20,940/- and Rs.1,51,43,445/-respectively deposited with the respondent-builder are not maintainable and the same are hereby ordered to be rejected. However, the complainants are directed to take possession of the allotted units from the respondent-builder by depositing the remaining amount due besides interest @ 9.30% p.a. from the date the same became due till the actual payment is made. Similarly, it is also directed that respondent is also liable to pay interest @ 9.30% p.a.

Shri. C. S. J. J.
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to the complainants as delayed possession charges of the allotted units from the due dates till the date of offer of possession respectively.

10. A copy of this order be placed in all four connected cases detailed above.

11. Files be consigned to the Registry.

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01.04.2021


(S.C. Goyal) 1-4-2021
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 16.04.2021