



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

Complaint No. : 1698/2019
Date of Decision : 06.09.2021

Smt Poonam Marwah & Rajesh Marwah
R/o Close North, Tower-9
Flat N.1401, Nirvana Country
Sector 49, Gurugram-122002

Complainants

V/s

M/s Emmar MGF Land Ltd.
306-308, IIIrd Floor, Square One
C-2, District Centre, Saket, New Delhi-110017

Respondent

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

Present:

For Complainant:

Mr. K.K Kohli, Advocate

For Respondent:

Mr. Ishaan Dang, Advocate

ORDER

This is a complaint filed by Smt. Poonam Marwah and Shri Rajesh Marwah,(also referred as buyers) under Section 31 of The Real

Estate(Regulation and Development) Act, 2016 (in brief 'The Act') read with rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 against M/s Emmar MGF Land Ltd.(also called as promoter) seeking, directions for refund of Rs.31,33,920/- alongwith interest @18%p.a.

2. According to the complainants, they applied for booking of a residential unit in the project of the respondent known as "Gurgaon Greens" Sector 102, Gurugram. Initially they paid a sum of Rs.7,50,000/- on 25.01.2013 towards booking of unit bearing No.GGN-14-1101, measuring 1650 sq ft. Buyer's Agreement(BA) between the parties was executed on 16.04.2013 wherein it was mentioned that possession of the booked unit shall be handed over within a period of 36 months, from the date of start of construction which started on 25.01.2016. The respondent was entitled to grace period of 5 months. As per payments schedule, they paid different amounts upto 28.08.2013, totalling Rs.31,33,920/- against sale consideration of Rs.97,31,726/-.

3. In the year 2014, they requested the respondent to cancel their unit and refund of deposited amount. They(complainants), in order to get back their money, visited the office of respondent several times between 2014 to 2016 with request to refund their amounts. Instead of cancelling the unit and refunding the amount, respondent continued raising demands, from them.

4. Details of the complaint's case, in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"Gurgaon Greens"

II.	Location of the project	Sector 102, Gurugram
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	GGN-14-1101
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 1650 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)	25.01.2013
XI	Date of Allotment(original)	
XII	Date of execution of FBA (copy of FBA be enclosed)	16.04.2013
XIII	Due date of possession as per FBA	Within 36 months from the date of start of construction i.e. 25.01.2016 with a grace period of five months i.e. 25.06.2016
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 clause	
Payment details		
XVI	Total sale consideration	Rs.97,31,726/-
XVII	Total amount paid by the complainants	Rs. 31,33,920/-

5. Contesting the claim of the complainants, the respondent raised preliminary objection about jurisdiction of this forum, to try and entertain a complaint seeking refund of amount. Even on merits, it is alleged by the respondent that the complainants booked apartment in question as speculative investment, they never intended to reside therein. They(complainants) consciously and wilfully opted for construction linked payment plan, for remittance of sale consideration for the unit in question. The respondent had no reason to suspect their bonafides. They(complainants) undertook to be bound by the terms and conditions of application form, but wantonly and consciously defaulted in timely remittance of instalments.

6. According to respondent, after completion of construction, the same has filed an application for grant of occupation certificate to Directorate of Town and Country Planning, Govt. of Haryana, Chandigarh on 13.04.2018 and occupation certificate has been issued by said office vide Memo dated 05.12.2018. It is claimed that a sum of Rs.1,01,42,681/- was outstanding against the complainants, as on 29.04.2019. Despite being suffered in payments, the respondent itself infused huge funds in the project, so that same is developed and completed in time. Objecting the prayer of interest, as claimed by the complainants, it is alleged by respondent that the same is beyond the scope of buyer's agreement. The complainants cannot demand any interest or compensation, beyond the terms and conditions of buyer's agreement. On the basis of this, respondent prayed for dismissal of complaint, being false and frivolous.

7. Apart from hearing learned counsels for parties, I have gone through the record particularly buyer agreement admittedly entered between the parties.

8. As mentioned above, it is not disputed by the respondent that the complainants applied for unit in question and paid the amounts as claimed by the latter. It is also not disputed that buyer's agreement dated 16.04.2013 was executed between them. As per clause 13 of said agreement, the company i.e. respondent had the right to terminate the agreement and forfeit the earnest money alongwith non-refundable amounts, in case of delay in making any payment by the allottee(s). A provisional allotment letter dated 25.01.2013 provides that in the event of allottee chooses to cancel the booking/allotment and/or the agreement or is in breach of any terms and conditions including but not limited to, send the duly signed copy of the agreement within 30 days from the date of dispatch by the company, the company shall be released and discharged of all liabilities and obligations under this Allotment letter and/or Agreement. Pursuant to any of the conditions^{as} aforesaid, the Allottees understands that the company at any stage shall have the right to resell the unit to any third party or deal with the same in any other manner as the Company may deem fit. On happening of such event, the company will refund to the allottee, the amount paid by allottee without interest and after deducting earnest money alongwith non-refundable amounts due and payable by the Allottee. The Allottee agrees that in case of such cancellation, refund shall be made only after realisation of such refundable amount on their sale/resale of the unit to any third party. As per clause 25 of said agreement reminds that, the allottee understood that the company shall treat 15% of the total consideration to be paid by the allottee, as per the payment plan as earnest money, to ensure due fulfilment by the allottee of

the terms and conditions as contained therein and again that if the allottee chooses to cancel the booking/allotment, in that case, according to clause 26, the company/respondent will have right to resell the unit to 3rd party, after deducting earnest money alongwith non-refundable amounts, due and payable by the allottee.

9. As mentioned above, according to complainants. On 04.06.2016, they sent email to the respondent seeking cancellation of their unit and also for refund of amount(Annexure C-1). The respondent in its reply did not deny specifically about receipt of such emails. In this way, as per agreement between the parties, the respondent was bound to refund the amount, when complainants opted to cancel their unit and requested for refund of amount. Respondent was entitled to forfeit the amount of earnest money alongwith non-refundable amounts, as mentioned in agreement. Admittedly, no such refund was made by the respondent. No reasonable explanation is given in this regard.


10. So far as the plea of respondent that complainants could not claim interest, as there was no such provision in agreement, is concerned, when respondent received request of complainants for cancellation of the unit, and refund of their amount, same was liable to refund the amount, received till then, after deduction as mentioned above. Failing, in this way, respondent is liable for payment of interest etc. as same retained the amount of complainants illegally, without any excuse.

11. The complaint, in hands is thus allowed. Respondent is directed to refund the amount received from the complainants, after deducting earnest money etc as mentioned above. Same is also directed to pay interest on said amount @ 9.30%p.a. from 04.06.2016 i.e. the date on which the complainants requested for refund of the amount after cancelling their unit,

by sending emails, till realisation of amount. This amount is to be paid within 90 days from the date of this order. Respondent is also burdened with cost of Rs.50,000/- to be paid to the complainant.

12. File be consigned to the Registry.

06.09.2021


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 11.09.2021.