



HARERA
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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

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Day and Date	Wednesday and 15.12.2021
Complaint no.	CR/3918/2021 Case titled as Ruchi Sehgal V/s Emaar MGF Land Ltd.
Complainant	Ruchi Sehgal
Represented through	Shri Jagdeep Kumar Advocate
Respondent	Emaar MGF Land Ltd.
Respondent represented through	Shri Harshit Batra Advocate
Last date of hearing	19.10.2021
Proceeding recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint has been received on 29.09.2021 and the reply was received on 19.10.2021.

Succinct facts of the case as per complaint and reply are as under:

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Unit no.	GGN-12-0701, 7 th floor, building no. 12 [annexure P2, page 45 of complaint]
3.	Provisional allotment letter dated	27.01.2013 [annexure P1, page 31 of complaint]
4.	Date of execution of buyer's agreement	26.04.2013 [annexure P2, page 42 of complaint]

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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CR 3918/2021

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5.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p>(emphasis supplied)</p> <p>[annexure P2, page 58 of complaint]</p>
6.	Date of start of construction as per statement of account dated 13.10.2021 at page 117 of reply	14.06.2013
7.	Due date of possession	14.06.2016 [Note: Grace period is not included]
8.	Total consideration as per statement of account dated 13.10.2021 at page 117 of reply	Rs. 98,65,174/-
9.	Total amount paid by the complainant as per statement of account dated 13.10.2021 at page 118 of reply	Rs. 99,24,786/-

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10.	Occupation certificate	30.05.2019
11.	Offer of possession	01.06.2019 [annexure R10, page 125 of reply]
12.	Unit handover letter dated	28.09.2019 [annexure R11, page 130 of reply]
13.	Conveyance deed executed on	03.10.2019 [annexure R12, page 133 of reply]
14.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 13.10.2021 at page 117 of reply	Rs. 3,77,963/-

The complainant is seeking the following reliefs:

1. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

Considering the above-mentioned facts, the authority calculated due date of possession according to clause 14(a) of the agreement i.e., 36 months from the date of start of construction and disallows the grace period of 5 months as the promoter has not applied to the concerned authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore, the authority allows DPC w.e.f. 14.06.2016 till 01.08.2019 i.e. expiry of 2 months from the date of offer of possession (01.06.2019).

The amount of compensation already paid to the complainant by the respondent as delay compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the prescribed rate of interest (DPC) to be paid by the respondent as per the proviso to section 18(1) of the Act.



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CRJ 29/8/2021

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2. Direct the respondent to return Rs.1,12,576/- unreasonably charged by the respondent by increasing sale price after execution of buyer's agreement between the respondent and the complainant.

As per schedule of payment annexed with the buyer's agreement (annexure P2, page 73 of complaint), the total sale consideration is Rs.92,58,383/- which is inclusive of basic sale price, EDC and IDC, club membership, IFMS, car parking, PLC and additional charges. Whereas as per statement of account dated 04.09.2021 (annexure P6, page 99 of complaint), the sale consideration has been increased to Rs.92,88,459/- i.e. an increase of Rs.30,076/-. Further IFMS of Rs.82,500/- has also been again added. Accordingly, Rs.1,12,576/- have been charged extra.

Therefore, the respondent is directed to delete the said amount from the total sale consideration.

3. Direct the respondent to charge maintenance in accordance with the buyer's agreement and furnish the records and details of maintenance calculations with the respondent.

The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

In the present complaint, as per clause 21 of the buyer's agreement, following provisions has been made with respect to the advance maintenance charges:

"21. MAINTENANCE

- (a) *The Allottee hereby agrees and undertakes to enter into a separate Maintenance Agreement as per the draft provided as Annexure-IX to this Agreement with the Maintenance Agency.*
- (b) *The Allottee further agrees and undertakes to pay the Maintenance Charges as may be levied by the Maintenance Agency for the upkeep and maintenance of the Project, its common areas, utilities, equipment installed in the Building and such other facilities forming part of the Project. Further, the Allottee agrees and undertakes to pay in advance, along with the last installment specified under Payment Plan, advance*



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maintenance charge (AMC) equivalent to Maintenance Charges for a period of one year or as maybe decided by the Company / Maintenance Agency at its discretion. Such charges payable by the Allottee will be subject to escalation of such costs and expenses as may be levied by the Maintenance Agency. The Company reserves the right to change, modify, amend and impose additional conditions in the Tripartite Maintenance Agreement at its sole discretion from time to time. (Emphasis supplied)

In the present complaint, the respondent has demanded Rs.1,44,540/- towards advance maintenance charges (@ Rs.3.65 per sq. ft.) for period of 24 months as per letter of offer of possession dated 01.06.2019.

Keeping in view the facts above, the authority holds that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgement (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the complainant.

4. Direct the respondent to return entire amount paid as GST.

The complainant submitted that GST came into force on 01.07.2017 and the possession was supposed to delivered by 14.06.2016. Therefore, the tax which has come into existence after the due date of possession and this extra cost should not be levied on complainant. On the contrary, the respondent denied that any amount towards GST is liable to be returned to the complainant.

The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements. In the present complaint, the possession of the subject unit was required to be delivered by 14.06.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the said agreement.



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5. Direct the respondent to return entire amount paid as VAT tax by the complainant between 01.04.2014 to 30.06.2017 and issue necessary instructions to the complainant's bank to remove lien marked over FD of Rs.3,04,935/- in favour of the respondent on the pretext of future payment of HVAT.

The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

In the present complaint, the respondent has not charged any amount towards HVAT for the period of 01.04.2014 till 30.06.2017, however, vide letter of offer of possession dated 01.06.2019 has demanded lien marked FD of Rs. 3,04,935/- towards future liability of HVAT for liability post 01.04.2014 till 30.06.2017. In light of judgement stated above, the respondent shall not demand the same and the lien so marked be removed.

Concerned bank be also informed both by the respondent and the complainant alongwith copy of this order.

6. Direct the respondent to return entire amount of Rs. 21,123/- paid as holding charges by the respondent.

The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

Therefore, in light of the above, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.



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7. Direct the respondent to get the flat measurement done by independent architect and furnish the report of actual size of flat to complainants and adjust the cost in accordance with actual size deliver to the complainant. - **This relief was not pressed by the counsel for the complainant.**

8. Direct the respondent to charge electricity charges in accordance with consumption of units by complainant and restrain the respondent from charging fixed minimum charges on electricity meters. - **This relief was not pressed by the counsel for the complainant.**

The matter stands disposed of. Detailed order will follow. File be consigned to registry.

V.K. - 
Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
15.12.2021