

PROCEEDINGS OF THE DAY		49
Day and Date	Tuesday and 01.02.2022	
Complaint no.	CR/4582/2021 Case titled as Saumendu Sinha and Smita Sinha V/s Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	
Complainants	Saumendu Sinha and Smita Sinha	
Complainants represented	Shri Jagdeep Kumar Advocate	
Respondent	Emaar India Ltd. (Formerly known as Emaar MGF Land Ltd.)	
Respondent represented through	Shri Harshit Batra Advocate	
Last date of hearing	First hearing	
Proceeding recorded by	Naresh Kumari and HR Mehta	
<b>Proceedings through V.C.</b>		
The present complaint has been received on 30.11.2021 and the reply was received on 30.12.2021.		
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-26-1202, 12 <sup>th</sup> floor, building no. 26 [annexure P2, page 45 of complaint]
3.	Provisional allotment letter dated	27.01.2013 [annexure R2, page 39 of reply]





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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CR/1582/221

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

4.	Date of execution of buyer's agreement	28.05.2013 [annexure P2, page 42 of complaint]
5.	Possession clause	<p><b>14. POSSESSION</b></p> <p><b>(a) Time of handing over the Possession</b></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 <b>36 (Thirty Six) months from the date of start of construction</b>, 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 <b>grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</b></i></p> <p>(emphasis supplied)</p>
6.	Date of start of construction as per statement of account dated 02.12.2021 at page 192 of reply	25.06.2013
7.	Due date of possession	25.06.2016 [Note: Grace period is not included]
8.	Total consideration as per statement of account dated 02.12.2021 at page 192 of reply	Rs. 1,32,78,012/- Rs.1,22,91,913/- exclusive of taxes as per buyer's agreement
9.	Total amount paid by the complainants as per statement of	Rs.1,32,83,780/-

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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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

21/08/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

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	account dated 02.12.2021 at page 194 of reply	
10.	Occupation certificate	16.07.2019 [annexure R6, page 134 of reply]
11.	Offer of possession	19.07.2019 [annexure R7, page 137 of reply]
12.	Unit handover letter dated	24.10.2019 [annexure R7, page 146 of reply]
13.	Conveyance deed executed on	05.11.2019 [annexure R8, page 150 of reply]
14.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 02.12.2021 at page 193 of reply	Rs.4,05,222/-

The complainants are 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 complainants 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. **26.06.2016 till 19.09.2019** i.e. expiry of 2 months from the date of offer of possession (19.07.2019).

The amount of compensation already paid to the complainants by the respondent as delayed compensation as per the buyer's agreement shall be adjusted towards delay possession charges payable by the promoter at the

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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

CRN/582/2021

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prescribed rate of interest to be paid by the respondent as per the proviso to section 18(1) of the Act.

**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 complainants.**

The counsel for the complainants submitted that as per schedule of payment annexed with the buyer's agreement (annexure P2, page 73 of complaint), the total sale consideration is Rs. 1,22,91,913.04/- 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 02.12.2021 (annexure R9, page 192 of reply), the sale consideration has been increased to Rs.1,23,21,989/- i.e. an increase of Rs.30,076/-. Further IFMS of Rs.82,500/- has also been again added. Therefore, Rs.1,12,576/- have been charged extra.

The respondent submitted that an amount of Rs.1,12,576/- has been charged as per the agreement: the sum being resultant of other charges @ Rs.63/- per sq. ft. + administrative charges of Rs.12,000/- + miscellaneous expenditure for registration charges of Rs.2,500/- with a deduction of Rs.5,874/- for reverse EDC.

In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has held that a nominal amount of up to Rs.15000/- may be charged by the promoter for administrative/registration charges which it may have incurred for facilitating the transfer of the subject unit as has been fixed by the DTP office in this regard and for any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

In light of the aforesaid judgement, the respondent is directed not to charge any amount under the head 'other charges' or 'miscellaneous expenditure' and is directed to delete the said amount from the total sale consideration.

**3. Direct the respondent to return entire amount paid as GST.**





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CA/1582/2021

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The complainants submitted that GST came into force on 01.07.2017 and the possession was supposed to be delivered by 25.06.2016. Therefore, the tax which has come into existence after the due date of possession and this extra cost should not be levied on complainants. On the contrary, the respondent denied that any amount towards GST is liable to be returned to the complainants.

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 25.06.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants 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 complainants/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.

- 4. Direct the respondent to return entire amount paid as VAT tax by the complainants 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.2,85,591/- in favour of the respondent on the pretext of future payment of HVAT for the period 01.04.2014 to 30.06.2017.**

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.





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CR/158/221

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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 19.07.2019 has demanded lien marked FD of Rs. 2,85,591/- 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. Also, information about the same be sent to the concerned bank by the promoter as well as complainants along with the copy of this order.

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

VJ - 3  
Vijay Kumar Goyal  
Member

  
Dr. KK Khandelwal  
Chairman  
01.02.2022