



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

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

Day and Date	Tuesday and 12.10.2021
Complaint No.	CR/4209/2020 Case titled as Pawan Dutta VS Emaar MGF Land Ltd.
Complainant	Pawan Dutta
Represented through	Sh. Gaurav Rawat, Advocate
Respondent	Emaar MGF Land Ltd
Respondent Represented through	Sh. J.K. Dang, Advocate
Last date of hearing	01.09.2021
Proceeding Recorded by	Satvir Singh and Ram Niwas

Proceedings

Arguments heard.

As per Builder Buyer Agreement executed between the parties on 19.01.2010, the possession of the unit was to be handed over by 19.01.2013. The complainant has paid only Rs.27,89,527/- against a total sale consideration of Rs.79,57,000/-. As such, the builder has cancelled the unit of the complainant vide letter dated 28.12.2013 due to non-payment of balance amount and forfeited Rs.14,09,830/-.

The complainant remained dormant on his rights for more than 6 years 10 months since the cause of action arose i.e. from the issuance of cancellation letter dated 28.12.2013 and till filing of this complaint i.e. 23.11.2020 as he did not approach any forum to avail his rights for almost six years.

It is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]** the hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of his/her right. In

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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GURUGRAM CR/1209/2020
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order to claim one's right, he/she must be watchful of his/her rights. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.

In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint for handing over possession along with delay possession charges is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. Moreover, the respondent submitted that after cancellation they have created third party right. The procedures of law cannot be allowed to be misused by the courts and it is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. However, the respondent should also not be allowed to get unfair advantage as he himself should have refunded the amount after cancelling the unit in question, but he failed to do so. Allowing the respondent for such practices may set a wrong precedence in the real estate industry. As per record, the balance amount of Rs.13,79,696/- was refundable under the cancellation letter dated 28.12.2013 but till date no such refund has been credited in the account of the complainant. Therefore, the respondent is directed to return the balance amount of Rs.13,79,696/- to the complainant as per the cancellation letter dated 28.12.2013.

The present complaint is not maintainable being barred by limitation. The matter stands disposed of.


Samir Kumar
Member


Dr. KK Khandelwal
Chairman
12.10.2021


Vijay Kumar Goyal
Member