

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

Complaint no. : 746 of 2021  
Date of decision : 07.04.2022

PANKAJ SARIN AND KANIKA SARIN  
R/O : Tower A, Flat No. 1502,  
Pioneer, Presidia CRPF Road,  
Sector-62, Gurugram- 122101

**Complainants**

Versus

EMAAR INDIA LTD.  
Address : Emaar Business Park,  
Sikanderpur, Sector-28,  
Gurugram, Haryana-122001

**Respondent**

**APPEARANCE:**

For Complainants:


Ms. Tanya Karnwal SPOA

For Respondent:


Mr. Ishaan Dang Advocate

**ORDER**

1. This is a complaint filed by Pankaj Sarin and Kanika Sarin (also called as buyers) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.

  
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2. Through this complaint, the complainants prayed for following reliefs:
- i. to direct the respondent to pay the compensation on account of the delay from the offer of possession till the actual physical possession of unit;
  - ii. to provide compensation for the delay of 21 months between the booking of the project and the start of excavation of the project;
  - iii. to provide the complainants the compensation for the rented premises for the months of August 2015 to November 2015 and April 2019 till August 2019;
  - iv. to provide compensation to the complainants in terms of rebate in accordance with either the Construction linked plan or the Subvention plan as neither is provided;
  - v. to provide compensation to the complainants towards mental agony and harassment caused due to delay, in registration of Conveyance Deed;
  - vi. to pass any other direction, which the adjudicating officer may deem fit, in the favour of the complainants and against the respondent.
3. Vide order of this forum dated 21.01.2022, the complainants were found entitled to get compensation from the respondent. The matter was adjourned for consideration on quantum of compensation.
4. Heard. It is contended by learned counsel for respondent that the complainants have already filed a complaint before the Haryana Real Estate Regulatory Authority, Gurugram ( in brief 'Authority') seeking delayed possession charges. In such a circumstance, the complainants cannot claim compensation either in the name of rent allegedly paid by them, during the period of delay, in handing over possession or for period between booking of unit and start of excavation work. Again,

  
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no compensation in the name of mental agony or harassment can be awarded, when same have already claimed for delay possession charges.

5. Learned counsel relies upon a case titled as **DLF Homes Panchkula Pvt. Ltd. Vs. D.S Dhanda AIR 2019 SC 3218**. It was a complaint, under The Consumer Protection Act, 1986. The National Consumer Disputed Redressal Commission (in brief NCDRC) granted compensation under various heads. The Apex Court set aside such award, stating that the amount of interest is the compensation to the beneficiary, deprived of the use of the investment made by the complainants. Such interest will take into its ambit, the consequences of delay in not handing over possession, award under various heads in respect of same default, is not sustainable.
6. There is no dispute over the mandate given by the Apex court. Aforesaid complaint was filed under The Consumer Protection Act, 1986. The Parliament has passed The Real Estate(Development and Regulation) Act, 2016, which is a special Act, with specific objects including to protect the interest of consumers, in real estate sector. Section 19 of said Act describes the rights and duties of allottee(s). Sub-section 4 of same provides that allottee shall be entitled to claim refund of amount paid alongwith interest at such rates as may be prescribed and compensation in the manner, as provided under this Act from the promoter, if the promoter fails to complete or is unable to give possession of apartment/plot or the building, as the case may, in accordance with the terms of agreement for sale. Section 18 of Act of 2016 prescribes for return of amount and compensation by the promoter. According to it, if promoter fails to complete or is unable to

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give possession of an apartment/plot or the building, as the case may be:

- a) In accordance with terms of agreement for sale or as the case may be duly completed by the date specified therein or;
- b) Due to discontinuance of his business.....

In such a case, he(promoter) shall be liable, on demand to the allottee..... to return the amount received by it in respect of that apartment/plot or the building, as the case may be with interest at such rates as may be prescribed in this behalf **including compensation** in the manner as provided under this Act. Both of these provisions cast obligation upon the promoter, to refund amount alongwith interest **as well as to pay compensation** in the manner, as provided under the Act.

7. The Apex court through a recent judgment given in case titled as **M/s Newtech Promoters and Developers Pvt Ltd. Vs State of UP & Ors Etc in Civil Appeal No.6745-6749 of 2021** referred both of aforesaid provisions i.e. Section 18 and 19 of the Act and observed as follow-

*"22 If we take a conjoint reading of sub-section(1),(2) and (3) of Section 18 of the Act, the different contingencies spelt out therein.(A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed;(C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act: (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed."*

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8. Their Lordships explained that section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both of these provisions recognise right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.
9. As described above, according to Section 18 and 19 of the Act, also relied upon by three Judges Bench of the Supreme Court of India in case referred above, it is clear that apart from interest on delayed possession charges, the complainants are entitled to compensation, in the manner, as provided under this Act.
10. As held by this forum vide order dated 21.01.2022, the respondent delayed start of construction for more than one year which was apparently unreasonable delay. The respondent used money of complainant without any justification. Moreover, this unreasonable delay in start of construction of project contributed in ultimate delay in completion of project. The allottees had right to get possession in agreed time and consequently duty of builder/promoter. Applying principle of *ubi jus ibi remedium*, the complainants are entitled to remedy in the manner of compensation.
11. As per Section 72 of Act of 2016, following factors are to be taken in account by the Adjudicating Officer while adjudging the quantum of compensation:
  - a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
  - b) the amount of loss caused as a result of the default;
  - c) the repetitive nature of the default;
  - d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

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- 14 There is nothing on record to show if any disproportionate amount is gained by builder, by not handing over possession of unit in question to the complainants. Similarly, there is no evidence to prove that respondent committed any such default earlier also. So far as the loss caused to the complainants in not getting possession of unit in question in time is concerned, as per special power of attorney holder representing them (complainants), they had hoped that after getting possession of flat in question, their burden of rental would go off and they will start living in their own house.
- 15 Complainants did not adduce any evidence to prove that they actually paid any rent during the period, same were <sup>entitled</sup> due to get possession of unit in question, till possession of same was actually handed over. According to Ld. attorney for complainants, although respondent offered possession on 16.8.2019, but the unit was not habitable and this fact is admitted by respondent also. Actual possession was given on 29.11.2019 i.e. after 4 years of due date of possession.
- 16 Unit in question is stated to be a flat situated in the project of respondent namely **"Palm Terraces Select" Golf Course Extension Road, Sector 66, Gurugram**, having super area of 2410 sq. ft. Considering the size of unit and also the locality where same is situated, this forum considers to award compensation of Rs. 10,000/- per month as <sup>compensation</sup> for deprivation of possession from the due date of possession i.e. 30.11.2015 till the date of actual handing over possession i.e. 29.11.2019.
- 17 . As per complainants they had paid Rs 57,62,270 to the respondent at the time of nomination of unit. The latter used money of buyers/complainants and did not start construction work within

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reasonable time. No explanation is given on behalf of respondent in this regard. The respondent is liable to compensate the buyers i.e. complainants. Same is directed to pay Rs 50,000 <sup>for</sup> delay <sup>in this regard</sup> for that. ✓

18. I do not find much force in plea of learned counsel for respondent stating that there is no evidence to verify that complainants actually suffered any mental agony due to fact that same did not get <sup>over</sup> possession of unit in time. To get a possession of their dream unit in agreed time, was right of buyers/complainants. It is not necessary that same would have suffered any mental illness. To deprive a person from his right amounts in itself a mental agony for such a person. The complainants are awarded a sum of Rs. 1,00,000/- as compensation for harassment and mental agony and again Rs 50,000 as litigation expenses.

19. The respondent is directed to pay aforesaid amounts to the complainants within 30 days <sup>from this order</sup> failing which complainants will be entitled to get interest @ 9.3 % p.a. till the date of realisation.

20. A decree sheet be prepared accordingly.

21. File be consigned to the Registry.

  
(Rajender Kumar) 7-4-22  
Adjudicating Officer,  
Haryana Real Estate Regulatory Authority  
Gurugram