



HARERA
GURUGRAM

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

Complaint no. : 1429 of 2021
Date of decision : 11.04.2022

PRASHANT JAIN
AND AKTA JAIN
R/O : L 106, Sarita Vihar,
New Delhi

Complainants

Versus

EMAAR MGF LAND LTD
ADDRESS: ECE House, 28,
Kasturba Gandhi Marg,
New Delhi-110001

Respondent

APPEARANCE:

For Complainant:

For Respondent:

Mr. Suresh Malhotra Advocate

Mr. M. K. Dang Advocate

ORDER

1. This is a complaint filed by Mr. Prashant Jain and Ms. Akta Jain (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.

2. As per complainants, on 06.05.2010, Mr. Harish Banwari, booked a residential independent floor, in respondent's project **Emerald Floor Premier**, situated at sector-65, Gurugram. A buyer's agreement dated 06.09.2010 was executed between parties for unit No. EFP-II-56-0101, admeasuring 1975 sq. ft consisting of 4 bedrooms, 4 bathrooms, study, servant room (on terrace). Subsequently, the said unit was purchased by complainant no. 1 and Suresh Chand. The transaction was endorsed by respondent in favour of complainant No. 1 and Suresh Chand on 16.11.2011. The name of complainant No. 2 was substituted in place of Mr Suresh Chand vide endorsement dated 29.12.2020.

3. As per Clause 11 (a) of buyer's agreement, possession of said unit was to be delivered by the developer to the allottees within 36 months from the date of buyer's agreement with further grace period of 3 months for applying/obtaining occupation certificate in respect of unit and/or the project.

4. They (complainants) have made timely payments as demands are raised by respondent, in accordance with the



payment plan opted by the complainants and no amount remained due on their part.

5. The respondent had committed to give possession of the unit by January 2014 but failed to do so. The complainants approached respondent with respect to their grievances. The respondent assured that it shall pay adequate compensation to them (complainants) for the period of delay in possession at the time of delivery of possession.
6. As the project was nowhere near completion, considering the inordinate delay in completion of project, complainants were compelled to file consumer complaint before National Consumer Redressal Commission, bearing complaint No. CC/1563/2019, against the respondent and sought immediate possession of unit along with interest @ 12 % and Rs 5,00,000 towards mental agony, harassment, and litigation cost.
7. Subsequently, parties entered into a settlement and the same was recorded in writing vide settlement agreement dated 19.03.2020. As per said settlement respondent agreed to pay lump sum compensation of Rs 17,00,000 for delay in handing over possession and including mental agony etc calculated upto 12.03.2020 and the same was paid by respondent. Further, the respondent had agreed to pay additional compensation @ 779/- per day less TDS starting

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from 12.03.2020 till the date of letter of intimation of possession (complete in all respects) of the unit, provide additional car parking space along with unit and refund excess amount received by it.

8. The respondent offered possession of the unit vide letter dated 20.11.2020. When complainants inspected the unit, they got shocked to notice that servant quarter admeasuring approximately 70 sq.ft. of super area was not constructed as promised. The respondent without intimating the complainants has changed the floor plan. The servant quarter was to be constructed on the terrace, but respondent has now sold the roof rights of the area (where servant room and common areas was to be constructed) to the top floor owner. Further, respondent had assured seamless access to basement parking along with independent floor of complainants, but on the contrary the access to basement parking is through another block several metres away.
9. Complainants approached respondent, for all the aforesaid deficiencies and defects, through various emails dated 01.12.2020, 23.11.2020, 25.11.2020, 04.02.2021. They (complainants) requested respondents to issue fresh offer of possession after completing the construction of unit as per agreement and to pay per day penalty in accordance

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with settlement agreement. The respondent has delayed delivery of possession of unit due to which complainants have to bear additional burden of increased stamp value required for registration of unit in question due to increase in stamp and municipal rates @ 2 % for registration of property in Gurugram.

10. The respondent refused to determine and ascertain the physical measurement of the unit and are now forcing complainants to accept the possession of unit as it is without servant quarter. To pressurise complainants to take possession of unit, respondent has raised invoices on account of holding charges and common area maintenance charges. The complainants regardless of the issue of non-construction of servant quarter is making payments of maintenance charges under protest.

11. Contending that the respondent has breached the fundamental terms of the contract, by not delivering possession of the unit as per the agreed floor plan and specifications, complainants have sought refund of excessive amount received on account of area of servant quarter on terrace floor (admeasuring 8 sq. ft. \times 6 sq. ft. = 57.6 sq. ft. of carpet area and 70 sq. ft. (approximately) of super area) along with common washroom on the terrace for servant/common usage along with interest @ 9.3 % per

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annum from the date of deposit of each payment till realisation of the same, per day penalty/compensation of Rs 779/- per day starting from 12.03.2020, to complainants for offering possession without having completing the unit till the date of actual possession of independent floor complete in all respects as per BBA, in terms of cluse 1 (ii) of settlement agreement dated 19.03.2020, Rs 10,00,000 towards damages for physical and mental torture, agony, discomfort and undue hardship; compensation on account of increase in stamp duty rates due to delay attributable to respondent; refund of amount of maintenance charges as well as withdraw holding charges illegally levied against the unit; withdraw false frivolous intimation of possession letter dated 20.11.2020 which has been issued without completing project and issue fresh offer of possession when the unit is completed in all respects and is in habitable condition; compensation for not providing seamless car parking charges along with residential independent floor; Rs 1,50,000 as litigation expenses.

12.The respondent contested the complaint by filing a reply. It is averred that apartment No. EFP-II-56-0101 was provisionally allottee in favour of original allottee on 15.06.2010 and buyer's agreement was executed between parties on 06.09.2010. The unit was transferred in favour of

complainant no. 1 and Suresh Chand on 11.11.2011 and not 16.11.2011. Subsequently the name of Suresh Chand was deleted and name of complainant no. 2 was added.

13. Further, provisions of Act of 2016 are not retrospective in nature. The provisions of Act of 2016 cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of Act.

14. It is averred that the project got delayed on account of various reasons which were beyond the control of respondent. Building plans were approved under the then applicable National Building Code (NBC) in terms of which buildings approved with single staircase. Subsequently, the NBC was revised in the year 2016 and Fire Department insisted upon construction of two staircase as per new rules. The respondent to avoid any further delay and for safety of occupants of buildings of project completed the construction of second staircase. Also the contractor who was engaged for construction of the project delayed the construction work and was not able to meet time-line. The had even filed a petition bearing No OMP. No. 100 of 2015 under section 9 of Arbitration and Conciliation Act 1996 before Hon'ble High Court. A settlement was also reached between respondent and contractor but as contractor was not able to meet the time-line, respondent had ended the

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contract vide termination notice dated 30.08.2018. The respondent had filed petition before Hon'ble High Court for protection against contractor. The Sole Arbitrator vide order dated 27.04.2019 gave liberty to respondent to appoint another contractor w.e.f 15.05.2019. The occupation certificate was granted 11.11.2020 and accordingly possession was offered to complainants on 20.11.2020.

15. Further, original allottees as well as complainants had defaulted in remittance of instalments and were thus not entitled to any compensation on account of delay in possession. Complainants had purchased the unit in resale and were aware at the time of purchase of unit that timeline for delivery of possession as set out in buyer's agreement could not be applicable to the subject unit. Furthermore, the terms of buyer's agreement are to be read in conjunction with settlement agreement dated 19.03.2020 in terms of which timeline for delivery of possession have been mutually extended by both the parties.

16. The respondent contended that project has been constructed as per the approved building plans which do not provide for any servant quarters on terrace for the said tower in which the unit in question is situated. As per the buyer's agreement the unit to be provided to the

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complainants was tentatively measured at 1975 sq. ft. and the same has been provided to the complainants. Further, respondent has already offered possession of the unit to complainants on 20th November 2020 after obtaining occupation certificate.

17. Furthermore, complainants are liable to pay stamp duty applicable on the date of registration of conveyance deed. The unit has been constructed as per the specifications set out under buyer's agreement and occupation certificate in respect thereof has already been issued by competent authority.

18. The respondent denied that complainants were promised 'seamless car parking'. The car parking space allocated to complainants is located close to unit of complainants and there is no default on the part of respondent.

19. The respondent submitted that payment of compensation amounting to Rs 17,00,000 and Amazon Gift Voucher worth Rs 1.5 lacs, refund of excess charges of Rs 1,36,699/- has already been done by respondent. The additional compensation of Rs 1,97,087 @ 779/- per day from 12.03.2020 till 20.11.2020 has already been transferred in favour of complainants. A sum of Rs 11,40,711 is outstanding and payable by complainants to respondents under various heads.

20. Moreover, complainants have failed to come forward to take possession of unit after payment of balance sale consideration. The complainants are liable for consequences of their defaults under buyer's agreement and are liable to pay holding charges, interest on delayed payment, stamp duty, e challan etc. the complainants are also liable for violation of section 19(10) of Act of 2016, by their wilful failure to obtain possession within 2 months from the date of issuance of occupation certificate by competent authority.
21. The complainant had entered into settlement agreement dated 19.03.2020 whereby complainant had agreed and undertook to withdraw consumer complaint before NCDRC and not institute any claim against respondent of any nature whatsoever. The present complaint has been filed in violation of terms and conditions of settlement agreement.
22. Contending all this, respondent prayed for dismissal of complaint.
23. The execution of settlement agreement dated 19.03.2020 admitted by both the parties. The learned counsel for complainants submitted that possession of unit has been taken by complainants during pendency of complaint.
24. The learned counsel for respondent argued that settlement between the parties is not an outcome of any coercion or undue influence and after execution of aforesaid settlement

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agreement, complainants are estopped from raising any claim in whatsoever nature.

25. It is further argued on behalf of respondent that as per the terms of settlement agreement complainant was under an obligation to withdraw the consumer complaint filed before NCDRC but the same is still pending before the aforesaid forum.
26. Learned counsel for complainants submitted that as parties have already reached a settlement about delay payment charges. He restricts the scope of present complaint only to the issue that servant quarter admeasuring approximately 70 sq. ft. of the super area has not been constructed as promised by the respondent. The latter be directed to compensate their client i.e. complainants in that regard. Apart from same learned counsel requests for compensation on account of mental and physical harassment as well as costs of the litigation
27. It is not denied on behalf of respondent that the latter committed to provide servant quarter on the terrace. The only plea taken by same is that ^{as} accordingly approved building plans did not provide for such a servant quarter on terrace and hence same could not be provided. ^{as} When promise was made by the builder i.e. respondent same was obliged to fulfil its promise, by constructing servant quarter

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or alternatively to compensate the same. As per learned counsel for complainants said servant quarter was admeasuring approximately 70 sq. ft. of the super area. This fact is not disputed during deliberations. Considering same respondent is directed to compensate the complainants about servant quarter admeasuring 70 sq. ft. ^(super area) at the same rate, which complainants have paid to it i.e. respondent. The respondent is liable to pay interest @ 9.30% on this amount from the date of handing over possession till realization of the amount. Apart from all this, complainants are awarded a sum of Rs. 50,000/-. As compensation for physical and mental harassment due to this litigation and again a sum of Rs. 50,000/- as cost of litigation. It is worth mentioning that the complainants did not file any receipt of payment if made to his counsel, but it is evident that complainants are represented by counsel in this case.

28. Decree sheet be prepared accordingly.

29. File be consigned to the registry.

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(Rajender Kumar) 11-4-22
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram