

PROCEEDINGS OF THE DAY		9
Day and Date	Monday and 06.02.2023	
Complaint No.	CR/3751/2021 Case titled as Anuradha Nidubrolu And Vivek Madnani Vs Emaar MGF Land limited	
Complainant	Anuradha Nidubrolu And Vivek Madnani	
Represented through	Shri Ravi Sharma proxy counsel	
Respondent	Emaar MGF Land limited	
Respondent Represented	Shri Harshit Batra Advocate	
Last date of hearing	03.02.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The present complaint has been received on 15.09.2021 and the reply was received on 16.11.2021.

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

Sr. No.	Particulars	Details
1.	Name of the project	Emerald Hills- Floors, Sector 65, Gurugram, Haryana
2.	Unit no.	EHF-267-A-GF-062 [page 22 of complaint]
3.	Provisional allotment letter w.r.t original allottee (Mr. Kalidas Mukherjee)	23.07.2009 [annexure R1, page 26 of reply]
4.	Date of execution of buyer's agreement w.r.t original allottee	17.03.2010 [annexure A, page 21 of complaint]



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हरियाणा भू-संपदा विनियामक, प्राधिकरण, गुरुग्राम, 2021

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

5.	Nomination letter w.r.t 1 st subsequent allottee (Mr. Vipin Chandra)	16.07.2010 [annexure R2, page 93 of reply]
6.	Nomination letter w.r.t 2 nd subsequent allottees (Mr. Veer Singh Sarna and Ramneek Kaur)	01.09.2017 [annexure R2, page 94 of reply]
7.	Possession clause	13: POSSESSION (a) Time of handing over the possession <i>Subject to terms of this clause and subject to the Allottee(s) 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 independent floor within 27 months from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a <u>grace period of 3 months for applying and obtaining the occupation certificate in respect of the Independent Floor and/or the Project.</u></i> (Emphasis supplied) [annexure A, page 36 of complaint]
8.	Due date of possession	11.06.2012 [Note: Grace period is not included]
9.	Total consideration as per statement of account dated 11.05.2019 at page 100 of reply	Rs. 62,18,583/-
10.	Total amount paid by the complainants as per statement of account dated 11.05.2019 at page 100 of reply	Rs.52,04,471/-



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CR/3151/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

11.	Occupation certificate	09.05.2019 [annexure R4, page 167 of reply]
12.	Offer of possession to 2 nd subsequent allottee	11.05.2019 [annexure R2, page 95 of reply]
13.	Conveyance deed w.r.t 2 nd subsequent allottee	24.02.2020 [annexure R2, page 106 of reply]
14.	Sale deed executed between 2 nd subsequent allottee and present allottee i.e., complainants	23.06.2020 [annexure C, page 93 of complaint]

The complainants are seeking the following reliefs:

1. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

The subject unit in the said project was originally allotted to Mr. Kalidas Mukherjee vide provisional allotment letter dated 23.07.2009 then the unit was subsequently transferred to Mr. Vipin Chandra (1st subsequent allottee) vide nomination letter dated 16.07.2010 who further transferred the unit to Mr. Veersingh Sarna and Ramneek Kaur (2nd subsequent allottees) vide nomination letter dated 01.09.2017, who was offered the possession on 11.05.2019 and the possession was subsequently handed over to them vide unit hand over letter dated 03.02.2020 and consequently a conveyance deed was executed on 24.02.2020. After this, Mr. Veersingh Sarna and Ramneek Kaur transferred the ownership rights to Mr. Vivek Madnani & Mrs. Anuradha Nidubrolu (complainants) vide sale deed dated 23.06.2020.

Considering the above-mentioned facts, the authority is of the view that the complainants herein are 3rd subsequent allottees who had purchased the apartment from the 2nd subsequent allottee after such time when the occupation certificate dated 09.05.2019 for the subject unit was obtained by the respondent promoter. Moreover, the offer of possession was also made to the 2nd subsequent allottee and thereafter conveyance deed with respect to the subject unit was also executed by the 2nd subsequent allottee and the respondent. It can be inferred that the complainants were well aware about the status of construction of the project at the time when they chose to purchase their rights from the previous allottee from the



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CA/3751/2021

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secondary market, and therefore, allegations qua delay in handing over the possession cannot be raised by the complainants at this stage. Hence, in such eventuality and in the interest of natural justice, delay possession charges cannot be granted to the complainants as there is no infringement of any right of the complainants by the respondent promoter.

2. To invoke powers of investigation enshrined under section 35 of the Act, to investigate the matter and penalize the respondent for violation of the provisions of section 14, thereby imposing penalty in accordance with the provisions of the Act.

The complainants in the present matter submitted that the respondent have made alterations in the building plans attached at schedule I of the conveyance deed and a complaint regarding the same have also been filed by the complainants before STP & CTP office, Gurugram on 29.06.2021. Accordingly, this act of the respondent is in violation of section 14 of the Act.

On the contrary, the respondent has contented in its reply that the respondent has adhered to the sanctioned plan and project specifications. It is asserted by the respondent that as per the approved layout plan of 2011, there was a 3 mtrs. road shown on west side of plot no. A-62. However, the respondent started the process of revision of the plan in 2014 and the layout plan were revised on 30.05.2017. Pursuant to the revision in layout plan/demarcation plan, the public notices were issued on 11.08.2017 and the final approval was received on 14.10.2020. Furthermore, the layout plans were again revised on 21.06.2021 pursuant to which public notice was again issued on 28.06.2021 for seeking any objection from the existing allottees. The complainants then filed two separate complaints before STP & CTP Haryana but did not receive any results and therefore, the complainants approached HARERA, Gurugram. The respondent also submitted that since this issue /matter is sub judice before DTP, Gurugram, the present complaint should be dismissed.

~~The primordial adjudication, as is presently requisite, commands the focus of the authority on the act of respondent in violation of provisions of section 14 of the Act. Before the authority delve into various facets of section 14, the authority thinks it appropriate to narrate the order dated 25.01.2021 issued by Principal Secretary, Town & country planning, Chandigarh regarding the procedure to be followed while altering the~~



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CRJ.3757/2021

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sanctioned plans, layout plans, building plans. The relevant part of the said order is reproduced herein below: -

“

A. Procedure for addition/alteration in sanctioned plans, viz., layout plans, building plans etc: The following procedure shall be adopted for the purpose of considering objections / suggestions of the allottees, in fulfilment of the provisions of Section 14(2) of the RERA Act, 2016 as well as the requirements, if any, under the Act of 1975:

I. The revised layout/building plan is approved in-principle with the following conditions:

i. That the colonizer shall invite objections from each existing allottee regarding the said amendment in the layout/ building plan through an advertisement to be issued at least in three National newspapers widely circulated in District, of which one should be in Hindi Language, within a period of 10 days from the issuance of approval.

ii. Each existing allottee shall also be informed about the proposed revision through registered post with a copy endorsed to the Senior Town Planner, Circle office in case of layout/building plan within two days from the advertisement as per (a) above clearly indicating the last date for submission of objection. A certified list of all existing allottees shall also be submitted to the Senior Town Planner, Circle office.....”

After expansively referring to the facts and documents placed on record, the authority observes that the respondent has not committed any irregularities in revision of the layout plan.

- 3. To pass interim directions u/s 36 of the Act to restrain the respondent from converting the open space meant for proposed 3 mtr. wide road by merging into another plot or utilizing it for any other purpose as an interim measure, till the pendency of the present complaint.**
- 4. To direct the respondent to construct the 3 mtr. wide road on the open space, adjacent building no. A-62, amber block, emerald hills floors, sector 65, Gurugram, Haryana, in accordance with the sanctioned layout plan.**

As far as the above two reliefs are concerned, since the matter is already sub judice before DTP, Gurugram and moreover, the approval of building plan and any objection with regard to the revision for the same are purely the subject



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CA 375/2021

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matter to be dealt by DTP, Gurugram. The authority hereby directs the complainants to put the above-mentioned issues before the complaint already going on before DTP, Gurugram.

5. Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of the litigation.

The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

Matter stands dismissed on merits. Detailed order will follow. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member
06.02.2023