



**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

<b>PROCEEDINGS OF THE DAY</b>		<b>10</b>
Day and Date	Monday and 06.02.2023	
Complaint No.	CR/3752/2021 Case titled as Swati Vishwakarma and Pramod Vishwakarma Vs Emaar MGF Land limited	
Complainant	Swati Vishwakarma and Pramod Vishwakarma	
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 11.10.2021.

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

<b>Sr. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	Emerald Hills- Floors, Sector 65, Gurugram, Haryana
2.	Unit no.	EHF-267-A-SF-062, 2 <sup>nd</sup> floor [page 17 of complaint]
3.	Provisional allotment letter in favour of original allottee (Mrs. Priyanka Puri) dated	03.07.2009 [annexure R1, page 23 of reply]
4.	Date of execution of buyer's agreement b/w original allottee and the respondent	26.02.2010 [page 16 of complaint]



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

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5.	Complainants are subsequent allottee	The respondent has acknowledged the complainants as allottees vide nomination letter dated 20.12.2018 (Page 128 of reply) in pursuance of agreement to sell dated 18.10.2018 (Page 87 of reply) executed between the complainants and the original allottee
6.	Possession clause as per supplementary agreement	<b>13. POSSESSION</b> <b>(a) Time of handing over the possession</b> <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 <u>within 27 months from the date of execution of this Agreement.</u> The Allottee(s) agrees and understands that the Company shall be entitled to a <u>grace period of 6 months, for applying and obtaining the occupation certificate in respect of the Floor and/or the Project.</u></i> (Emphasis supplied) [page 31 of complaint]
7.	Due date of possession	26.05.2012 [Note: Grace period is not included]
8.	Total consideration as per statement of account dated 21.09.2021 at page 234 of reply	Rs. 50,22,718/-
9.	Total amount paid by the complainant as per statement of	Rs. 50,25,409/-



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CR/37/2021

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	account dated 21.09.2021 at page 235 of reply	
10.	Occupation certificate	09.05.2019 [annexure R3, page 129 of reply]
11.	Offer of possession	11.05.2019 [annexure R3, page 131 of reply]
12.	Unit handover letter dated	23.05.2019 [annexure R3, page 137 of reply]
13.	Conveyance deed executed by the complainants on	04.06.2019 [annexure R3, page 143 of reply]

The complainants are seeking the following reliefs:

- 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



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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 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.

**2. To pass interim directions u/s 36 of the Act to restrain the respondent from converting the open space meant for proposed 3**



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**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.**

- 3. 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 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.

- 4. Direct the respondent to pay a sum of Rs.50,000/- 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