

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 393 OF 2020

1. GAURAV JAIN & ANR.

S/o Sh. Satish Chandra jain, R/o 399, mahaveer Ji nagar, Delhi
Road, Meerut,
Uttar Pradesh

.....Complainant(s)

Versus

1. EMAAR MGF LAND LTD.

Through its managing Director Regd. office Emaar MGF Land
Limited, 306-308, 3rd Floor, Square One, C-2 District Centre,
Saket,
New Delhi-110017

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER
HON'BLE MR. BINOY KUMAR, MEMBER**

For the Complainant : Mr.Saurabh Jain, Advocate

For the Opp.Party : Mr.Swetank Shantanu, Advocate
Mr. Pratap Shankar, Advocate

Dated : 04 May 2023

ORDER

R.K. AGRAWAL, J., PRESIDENT

The present Consumer Complaint has been filed under Section 21 of the Consumer Protection Act, 1986 (for short "the Act") against the Opposite Party, Emaar MGF Land Ltd. (hereinafter to be referred to as 'the Opposite Party) seeking possession of the purchased floor to the Complainants with the following reliefs:

a) Direct the Opposite Party to handover possession of the floor to the Complainants forthwith after completing the construction of the floor and the project in all respects (i.e., development of complex with all basic amenities and facilities, club, lawns, and other several facilities which was agreed to by the Opposite Party at the time of booking/purchase). And;

b) Grant compensation/damages to the Complainants in the form of interest amounting to Rs.63,66,101/-, as calculated upto 10.03.2020, at the rate of 12% per annum on an amount of Rs.83,56,351/- paid by them, towards delay in handing over possession of the floor, along with pendent lite and future interest at the same rate or such higher rate of interest which this Hon'ble Commission may deem fit in the interest of justice, till the date the possession of the floor is handed over by the Opposite Party to the Complainants.

c) Direct the Opposite Party to refund the PLC amounting to Rs. 12,99,292.50/- along with interest @ 12% per annum, as compensation towards change in layout of rear and front lawns.

d) Direct the Opposite Party to make the open car parking free usable by all buyers, including the Complainants in view of the judgment passed by the Hon'ble Supreme Court in "Nahalchand Laloochand Pvt. Ltd. vs. Panchall Co-operative Housing Society Ltd.", AIR 2010 SC 3607.

e) Direct the Opposite Party to ensure privacy and proper ventilation in the kitchen.

f) Grant exemplary damages to the tune of Rs. 15 lacs for the losses, mental agony and harassment suffered by the Complainants.

g) Grant cost of Litigation to the Complainants

h) Any other order, relief or direction which this Hon'ble Commission may deem fit and proper under the circumstances of the case may kindly be passed in favour of the Complainants and against the Opposite Party.

2. The brief facts of the case as narrated in the Complaint are that the Complainants in the year 2016 had purchased a residential floor for their self-residence in re-sale, in the project "Emerald Floors Premier" situated at Emerald Estate, which is being developed and constructed by the Opposite Party at Sector-65, Gurgaon, Haryana for total cost of Rs.82,55,642/-. Accordingly, in October 2016, the floor No.EFP-01-001 having a super area of about 153.29 sq. mtrs. (1650 sq. ft.) approx. was transferred by the Opposite Party in favour of the Complainants. Accordingly, the floor Buyer's Agreement dated 05.03.2010 was endorsed by the Opposite Party in favour of the Complainant on 07.11.2016. As per Clause 11 (a) of the Buyer's Agreement, the Opposite party had assured to handover the possession of the floors within 36 months from the date of execution of the Buyer's Agreement, with additional grace period of 3 months. Accordingly, as per the Buyer's Agreement the possession of the floor was to be handed over by March 2013 with additional 3 months grace period. But, the Opposite Party failed to deliver the possession of the purchased floor to the Complainants within the stipulated period. It is further submitted in the Complaint that at the time of purchasing the residential unit, the Complainants had opted for Type-A, Ground Floor property which had Rear and Front Lawns, total measuring about 500 sq. ft. for their exclusive usage and for the same, the Complainants had paid Preferential Location Charges (PLC) to the tune of Rs.12,99,292.50. It is submitted that without resolving the issues and concerns raised by the Complainants, the Opposite Party in an arbitrary and unreasonable manner, issued Intimation of Offer of Possession to the Complainants on 13.02.2020, without giving any compensation for the inordinate delay in offering possession of the unit and further without compensating them for the change in layout of the lawns. Being aggrieved, the Complainants have filed the present Complaint against the Opposite Party due to unfair trade practice with the above said reliefs.

3. Upon notice, the Complaint has been resisted by the Opposite Party by filing their Written Statement and raising, *inter-alia*, the preliminary issues that; the Complainants have no locus standi to file the present Complaint as there is no deficiency in service or breach of terms and conditions of the Agreement by the Developer, Complaint has been filed only with the intention to harass the Opposite Party Developer, most of the Complainants had already obtained the possession.

4. On merits, it is contended that the delay had occurred in completion of the Project due to '*force majeure conditions*' are applicable as delay is on account of reasons beyond the control of the Opposite Party. Further, it is pleaded by the Opposite Party that the Opposite Party offered the Possession to the Complainants vide Letter of Offer of Possession dated 13.02.2020. It is further pleaded that the unit has been constructed as per the approved site plan and the alteration/modification has only been done on the advice of the Architecture or Engineer and intimation to the Complainants. However, the Complainants are not coming forward to take possession despite offer of possession by the Opposite Party; It is finally contended that the Complainants are not entitled to any relief and Complaint is liable to be dismissed with exemplary costs.

5. I have heard the learned Counsel for the Parties at length and also perused the material available on record, evidence adduced by the respective parties and the Written Submissions filed by the Parties.

6. Mr.Saurabh Jain, learned Counsel appearing on behalf of the Complainants has vehemently argued that as promised by the Opposite Party the possession of purchased Residential Unit, complete in all respect, was supposed to be handed over by March, 2013. He strenuously urged that the Opposite Party has failed to deliver the possession of the purchased floor within the stipulated period of time.

7. *Per contra*, Mr.Swetank Shantanu, learned Counsel appearing on behalf of the Opposite Party strenuously argued that since the delay in completion of the Project was due to several '*force majeure conditions*', the Opposite Party Developer is not liable to pay any compensation to the Complainants.
8. The main defense of the Opposite Party Developer with regard to the delay in construction and handing over of possession is twofold. First is that the delay, if any, in construction and handing over of possession was due to reasons beyond its control and are attributable to the '*force majeure conditions*' and the second is that the Opposite Party Developer in Clause 11 (b) of the Agreement has agreed that the date of handing over of the possession can be extended if the delay has been caused because of Force Majeure conditions and no specific date for completion of construction and delivery of possession has been committed in the Agreement and the time is not the essence of the Contract and the Opposite Party Developer has already offered possession in the year 2020 and therefore there is no delay.
9. The contention of the learned Counsel for the Opposite Party Developer that the delay is attributable to '*force majeure conditions*', and therefore no deficiency of service can be attributed to them is totally unsustainable as the grounds mentioned for delay, like, processing the Fire NOC, termination of contract with the previous contractor etc., has already been dealt with by this Commission in catena of decisions wherein it has been held that these reasons are not attributable to '*force majeure conditions*'. Therefore, the reasons given by the Opposite Party for delay in completion of construction and handing over of possession, viewed from any angle, cannot be said to be a '*force majeure conditions*' as there is no material on record to establish that the aforementioned reasons were beyond its control.
10. The second contention of the Opposite Party that as per Clause 11 (b) of the Agreement, the date of possession can be extended and the time is not the essence of the contract and therefore there is no delay in handing over of possession. At this juncture, I find it a fit case to place reliance on the ruling of the Hon'ble Supreme Court in Kolkata ***West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 (SC)***, wherein the Hon'ble Apex Court has observed that the Complainant cannot be made to wait indefinitely for the possession of the booked unit. In the instant case also the Complainants cannot be made to wait indefinitely for possession, as the Agreement was entered into between the Complainants and the Opposite Parties as early as in 2010 and after more than 10 years the Opposite Party offered the possession of the purchased floor in the year 2020. The period of more than 10years for delivery of possession from the date of booking cannot be said to be a reasonable period for delivery of possession by any stretch of imagination. Therefore, the contention of the Opposite Party Developer that there is no delay in handing over of possession does not hold water. As a period of more than 10 years has lapsed from the date of initial booking till the date of offer possession, I am of the considered opinion that the Complainants are entitled for reasonable compensation in the form of interest for the delayed period of possession from the date of Buyer's Agreement dated 05.03.2010 till the date of possession.
11. The next question which arises for consideration is the rate of interest that is to be paid to the Complainants for the delayed period. Having regard to the fact that the Hon'ble Supreme Court has been awarding interest @ 9% p.a. and keeping in view the Principles laid down by the Hon'ble Supreme Court in catena of judgments, I am of the considered opinion that interest @ 9% p.a. for the delay period, would meet the ends of justice. This interest @ 9% p.a. is being awarded as damages and compensation, considering the fact that the Complainants had obtained home loans from the financial institutions at the floating interest rates and also having regard to the mental agony suffered by the Complainants as no additional amounts are being awarded under the head of 'Compensation' in view of the judgment of the Hon'ble Supreme Court in ***DLF Homes Panchkula Pvt. Ltd Vs. D.S. Dhanda, II (2019) CPJ 117 (SC)***, wherein it is observed that when interest is awarded by way of damages awarding additional compensation is unjustified.
12. In the result, the Complaint is allowed in part and the Opposite Party Developer is directed to handover the possession of the purchased floor i.e. Apartment Number EPF-01-001 in Emerald Premier Floor, Sector-65, Gurgaon, Haryana within 6 weeks from today, complete in all respect and pay the delayed compensation in the form of simple interest @ 9% per annum on the amount deposited by the Complainants from 05.03.2010 the date of Buyer's Agreement till the date of possession. The Complainants are also entitled to refund the PLC amounting to Rs.12,99,992.50 along with interest @ 9% per annum from the date of deposit till the date of possession. However, the Complainants shall pay the balance consideration, if any, at the time of possession. No Order as to costs.

13. Time for compliance of the Order is six weeks from today, failing which the compensation amount calculated in terms of the Paragraph 12 will attract simple interest @ 12 % per annum from the date of Order till its realization.

14. The pending Applications if any, also stands disposed of.

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R.K. AGRAWAL
PRESIDENT

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DR. S.M. KANTIKAR
MEMBER

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BINOY KUMAR
MEMBER