

**Before Sh. J. S. Khushdil, Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, First Floor, Plot No.3,
Block-B, Madhya Marg, Sector 18A, Chandigarh-160018.**

Complaint No. AO/12/2017
Date of Institution: 25.10.2017
Date of Order: 31.10.2018

Ranjeev Singh Rai and Ms. Bhupinder Kaur Rai, Winckworth Sherwood Solicitors, 35, Great Peter St. Westminster, London, UK., 2nd address 58, Hardial Nagar, Garha Road, Jalandhar-144022, Punjab, India.

Complainants

Versus

M/s Emaar MGF Land Limited, ECE House, 28, Kasturba Gandhi Marg, New Delhi-110001. 2nd address: EMAAR MGF Land Private Limited, 1st Floor, SCO No.120-122, Sector-17C, Chandigarh-160017.

Respondent

J.S. Khushdil
31/10/2018

Complaint under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016 in Form N.

Present:

Sh. Gaurav Chopra alongwith Ms. Kashika Kaur representatives for complainants.

Sh. Sanjiv Sharma alongwith Shri Subrat Pradhan DGM(L) representatives for respondent.

ORDER

1. Ranjeev Singh Rai and Ms. Bhupinder Kaur Rai (here-in-after called as the complainants) have filed this complaint against M/s Emaar MGF Land Limited, (here-in-after called as the respondent)

alongwith documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund alongwith interest and compensation as per the provisions of the Act on account of delay in handing over possession of the flat bearing No.H3-FPH-PH04 in Tower No.H, The Views at Mohali, Hills, Sector 105, SAS Nagar. It is the case of the complainants that the total price of the apartment was Rs.99,15,119/- and the complainants have paid the an amount of Rs.86,41,522/-, however, the possession of the flat has not yet been handed over to them, though as per terms and conditions of the agreement to sell dated 01.09.2009, the possession was to be delivered within thirty six months plus three months i.e. upto 01.12.2012. The project in question has been registered with this Authority against registration No.PBRERA-SAS81-0119.

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2. Upon notice of this complaint, respondent appeared and filed detailed reply opposing the claim of the complainants on various grounds.
 3. Considering the pleadings and documents annexed therewith, it was prima facie found that the respondent has violated the provisions of Section 18 of the Act and accordingly notice was

served upon the respondent through its representative, who pleaded not guilty to the contents of notice.

4. The case is at the stage of filing further documents/evidence by the parties in addition to the documents already on record.
5. While exercising powers as Adjudicating Officer, I have decided several cases including *Suman Mann Vs. JLPL bearing complaint No.AO.09 of 2017 decided on 14.05.2018 and Nikhil Kwatra Vs. JLPL bearing complaint No.AO.20/2017 decided on 14.05.2018 and other cases*, wherein, several points have been elaborated including one regarding role of the Authority and the Adjudicating Officer. Now, the Punjab State Real Estate Authority, in its 7th meeting held on 09.10.2018 at Agenda Item No. 7.4 has taken a decision in regard to the role of the Adjudicating Officer in the context of complaint in form-N and subsequently a circular bearing No.RERA/Pb./ENF/14 dated 29.10.2018 has also been issued in that regard. The said item No.7.4 is reproduced as under for ready reference:-

"7.4 Role of the Adjudicating Officer in the context of complaint in form 'M' and 'N'.

The matter was discussed at length and it was decided that the role of the Adjudicating Officer was limited only to the

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purpose of adjudication of compensation under Sections 12, 14, 18 and 19 of the Act. Refund of money deposited by a complainant, alongwith interest thereon, would not be treated as compensation; and hence, complaints in which the above relief was claimed were to be filed in form-M and be dealt with by the Authority or its Benches. The complainant would also be free to file a separate claim in Form-N before the Adjudicating Officer for compensation in Form-M for refund of amount deposited and interest thereon.

It was also seen that in a number of cases, the relief of compensation for harassment etc. was claimed in the complaint, but, was not pressed at the time of arguments. Therefore, if the relief of compensation was claimed in addition to the refund of the amount and interest thereon, the complaint would still be filed in Form-M; and if the point of compensation was actually pressed, the complainant would be advised to file a separate complaint before the Adjudicating Officer for this purpose.

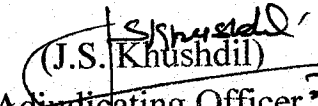
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The Legal Branch should scrutinize the complaints received in accordance with the above decision."

6. In view of the above decision of the Authority, the Adjudicating Officer now cannot deal with the cases of the refund and interest and for that purpose the complaint has to be filed in Form-M

before the Authority. For compensation only, the party may file complaint in Form-N. Thus, in view of these circumstances, the Adjudicating Officer lacks the jurisdiction to grant relief of refund or interest thereon. Therefore, in the larger interest of justice, the complaint is ordered to be returned to the complainants, who are at liberty to file a fresh complaint before the Authority as per the decision of learned Authority. Copy of this order be supplied to both the parties under Rules.

Dated:31.10.2018


(J.S. Khushdil)
Adjudicating Officer, 31/10/2018
Real Estate Regulatory Authority, Punjab.

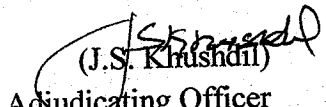
Ranjeev Singh Rai and another Vs. EMAAR MGF

Dated : 31.10.2018

Present: Sh. Gaurav Chopra alongwith Ms. Kashika Kaur
representatives for complainants.
Sh. Sanjiv Sharma alongwith Shri Subrat Pradhan DGM(L)
representatives for respondent.

Heard. Vide my separate detailed order passed today, the complaint is ordered to be returned to the complainants with liberty to file a fresh complaint before the learned Authority. Remaining papers including the proceedings of this Bench be retained and consigned to record room.

Dated: 31.10.2018


(J.S. Khushni)
Adjudicating Officer
RERA