

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

APPEAL NO. 98 OF 2021

1. Garish Kumar, S/o Sh. Suresh Kumar
2. Nirmal Gupta, W/o Sh. Suresh Kumar
3. Nupur Hingad, W/o Sh. Garish Kumar

All R/o #2178, Jalvayu Vihar Sector-67, Mohali, Punjab
(160062)

...Appellants

Versus

M/s Emaar MGF Land Limited, Office No. 40, Central Plaza,
Sector-105, Mohali (140306).

....Respondent

Memo No. R.E.A.T./2022/ **558**

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,
SECTOR-18, CHANDIGARH-160018.**

Whereas appeal titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeal is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this 02nd
day of November, 2022.



Thomas Kaur

REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

2

IN THE REAL ESTATE APPELLATE TRIBUNAL CHANDIGARH

Appeal No. 98 of 2021

MEMO OF PARTIES

1. Garish Kumar, S/o Sh. Suresh Kumar
2. Nirmal Gupta W/o. Sh. Suresh Kumar
3. Nupur Hingad, W/o. Sh. Garish Kumar

All R/o #2178, Jalvayu Vihar Sector-67, Mohali, Punjab- 160062.

Mobile No. 9357193144

email id: drgarish@hotmail.com

.....Appellants

AND

M/s. Emaar MGF Land Limited, Office No. 40, Central Plaza, Sector 105,
Mohali-140306

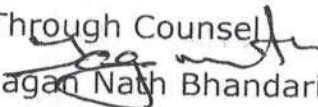
Contact no.01244793401 email id: info@emaarmgf.com

.....Respondents

Place: Chandigarh

Dated:28.09.2021

Appellants

Through Counsel

Jagan Nath Bhandari & Associates
Advocate

Jagan Nath Bhandari
Advocate
P-1666/2014
CEO & Founder Bhandari Law Firm
M.:+919855677966, www.bhandariawfirm.com



12

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
AT CHANDIGARH**

APPEAL NO. 98 OF 2021

1. Garish Kumar, S/o Sh. Suresh Kumar
 2. Nirmal Gupta, W/o Sh. Suresh Kumar
 3. Nupur Hingad, W/o Sh. Garish Kumar
- All R/o #2178, Jalvayu Vihar Sector-67, Mohali, Punjab
(160062)

...Appellants

Versus

M/s Emaar MGF Land Limited, Office No. 40, Central Plaza,
Sector-105, Mohali (140306).

....Respondent

Present: Mr. Jagan Nath Bhandari, Advocate for the
appellants.
Mr. Sanjeev Sharma, Advocate for the respondent.

CORAM:



**JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE
(RETD.), MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./ TECH.)**

JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

1. The appellants are aggrieved of the order 09.07.2021
passed by the Real Estate Regulatory Authority
(hereinafter known as the Authority).

Facts of the case

2. The appellants had booked a plot measuring 300 sq. yards against a total cost of Rs.36,19,104/- in a project being developed by the respondent by the name of 'Augusta Park' in Mohali Hills, Sector 109, Mohali (Punjab).
3. An allotment letter dated 20.08.2007^{was}, issued, allocating plot number 500 to the appellants. The Plot Buyer's Agreement dated 04.07.2007 preceded the allotment letter that also laid down the installment payment plan. As per this agreement the possession of the plot, complete with all the development works, was to be handed over to the appellants within a period of two years from the date of its execution but not later than three years i.e. by July, 2010. The appellants were compliant with regard to the payment schedule. However, instead of the originally allotted plot number 500, the appellants were allotted a plot in Sector 108 in another project by the name of 'Pinewood Park' and on 30.07.2010 plot number 450 measuring 300 sq. yards was ear marked for them. This was again changed to plot number 109-MLU-8-300 Mohali Hills vide letter dated 16.10.2012 at a revised cost of Rs.40,50,354/- and an



APPEAL NO. 98 OF 2021

3

amended agreement with relation to this change was executed on 06.11.2012.

4. The appellants took possession of the plot on 30.07.2015 under protest, and according to them, in compelling circumstances, executed a Conveyance Deed on 26.02.2019. According to the appellants the possession could not be termed to be valid in the absence of a completion certificate.
5. This resulted in a complaint filed on 26.12.2019, with the aforesaid grievance, as also, regarding delayed possession.
6. Although the crux of the complaint has been brought out as above, yet we deem it appropriate to extract a portion of the complaint here below:-

“On 10.07.2014 res. offered a paper of possession and threatened to impose the holding charges @ Rs.50 per square yard P.M but the respondent did not offered valid legal possession but in compelling circumstances the complainants received the paper possession under protest on 30.07.2015 (Ann. C-4). 6. That in 2017 the complainants moved an RTI to the Forest Department Punjab and in reply Ann. C-5 it was stated that the builder has applied for excess road of Sector 108 to the Kharar-Banur road and further informed that main entrance of project situated at Sector-109 which have been



APPEAL NO. 98 OF 2021

4

shown in Court. It shows that till 20.10.2015 the res. was not having the approval then how possession was offered. Further till 03.03.2017 the company had not completed its development and it have been admitted in email dated 03.03.2017 Ann. C-6. 7. That the time bound possession was essence of agreements but the res. did not adhered the terms and conditions. The res. deliberately remained silent for progress of project. 8. That in February 2019 the complainant received email from res. and phone calls regarding the proceedings initiated by NCLT and in compelling circumstances the complainants got registry of this Plot on their name vide registry Dated 26.02.2019 (Ann. C-7) but till date the respondent have not provided the valid legal possession as the company have not obtained Completion Certificate for the competent authority. 9. That from the date of booking the complainants were in regular communication with res. but in all the communications the res. have not given any valid reply Email communications Ann.C-8”

The appellants prayed for the following reliefs:-

“1. Delay interest @ 12% per annum w.e.f 31.07.2010 from the date of payment till the handing over actual physical and valid legal possession with Occupancy Certificate and Completion Certificate. 2. To refund of maintenance charges from the dates of payments as the respondent has not provided



APPEAL NO. 98 OF 2021

5

valid legal possession to the complainant.

3. Litigation expenses of Rs.55000/-”

The respondent contested the proceedings before the Authority to contend that the complaint was hit by the delay and laches and law of limitation for the reason that possession was offered to the appellants on 10.07.2014 and ultimately delivered on 30.07.2015. The appellants raised no grievance thereafter till the filing of the complaint in 2020. Besides after the offer of possession a sum of more than Rs.9lacs had been adjusted against the dues of the complainants on account of the compensation for the delayed possession. The appellants also signed an indemnity-cum-undertaking on 26.08.2014. The Conveyance Deed has also been executed and thus the appellants were estopped from raising any issues of compensation on account of the delay. With regards to the complaint regarding the completion certificate it was pleaded by the respondent that they had been granted exemption from such a requirement, by the Punjab Urban Planning and Development Authority, SAS Nagar vide No.PUDA-STP/2013/4848 dated 10.06.2013.



7. The Authority went into the matter and concluded that the possession was indeed handed over to the appellants on 30.07.2015 but no objection was ever raised by them

APPEAL NO. 98 OF 2021

6

for a period of nearly 5 years till January 2020 when the complaint was filed. It was further observed that even though no time has been prescribed for filing of a complaint yet the basic principle of initiating a grievance after unexplained delay cannot be ~~permitted~~ ^{overlooked}. It relied upon entry number 137 of the Schedule of the Limitation Act, 1963 to record that limitation for any proceeding for which no separate period of limitation is provided in a statute would be three years and dismissed the complaint.

8. Aggrieved of the aforesaid the appellants are in appeal before us to contend that there was a delay in handing over possession of the plot and that too without amenities. It was vehemently argued by the learned counsel for the appellants that there was no electricity available at the time of possession apart from the fact that access to the project as per the layout was unavailable in view of a dispute by the Forest Department regarding which the matter was pending before the Civil Courts. The possession therefore could not be held to be meaningful in the absence of any facility of ingress and egress.



APPEAL NO. 98 OF 2021

7

9. With regard to the delay in initiating the complaint it was contended that the appellants had been making repeated correspondence with the respondents in this regard.
10. These were broadly the contours of the arguments of the appellants with utmost emphasis on the fact that the possession of the plot was meaningless on the account of (i) lack of amenities; (ii) no access as per the layout plan and (iii) no completion certificate.
11. It was finally argued that on account of the above, the appellants were entitled to interest at the rate of 12% per annum with effect from 31.07.2010 on account of the delayed possession, till the time valid and legal possession with occupancy certificate and completion certificate is given to the appellants.
12. The respondent on the other hand contended that the complaint was hit by the Law of Limitation, as concededly, the possession was given in the year 2015 and the complaint filed in the year 2020 with no justification for the delay. Reliance was placed upon orders passed by this Court, wherein it had been held that even though limitation has not been provided in the statute for filing a complaint yet three years would be a safe period to consider a complaint within limitation. Besides this it was argued that the conduct of the



appellants in invoking the complaint belatedly showed that there was no genuineness to the grievance. Even the complaint is silent with regard to such grievances. It was next argued that the appellants had not disclosed the material facts in the complaint as more than Rs.9 lacs were adjusted towards the payment schedule of the appellants considering the delayed possession. The respondent has also awarded the appellants for having made timely payments by granting concession in payments schedule. It was thus prayed that the appeal is without any merit and should be dismissed as such.

13. We have heard learned counsel for the parties and have perused the material on record.

14. To our minds the foremost document of importance in such proceedings is the complaint itself as it unravels the grievance of an allottee/complainant. It is therefore expected that the complaint should encompass material particulars regarding which the respondent is put on notice so as to enable it to respond appropriately.



15. The complaint cannot be left to ambiguities of words or ambivalence of phrases. It is expected to be forthright with regard to the deficiencies and violations of the project as also the shortfalls in delivery by the developer.

APPEAL NO. 98 OF 2021

9

16. If we see the complaint in the instant case then it does not talk of any amenities in specifics that were lacking. The extract of the complaint as reproduced in the foregoing paras merely talks of a blockade by the Forest Department to the access as per the layout plan regarding which the matter was pending before the Civil Courts. Apart from this, what were the amenities that were lacking have not been mentioned and all that has been said is that the possession offered was not a valid possession in the absence of a completion certificate by the competent authority. It is in this backdrop of lack of material particulars that the delay in initiating the proceedings also assumes a greater significance. The possession was given to the appellants on 30.07.2015 and the complaint was filed in the year 2020. Even if it is assumed that he received some information under the RTI Act regarding the blockade by the Forest Department qua the ingress and egress as provided in the layout plan, yet there is not a word in the complaint whether the plot was completely inaccessible altogether. For five years, if a person is deprived of access to his property then it is not possible that he would not make a complaint in this regard. It is possible that some legal proceedings with regard to that access in the layout plan may have been pending but it does not imply that the



plot was inaccessible altogether so as to put the appellants to a disadvantage and assuming, such a disadvantage was existing then it should have been succinctly set out in the complaint to form the basis of a valid claim for compensation.

17. In fact this is not even the relief claimed by the appellants. The only relief that they have claimed in the complaint is with regard to the delayed possession.

18. We have seen the record and Annexure C5 is the information to the appellants from the Forest Department given on 20.10.2015. We deem it appropriate to extract the relevant information hereinbelow:-

“1. *M/s EMAAR MGF, builders Sectors 108, regarding the approach road from Kharar to Banur Topla Road, to take permission from the Indian Government had applied in this office under Forest Conservation Act, 1980, the permission for the same is still pending. The case of the construction of Kharar-Banur-Topla approach road is still pending before the Hon'ble Civil Court, Kharar.*

2. *The width of existing land of forest Department on Kharar-Banur-Topla Road in Sectors 108 and 109 is 0.11m and 0.30m respectively.*

3. *Public Welfare Department already has presented the case regarding widening of Kharar-Banur-Topla Road. The case was filed by*



the department and approval for widening of 1800 hectare area has been received from Government of India.”

Aforesaid information was given in the year 2015 almost three months after the possession to the appellants, but strangely it took almost 5 years for them to initiate the complaint. Besides there is nothing in the information that suggests that the appellant's plots were inaccessible altogether. Indeed permission to construct some road from Kharar-Banur-Topla Road was pending, but it does not depict inaccessibility of the plot ^{or} ~~of~~ the project. The appellant has failed to prove this aspect miserably. Besides no relief is claimed on this Court.

19. For the reason that the complaint is lacking in material particulars with regard to the shortfall of amenities and the fact that the complaint was initiated belatedly, we are unable to put ourselves in disagreement with the findings of the Authority with regard to the proceedings being hit by delay and latches.

20. Apart from this we are constrained to observe that appellant have demanded interest at the rate of 12% with effect from 31.07.2010 till the time possession is given after obtaining completion/occupancy certificate, but not a word has been said by them with regard to the amount paid by the respondent in terms of the buyer's agreement



APPEAL NO. 98 OF 2021

12

on account of the delayed possession. This to our minds is a concealment of a material facts and the complaint ought to have been dismissed on this score as well.

21. For the aforestated reasons when there is an unexplained delay in initiating the proceedings and for the reason that there is concealment of facts and lack of material particulars we are of the opinion that the appeal is without any merit and hence it is dismissed as such.

File be consigned to the record room.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

October 13, 2022

DS



Certified To Be True Copy

Shanesh Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

02/11/2022