

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 168 of 2019
Date of first hearing: 13.08.2019
Date of decision : 05.09.2019

Shri Puneet Tripathi,
House no. 487, sector A, Pocket C,
Vasant Kunj, New Delhi: 110070.

Complainant

Versus

M/s Emaar MGF Land Limited,
Emaar MGF Business Park,
M.G. Road, Sikanderpur Chowk,
Sector 28, Gurugram, Haryana.

Respondent

CORAM:

N. K. Goel

(Former Additional District and Sessions Judge)
Registrar-cum-Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority,
Gurugram) (Authorised by resolution no.
HARERA, HHM/Meeting/2019/Agenda
29.2/Proceedings/16th July 2019) under
section 81, Real Estate (Regulation and
Development) Act, 2016.

APPEARANCE:

Shri Varun Chugh Advocate for the complainant
Shri Ishan Dang Advocate for the respondent

EXPARTE ORDER

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1. The present complaint relates to a buyer's agreement dated 05.03.2010 executed between Shri Ashok Punjabi who later on transferred the same in the name of the complainant and the respondent promoter, in respect of flat measuring 1650 sq. ft. super area bearing no. EFP-30-0001 of the project, namely, "Emerald Floors Premier" situated in Sector 65, Gurugram, (in short, the subject flat) for a basic sale price of Rs. 57,60,199.5 excluding other charges as per the buyer's agreement dated 05.03.2010 and the complainant opted for construction linked payment plan though according to him the booking was made in the year 2009. Project is not registered with this Authority.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	Emerald Floors Premier, Sector 65, Gurugram
2.	DTCP license no.	06 of 2008 dated 17.01.2008
3.	Nature of real estate project	Group housing colony
4.	Flat/unit no.	EFP-30-0001
5.	Measuring area of the allotted flat	1650 sq. ft.
6.	RERA registered/Unregistered	Unregistered
7.	Date of execution of buyer's agreement	05.03.2010
8.	Payment Plan	Construction linked payment plan
9.	Basic sale price of the allotted	Rs. 57,60,199.5

	unit as per clause 1.2(a)(i) of the buyer's agreement	
10.	Total consideration as per statement of account dated 17.12.2018	Rs. 82,65,015/- (Annexure E at page 70)
11.	Total amount paid by the complainant as per statement of account dated 17.12.2018	Rs. 79,71,757/- (Annexure E at page 70)
12.	Total amount paid by the complainant as stated by him in the complaint	Rs. 79,20,170/-
13.	Due date of delivery of possession as per clause 11(a) of the buyer's agreement dated 05.03.2010	05.06.2013 (Note - 36 months plus 3 months' grace period from the date of execution of agreement for applying and obtaining the completion certificate/occupation certificate in respect of the unit and /or the project.)
14.	Delay in handing over possession till date of decision	Continuing

3. According to the complainant, he visited the site several times and noticed that there are quality issues with respect to the construction carried out by the respondent. The respondent has not acknowledged the requests of the complainant regarding the status of the project. There are no signs of completion of the project and there is delay of about 64 months. The respondent has committed gross violation of section 18(1) of the Real Estate (Regulation and

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Development) Act, 2016 (in short, the Act) by not handing over the timely possession of the flat in question and not giving interest to the buyer. The complainant does not intend to withdraw from the project. According to him the penalty for not handing over the possession of the subject flat by the respondent in time is just Rs. 5/- per sq. ft. per month, while the respondent charges interest at the rate of Rs. 24% p.a. for delayed payments. Complainant does not intend to withdraw from the project. Hence, this complaint.

4. The following issues have been raised by the complainant: -

1. "Whether the respondent/promoter has made false representations about the project in question in order to induce the complainant to make a booking?
2. Whether the respondent-promoter is liable for unjustifiable delay in construction and development of the project in question?
3. Whether the respondent-promoter is liable to handover the property/apartment in question to the complainant in a time bound manner?
4. Whether the respondent-promoter is liable to pay interest @18% as compensation, towards delay in

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handing over the property in question as per provisions of RERA and HARERA?

5. Whether the respondent-promoter has cheated the complainant by concealment of several facts and misrepresentation?"

5. The reliefs sought are detailed as under: -

- i. "Direct the respondent to handover the possession of the property/apartment to the complainant in a time bound manner.
- ii. Direct the respondent to pay interest @18% p.a. as compensation towards delay in handing over the property in question.
- iii. Direct the respondent to pay a sum of Rs 5 lakh to the complainant towards undue hardship caused due to the acts of omissions and commissions on the part of the respondent.
- iv. Direct the respondent to pay a sum of Rs 50,000/- to the complainant towards the cost of litigation."

6. Notice of the complaint has been issued to the respondent. As per the service report the respondent has refused to accept the notice twice (envelopes placed on the file) and service has



been effected through email message of the respondent i.e. coordination @ emaarmgf.com registered with the Authority for other sites/projects but the respondent has preferred not to put the appearance and to file the reply to the complaint within the statutory period of 21 days. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent. Reply filed thereafter has been taken on record subject to all just exceptions and is not being considered in view of the judgment reported as AIR 1964 SC 993.

Issue wise findings of the Authority: -

7. **Issue no. 1 and 5:** - In the considered opinion of this Authority these issues must not be decided in present proceedings for claiming interest towards delayed possession charges.
8. **Issues no. 2, 3 and 4:** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the flat buyer's agreement's clause no.11 (annexure C), there is every reason to believe that vide the flat buyer's agreement dated 05.03.2010, the respondent had agreed to handover the possession of the subject flat to the complainant within a period of 36 months from the date of



execution of agreement with a grace period of 3 months for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project which, in other words, means that the respondent was bound to offer the physical possession of the subject flat to the complainant on or before due date 05.06.2013 including 3 months' grace period. However the possession has not been delivered till date which is in violation of the terms and conditions of the buyer's agreement and also violation of section 11(4)(a) of the Act. The project in question was not complete on the date of coming into force of the Act. Hence the same must be considered as "ongoing project" and covered under the provisions of the Act and the Rules and regulations framed thereunder. In order to decide the controversy between the parties with regard to the date, which should be taken into consideration for fixing liability of the respondent for payment of delay possession charges, let us deal with the contentions raised on behalf of the respondent. In this regard, the following facts have been brought to the notice of the Authority:-

- (a) Occupation certificate applied on 30.06.2017 was issued by the competent authority on 08.01.2018 (copy Annexure R-26) but without NOC from the Fire Department.
- (b) Representation made to the competent authority vide representation dated 04.01.2017 (copy annexure R-27).
- (c) Respondent did not act on the said occupation certificate and withheld offering possession of apartments.

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(d) Vide notification dated 15.03.2017 provisions of NBC 2016 superseded NBC 2005 (copy Annexure R-28) and all the high rise buildings having height of 15 meters or above irrespective of the area of each floor are now required to have two stair cases. Hence the respondent shall need additional time to comply with this newly enacted mandate.

(e) Disputes between the contractor engaged vide contract dated 01.11.2010 and the respondent arose and the respondent had to terminate the said contract vide termination notice 30.08.2018 in respect of which arbitration proceedings are going on.

In sum and substance the respondent has tried to build up a case to invoke *force majeure* clause. The submission on behalf of the respondent is that at the best the date for determining the delay period should be calculated w.e.f. 15.03.2017.

As rightly submitted on behalf of the complainant, this Authority does not agree with the submissions made on behalf of the respondent for the following reasons:-

- (i) As per clause 11 (a) of the buyer's apartment dated 25.03.2010, the respondent was bound to deliver the possession of the subject flat to the complainant on or before 25.06.2013. However, the respondent did not or could not fulfil this obligation and applied for the occupation certificate only on 30.06.2017 i.e. after 4 years of the stipulated date. Can the complainant be put at blame for this inordinate delay? Certainly not.

- (ii) Complainant cannot be held responsible if without obtaining Fire NOC, the respondent had applied for occupation certificate from the competent authority.
- (iii) As stated hereinabove, the respondent was obligated to deliver the possession of the subject flat to the complainant on or before 25.06.2013. Hence, liability for contingency or legal obligation having taken place or arisen subsequent to 25.06.2013 cannot be attributed to the complainant or an allottee who always remains at the receiving end.
- (iv) Disputes having arisen between the respondent and the contractor and termination of latter's contract by the former vide termination notice dated 30.08.2018 were the result of the acts of omissions and commissions on the part of the respondent and complainant was not a privy to the same and took place much after 15.06.2013.
- (v) Similar reasoning equally applies to the case of amendment in the bye-laws vide the notification dated 15.03.2017.

Hence, it is held that 25.06.2013 is the relevant date which shall apply for counting the delay period.

9. Hence the Authority is of the considered opinion that the complainant is entitled for delayed possession charges for every month of delay at the prescribed rate of interest of 10.40% p.a. as prescribed under the Haryana Real Estate (Regulation and Development) Rules, 2017 in terms of section 18(1) proviso of Haryana Real Estate (Regulation and Development) Act, 2016 w.e.f. 25.06.2017.

Findings of the Authority: -

10. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the



promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose for promoter projects situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this Authority has complete territorial jurisdiction to deal with the present complaint.

Decision and directions of the Authority: -

11. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 and as prescribed in proviso to Section 18 (1)(b) of Act read with Rule 15 of the Rule hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.40% per annum to the complainant with effect from the committed date of delivery of possession till actual offer of possession. The interest accrued so far from the due date of delivery of possession i.e. 05.06.2013 till the date of order be paid within a period of 90 days from this order and thereafter monthly interest at the prevalent prescribed rate of 10.40% per annum be paid on or before 10th day of each succeeding English calendar month.

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12. Since as per the office report project is not got registered by the promoters the Authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceedings be initiated against the respondent. A copy of this order be endorsed to registration branch for issuing notice to the respondent u/s 59 of the Act for violation of Section 3 of the Act.
13. The complaint stands disposed of accordingly.
14. The case file be consigned to the registry.

N.K. Goel

5-9-19

(Former Additional District and Sessions Judge)
Registrar-cum-Administrative Officer (Petitions)
(Haryana Real Estate Regulatory Authority, Gurugram)
Authorised by resolution no. HARERA,
GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)
under section 81, Real Estate (Regulation and Development) Act,
2016.

Dated: 05.09.2019

Order ratified by the Authority as above.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: - 05.09.2019

Judgement uploaded on 13.09.2019