

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

Complaint no. : 212 of 2018
First date of hearing : 31.05.2018
Date of decision : 16.01.2019

1. Mr. Ashok Goil
2. Mrs. Pratibha Goil

Both R/o: PRERNA # 212, Civil Lines,
Mansarover lane no. 1, Meerut,
Uttar Pradesh-250001.

Complainants

Versus

M/s Emaar MGF Land Limited
(through its directors)
Regd. office.: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav	Advocate for the complainants
Shri Ashok Goil	Complainant in person
Shri Ishaan Dang	Advocate for the respondent
Shri Kethan Luthra	Authorized representative on behalf of the respondent company.

ORDER

1. A complaint dated 01.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read



with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Ashok Giol and Ms. Pratibha Goil, against the promoter M/s Emaar MGF Land Limited, on account of violation of the clause 16(a) of office space buyer's agreement executed on 09.08.2011 in respect of office space described as below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*. An amendment to the complaint was filed by the complainants on 05.07.2018 wherein they have stated that they are not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Now the matter is before the authority not for compensation but for fulfilment of obligation by the promoter as per section 18(1) of the Act *ibid* due to failure to give possession by the due date as per the said agreement.

2. Since, the office space buyer's agreement has been executed on 09.08.2011 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the



present complaint as an application for non-compliance of statutory obligations on part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Emerald Plaza" in Emerald Hills, Sector 65, Gurugram, Haryana.
2.	Project area	3.963 acres
3.	DTCP license no.	10 dated 21.05.2009
4.	RERA registered/ not registered	Not registered
5.	Applied for occupation certificate on	26.05.2017
6.	Occupation granted on	08.01.2018
7.	Office space/unit no.	EPO-09-009, 9 th floor
8.	Unit measuring as per the said agreement	668.04 sq. ft. [unit area stands revised to 614.15 sq. ft. vide letter of offer of possession dated 25.01.2018]
9.	Office space buyer's agreement executed on	09.08.2011
10.	Total cost of the property as per statement of account dated 09.05.2018 annexed with the reply.	Rs.48,49,833/-
11.	Total amount paid by the complainants till date as per statement of account dated 09.05.2018 annexed with the reply.	Rs.48,23,401/-
12.	Percentage of consideration amount	Approx. 99.4 percent
13.	Due date of delivery of possession as per clause 16(a). (30 months + 120 days grace period from the date of execution of this agreement i.e. 09.08.2011)	09.06.2014



14.	Letter of offer of possession sent to the complainants on	25.01.2018
15.	Delay in handing over possession from due date till offer of possession	3 years 7 months 16 days
16.	Penalty clause as per office space buyer's agreement	Clause 18(a) of the said agreement i.e. interest calculated at 9% p.a. (simple interest) on the amount(s) paid by the allottees for such period of delay.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondent. As per clause 16(a) of the office space buyer's agreement dated 09.08.2011, the due date of handing over possession was 09.06.2014 and the possession was offered to the complainants on 25.01.2018. The respondent has refused to give interest on delayed possession as per clause 18(a) of the buyer's agreement executed by the parties. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 31.05.2018. The case came up for hearing on 31.05.2018, 05.07.2018, 09.08.2018, 30.08.2018, 06.09.2018, 09.10.2018, 13.11.2018,



16.11.2018, 7.12.2018 and 16.01.2019. The reply filed on behalf of the respondent has been perused.

Brief facts of the complaint

6. The complainants submitted that as per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "promoter" and is bound by the duties and obligations mentioned in the said Act and is under the territorial jurisdiction of this hon'ble regulatory authority.
7. The complainants submitted that on 18.07.2011, they booked an office space in the said project and issued a cheque of Rs.5,00,000/- towards booking amount. Office space was purchased under the construction linked payment plan for sale consideration of Rs.45,82,754/-.
8. The complainants submitted that on 28.07.2011, respondent issued an allotment letter and schedule of payment, confirming the booking. As per payment plan, total cost of office space was Rs. 5047473/- including basic sale price, EDC, IDC, IMFS and service tax.
9. The complainants submitted that on 09.08.2011, a pre-printed office space buyer's agreement was executed between respondent and complainants. Office space buyer's



agreement contained tentative lay out drawing plan of ninth floor. The complainants submitted that on 31.07.2012, respondent called a demand of Rs.3,43,707/- as per the payment plan on stage of completion of 3rd basement roof slab and the complainant made payment on 28.07.2012. However, the complainants stated that the said building does not have 3rd basement parking and it has only 2 floors basement parking.

10. The complainants submitted that on 28.03.2014, the respondent sent an email to the complainants informing that as per the proposed plans of the company, the application for occupation certificate is likely to be made in quarter 2 of 2015. Thereafter complainants continued to pay the remaining instalment as per the payment schedule of the said office space buyer's agreement and have already paid more than 99% amount i.e. Rs.48,23,401/- i.e. 99% amount to respondent till 04.09.2017 along with interest and other allied charges of actual purchase price.

11. The complainants submitted that their main grievance in the present complaint is that in spite of having paid more than 99% of the actual amounts of office spaces, the builder did not perform his promises i.e. compensation on delay of possession and agreed carpet area etc. On 25.01.2018, the



respondent offered possession of decreased area 53.89 sq. ft. i.e. 614.15 sq. ft. from 668.04 sq. ft. to complainants. It is pertinent to mention here that till date construction of office space is incomplete. The respondent has not constructed one side wall of office and still has not fixed/installed door, wet point, air conditioner etc.

12. The complainants submitted that they asked for compensation for delay in possession for more than 4 years but the respondent refused to pay penal interest on delay possession. Complainants have requested many times through email, letters and personal visits to get the compensation for delay on possession.

13. The complainants submitted that due to above acts of the respondent and of the terms and conditions of the said office space buyer's agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore, the opposite party respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice and deficiency in services.

14. The complainants submitted that for the first time cause of action for the present complaint arose in or around August 2011 when the said office space buyer's agreement



containing unfair and unreasonable terms was forced upon the allottee. The cause of action further arose in 2014 when the respondent party failed to handover the possession of the office space as per the space buyer's agreement. Further the cause of action again arose on various occasions, including on: a) November 2013; b) January 2014; c) June 2015, d) November 2016; e) July 2017, f) December, 2017, g) February 2018 and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

15. The complainants submitted that as per section 18 of the Act ibid, the promoter is liable to pay compensation to the allottees of an apartment, building or project for a delay or failure in handing over of possession as per the terms and agreement of sale. Also, the respondent is bound by the Rules ibid which lists the interest to be compounded while calculating compensation to be given by the promoter to an allottee in case of default.

Issues to be decided

16. After an amendment to the complaint dated 05.07.2018, the sole issue remains whether the respondent has violated the terms and conditions of the said agreement and the complainants are entitled to get interest for every month of delay in handing over the possession of the said unit?

17. Reliefs sought

The complainants are seeking interest at the prescribed rate for every month of delay till the handing over of possession.

Respondent's reply

18. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the unit in question was made on 26.05.2017, i.e. well before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017. The occupation certificate has been thereafter issued on 08.01.2018. Thus, the project in question is not an "ongoing project" under rule 2(1)(o) of the Rules *ibid*. The project has not been registered under the





provisions of the Act *ibid*. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

19. The respondent submitted that the complainants have filed the present complaint seeking interest, damages and compensation for alleged delay in delivering the possession of the said unit booked by the complainants. The respondent submitted that complaint pertaining to compensation, damages and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this hon'ble authority. So, the present complaint is liable to be dismissed.

20. The respondent submitted that the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the office space buyer's agreement dated 09.08.2011.

21. The respondent submitted that the complainants have agreed to purchase commercial unit number EPO-09-009, Emerald Plaza, Sector 65, Gurugram, Haryana from the respondent. Office space buyer's agreement was executed between the parties on 09.08.2011.
22. The respondent submitted that the contractual relationship between the complainants and the respondent is governed by the terms and conditions of the office space buyer's agreement dated 09.08.2011. The said agreement was voluntarily and consciously executed by the complainants. Once a contract is executed between the parties, the rights and obligations of the parties are determined entirely by covenants incorporated in the contract. No party to a contract can permitted to assert any right of any nature at variance with the terms and conditions incorporated in the contract.
23. The respondent submitted that the complainants have also completely misinterpreted the terms and conditions of the said agreement. So far as alleged non-delivery of physical possession is concerned, clause 16(a)(i) of the aforesaid contract clearly states that possession of the unit in question would be delivered by the respondent to the complainants with a period of 30 months from the date of execution of the aforesaid contract subject to complainants having strictly



complied with all the terms and conditions of the contract and not being in default under any provisions of the contract. It was further provided that the time period indicated above would be confirmed to, if all the amounts due and payable by the complainants in terms of the agreement were duly paid in time by them.

24. The respondent submitted that it was provided in the aforesaid contract that the respondent would be entitled to a grace period of 120 days over and above the period mentioned above, for applying and obtaining necessary approvals in respect of the commercial complex. It was mentioned in clause 16(b) of the aforesaid contract that in case the completion of the commercial complex was delayed due to sanction of any revised building/zoning plans or due to any other reason beyond the control of the respondent, in that event the respondent would be entitled to reasonable extension of time for handing over possession of the commercial unit. It is respectfully submitted that once an application for grant of any permission/sanction or for that matter building plans/zoning plans etc. are submitted for approval in office of any statutory authority, the respondent ceases to have any control over the same.



25. The respondent submitted that in accordance with contractual covenants incorporated in the said agreement, the span of time which was consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession:

Sr. no.	Nature of permission	Date of submission of application for grant of permission / approval	Date of sanction of permission / grant of approval	Period of time consumed
1.	Zoning plan	12.08.2009	04.05.2010	8 months
2.	Building plan	28.06.2010 & 20.10.2011	05.12.2011	5 months
3.	Consent granted by Haryana State Pollution Control Board, Panchkula.	02.02.2012	21.05.2012	3 months
4.	Environmental clearance	29.03.2010	09.11.2010	9 months

26. The respondent submitted that from the facts and circumstances mentioned above, it is comprehensively established that the time period mentioned hereinabove was consumed in obtaining of requisite permission/sanctions from the concerned statutory authorities. It is respectfully submitted that the project in question could not have been constructed, developed and implemented by the respondent without obtaining the sanctions referred above. Thus, the



respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the said period.

27. The respondent denied for want of knowledge as to whether the complainants had visited the office of the respondent along with any real estate agent in the manner claimed in the complaint. The respondent submitted that prior to purchase, the complainants had made elaborate and detailed enquiries with regard to nature of the project, specifications of materials to be used/utilised in the development of the project, captivity, competence and capability of the respondent to successfully undertake the conceptualisation, promotion, construction, development and implementation of the project. Only after being fully satisfied in all respects, the complainants proceed to purchase the commercial unit subject matter of present litigation.

28. The respondent submitted that as far as third basement is concerned, the same was to be utilised for providing services and other infrastructure. It had never been indicated to the complainants at any point of time by the respondent that the 3rd floor basement in the project would be used and utilised



for parking purposes. The building has been constructed and developed in terms of the approved plans by the competent authorities. Therefore, there was no illegality or impropriety in the demand raised by the respondent. Moreover, complainants have been called upon to make payment for utilizing parking spaces.

29. The respondent denied that efforts in the manner claimed in the complaint been made by the complainants for obtaining possession of the allotted office space or that the same have been proved futile. The respondent denied any compensation in the manner claimed by the complainants liable to be paid by the respondent. It is denied that till date construction of the office space is incomplete. The unit has been developed in terms of the specifications provided for in the buyer's agreement and possession has also been offered to the complainants.

30. The respondent denied that it can be held responsible for alleged non-providing of financial support by way of rental income. The investment has been made by the complainants in the present case with the intention of earning rental amount from the property in question. Thus, the complainants are precluded from invoking the provisions of the Act *ibid*.



31. The respondent denied that it has promised to the complainants at the time of receiving any payment that the possession of fully constructed office space along with basement and surface parking, landscaping etc. would be delivered as soon as construction work is complete or that the said period had been indicated to be 30 months. It is denied that any excess payment for three-storeyed basement parking has been realised by the respondent from the complainants.

32. The respondent submitted that extremely serious and grave plea of fraud cannot be adjudicated in summary proceedings. It is denied that any unfair trade practice has been adopted by the respondent or any breach of contract has been committed by the respondent.

33. The respondent denied that any cause of action for filing the present complaint had accrued to the complainants in August 2011. It is denied that office space buyer's agreement dated 09.08.2011 contains unfair terms. It is denied that the aforesaid contract was forced upon the complainants. It is denied that any cause of action had accrued to the complainants in November 2013, January 2014, June 2015,



November 2016, July 2017, December 2017 or February 2018 or at any point of time. The alleged protests referred to in the complaint are absolutely inconsequential and irrelevant.

34. The respondent denied that as per section 18 of the Act *ibid*, he is liable to pay any compensation to the complainants. All the allegations levelled by the them are absolutely false and frivolous.

Written arguments filed by the complainants

35. The complainants submitted that the license was granted on 21.05.2009 vide license no.10 of 2009 and it was valid upto 20.05.2013. Respondent deliberately delayed in applying for required statutory approvals. Pollution Control Board Permission was applied on 02.02.2012 (why not on 29.03.2010 along with environmental clearance) and was granted on 21.05.2012 and construction was commenced on 24.11.2011 and 3rd basement roof was casted on 31.07.2012. The act of the respondent clears the position that respondent is a lawless person and has violated rules/conditions of license and other applicable Acts. Therefore, the acts of respondent attract strong sanction.

36. The complainants submitted that as per condition no.6 of license "the licensee will not give any advertisement for sale of shop/plot area before the approval of layout plan/building plan". As per reply of respondent, building plan was approved on 05.12.2011 and respondent sold office space on 18.07.2011, issued allotment letter on 28.07.2011 and executed office space buyer agreement on date 09.08.2011. The said act of respondent is violation of license conditions and attract penal provision on respondent.
37. The complainant submitted that the respondent called a demand on 31.07.2017 as per construction linked plan i.e. "on completion of exterior facade" and another demand was raised on 25.09.2017 on "installation of services". It is clear from above mentioned facts that OC application filed by respondent was not complete, OC can't be granted to under construction building. As per payment plan, application for OC was the last stage, but respondent raised this stage by two levels in order to come out from the ambit of the honourable authority.
38. The respondent is caught in web of his own lies and misrepresentation as OC was applied on 22.05.2017 and till



that time construction was not completed and required NOC's were not present at place with OC application. It is pertinent to note here that date of completion of exterior façade was 31.07.2017 and date of installation of services was 25.09.2017 and respondent applied for OC before completion of construction. Moreover, no objection certificate for occupation of the above referred building was received on 29.11.2017 by Director General, Fire Service, Haryana Panchkula, by Chief Engineer-1, HUDA, Panchkula on 16.11.2017, by Senior Town Planner, Gurugram on 08.09.2017 and District Town Planner, Gurugram on 07.09.2017. The above mentioned NOC's are issued after the both important dates i.e. 01.05.2017 and 28.07.2017.

Determination of issues:

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the findings of the authority on the issue is as under:

39. With respect to the **sole issue**, as per clause 16(a) of office space buyer's agreement, the possession of the said unit was to be handed over within 30 months plus grace period of 120 days from the execution of the said agreement i.e. 09.08.2011. Therefore, due date of possession shall be computed from



09.08.2011. The clause regarding the possession of the said unit is reproduced below:

"16(a) Time of handing over the possession

- (i.) *That the possession of the office spaces in the commercial complex shall be delivered and handed over to the allottee(s) within 30 months of the execution hereof, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee(s) under this agreement having been paid in time to the company. The company shall give notice to the allottee(s), offering in writing, to the allottee to take possession of the office spaces for his occupation and use (notice of possession).*
- (ii.) *The allottee(s) agrees and understands that the company shall be entitled to a grace period of one hundred and twenty (120) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the commercial complex."*

Accordingly, the due date of possession was 09.06.2014.

However, the respondent sent letter of offer of possession to the complainants on 25.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till handing over of possession i.e. 25.01.2018. The possession has been delayed by three years seven months and eighteen days from due date of possession till the offer of possession.



40. As the possession of the unit was to be delivered by 09.06.2014, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation, the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the Rules *ibid*, to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

Findings of the authority

41. 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 complainants 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. 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.



42. The possession of the unit was to be delivered by 09.06.2014. As per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso of the Act *ibid*, to pay to the complainants interest, at the prescribed rate, for every month of delay till the offer of possession.
43. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
44. For the time being, till view is taken by the authority regarding holding charges, these shall not be applicable for the period the matter remained sub-judice.

Decision and directions of the authority

45. After taking into consideration all the material facts as adduced and produced by both the parties, the authority

exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 09.06.2014 till offer of possession i.e. 25.01.2018. The interest so accrued shall be paid within 90 days from the date of this order.
- ii. The complainants are also advised to take possession and after possession, if they come to know any deficiencies they may approach the appropriate forum.
- iii. The respondent is directed to desist from charging holding charges for period the matter remained sub-judice.

46. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent



under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

47. The order is pronounced.
48. Case file be consigned to the registry.


(Samir Kumar)

Member


(Subhash Chander Kush)

Member


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.01.2019

Judgement uploaded on 08.07.2019

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