

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

Complaint no. : 453 of 2018
Date of first hearing: 09.08.2018
Date of decision : 16.01.2019

1. Mrs. Savita Gulia
R/o: flat no. A/102, Joy Kunj,
CGHS, Gurgaon-122001

2. Manav Deep Singh
R/o: U 30, Green Park Main,
New Delhi

Complainants

Versus

M/s Emaar MGF Land Limited
Office at: Emaar Business Park, MG Road,
Sikanderpur , Sector 28, Gurugram-122001

Respondent

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Shri Sanjeev Kumar Sharma
Shri Ketan Luthra,
Shri Ishaan Dang

Advocate for the complainants
Authorised representative on
behalf of respondent company
Advocate for the respondent

ORDER

1. A complaint dated 18.06.2018 was filed under Section 31 of the Real Estate (regulation & development) Act, 2016 read



with rule 28 of the Haryana Real Estate regulation and development) Rules, 2017 by the complainant Mrs. Savita Gulia and Manav Deep Singh against the promoter M/s Emaar MGF land limited on account of violation of clause 16 (a) of the retail space buyer's agreement executed on 29.12.2010 for unit no. EPS-GF-023 with a super area of 1043.5 sq. ft. in the project "Emerald Plaza" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. An amendment to the complaint was filed by the complainants 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 on the due date as per the said agreement.

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

1.	Name and location of the project	"Emerald Plaza" sector 65, Gurugram
2.	Nature of project	Commercial project
3.	Project area	102.741 acres
4.	Unit No.	EPS-GF-023
5.	Unit area	1043.5 sq. ft'
6.	Registered/ Not Registered	Not registered
7.	DTCP license no.	10 of 2009 dated 21.05.2009
8.	Date of retail space buyer's agreement	29.12.2010
9.	Total consideration as per statement of account dated 21.06.2018	Rs.76,70,467/-
10.	Total amount paid by the complainant as per statement of account dated 21.06.2018	Rs 63,68.752/-
11.	Payment plan	Installment plan
12.	Due date of delivery of possession. Clause 16 (a) of retail space buyer's agreement	Within 30 months from the execution of agreement + 120 days grace period that would be 29.10.2013
13.	Offer of possession	27.01.2018
14.	Delay in handing over possession till date of offer of possession	4 years 2 months 29 days
15.	Occupation certificate	08.01.2018
16.	Penalty as per clause 18 of retail space buyer's agreement	i.e. Interest calculated @9% p.a on the amount paid by allottee.

4. As per the details provided above, which have been checked as per record of the case file, a retail space buyer's agreement is available on record for commercial space no. EPS-GF-023 according to which the possession of the aforesaid unit was to be delivered by 29.10.2013. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled its committed liability till date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 09.08.2018 for the first hearing. The case came up on hearing on 09.08.2018, 13.09.2018, 13.09.2018, 25.09.2018, 25.10.2018, 15.11.2018, 16.11.2018, 07.12.2018 and 16.01.2019. The reply has been filed on behalf of the respondent on 20.08.2018.

FACTS OF THE CASE

6. The complainants submitted that on 19.02.2010, they booked an office space no. EPS-GF-023 in the year @ 6000/- per sq. ft. on the assurance that the construction would be completed on time and the possession would be handed over on 29.10.2013



by paying an advance cheque of Rs 5,00,000/- bearing no. 036252 drawn on 19.02.2010.

7. The complainants submitted that on 29.12.2010, the retail space buyer's agreement was signed between both the parties wherein it was assured by the promoter M/s Emaar MGF Land Ltd. that project shall be delivered to the buyer within 30 months of the execution of agreement i.e. 29.10.2010 plus 120 days of grace period.
8. The complainants submitted that they made regular payments as demanded by the promoter time and again and paid Rs.43,67,874/- till June 2013. There was no default on account of making payment to the promoter till June, 2013
9. The complainants submitted that they visited the construction site several times and visited the officer of the promoter also to inquire about the slow construction and time of handing over the possession.
10. The complainants submitted that the promoter only raised construction up to 5th floor slab up to the time of handing over the possession in June 2013. Thus, the complainant also



slowed down the instalments but still paid Rs. 20,00,878/- to the promoter on different occasion.

11. In January, 2018 the promoter offered handing over the possession and raised the demand of Rs.24,89,153 /-.

ISSUES RAISED BY THE COMPLAINANT

- I. 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?

RELIEF SOUGHT

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

REPLY ON BEHALF OF THE RESPONDENT

12. The respondent stated that the present complaint is not maintainable in law or facts. The provisions of Real Estate(Regulation and Development) Act,2016 are not



applicable to the project in question. Application for occupation certificate was made on 26.05.2017 which is before the notification of the Haryana Real Estate (Regulation and Development) Rules 2017 and the same was received on 08.01.2018. Thus, the project is not an 'on-going project'. The present complaint is liable to be dismissed on this ground alone.

13. The respondent submitted that the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the apartment booked by the complainant. Thus it was further submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the said Act read with rule 29 of HARERA Rules 2017 and not by this authority.

14. The offer of possession was made to the complainant on 27.01.2018 and the complainants were called upon to remit the balance payment including the delayed payment charges, but the complainants did not complete the necessary



formalities for obtaining possession, which is a lapse on the part of the complainants.

15. Respondent further submits that the complainants had been irregular in making payments due to which many reminders were sent and even demand notices were sent to the complainants to clear their outstanding dues. As till the date of 29.12.2018 the outstanding liability of the complainants is Rs.19,39,946/-.
16. Respondent submitted that the construction of the project/apartment in question stands completed and the respondent had already applied for the occupation certificate and had been granted the same. The respondent company has already handed over the possession to many allottees and the conveyance deed for the same has been executed.
17. Respondent submits that the demands raised by the promoter is as per the retail space buyer's agreement and there is no lapse or default on the part of respondent. It is the complainants who have defaulted on not obtaining the

possession on time and have initiated a false and frivolous complaint.

WRITTEN ARGUMENTS FILED BY THE COMPLAINANT

18. The complainants submitted that the only defence taken by respondent in their reply is that this hon'ble authority does not have jurisdiction to decide the present case which was already decided in the matter of Simmi Sikka V Emaar MGF Ltd.
19. The complainants submitted that the respondent has made a breach in terms of the said agreement and according to clause 16 the respondent has violated the agreement by not delivering the project in time.
20. The complainants submitted that according to provisions of the act and relevant judgments as cited by the complainant, regarding the same, the respondent is liable to pay delayed possession.
21. The complainants submitted that the respondent are liable to refund the extra charges paid to the respondent as parking charges.
22. The complainants further in the written argument raised issues like sale of super area, issue relating to decrease/increase of area of unit, charge of GST and transfer



of common areas to the association of allottees which have been considered in this order.

DETERMINATION OF ISSUES

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

23. With respect to the **sole issue**, as per clause 16(a) of retail 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. 29.12.2010. Therefore, due date of possession shall be computed from 29.12.2010. The clause regarding the possession of the said unit is reproduced below:

"16(a) Time of handing over the possession

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).



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 29.10.2013.

However, the respondent sent letter of offer of possession to the complainants on 27.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till handing over of possession i.e. 27.01.2018.

The possession has been delayed by 4 years 2 months and 29 days from due date of possession till the offer of possession.

24. As the possession of the apartment was to be delivered by 29.10.2013, 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. The complainants made a submission before the authority under section 34 (f) of the Act *ibid* to ensure compliance/ obligations cast upon the promoter under section 11(4)(a) of the Act *ibid*. The complainants requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil its

obligations. 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 i.e. 10.75%, for every month of delay till the handing over of possession.

Findings of the authority

25. 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 Department of Town and Country Planning, 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.





26. As per clause 16(a) of retail 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. 29.12.2010. Therefore, due date of possession shall be computed from 29.12.2010.
27. Accordingly, the due date of possession was 29.10.2013. However, the respondent sent letter of offer of possession to the complainants on 27.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till handing over of possession i.e. 27.01.2018. The possession has been delayed by 4 years 2 months and 29 days from due date of possession till the offer of possession. The authority decides that promoter shall be liable to pay interest for every month of delay till handing over the possession at the prescribed rate i.e. 10.75%.

Holding charges.

28. 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


29. 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 the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 29.10.2013 till handing over the possession i.e. 27.01.2018.
- 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 the period the matter remained sub-judice.
- iv. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-

motocognizance 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.

30. The order is pronounced.

31. 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

Dated:16.01.2019

Judgement uploaded on 08.07.2019