

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

**Complaint no. : 454 of 2018**  
**First date of hearing : 09.08.2018**  
**Date of decision : 16.01.2019**

Mr. Pawan Kumar Gupta  
R/o. 528/3, Roshanpura, opp. Ghanteshwar  
Mandir, Gurugram, Haryana.

**Complainant**

**Versus**

Emaar MGF Land Limited.  
Address: Emaar Business Park,  
MG Road, Sikanderpur, Sector 28,  
Gurugram-122002.

**Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Shanjeev Sharma  
Shri Ishaan Dang

Advocate for the complainant  
Advocate for the respondent

**HARERA**  
**ORDER**  
**GURUGRAM**

1. A complaint dated 18.06.2018 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. Pawan Kumar Gupta, against the promoter M/s Emaar MGF Land

Ltd., on account of violation of the clause 16(a) of retail space buyer's agreement executed on 01.07.2010 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 complainant 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 retail space buyer's agreement has been executed on 01.07.2010 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 hills", Sector 65 urban estate, Gurugram, Haryana.
2.	DTCP licence no.	10 of 2009 dated 21.05.2009
3.	RERA registered/ not registered	<b>Not registered</b>
4.	Unit no.	EPS-CF-018,
5.	Unit measuring	1043.5 sq. ft.
6.	Retail space buyer's agreement executed on	01.07.2010
7.	Total consideration amount as per statement of account	Rs.74,35,013/-
8.	Total amount paid by the complainant	Rs.74,47,874/-
9.	Payment plan	Construction link plan
10.	Due date of delivery of possession clause 16(a)(i) (30 months from the date of buyers agreement + 120 days grace period)	01.05.2013
11.	Date of offer of possession	27.01.2018
12.	Date of receipt of OC	08.01.2018
13.	Date of application for OC	22.05.2018
14.	Delay in handing over possession till date of offer of possession	4 years 8 months and 26 days
15.	Penalty clause as per said buyer's agreement	Clause 18 of the agreement i.e. 9% p.a simple interest on the amounts 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 has been provided by the complainants and the respondent. A retail space buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 01.05.2013 as per the said agreement. The respondent has offered the possession of the said unit on 27.01.2018. the respondent has failed to give interest on delayed possession in terms of the said agreement. 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 09.08.2018. The case came up for hearing on 09.08.2018, 13.09.2018, 25.09.2018, 15.11.2018, 16.11.2018, 07.12.2018 and 16.01.2019. the reply filed by the respondent has been perused.

**Brief facts of the complaint**

6. Briefly stated, the facts of the complaint are that Emaar MGF Land Ltd is a company incorporated under the



Company's Act, mainly based in Middle East and UAE; entered into the emerging and booming real estate market in India during the first decade of 21<sup>st</sup> century. All the formalities laid down by the central government were fulfilled before commencing the business. Company purchased hundreds of acres of land in Gurgaon and other major cities of India.

7. The complainant submitted that company conceived, planned and was in the process of constructing and developing a residential plotted colony "Emerald Hills" (Herein after called project) to be developed on a piece of land admeasuring 102.471 acres in Sector 65, Urban Estate, Gurgaon.
8. The complainant submitted that Director, Town and country Planning, Government of Haryana has granted license bearing no.-10 dated 21.05.2009 to develop the project. The complainants purchased a unit in the multistoried commercial complex "Emerald Plaza" admeasuring 3.963 acres forming part of the land on which license no-10 dated 21.05.2009 admeasuring 102.471 obtained.

9. The complainant submitted that he purchased unit no. **EPS-GF-018** measuring **1043.50** sq. feet retail shop / office space in the name of Sh. Pawan Kumar Gupta and paid booking amount of Rs. **6,25,800/-** vide cheque no. **689555** of State Bank of India dated **22.08.2009** in the year **2009** at the rate of Rs. 6000/- per sq. feet.
10. The complainant submitted that at the time of booking the unit, it was assured by the promoter M/s Emaar Land Ltd. that project shall be delivered to the buyers within (30) thirty months from date of the execution of agreement plus (120) one hundred twenty days as grace period.
11. The complainant submitted that believing the representation, assurances and goodwill which the promoter command, the complainant paid booking amount on 22.08.2009 and subsequently signed retail space buyer's agreement on 01.07.2010.
12. The complainant submitted that he made regular payments as demanded by the promoter time and again and paid Rs. 7,44,827/- till June 2013. There was no default on account of making payment to the promoter till June 2013 which was





the time as per agreement to hand over the possession to the complainant.

13. The complainant submitted that the promoter only raised construction up to 5<sup>th</sup> floor slab up to the time of handing over the possession in June 2013 so the complainant also slowed down the payments of installments but still to be paid Rs. 6,264/- to the promoter on different occasions.
14. The complainant submitted that in January 2018, builder offered handing over the possession and raise a demand of Rs. 6,264/- which accounted the following details:-  
overdue amount. GST amount. electricity connection amount, IFMS etc.
15. The complainant submitted that he visited the office of promoter and tried his level best to meet the senior officials but CRM (customer relation managers) did not allow to meet, so complainant send legal notice to the promoter. Respondent company didn't bother to reply. Leave aside reply they did not ever acknowledge the notice, hence, the complainant was construed to approach the Haryana Real

Estate Regulatory Authority at Gurugram. On the Grounds which are raised in issues to decided.

**Issue to be decided:**

16. After an amendment to the complaint 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. **Relief sought**

The complainant is seeking refund of the entire amount paid by him along with interest at the prescribed rate which is an obligation of the promoter as per section 18(1) of the Act ibid.

**Respondent's reply**

18. The respondent has raised various preliminary objections and submissions they are as follow:

- i. The respondent submitted that the hon'ble authority has no jurisdiction to entertain the present complaint as the





complainant has not come to this authority with clean hands and has concealed the material facts.

19. The respondent submitted that the provision of the RERA Act, are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment in question was made on 26.05.2018 i.e well before the notification of the HARERA Rules 2017. The occupation certificate has been thereafter issued on 08.01.2018. the project in question is not an "ongoing project" under rule 2(1)(o) of Rules ibid.
20. The respondent submitted that present complainant is to be decided by the adjudicating officer under section 71 of the RERA Act, 2016 read with rule 29 of the HARERA Rules, 2017 and not by this hon'ble authority.
21. The respondent submitted that the complainant was offered possession of the said unit in question through letter of offer of possession dated 27.01.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities for handing over of the office space to the complainant.



22. The respondent submitted that clause 18 of the retail space buyer's agreement further provided that compensation for delay in delivery of possession shall only be given to such allottees who are not in default of the agreement and who have not defaulted in payment as per the payment plan annexed with the agreement.
23. The respondent submitted that it is wrong and denied that it had only completed the fifth floor roof slab till June 2013. It is wrong and denied that the complainant was entitled to renege from the schedule of payment.
24. The respondent submitted that demands raised by the respondent are strictly in accordance with the terms and condition of the said buyer's agreement executed by the parties. Therefore, complainant is not entitled to any compensation or interest as claimed by him. The contractual relationship between the complainant and the respondent is governed by the terms and conditions of buyer's agreement.



25. **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 :

26. 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. 01.07.2010. Therefore, due date of possession shall be computed from 01.07.2010. 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."*

27. Accordingly, the due date of possession was 01.05.2013.

However, the respondent sent letter of offer of possession to the complainant 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 four years eight months and twenty six days from due date of possession till the offer of possession. The refund in the present case cannot be allowed as it will hamper the progress of the project as OC has already been obtained by the respondent on 08.01.2018 from the competent authority.

28. As the possession of the apartment was to be delivered by 01.05.2013, 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 complainant 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 complainant 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 complainant, at the prescribed rate, for every month of delay till the handing over of possession.

**Findings of the authority**

29. 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. 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.

30. The possession of the unit was to be delivered by 01.05.2013.

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 complainant interest, at the prescribed rate, for every month of delay till the offer of possession.

31. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

32. 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**

33. 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 both parties 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. 01.05.2013 till offer of possession i.e. 27.01.2018. The interest so accrued shall be paid within 90 days from the date of this order.
- (ii) The complainant is 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.




34. 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.

35. The order is pronounced.

36. 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