

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

**Complaint No. : 455 of 2018**  
**First date of hearing: 09.08.2018**  
**Date of Decision : 16.01.2019**

Mr. Ajay Nagpal  
R/o C-1050, Sushant Lok-I,  
Gurugram-122001,  
Haryana

**Complainant**

Versus

M/s Emaar MGF Land Ltd.  
Corporate Office: Emaar MGF Business Park,  
Mehrauli Gurgaon Road, Sector-28,  
Sikanderpur,  
Gurugram-122001, Haryana

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Sanjeev Sharma  
Shri Ishaan Dang  
Shri Ketan Luthra

Advocate for the complainant  
Advocate for the respondent  
Authorized representative on  
behalf of the respondent company

**ORDER**

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 complainant Sh. Ajay Nagpal, against the promoter M/s Emaar MGF Land Ltd., on account of violation of clause 16 of the office space buyer's agreement executed on 23.02.2011 for unit no. EPO-07-018 on 7<sup>th</sup> floor having 627.16 sq. ft. approx. in the project "Emerald Plaza", Sector-65, Gurugram 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 complainant wherein he has stated that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserves his right to seek compensation from the promoter for which he 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.



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

1.	Name and location of the project	"Emerald Plaza", Sector 65, Gurugram.
2.	Office space /unit no.	EPO-07-018
3.	Office space measuring	627.16 sq. ft.
4.	RERA registered / not registered.	<b>Not registered</b>
5.	Date of execution of office space buyer's agreement	23.02.2011
6.	Total consideration	Rs. 47,51,940/- (statement of account dated 21.06.2018)
7.	Payment plan	Construction linked plan
8.	Total amount paid by the complainant till date	Rs. 42,83,495/-
9.	Due date of possession	Clause 16 - 30 months + grace period 120 days from the execution of agreement i.e. 23.12.2013
10.	Delay in possession	4 years 1 month and 2 days
11.	Offer of possession	25.01.2018
12.	Date of application for OC	26.05.2017
13.	Date of receipt of OC	08.01.2018

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared





on 09.08.2018. The case came up for hearing on 09.08.2018, 13.09.2018, 25.09.2018, 25.10.2018, 15.11.2018, 16.11.2018, 07.12.2018 and 16.01.2019. The reply filed on behalf of the respondent on 17.08.2018 has been perused by the authority.

**Facts of the complaint**

5. Briefly stated, the facts of the case as culled out from the case of complainant are that he has booked a shop with the respondent named as EMAAR MGF Limited in the project Emerald Plaza, unit no. EPO-07-018, on the 7<sup>th</sup> floor measuring 627.16 sq. ft. @ 6500/-per sq. ft. situated at Sector 65, Golf course road, Gurugram, Haryana.
6. The complainant submitted that he paid booking amount of Rs. 5,00,000/- vide cheque no. 434966 of Royal Bank of Scotland dated 20.09.2010 and subsequently signed buyer's agreement on 23.02.2011 and that project shall be delivered to the buyers within 30 months of the execution of agreement plus 120 days as grace period.
7. The complainant submitted that he made regular payments as demanded by the promoter and paid Rs. 38,03,396/- till November 2013 and further paid Rs. 4,80,099/- i.e. total



amount of Rs. 42,83,495/-. The complainant submitted that there was no default on account of making payment to the promoter till November 2013, which was the time as per agreement to hand over the possession to the complainant.

8. The complainant submitted that he visited the construction site several times and visited the office of the promoter also to enquire about the slow construction and time of handing over the possession. The promoter only raised construction upto 5<sup>th</sup> floor slab upto the time of handing over the possession in June 2013.

9. The complainant submitted that in January 2018 builder offered handing over the possession and raised a demand of Rs. 10,63,529/- . There was no mention of delayed possession interest, compensation for delayed possession etc. The complainant submitted that he sent legal notice to the promoter but respondent company did not bother to reply.

**10. Issues raised by the complainant**

i. 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 complainant is





entitled to get interest for every month of delay in handing over the possession of the said unit?

**11. Relief sought by the complainant**

- i. The complainant is seeking interest at the prescribed rate for every month of delay till the handing over of possession.

**Respondent reply**

The respondent submitted various preliminary objections and submissions. They are as follow:

12. The present complaint is not maintainable in law or facts. The application for issuance of occupation certificate in respect of the commercial unit in question was made on 26.05.2017 i.e. well before the notification of the HRERA Rules, 2017. The occupation certificate has been thereafter issued on 08.01.2018. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint.
13. The complaint is not maintainable before this hon'ble authority. The complainant has filed the present complaint seeking possession, compensation and interest for alleged delay in delivery of possession of the apartment booked by



the complainant. It is respectfully submitted that complaints pertaining to compensation and refund are to be decide by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016.

14. The respondent is covered under the definition of ongoing projects and is partly registered with this hon'ble regulatory authority and complaint, if any is still required to be filed before the adjudicating officer under rule -29 of the said rules.
15. The complainant has got no locus standi or cause of action to file the present complaint. The present is based on an erroneous interpretation of the provisions of the Act ibid as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 23.02.2011.
16. The complainant was offered possession of the above mentioned unit through letter of offer of possession dated 25.01.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the office space to the complainant. However,





the complainant did not take any steps to complete the necessary formalities or to pay the balance amount payable by him.

17. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan dated 23.02.2011 opted by the complainant and possession reminder letter 03.03.2018 was sent to the complainant by the respondent.

18. The complainant had delayed payment of instalments and was consequently not eligible to receive any compensation from the respondent. As per statement of account dated 21.06.2018 the outstanding amount including the delayed payment charges payable by the complainant to the respondent is Rs. 6,51,572/-. It is pertinent to mention that respondent has already handed over possession to number of allottees and conveyance deeds have also been executed in their favour.

19. The demanded amount in the letter of possession was Rs. 10,60,784/-. The demanded amount included overdue





amount, electricity connections charges, water and sewerage connection charges, interest free maintenance security, delayed payment charges etc.

**WRITTEN ARGUMENTS FILED BY THE COMPLAINANT**

20. The complainant 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.
21. The complainant 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.
22. The complainant 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.

23. The complainant submitted that the respondent is liable to refund the extra charges paid to the respondent as parking charges.
24. The complainant further in the written argument has 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.

**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 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. 23.02.2011. Therefore, due date of possession shall be computed from 23.02.2011. 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 23.12.2013.

However, the respondent sent letter of offer of possession to the complainant on 25.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till offer of possession i.e. 25.01.2018. The possession has been delayed by 4 years 1 month and 2 days from due date of possession till the offer of possession.

27. As the possession of the apartment was to be delivered by 23.12.2013, 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 offer of possession.

#### **Findings of the authority**

28. 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.

29. 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. 23.02.2011.

30. Accordingly, the due date of possession was 23.12.2013. However, the respondent sent letter of offer of possession to the complainant on 25.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till offer of possession i.e. 25.01.2018. The possession has been delayed by 4 years 1 month and 2 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.

31. Holding charges.

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 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. 23.12.2013 till offer of possession i.e. 25.01.2018.
- 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 the 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 section 59 of 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