

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

Complaint No. : 456 of 2018
First date of hearing : 21.08.2018
Date of Decision : 16.01.2019

Mr. Ashok Nagpal
Authorised signatory of M/s O.C. Construction
Pvt. Ltd.
R/o. H. No. 8101, DLF Phase-4,
Gurugram, Haryana.

Complainant

Versus

M/s Emaar MGF Land Ltd.,
Regd. Office: Emaar Business Park,
M.G. Road, Sikanderpur, Sector-28,
Gurugram (Haryana) - 122001

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Ashok Nagpal
Shri Ketan Luthra

Complainant in person
Authorised representative on behalf
of the respondent- company.
Proxy counsel for Shri Dheeraj
Kapoor, Advocate for the respondent

Ishaan Dang

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 Mr. Ashok Nagpal, against the respondent Emaar MGF Land Ltd., on account of violation of clause 16(a)(i) of the space buyers agreement which states the right of buyer to possession within the promised time of 30 months from the date of the execution of the space buyers agreement dated 24.12.2010 in respect of unit number EPO-07-017 in the project named "Emerald Plaza" in Sector 65, Gurugram, which is an obligation under section 11(4)(a) of the Act ibid.

2. Since the shop buyer's agreement dated 24.12.2010 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016 so the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non compliance of obligation on the part of respondent under section 34(f) of the Act ibid.
3. The particulars of the complaint case are as under: -

1.	Name and location of the Project	"Emerald Plaza", Sector 65, Golf Course Link Road, Gurugram
2.	Nature of real estate project	Commercial Complex
3.	Total area of the project	102.741
4.	DTCP license no.	10 dated 21.05.2009.
5.	Flat/Apartment/Unit No.	EPO-07-017 on 7 th Floor
6.	Unit measuring area	655.19 Sq. Ft.
7.	RERA Registered/ Not registered.	Not registered



8.	Booking date	24.06.2010
9.	Date of execution of shop buyer's agreement	24.12.2010 (Annx 1)
10.	Payment plan	Construction Linked Plan
11.	Basic Sale Price	Rs.42,58,735/-
12.	Total amount paid by the complainant till date	Rs.39,75,029/-
13.	Percentage of consideration amount	Approx. 80 percent
14.	Due date of delivery of possession as per the clause 16(a)(i) of the space buyers agreement.	24.09.2013 30 months from the date of execution of the agreement + grace period of 120 days.
15.	Date of offer of possession letter	30.01.2018 (Annx R-5)
16.	Date of receipt of occupation certificate	08.01.2018 (Annx R-3)
17.	Delay of number of years / months/ days till	4 years 10 months and 12 days
18.	Penalty Clause as per shop buyer's agreement dated 24.12.2010	Clause 18(a) an interest @9% per annum on the amount paid by the allottee.

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. A space buyer's agreement is available on record for the aforesaid space according to which the possession of the same was to be delivered by 30 months from the date of the execution of the agreement dated 24.10.2010. Neither the respondent delivered the possession of the said unit on the due date to the complainant nor have they paid any compensation which

is in violation of obligation of promoter under section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 21.08.2018. The case came up for hearing on 21.08.2018, 29.08.2018, 09.10.2018, 13.11.2018, 16.11.2018, 07.12.2018, 16.01.2019 and 12.04.2019. The reply filed on behalf of the respondent has been filed on 24.09.2018 which has been perused.

Facts of the complaint:-

6. Briefly stated, the facts of the case as culled out from the case of complainant are that on 24.06.2010 the complainant purchased a shop/office bearing a unit no. EPO-07-017 on the 7th floor @ 6500/- per sq. ft. on the assurance that construction shall be completed in time and possession would be handed over in time and so the complainant paid the booking amount of Rs. 500,000/- dated 24.07.2010.
7. The complainant further submitted that the Emaar MGF Land Ltd. is a company incorporated under the company's Act mainly based in Middle East and UAE which has entered into the emerging and booming real estate market in India. This company conceived, planned and was in the process of

constructing and developing a residential plotted colony "Emerald Hills" to be developed on a piece of land measuring 102.471 acres in sector 65, Gurugram.

8. The complainant submitted that it purchased a unit in the multi-storied commercial complex "Emerald Plaza" admeasuring 3.963 acres forming part of the land on which licence no. 10 of 2009 dated 21.05.2009 was obtained. It was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space. That the complainant purchased unit no. EPO-07-017 measuring 655.19 sq.ft. in the name of M/s O C Construction Pvt. Ltd. through its director Mr. Ashok Nagpal. The complainant signed the space buyer's agreement on 24.12.2010.
9. The complainant further submitted that it has made regular payments as demanded by the respondent time and again and paid Rs.39,75,029/- till June 2013. There was no default on account of making payment to the promoted till June 2013, which was the time as per the agreement to hand over the possession to the complainant. The complainant further asserted that the complainant visited the construction site several time and visited the office of the respondent also to enquire about the slow construction and time of handing over the possession. That the respondent only raised construction

upto 5th floor slab till the time of handing over the possession which fell due in June 2013, so the complainant also slowed down with the payment of instalments but it still paid Rs.39,75,029/- to the respondent on different occasions.

10. The complainant further submitted that in January 2018 builder offered handing over the possession and raise a demand of Rs. 21,07,753/-. On receiving the demand letter and letter for possession, the complainant was aghast as there was no mention of delayed possession interest, compensation for delayed possession etc but demand and only demand for more money. The complainant visited the office of respondent and tried his level best to meet the senior officials but customer relation manager did not allow to meet, so complainant sent legal notice to the respondent, and respondent company did not bother to reply or even acknowledge the notice hence, this complaint to the Haryana Real Estate Regulatory Authority at Gurugram.

11. Issues to be decided:-

- 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?

12. Reliefs sought:-

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

Respondent reply:-

13. The respondent submitted that the allottee in the present case is a company i.e. O.C. Constructions Pvt. Ltd. which has not filed the present complaint instead it has been filed by one Mr. Ashok Nagpal who is not the allottee and the complaint should be liable to be dismissed on this ground alone.

14. The respondent further submitted that the complaint filed by the complainant is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint on the grounds that the project of the respondent is not an ongoing project as per rule 2(0), the project i.e. "Emerald Plaza" at "Emerald Hills" of the respondent is neither covered under the Haryana Real Estate (regulation and development) Rules, 2017 not the said project is registered with this authority. The respondent further vindicated by Rule 4 (5) which clearly states that any project for which an application

for OC is made to the competent authority on or before the publication of the said rules i.e. 28.07.2017, is outside the purview of this authority.

15. The respondent further submitted that the OCCPL is a private ltd. Company and works in the business of real estate and also deals in the sale and purchase of real estate and has booked the unit in question for a commercial purpose which also goes to clearly show that OCCPL is an investor and not a consumer. Its submitted that these facts are intentionally concealed from the regulatory authority and hence, the complaint is liable to dismissed on this ground alone.

16. The respondent submitted that it has already applied for the OC vide application dated 22.05.2017 and its was deemed to be granted on 21.07.2017 and actually granted on 08.01.2018. It is pertinent to mention here that after obtaining the OC the respondent has already issued the letter of offer of possession dated 30.01.2018 for the said commercial/office unit along with the statement of accounts dated 30.01.2018 with the details of all the charges etc. as mentioned therein as well as in the notice of possession. However, even after receiving the notice of possession and various reminders OCCPL did not make the payments and have not come forwards till date to take the possession of the

said unit and hence, the present complaint is filed on false and frivolous grounds.

17. The respondent submitted that the OCCPL has been a defaulter in making payments of various installments within the time prescribed, which resulted in delay of payment charges as reflected in the statement of accounts dated 30.01.2018. That the OCCPL has concocted a false story to cover up their own default of non-payment of dues and raised false and frivolous issues and the present complaint is liable to be dismissed. That despite several adversities the respondent has completed the construction of the said project and has already obtained the OC dated 08.01.2018 for the said office unit.

18. The respondent further submitted that the said project was never to be built with 3 levels of basement parking or that the unit is purchased by the complainant or that it was assured that project will be completed, or possession be given by June 2013 or that June 2013 was the due date of possession as per the agreement. It is also denied that the complainant ever visited the site or office of the respondent or that the construction was slow or that after receiving the notice of possession, the complainant was aghast or sent any legal notice. The respondent further denies that the complainants



has made timely payment of installments or that it was agreed that possession will be given within 34 months of signing the agreement dated 24.12.2010.

19. The respondent further submitted that as per clause 6 of the space buyer agreement it clearly provides that in case of any alteration/modification resulting in any increase in the super area of the retail space, the respondent shall raise additional demand at the original rate and OCCPL shall be liable to pay the same. It is further submitted that the definition of super area as provided in clause 10 of the agreement OCCPL has assured that it shall not raise any dispute or make any claim in this regard at later stage. However, now by raising a dispute with regard the same, OCCPL is trying to wriggle out of the terms and conditions of the agreement. It is submitted that there is an area below the second basement but it was never intended to be used for parking instead it houses services including a pump room, underground water tank etc.

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-



20. With respect to the **sole issue** raised by the complainant, as per clause 16(a)(i) of shop buyer's agreement dated 24.12.2010, 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. The relevant portion of 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 delivery of possession comes out to be 24.09.2013. However, the respondent had sent letter of offer of possession to the complainant on 30.01.2018 **(Annexure R5)**. Therefore, delay in handing over possession

shall be computed from due date of handing over possession till handing over of possession i.e. 30.01.2018 (**Annexure R5**). The possession has been delayed by three years seven months and eighteen days from due date of possession till the offer of possession.

21. As the possession of the apartment was to be delivered by 24.09.2013, 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, for every month of delay till the handing over of possession.



Findings of the authority:-

22. The respondent admits as the concerned project is situated in Sector- 65, Gurugram and as the nature of the project is commercial complex and thus the authority has complete territorial as well as subject matter jurisdiction .
23. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
24. Arguments heard. The three different issues were raised during arguments:-
- (i) Payment of interest for every month of delay in handing over possession. The authority decided that promoter shall be liable to pay interest for every month of delay till handing over of possession at the prescribed rate.
 - (ii) Not following the specification and plan.
 - (iii) Holding charges.



25. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to register its project under the RERA Act 2016 and hence has violated section 3 of the Act, ibid and also attracts necessary action under section 59 of the said Act.
26. Since there is a delay of more than 4 years in offer possession to the complainant, therefore the authority is of the view that the complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.75% per annum in terms of the provision of section 18 (1) proviso of the Act ibid.

Decision and directions of the authority:-

27. 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 in the interest of justice:
- i. The respondent is directed to pay delay possession charges at the prescribed rate of 10.75% per annum for every month of delay from the due date of delivery of possession i.e. 24.09.2013 till offer of possession (30.01.2018) within 90 days from this order.



- ii. The authority has decided to take suo-moto cognizance against the respondent - promoter for not getting the project registered & for that registration branch is directed to initiate necessary action against the respondent under section 59 of the Act. A copy of this order be endorsed to the registration branch.

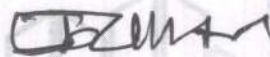
28. Complaint is disposed of accordingly.

29. Order is pronounced.

30. 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 :

Judgement uploaded on 08.07.2019