

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

Complaint no. : 563 of 2018
Date of first hearing: 18.09.2018
Date of decision : 16.01.2019

Mr. Moninder Pal Singh and
Mrs. Seema Singh
Both R/o: 1330, DLF-Phase IV,
Gurugram-122009

Complainants

Versus

M/s Emaar MGF Land Limited and
Office at: 306-308, 3rd floor,
Square One, C-2, District Centre, Saket
New Delhi- 110017

Mr. Sachin Dalal
Address: KSD Land Traders Pvt Ltd,
SCO-35, HUDA market,
Sector-15, Part II,
Gurugram-122001

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Abhimanyu Dhawan
Shri Ketan Luthra, authorized
representative with Shri
Ishaan Dang

Advocate for the complainants

Advocate for the respondents

ORDER

1. A complaint dated 19.07.2018 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 complainants Mr. Moninder Pal Singh and Mrs. Seema Singh against the promoter M/s Emaar MGF land limited and Mr. Sachin Dalal on account of violation of clause 16 (a) of the office space buyer's agreement executed on 02.07.2010 for unit no. EPO-09-001 with a super area of 637.67 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.	Unit No.	EPO-09-011
4.	Unit area	637.67 sq. ft
5.	Registered/ Not Registered	Not registered
6.	DTCP license	10 of 2009 dated 21.05.2009
7.	Date of office space buyer's agreement	02.07.2010
8.	Total consideration	Rs.38,12,628.93/-
9.	Total amount paid by the complainant (as alleged by complainant)	Rs 48,07,450/-
10.	Payment plan	Construction linked plan
11.	Application for OC	26.05.2017
12.	Receipt of OC	08.01.2018
13.	Offer of possession	24.01.2018
14.	Due date of delivery of possession.	Clause 16 (a) i.e. 30 months from the execution of agreement + 120 days grace period that would be 02.05.2013
15.	Delay of number of months/ years upto 24.01.2018	4 years 8 months 22 days



16.	Penalty clause as per space buyer's agreement dated 02.07.2010	Clause 18 i.e. Interest calculated @9% p.a on the amount paid by allottee.
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4. As per the details provided above, which have been checked as per record of the case file. A office space buyer's agreement is available on record for commercial space no. EPO-09-011 according to which the possession of the aforesaid unit was to be delivered by 02.05.2013. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply up and for appearance. Reply has been filed and been perused.

FACTS OF THE CASE

6. The complainants submitted that they approached the respondent to book an office space no. EPO-09-001 admeasuring 637.65 sq. ft in the project "Emerald Plaza Office". The complainants paid Rs.5,00,000/- vide cheque bearing no.194754 vide receipt dated 27.11.2009.



7. The complainants submitted that a provisional allotment of the said unit was given vide letter dated 09.12.2009. the said letter mentioned basic sale price exclusive of EDC and IDC.
8. The complainants submitted that the copy of unsigned office space buyer's agreement was received by the complainants in March 2010 which got executed on 02.07.2010 and 40% of total money was paid to the respondents. No delay was ever made by the complainants and the delay in a payment of March 2010 was at the behest of respondent no.1 and 2.
9. The complainants submitted that the respondents have violated office space buyer's agreement and as per payment schedule on page 19 of the agreement amount of Rs.2,85,947.17/- has been charged under the head of "THIRD BASEMENT ROOF SLAB" however no such basement has been constructed.
10. The complainants submitted that the respondents have breached clause 16 of the agreement for delay in possession of the agreement wherein they had to provide possession till 02.05.2013. Also, as per clause 18 of office space buyer's

agreement if the company is not able to provide possession to the allottee, the allottee shall be entitled to interest @9% p.a on the total amount paid by the allottee.

11. The complainants submitted that the complainants sent a legal notice in May 2018 for recovery of Rs.16,50,000/- with 9% interest which was denied by the respondents vide letter dated 03.07.2018. That because of delay by the respondents there were various tax liabilities imposed upon the complainants.

12. The complainants submitted that they do not want to withdraw from the project but wants the compensation in form of interest for the delayed period.

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



13. RELIEF SOUGHT

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 RESPONDENTS

14. The respondents 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'

15. The respondents 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 complainants. 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.

16. The respondents submitted that the offer of possession was made to the complainants on 24.01.2018 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.
17. Respondents 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.
18. Respondents submitted that the construction of the project/apartment in question stands completed and the respondents had already applied for the occupation certificate and had been granted the same. The respondent's company has already handed over the possession to many allottees and the conveyance deed for the same has been executed.

19. Respondents submitted that the demands raised by the promoter is as per the space buyer's agreement and there is no lapse or default on the part of respondents. It is the complainants who have defaulted on not obtaining the possession on time and have initiated a false and frivolous complaint.

DETERMINATION OF ISSUES

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

20. With respect to the **sole issue**, the space buyers' agreement is sacrosanct as regards the dealings between parties. Clause 6(a) is reproduced hereunder:

"the allottees hereby consents and shall raise no objection in the event company at its sole option and discretion till the grant of an occupation certificate and at any time even after the building plans for the commercial complex/ tower are sanctioned carries out any additions, alterations, deletions and design modifications, as it may consider necessary in its sole discretion and/or as directed by any competent authority and/or the architect. Such changes may include but shall not be limited to change in the

building plans of the retail space/tower/floor plans, location, increase or decrease in super area, number of retail spaces, floors, block or designs and specifications annexed in Annexure-VI."

So, the complainants have agreed to the above-mentioned terms and the respondents can make alterations as per the agreement.

21. As per clause 16(a) of the agreement is reproduced hereunder:

"30 months from the execution of agreement + 120 days grace period"

The due date comes out to be 02.05.2013 and the possession was offered on 24.01.2018 which means that there is a delay of 4 years 8 months 22 days till the offer of possession. Regarding payment of interest for delay in delivery of possession the promoter is liable under section 18(1) proviso 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.

22. The prayer of the complainants regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for

sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate on the amount deposited by the complainants with the promoter on the due date of possession i.e. 02.05.2013 up to the date of offer of possession i.e. 24.01.2018.

23. The project is unregistered at the moment and the counsel for the respondents is advised to get itself registered with the authority u/ s 3 of the RERA Act, 2016 and this be treated as notice that as to why penal proceedings should not be initiated against the promoter and 10% of the cost to be imposed on the promoter.

FINDINGS OF THE AUTHORITY

24. The application filed by the respondents for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.

25. As per clause 16(a) of the agreement is reproduced hereunder:

"30 months from the execution of agreement + 120 days grace period"

The due date comes out to be 02.05.2013 and the possession was offered on 24.01.2018 which means that there is a delay of 4 years 8 months 22 days till the offer of possession. Regarding payment of interest for delay in delivery of possession the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

The prayer of the complainants regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay

interest at the prescribed rate on the amount deposited by the complainants with the promoter on the due date of possession i.e. 02.05.2013 up to the date of offer of possession i.e. 24.01.2018.

26. Holding charges.

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.

27. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

DIRECTIONS OF THE AUTHORITY

28. 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 respondents shall be liable to pay interest for every month of delay at prescribed rate from due date of possession till the offer of possession to the allottee.
- (ii) If the possession is not given on the date committed by the respondent, then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions.
- (iii) The respondent is directed to desist from charging holding charges for the period the matter remained sub-judice.

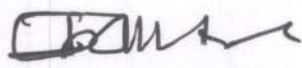
29. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch 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