

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

Complaint no. : 574 of 2018  
Date of first hearing: 20.09.2018  
Date of decision : 16.01.2018

Mr. Anurag Kumar  
R/O E-23, Sector-48, Vipul World,  
Gurugram

**Complainant**

Versus

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

**Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Shri Sanjeev Kumar Sharma Advocate of Complainant  
Shri Ishaan Dang Advocate for the respondent

**ORDER**

1. A complaint dated 23.07.2018 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 Shri Anurag Kumar, against the promoter M/s Emaar MGF land limited, on account of violation of clause 16(a) of the office space buyer's agreement executed on 30.10.2010 for unit no. EPO-03-020 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*. 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 on the due date as per the said agreement.

2. Since, the space buyer's agreement has been executed on 30.10.2010 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 contractual obligation on the 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 are as under: -

- \* **DTCP licence no. 10 of 2009 dated 21.05.2009**
- \* **Nature of project: commercial**
- \* **Collaboration agreement between active promoters pvt. Ltd. and Emaar MGF land ltd.**

1.	Name and location of the project	"Emerald Plaza offices" in sector 65, Gurugram
2.	Nature of real estate project	Commercial complex
3.	Unit no.	EPO-03-020
4.	Area of unit	627.16 sq. ft.
5.	Payment plan	Construction linked plan
6.	Registered/ not registered	<b>Not registered</b>



7.	Date of occupation certificate	08.01.2018
8.	Provisional allotment letter dated	17.09.2010
9.	Date of offer of possession	24.01.2018
10.	Date of space buyer's agreement	30.10.2010
11.	Total consideration	Rs. 34,28,412/- (as per statement of account)
12.	Total amount paid by the complainant	Rs. 30,39,701/- (as per statement of account)
13.	Due date of delivery of possession clause 16(a)(30 months from date of execution plus 120 days as grace period)	30.08.2013
14.	Delay in handing over possession till date of offer of possession	4 years 4 months and 25 days
15.	Penalty clause as per office space buyer's agreement dated 30.10.2010	Clause 18(a)- 9% p.a simple interest on the amount paid by the allottee for such period of delay

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An office space buyer's agreement is available on record for unit no. EPO-03-020 according to which the possession of the aforesaid unit



was to be delivered by 30.08.2013 and the possession was offered to the complainant on 24.01.2018. The promoter has failed to give interest on delayed possession as per the said agreement duly executed between the parties. 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. Accordingly, the respondent appeared on 11.12.2018 and the case came up for hearing on 11.12.2018 and 16.01.2019. The reply has been filed by the respondent.

**Facts of the complaint**

6. 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.
7. 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 "Emerald Plaza" was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space.

8. The complainant submitted that he purchased a shop / office / unit no EPO-03-020 admeasuring a super area of 627.16 sq. ft. situated on the third floor on the assurance that construction shall be complete in time and possession would be handed over in time and paid advance cheque of Rs. 5,00,000/-.
9. The complainant submitted that office space buyer agreement dated 30.10.2010 was signed between both the parties i.e. M/s Emaar MGF Land Ltd. and the complainant on the terms and conditions as laid down by the company. It is must to mention here that as per the space buyer agreement, the possession of the unit in question was to be handed over within 30 months from the date of the said agreement with a grace period of 120 days as provided under clause 16(a) of the agreement.



10. The complainant submitted that as per the office space buyer agreement the possession of the unit in question was to be handed by April 2013, however at that time the construction of the project was far from completion. Complainant visited the construction site several time and visited the office of the promoter also to enquire about the slow construction and time of handing over the possession.
11. The complainant submitted that he after an exorbitant delay of almost 5 ½ years received letter for offer of possession dated 24.01.2018 with respect to the unit in question. Though the respondent offered the possession of the unit in question after a delay of almost 5 1/2 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant has also visited the office of the respondent with the request to pay interest for the delayed possession but the same were in vain.
12. 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 he send a legal notice to the promoter. Respondent, company didn't bother to reply. Leave reply they even did not acknowledge the notice hence this complaint to the Haryana Real Estate Regulatory Authority at Gurugram.

**Issues raised by the complainant**

- i. After an amendment to the complaint filed along with 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 refund of the amount paid by him?

**Relief sought**

- i. The complainant is seeking refund of the entire amount paid by him along with prescribed interest which is an obligation on the promoter as per section 18(10).







**Respondent's reply**

13. The respondent stated that the present complaint is not maintainable in law or facts. The project of the respondent is neither covered under the Haryana Real Estate (Regulation and Development) Rules, 2017 nor is the project of the said respondent registered with this authority. As per the definition of "ongoing projects" under Rule 2(1)(o) of the said Rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said Rules is outside the purview of this authority.

14. The respondent submitted that the respondent had applied for the occupation certificate for the said project on 22.05.2017 which is prior to the date of publication of the Rules. i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(1)(o) and the present case is squarely covered under the first exception provided under rule 2(1)(o)

and therefore this authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. This position is further vindicated by rule 4(5) which clearly states that any project for which an application of occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before publication of the said Rules, i.e. 28.07.2017 is outside the purview of this authority, unless the said application is refused by the competent authority and it is only then that the project is required to be registered within 30 days of the receipt of such refusal.

15. It is pertinent to mention that even the actual occupation certificate has also been granted on 08.01.2018.
16. It is further submitted that without prejudice to the above, even otherwise also as per the deeming provision of sub code 4.10(5) of the Haryana Building Code, 2017, if after submission of an application for occupation certificate or part thereof, there is no communication from the competent authority for

60 days then there is deemed to be an occupation certificate granted to the applicant.

17. The respondent submitted that the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Act, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble authority under rule 28.

18. The respondent submitted that the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the office space buyer's agreement dated 30.10.2010.



19. The respondent submitted that the complainant has not come to this authority with clean hands and has concealed the material fact that:

- (i) The respondent had already applied for occupation certificate and it was deemed to be granted on 21.07.2017 and actually granted on 08.01.2018. After obtaining the occupation certificate, the respondent has already issued the letter of possession dated 24.01.2018 for the said commercial unit along with the statement of account dated 07.08.2018 with the details of charges etc. as mentioned therein as well as in the notice of possession. However, even after receiving the notice of possession and various reminders thereafter, the complainant did not make all the payments in the prescribed time and at the same time despite the handover advice letter dated 25.06.2018, to handover the physical possession of the office unit to the complainant, the complainant have not come forward till date to take possession.



- (ii) The complainant has been defaulter in making payment thereby resulting in delay payment charges and on request of the complainant and as a special case, the delay payment charges of Rs. 4,14,057/- were waived off by the respondent.

20. The respondent submitted that clause 18 of the office space buyer's agreement further provides that compensation for any 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. The complainant, having defaulted in making timely payment of instalments, is thus not entitled to any compensation under the said buyer's agreement.

21. The respondent submitted that the construction of the project in question stands completed and the respondent is in receipt of the occupation certificate in respect of the same. It is submitted that as soon as the balance payment is remitted by the complainant and necessary formalities completed, the



respondent shall hand over possession of the unit to the complainant.

**Determination of issues:**

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

22. 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. 30.10.2010. Therefore, due date of possession shall be computed from 30.10.2010. 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."*

Accordingly, the due date of possession was 30.08.2013. However, the respondent sent letter of offer of possession to the complainant on 24.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till handing over of possession i.e. 24.01.2018. The possession has been delayed by four years four months and twenty five 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.

23. As the possession of the apartment was to be delivered by 30.08.2013, 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**

24. 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.

25. The possession of the unit was to be delivered by 30.08.2013.

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.

26. 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.

27. 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**

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 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. 30.08.2013 till offer of possession i.e. 24.01.2018. 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.

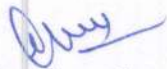
29. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*. A copy of this order be endorsed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



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

Date: 16.01.2019

Judgement uploaded on 08.07.2019

  
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