

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

Complaint no. : 575 of 2018
First date of hearing: 11.12.2018
Date of decision : 16.01.2019

Mrs. Reema Goenka
R/o M-13/24C, first floor, DLF phase-2,
Gurugram-122002

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 Advocate for the complainant
Shri Ketan Luthra Authorized representative on
behalf of respondent company
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 complainant Mrs. Reema

Goenka, 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 22.09.2010 for unit no. EPO-03-009 on 3rd floor having 637.67 sq. ft. 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 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.	Unit no.	EPO-03-009
3.	Unit admeasuring	637.67 sq. ft.



4.	RERA registered / not registered.	Not registered
5.	Date of execution of office space buyer's agreement	22.09.2010
6.	Total consideration as per statement of account dated 07.08.2018	Rs. 44,48,359/- (page 202 of reply)
7.	Payment plan	Construction linked plan
8.	Total amount paid by the complainant till date as per statement of account dated 07.08.2018	Rs. 44,51,616/-
9.	Due date of possession as per clause 16-(30 months + grace period 120 days from the execution of agreement)	22.07.2013
10.	Delay in possession till date of offer of possession	4 years 6 months 2 days
11.	Offer of possession	24.01.2018
12.	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 case came up for hearing on 11.12.2018 and 16.01.2019. The reply filed on behalf of the respondent on 20.09.2018 and 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 is that DTCP, Haryana had granted license no.



10 dated 21.05.2009 to develop the project. The project "Emerald Plaza" was to be built with state of art office spaces and retail shops with 3 levels of basement parking space. However when the possession of the unit in question was offered, only two level basement parking has been constructed.

6. Complainant submitted that Mr. Ashish Garg purchased a shop/office/unit no. EPO-03-009 having a super area of 637.67 sq. ft. situated on the third floor @ 6000/- per square feet on the assurance that construction shall be completed in time and possession would be handed over in time and she paid an advance cheque of Rs. 5,00,000/-.
7. Complainant submitted that the office space buyer's agreement was signed between both the parties i.e. M/s Emaar MGF Land Ltd. and Mr. Ashish Garg on the terms and conditions as laid down by the company. It is must to mention here that as per the office space buyer's 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 6 months as provided under clause 16(a) of the agreement.

8. Complainant submitted that on 07.12.2010, the complainant herein purchased the above said unit from Sh. Ashish Garg vide duly executed agreement to sell and acknowledging the sale. The respondent also transferred the unit in question to the complainant after charging transfer fee in the name of the complainant is acknowledged by the respondent in their letter dated 27.10.2010.
9. Further the complainant submitted that she made regular payments as demanded by the promoter times and again and till date has paid Rs. 44,51,616/- to the respondent. Also, complainant visited the construction site several time and visited the office of the promoter to enquire about the slow construction and time of handing over the possession.
10. Complainant submitted that she after an exorbitant delay of almost 6 years received letter for offer of possession dated 24.01.2018 with respect to the unit in question. However though the respondent offered the possession of the unit in



question after a delay of almost 6 years, no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant herself and through her husband wrote various emails to the respondent and also visited their office with the request to pay interest for the delayed possession but the same were in vain.

11. Complainant submitted that on receiving the demand letter and letter for possession, the complainant was aghast. There was no mention of delayed possession interest, compensation for delayed possession etc. but demands for more money.
12. Complainant submitted that she visited the office of promoter and tried her level best to meet the senior officials but customer relation managers did not allow her to meet the promoter so complainant sent legal notice to the promoter, to which no reply was received. Hence the complainant has filed the present complaint.

13. 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?

14. Relief sought by the complainant

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:

- 15.** 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 was thereafter issued on 08.01.2018. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint.





16. 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 read with rule -29 of the said Rules.
17. The complainant has got 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 buyer's agreement dated 22.09.2010.
18. The respondent submitted that the complainant has falsely contended that she has not been offered possession of the unit in question whereas not only was possession of the unit offered to the complainant on 24.01.2018 but the complainant has also taken possession of the unit on 15.06.2018 and has also executed the conveyance deed.



19. The respondent submitted that the original allottee entered into an agreement to sell dated 07.10.2010 with the complainant. The original allottee and the complainant approached the respondent and requested that the allotment of the unit in question be transferred in the name of the complainant. The allotment was transferred in favour of the complainant on 27.10.2010. At the time of transfer of the unit in the name of the complainant, the original allottee had made payment of Rs. 10,12,526/- to the respondent.
20. Respondent submitted that by letter dated 24.01.2018, the respondent offered possession of the unit to the complainant. It is pertinent to mention that the tentative super area of the said office space was 637.67 sq. ft. However, after completion of construction of the complex, the final super area of the said office space stood revised to 641.17 sq. ft. The same was duly conveyed to the complainant vide letter dated 24.01.2018 and revised calculation of the sale price, EDC/IDC etc of the unit was also conveyed to the complainant.

21. Determination of issues

- a. 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. 22.09.2010. Therefore, due date of possession shall be computed from 22.09.2010. 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."



22. Accordingly, the due date of possession was 22.07.2013. 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 offer of possession i.e. 25.01.2018. The possession has been delayed by 4 years 6 months and 2 days from due date of possession till the offer of possession.
23. As the possession of the unit/office space was to be delivered by 22.07.2013, 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. As the promoter has failed to fulfil its 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 flat was to be delivered by 22.07.2013. 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 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. 22.07.2013 till offer of possession i.e. 24.01.2018.



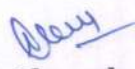
- (ii) The complainant is also advised to take possession and after possession, if they come to know any deficiencies they may approach the appropriate forum.
- (iii) The respondent is directed to desist from charging holding charges for the period the matter remained sub-judice.
- (iv) As the project 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.

29. The 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:16.01.2019

Judgement uploaded on 08.07.2019