

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

Complaint no. : 601 of 2018
First date of hearing : 25.09.2018
Date of decision : 16.01.2019

1. Rajat Lal
R/o P1/5, First Floor, DLF Phase II,
Gurugram
2. Dr. T. Chandan
R/o D-114, Ground Floor, Freedom
Fighters Enclave, IGNOU Road, New Delhi.

...Complainants

Versus

M/s Emaar MGF Land Limited
Marketing Office : Emaar MGF Business
Park, Mehrauli-Gurgaon Road, Sikandarpur
chowk, Sector 28, Gurugram-122001.

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sanjeev Sharma
Shri Ketan Luthra on behalf of
Shri Ishaan Dang

Advocate for the complainants

Advocate for the respondent

ORDER

1. A complaint dated 24.07.2018 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 Mr. Rajat Lal and Dr. T. Chandan, against the promoter M/s Emaar MGF Land Limited, on account of violation of the clause 16(a) of office space buyer's agreement executed on 17.01.2011 in respect of office space described as below for not handing over 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 on 05.07.2018 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 office space buyer's agreement has been executed on 17.01.2011 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 statutory 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: -

1	Name and location of the project	"Emerald Plaza in Emerald Hills" at sector 65, Gurugram
2	Unit no.	EP0-03-019
3	Unit area	627.16 Sq. Ft.
4.	Project area	3.963 Acres
5	Registered/ Not Registered	Not Registered
6	DTCP license no	10 dated 21.05.2009
7	Date of booking	30.06.2010
8	Date of office space buyer agreement	17.01.2011
9	Total consideration as per statement of account dated 17.08.2018	Rs 34,28,412/-

10	Total amount paid by the complainant as per statement of account dated 17.08.2018	Rs. 34,31,798/-
11	Due date of delivery of possession As per clause 16: Within 30 months+ 120 days grace period from execution of agreement	17.11.2013
12	Delay of number of months/ years till date	4 years 2 months 7 days
13	Penalty clause as per retail space buyer agreement	Clause 18 (a)- 9% per annum on amount paid by allottee.
14	Date of receipt of occupation certificate	08.01.2018
15	Offer of possession	24.01.2018

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondent. As per clause 16(a) of the office space buyer's agreement dated 17.01.2011, the due date of handing over possession was 17.11.2013 and the possession was offered to the complainants on 24.01.2018. The respondent has refused to give interest on delayed possession @9% per annum as per clause 18(a) of the office space buyer's agreement executed by the parties. Therefore, the promoter has not fulfilled their committed liability

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 25.09.2018. The case came up for hearing on 25.09.2018, 25.10.2018, 15.11.2018, 16.11.2018, 07.12.2018 and 16.01.2019. The reply has been filed on behalf of the respondent which has been perused.

FACTS OF THE CASE:

5. The complainant submitted that the complainant visited the site of project named "Emerald Plaza", Sector 65, Gurugram. The location of the project was excellent, therefore they consulted the local representative of the developer. The local representative of developer assured the complainant with special characteristics of project and other world class amenities of the project.
6. The complainant submitted that the complainant has booked a shop bearing no EP0-03-019 admeasuring 627.16 sq. ft. in 'Emerald Plaza' at sector 65, Gurugram developed by the respondent on the assurance that construction shall be completed in time and possession would be handed over in time and also paid advance cheque of Rs 5,00,000.

7. The complainant submitted that the space buyer agreement dated 17.01.2011 is signed between both the parties i.e. M/s Emaar MGF Land Ltd. and the complainants on the terms and conditions as laid down by the company. That 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 6 months as provided under clause 16(a) of the agreement.
8. The complainant submitted that as per the office space buyers agreement the possession of the unit was to be handed by January, 2013 however at that time the construction of the project was far from completion. The complainant has made regular payments as demanded by the promoter time and again.
9. The complainant submitted that the complainant after an exorbitant delay of almost five years received a letter of offer of possession in January, 2018 with respect to the unit in question and there was no mention of the interest for the delayed period by the respondent. The complainant also requested the respondent to pay the interest for the delayed possession but the same was not accepted.

ISSUE RAISED BY THE COMPLAINANT

10. The following issue has been raised by the complainant:

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?

RELIEF SOUGHT BY THE COMPLAINANT

11. The following relief has been prayed for:

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

REPLY BY THE RESPONDENT

12. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the unit in question was made on 26.05.2017, i.e. well before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017. The occupation certificate has been thereafter issued on 08.01.2018. Thus, the project in

question is not an "ongoing project" under rule 2(1)(o) of the Rules *ibid*. The project has not been registered under the provisions of the Act *ibid*. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

13. The respondent submitted that the complainant has filed the present complaint seeking interest, damages and compensation for alleged delay in delivering the possession of the said unit booked by the complainants. The respondent submitted that complaint pertaining to compensation, damages and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this hon'ble authority. So, the present complaint is liable to be dismissed.
14. The respondent submitted that the complainants have 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 17.01.2011.

15. The respondent submitted that the complainants have agreed to purchase commercial unit number EP0-03-019, Emerald Plaza, Sector 65, Gurugram, Haryana from the respondent. Office space buyer's agreement was executed between the parties on 17.01.2011.
16. The respondent submitted that the complainants were offered possession of the above mentioned unit through letter of offer of possession dated 24.01.2018. the complainants 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 complainants.
17. The respondent submitted that right from the beginning the complainants were extremely irregular as far as payment of installments was concerned. The respondent was compelled to issue demand notices, reminders, etc, calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/ instalment plan opted by the complainants.
18. The respondent submitted that it is pertinent to mention that the complainants had delayed payment of instalments and were consequently not eligible to receive any compensation from the respondent. As per statement of account dated

17.08.2018, the delayed payment charges had been qualified at Rs. 3,022/-

19. The respondent submitted that clause 18 of the space buyer's agreement further provides that compensation for nay 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.
20. The respondent submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse on the part of the respondent.

WRITTEN ARGUMENTS FILED BY THE COMPLAINANT:

21. The complainant further submitted that the respondent in the office space buyer's agreement as per sub clause 6 has himself stated that the actual area of the unit in question shall be 65% of the super area incase of offices spaces and shall be 52% incase of shops however, the actual area when offered for possession is much less and thus it is requested from this Hon'ble Authority to appoint LC to tale actual measurement in order to make the money and dupe the allottees has actually sold more than the FAR area he was permitted in law.

22. The complainant further submitted that the respondent in some of the present cases for the first time informed the complainants that respondent has increased/decreased the area of unit in question while issuing the letter of offer of possession for which no prior consent of the complainant was obtained.
23. The complainant submitted it is also worthwhile mentioning here that the respondent further promised the complainant that a three level parking shall be created however at present when the possession is being offered only two level parking has been made.

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 is as under:

21. 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 office space buyer's agreement i.e. 17.01.2011. Therefore, due date of possession shall be computed from 17.01.2011. 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."*

22. Accordingly, the due date of possession was 17.11.2013.

However, the respondent sent letter of offer of possession to the complainants 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 five years three months from due date of possession till the offer of possession.

23. As the possession of the apartment was to be delivered by 17.11.2013, 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:

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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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 following three different issues were raised during arguments:

i. Payment of interest for every month of delay in handing over 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.

ii. 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.

DIRECTIONS OF THE AUTHORITY:

26. 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 and the complainants in the interest of justice and fair play:

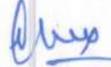


- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 17.11.2013 till handing over the possession i.e. 24 .01.2018.
- ii. The respondent is directed to desist from charging holding charges for the period the matter remained sub-judice.

27. The order is pronounced.

28. 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