

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

Complaint No. : 617 of 2018
Date of First
Hearing : 11.12.2018
Date of Decision : 16.01.2019

Shri Manish Sultania
R/o A-8, Rashmi Apartments, Harsh Vihar,
Pitampura, New Delhi

...Complainant

Versus

M/s Emaar MGF Land Limited
Office at: Emaar Business Park, MG Road,
Sikanderpur, Sector-28,
Gurugram-122001, Haryana
Also at: ECE House, 28 Kasturba Gandhi
Marg, New Delhi

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant in person with
Shri Sanjeev Sharma,
Advocate
Sh. Ketan Luthra
Shri J.K.Dang, Advocate

Advocate for the complainant

AR of the Respondent company
Advocate for the respondent

ORDER

1. A complaint dated 26.07.2018 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 Shri Manish Sultania, 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 27.07.2010 for unit no. EPO-02-038, on 2nd floor, admeasuring super area of 637.67 sq. ft. in the project "Emerald Plaza" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the office space buyer's agreement has been executed on 27.07.2010, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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: -

1.	Name and location of the project	"Emerald Plaza" in sector 65, Gurugram
2.	Nature of real estate project	Commercial complex
3.	Unit no.	EPO-02-038
4.	Project area	3.963 acres
5.	Registered/ not registered	Not registered
6.	DTCP license	No. 10 dated 21.05.2009
7.	Date of occupation certificate	08.01.2018



8.	Date of offer of possession	29.01.2018
9.	Date of booking	16.06.2010
10.	Date of office space buyer's agreement	27.07.2010
11.	Total consideration	Rs. 43,29,814/- (as per statement of account dated 17.08.2018, annexure R9, pg 99 of the reply)
12.	Total amount paid by the complainant	Rs. 43,29,816/- (as per statement of account dated 17.08.2018, annexure R9, pg 99 of the reply)
13.	Payment plan	Construction linked plan
14.	Due date of delivery of possession	Clause 16(a) - 30 months from date of execution of agreement + 120 days grace period i.e. 27.05.2013
15.	Delay of number of months/ years upto 29.01.2018	4 years 8 months and 2 days
16.	Penalty clause as per office space buyer's agreement dated 27.07.2010	Clause 18(a)- 9% simple interest on amount paid

3. 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-02-038 according to which the possession of the aforesaid unit was to be delivered by 27.05.2013. The promoter has failed to deliver the possession of the said unit to the complainants.

Therefore, the promoter has not fulfilled his committed liability as on date.

4. 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 has been filed by the respondent on 25.09.2018 and has been perused.

Facts of the complaint

5. The complainant submitted that on 16.06.2010, the complainant booked a unit in the project named "Emerald Plaza" in sector 65, Gurugram by paying an advance amount of Rs. 5,00,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing EPO-02-038, on 2nd floor, admeasuring super area of 637.67 sq. ft.
6. The complainant submitted that on 27.07.2010, an office space buyer's agreement was entered into between the parties wherein as per clause 16(a), the construction should have been completed within 30 months + 4 months grace period from the date of execution of agreement, i.e. by 27.05.2013. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs. 43, 29,810/-.

7. The complainant submitted that it came to their knowledge that the respondent has reduced the common basement parking only up to the two levels which is in non-conformity with the schedule of payments.
8. The complainant submitted that a letter of offer of possession dated 29.01.2018 was sent by the respondent to the complainant in order to enable the respondent to handover the possession of the office unit to the petitioners. Though the respondent offered the possession of the unit in question after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant as also visited the office of the respondent with the request to pay interest for delayed possession but the same were in vain.
9. The complainant submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown and no appropriate action was taken to address the concerns and grievances of the complainant. Complainant further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.
10. As per clause 16(a) of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 27.05.2013. The clause regarding possession of the said unit is reproduced below:

"16(a)

(i)- " That the possession of the office spaces in the commercial complex shall be delivered and handed over to the allottees within 30 months of the execution hereof, subject however to the allottees having strictly complied with all the terms and conditions of the agreement and not being in default under any provisions of this agreement....."

(ii)- "The allottee agrees and understands that the company shall be entitled to a grace period of 120 days over and above the period more specifically provided herein-above....."

11. Issues raised by the complainant

- I. After an amendment to the complaint dated 26.07.2018, 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. Relief sought

- I. The complainants are seeking interest at the prescribed rate for every month of delay till the handing over of possession.

Respondent's reply

13. 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 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment in question was made on

26.05.2017, i.e well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). The occupation certificate has been thereafter issued on 8.01.2018. Thus, the project in question (Emerald Plaza, Sector 65, Gurgaon) is not an 'ongoing project' under rule 2(1)(o) of the rules. The project has not been registered under the provisions of the Act. It is also pertinent to mention that the respondent has applied for part completion certificate also for the project where services are complete and hence the project does not fall in the definition of "ongoing project".

14. The respondent submitted that the complainant was offered possession of the above mentioned unit through letter of offer of possession dated 29.01.2018. The complainant took physical possession of the aforesaid unit on 18.05.2018. Copy of the unit handover letter dated 18.05.2018 is annexed. The conveyance deed dated 25.05.2018 was executed between the complainant and the respondent.
15. The respondent further submitted that right from the beginning, the complainant was extremely irregular as far as payment of instalments was concerned. The payment reminder letters dated 11.11.2010, 16.10.2012, 31.10.2012, final notice dated 15.11.2012, payment reminder letters dated 26.04.2013, 15.05.2013, final notice dated 09.10.2013, payment reminder letters dated 25.11.2013, 11.12.2013, final notice dated 26.12.2013, notice dated 10.03.2015, payment

reminder letters dated 12.10.2017 and 13.01.2018, had been sent to the complainant by the respondent.

16. The respondent submitted that on time payment rebate(OTPR) of Rs. 1,00,000/- has already been credited to the complainant's account on 04.05.2018 as per statement of account dated 17.08.2018. Moreover, the delayed payment charges amounting to Rs. 1,92,736/- have also been waived off as is evident from the statement of account. This waiver was done on the basis of the respondent's internal approval for all the EPO units. Thus, the complainant is not entitled to receive any more compensation or interest thereon from the respondent and the demands raised by the complainant in his complaint are purely a matter of afterthought.
17. 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 buyer's agreement.
18. The respondent submitted that there is no default or lapse on the part of the respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that

the present application deserves to be dismissed at the very threshold.

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:

19. 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. 27.07.2010. Therefore, due date of possession shall be computed from 27.07.2010. 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 27.05.2013. However, the respondent sent letter of offer of possession to the complainants on 29.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession i.e. 27.05.2013 till offer of possession 29.01.2018. The possession has been delayed by 4 years 8 months and 2 days from due date of possession till the offer of possession.

20. As the possession of the apartment was to be delivered by 27.05.2013, 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 offer of possession.

Findings of the authority

21. 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.

22. The following 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

23. 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. 27.05.2013 till handing over the possession i.e. 29.01.2018.
- (ii) The complainants are 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.

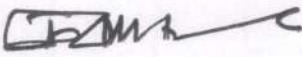
24. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

25. The order is pronounced.

26. 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