

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

Complaint No. : 709 of 2018
**Date of First
Hearing** : 09.10.2018
Date of Decision : 16.01.2019

Mrs. Pooja Hemnani
R/o House no. 1601, first floor DLF, Phase-IV,
Gurugram, Haryana **Complainant**

Versus

M/s EMAAR MGF Land Ltd.
Corporate Office: EMAAR Business Park, MG
Road, Sikandarpur, Sector-28, Gurugram,
Haryana-122001 **Respondent**

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for complainant
Shri Ishaan Dang Advocate for respondent
Shri Ketan Luthra Authorized representative on
behalf of the respondent
company

ORDER

1. A complaint dated 10.08.2018 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 complainant Mrs. Pooja Hemnani, against the promoter M/s Emaar MGF Land Ltd. in respect of apartment/unit described below in the project Emerald Plaza at Emerald Hills, Sector-65, Gurugram on account of violation of the section 11(4)(a) of the Act ibid for not developing the project within stipulated period.

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 by the due date as per the said agreement.
3. Since, the retail space buyer's agreement has been executed on 01.04.2010 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

statutory obligations on part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	Emerald Plaza in Emerald Hills, Sector-65, Gurugram
2.	Project area	3.963 acres
3.	Unit no./office space no.	EPS-FF-045, first floor
4.	Registered/ unregistered	un registered
5.	Date of booking	22.02.2010
6.	Payment Plan	Construction linked Plan
7.	Nature of real estate project	commercial complex
8.	DTCP License No.	10 dated 21.05.2009
9.	Date of retail space buyer agreement	01.04.2010
10.	Total consideration amount as per statement of account 16.05.2018	Rs. 27,34,634/-
11.	Total amount paid by the complainant	Rs. 27,34,634/-
12.	Due date of delivery of possession as per clause 16(a)- 30 months + 120 days grace period from the date of agreement	01.02.2013
13.	Letter of offer of possession on	24.01.2018
14.	Delay in handing over of possession from due date of	4 years 11 months 23

	possession till the offer of possession	days
15.	Penalty clause as per retail space buyer agreement dated 01.04.2010	Clause 18(a) of the said agreement i.e. interest calculated at 9% p.a. (simple interest) on the amount(s) paid by the allottees for such period of delay.

5. 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 retail space buyer's agreement dated 01.04.2010, the due date of handing over possession was 01.02.2013 and the possession was offered to the complainants on 24.01.2018. The respondent has refused to give interest on delayed possession as per clause 18(a) of the buyer's agreement executed by the parties. Therefore, the promoter has not fulfilled its committed liability as on date.

6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 09.10.2018. The case came up for hearing on 09.10.2018, 13.11.2018, 16.11.2018 and

07.12.2018 and 16.01.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

7. Briefly stating the facts of the complainant, the complainant submitted that the respondent company is M/s EMAAR MGF Land Ltd incorporated under the Companies Act mainly based in the middle east and UAE and entered into the emerging and booming real estate market in India during the first decade of 21st century.
8. The complainant submitted that Mr. Ajay Kumar purchased a shop/office/unit no. EPS-FF-045 admeasuring a super area of 328.96 sq.ft situated on the first floor @6000/- per sq. ft.on the assurance that construction will be completed in time and possession would be handed over in time and paid advance cheque of Rs. 1,97,376/- in February 2010.
9. The retail space buyer agreement dated 01.04.2010 was signed between both the parties i.e M/s Emaar MGF Land Ltd. and Mr. Ajay Kumar on the terms and conditions laid down by the company.
10. On 10.10.2017 the complainant purchased the above said unit from Mr. Ajay Kumar vide duly executed agreement to sell and

acknowledging the sale. The respondent also transferred the unit in question after charging transfer fee in favour of the complainant. The 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 after an exorbitant delay of almost 6 years, she received letter of possession for offer of possession dated 24.10.2018. However no interest as per the RERA Act for the delayed period was offered by the respondent to the complainant, aggrieved of which the complainant herself and through her husband demanded interest from to the respondent.

12. In order to safe guard the hard earned money, the complainant took the possession of the unit in question from the respondent. However, now the plan of the said unit has been completely changed without any intimation to the complainant or her consent. Further certain blank documents were signed by the complainant while handing over the possession. Also maintenance agreement dated 11.05.2018 was executed by the complainant.

13. The complainant alleged that the respondent forcibly without the consent of the complainant got documents signed for making her a member of the association, to which she had to sign certain documents as she had no other option. The respondent asserted that she won't be given possession of the unit in question unless she signs and be a part of the said association.

14. Being aggrieved by the high handed attitude of the respondent, the complainant was constrained to file the present complaint.

15. Issue raised by the complainant:

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?

16. Relief sought

The respondent be ordered to make payment of interest accrued on amount collected by the respondent from the complainant on account of delayed offer for possession.



Respondent's reply

17. The respondent raised preliminary objections upon the maintainability of the complaint and also on the ground of jurisdiction. The respondent stated that the present complaint is not maintainable in law or facts and the Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain the present complaint.
18. The respondent submitted that the project of the respondent is not covered under the definition of "ongoing projects" under rule (1)(o) of the rules. The project has not been registered under the provisions of the Act. The present complainant is liable to be dismissed on this ground alone.
19. The respondent further submitted that the complainant has no locus standi or cause of action to file the present complainant. 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 retail space buyer's agreement.
20. The respondent submitted that the said unit was endorsed in favour of the complainant on 10.10.2017 much later than the retail space buyer's agreement was executed with the original



allottee. The complainant was very well known about the status of the unit at the time of endorsement of the unit and therefore the complainant cannot allege that the respondent has defaulted in handing over the possession of the unit and also cannot be categorized as 'consumer'.

21. The respondent submitted that the compensation of Rs. 8,08,747/- has already been credited to the complainant's account on 24.01.2018 as per the statement of account dated 03.09.2018 for the period of delay. The aforesaid compensation has been calculated as per clause 18 of the agreement. An indemnity-cum-undertaking dated 10.10.2017 was signed by the complainant wherein the complainant consented that she is not entitled for compensation for delay in handing over possession and agreed to not raise any claims or concerns regarding the same. However, the respondent credited Rs. 8,08,747/- in the statement of account as compensation for delay as a gesture of goodwill. The complainant is not entitled to receive any more compensation or interest thereon from the respondent and the demands raised by the complainant in her complaint are purely a matter of afterthought.

22. The respondent further submitted that there is no default or lapse on the part of the respondent. It is evident from the entire sequences of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless.

Written arguments filed by the complainant

23. The complainant submitted that the complaints filed against Emaar MGF land Ltd. the factual matrix has not been disputed by the parties, as the same are admitted facts. The only defence taken by the respondent in their reply is that this hon'ble authority does not have jurisdiction to decide the present complainants and that the said question of jurisdiction has been raised on numerous grounds which grounds are identical and similar to the grounds raised by the respondent in another matter titled Simmi Sikka V/s Emaar MGF Land Ltd. which has already been decided by this hon'ble court in favour of the complainant therein.

24. The complainant submitted that the hon'ble authority has jurisdiction to adjudicate complaints against the respondent herein and has also observed that because of the failure on the

part of the respondent herein to register the project in question with this hon'ble authority, the respondent has violated the provisions of Section 3(1) of the Act for which separate actions has to be initiated against the respondent.

25. The complainant submitted that for the just disposal of the present complaints and that to show in-exorbitant delay has been caused in handing over the possession by the respondent certain clauses of the said agreement. The plain reading of the above said clause which is identical in all the space buyer agreements concerning the project Emerald Plaza leaves no doubt that the possession of the unit in question booked by the complainants in the present cases had to handed over to the complainant with in a maximum period of 30 months, as per which calculation the possession of the unit was to be handed over to the complainants lastly by 2012/2013 in almost every case with variation of few months depending on the date of execution of space buyer agreement in individual cases, however in reality which is not disputed by the respondent the offer of possession of the units in question was given to the complainants by the respondent in 2018.

26. It has been clearly laid down that the respondent shall pay to the buyer simple interest @ 9% p.a for the delay period in case the respondent fails to hand over the possession of unit in question on time. However, though offering a meagre simple interest of 9% p.a. for delay period in case the respondent fails to hand over the possession of the unit in question on time, contrary to the said the respondent under clause 15 (a) of the space buyer agreement under the heading of "delay in payments" have stipulated compound interest @24% p.a. in case the allottees made any default in payments and instalments.

27. On the basis of above factual matrix the complainant now craves the leave of this hon'ble authority to give detail arguments point wise to corresponding issues and prayers made by the complainant in the present complaint and as particularly to decided issues by this hon'ble authority by its order dated 13.09.2018 in the matter of M/s Savita Gulia & Anr. V/s Emaar MGF Land Ltd.

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:

28. With respect to the **sole issue**, as per clause 16(a) of retail 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. 01.04.2010. Therefore, due date of possession shall be computed from 01.04.2010. 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."



29. Accordingly, the due date of possession was 01.02.2013.

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.

30. As the possession of the unit/office space was to be delivered by 01.02.2013, 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

31. 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 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.

32. The possession of the unit was to be delivered by 01.02.2013. 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 complainants interest, at the prescribed rate, for every month of delay till the offer of possession.

33. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

34. 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

35. 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 interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 01.02.2013 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.

36. 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.

37. The complaint is disposed of accordingly.

38. The order is pronounced.

39. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.


(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