



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

**Complaint no.** 1368 of 2019  
**Date of first hearing** 18.07.2019  
**Date of decision** 18.07.2019

Smt. Monika Gundal  
R/o House no. 4, R.K. Puram,  
Near Pawan shuttering store,  
Jattal road, Panipat, Haryana.

**Complainant**

Versus

M/s Puri Construction Pvt. Ltd.  
Registered office at: 4-7B, Ground floor,  
Tolstoy house,  
15 and 17 Tolstoy Marg,  
New Delhi-110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Smt. Monika Gundal  
Shri Sushil Yadav  
None

Complainant in person  
Advocate for the respondent  
For the respondent

**ORDER**

1. A complaint dated 27.03.2019 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 Smt. Monika

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Gundal, against the promoter M/s Puri Construction Pvt. Ltd., on account of violation of the clause 11(a) of the apartment buyer's agreement executed on 22.10.2013 in respect of flat described below in the project 'Emerald Bay' 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*.

2. Since the apartment buyer's agreement has been executed on 22.10.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so 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.

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

1.	Name and location of the project	"Emerald Bay" in Sector 104, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	15.337 acres
4.	Unit no.	202, 2 <sup>nd</sup> floor, tower/block no. 'B3'
5.	Unit area	1550 sq. ft.



6.	Registered/ not registered	<b>Registered (136 of 2017)</b>
7.	RERA registration certificate valid upto	<b>28.02.2020</b>
8.	DTCP license	68 of 2012
9.	Occupation certificate granted on	21.11.2018 (page 40 of reply)
10.	Date of apartment buyer's agreement	22.10.2013
11.	Total consideration as per payment schedule complainant as per sales customer ledger dated 21.01.2019	Rs. 1,64,34,209/- (page 94 of complaint)
12.	Total amount paid by the complainant as per sales customer ledger dated 21.01.2019	Rs. 1,64,78,870/- (page 94 of complaint)
13.	Payment plan	Construction linked
14.	Due date of delivery of possession as per clause 11(a) of the apartment buyer's agreement: within 48 months from date of execution of agreement dated 22.10.2013 + 180 days grace period	22.04.2018
15.	Delay in delivering possession till date of offer of possession i.e. 21.01.2019	9 months
16.	Offer of possession (page 84 of complaint)	<b>21.01.2019</b>
17.	Penalty clause as per clause 15 of apartment buyer's agreement dated 22.10.2013	Rs. 5/- per sq. ft. of super area of said apartment per month for first 6 months of delay; Rs. 10/- per sq. ft. of super area of the said apartment per month for up to 12 months of delay;

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		Rs. 15/- per sq. ft. of super area per month for delay beyond 12 months;
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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 apartment buyer's agreement dated 22.10.2013 is available on record for unit no. 202, 2<sup>nd</sup> floor, tower/block no. 'B3', admeasuring 1550 sq. ft. in the project 'Emerald Bay' according to which the promoter has failed to give possession by due date i.e. 22.04.2018. The respondent has failed to fulfil 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. The case came up for hearing on 18.07.2019. The reply filed on behalf of the respondent on 18.04.2019 has been perused.

**FACTS OF THE CASE:**

6. The complainant submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named "Emerald Bay" Sector 104 Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the



promise and undertakings given by the respondent in the advertisements Mr. Rajan Gundal, booked an apartment measuring 1550 sq. ft. in aforesaid project of the respondents for total sale consideration of Rs. 1,52,18,128/- which includes BSP, car parking, IFMS, club membership, PLC etc. Later on, with the consent and permission of the respondent, the complainant endorsed the apartment in her name.

7. The complainant made payment of Rs. 1,57,94,584/- to the respondent vide different cheques on different dates, the details of which are as annexed.
8. As per apartment buyers' agreement the respondent had allotted a unit/apartment bearing no.202 in block B3 having super area of 1550 sq. ft. to the complainant. As per para no.11(a) of the apartment buyer agreement, the respondent had agreed to deliver the possession of the flat within 48 months from the date of signing of the flat buyer's agreement dated 22.10.2013 with an extended period of 180 days.
9. The complainants regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It



appears that respondent has played fraud upon the complainants. The only intention of the respondents was to take payments for the tower without completing the work and handing over the possession on time. Despite receiving approximately 100 % payments on time for all the demands raised by the respondents for the said apartment and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.

10. It could be seen that the construction of the block in which the complainant's flat was booked with a promise by the respondents to deliver the flat by 22.04.2018 but was not completed within time for the reasons best known to the respondents; which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently and lastly on 21.01.2019, the respondent sent the offer of possession but the fact is that the apartment is not habitable till date and in the apartment buyer's agreement the respondent themselves admitted that they will able to give the



possession within 90 days after offering the possession and still the project is not habitable.

11. Due to this omission on part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the flat on time. As per clause 15 of the apartment buyer's agreement, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.10/- per sq. ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.10/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the apartment even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers' agreement and offered to pay a sum of Rs.10/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it



comes to approximately @ 2% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

12. On the ground of parity and equity the respondent also be subjected to pay the same rate of interest. Hence, the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the apartment is delivered to the complainant.

13. The complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the apartment in question along with prescribed interest on the amount deposited by the complainant, but respondents has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gain himself and caused wrongful loss to the complainant.

**ISSUES RAISED BY THE COMPAINANT:**

14. The relevant issues are as follows:

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- a. Whether or not the respondent has violated the terms and conditions of the apartment buyer's agreement thereby delaying possession?
- b. Whether the complainant is entitled for possession along with prescribed interest for delay in possession?
- c. Whether interest cost being demanded by the respondent is higher, unjustified and not reasonable?

**RELIEFS SOUGHT BY THE COMPLAINANT:**

15. The complainant is seeking the following reliefs:

- i. Direct the respondent to handover the possession of the apartment along with prescribed interest per annum from the promissory date of possession of the apartment in question.
- ii. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainant.

**REPLY BY THE RESPONDENT:**

16. The respondent submitted that the complaint filed by the complainant is not maintainable under the provisions of RERA Act and applicable Rules, as the complaint can only be filed for



violation and/or breach of the provisions of the Act and Rules. In the present complaint no violation or breach of the provisions of the Act and Rules has been alleged or averred. Hence present complaint be dismissed.

17. The respondent submitted that the present complaint does not fall within the ambit of HRERA Rules, and the hon'ble authority has got no jurisdiction to try and entertain the same as neither there is any breach of any of the obligations by the respondent nor there is any delay in offer of possession, as the respondent had already obtained the application for occupation certificate and offered the possession of the apartment to the complainant and complainant has already accepted the possession letter and has waived all her rights to file the present complaint.

18. The respondent submitted that the complainant has got no cause of action to file the present complaint. The whole complaint is based upon the ground of expiry of 54 months from the date of agreement, subject to force majeure conditions and apart from minor conditions like torrential rains, extreme weather conditions in summers etc. The following major force majeure conditions have affected the construction and its progress in last



5 years and after taking into account the time spent to overcome the effects of these conditions, the timeline to complete construction is within prescribed timelines. Further, adequate mechanism for compensation in case of delay was provided in the agreed terms of buyer's agreement. The major events/ conditions affecting the construction, during currency of buyers agreement, which were totally beyond the control of the respondent are as under:

- a. The contractor's (Simplex Infrastructures Limited letter requesting for extension of time for 6 months) inability to undertake the construction for 3-4 months due to central government's notification with regard to demonetization: The company has awarded the construction of the project to Simplex Infrastructures Limited, which is one of the leading construction company of India. The said contractor/ company undertaking the construction of the project could not undertake construction for approx. 3-4 months w.e.f. from 9-10 November 2016 the day when the central government issued notification with regard to demonetization and 3-4 subsequent months. During this period, the contractor, Simplex Infrastructures Limited could not make payment to the labour in cash and the work at site got halted for

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3-4 months as the labour went to their hometowns, which resulted into shortage of labour. The contractor requested for extension of time period to complete construction by 6 months as once the work is stopped in a construction site of such magnitude, the remobilization of resources takes at least 6 months, to gather and to arrive at same pace of construction. Hence, the construction being carried out by a third party and not by respondent himself got delayed due to issues faced by contractor due to notification of Central Government.

- b. That further, there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labor
- c. That the Reserve Bank of India has published reports on impact of Demonetization. In the report- Macroeconomic Impact of Demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.

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d. That orders passed by National Green Tribunal: In last three successive years i.e. 2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The said hon'ble tribunal has passed orders governing the entry and exit of vehicles in NCR region. Also, the said tribunal has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. All the persons have been following such orders. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather during November every year. There were specific orders of National Green Tribunal for stopping all construction activity in the whole national capital region when pollution levels were alarmingly high and the construction activities were stopped for certain time period. Had the construction continued then the same would have amounted to contempt of court. The contractor of opposite party could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, the law of land has resulted in delays of 3-4 months as labor went back to their hometowns, which resulted in shortage of labor.

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- e. That non-Payment of instalments by allottees: Several allottees were in default of the agreed payment plan and the payment of construction linked instalments was delayed. The construction/development of the project is dependent upon the allottees to fulfill their respective obligations of making timely payments. The allottee has been in default of making timely payments on several occasions which are explained hereinafter, hence the delay of completion of construction of 6-12 months is duly covered by the above stated force majeure conditions and being miniscule delay cannot tantamount to default. Rather the non-payment of timely instalments by the allottee amounts to default on the part of allottee himself.
- f. Revision in building plans: During the currency of the agreement, the respondent has applied for revision in building plans with the Department of Town and Country Planning Haryana, and a considerable time was spent for obtaining the approval for revised building plans.
- g. Inclement weather conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were stopped as the



whole town was waterlogged and gridlocked as a result of which the construction came to standstill for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

- h. Lack of civic infrastructure: The State of Haryana has miserably failed to provide the basic civic infrastructure to all the new sectors falling on the Dwarka expressway despite payment of hundreds of crores of rupees towards EDC and IDC by the respondent and other developers. Till date State of Haryana has not been able to complete the construction of much publicized Dwarka Expressway even after expiry of more than 11 years of publication of Development Plan of Haryana. The state agencies responsible for providing water supply and electricity in new sectors have also failed to provide the same on time. All these factors have impacted the pace of construction. It is pertinent to mention here that the total sale consideration of the present unit of the complainants includes more than Rs. 7.4 Lacs, towards taxes and EDC and IDC, which stand paid to the Government agencies.

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19. The respondent submitted that further, despite all circumstances mentioned hereinabove, the respondent has completed the construction and has obtained the occupation certificate on 21.11.2018 for the said project. The project has been completed much prior to the prescribed timelines by considering the time spent in overcoming the effects of the above stated force majeure conditions. As per agreed terms of buyers agreement provided in clause 11, the time period of 54 months for completion of construction and obtaining occupation certificate expired on 22.04.2018, which was subject to force majeure conditions. The respondent has obtained OC on 21.11.2018 hence after considering the time period spent in overcoming the effects of above stated force majeure conditions, which is more 12 months, the respondent has completed the construction much prior to the prescribed timelines. Hence present petition be rejected.

20. The complainant has not come before the authority with clean hands and has concealed various facts and is also guilty of misrepresentation, hence the complainant is not entitled to any relief.

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**DETERMINATION OF ISSUE:**

18. With respect to the **issues** raised by the complainant, the authority came across that as per clause 11(a) of apartment buyer's agreement, the possession of the said apartment was to be handed over within 48 months plus grace period of 180 days from the date of execution of agreement. The agreement was executed on 22.10.2013. Therefore, the due date of possession shall be computed from 22.10.2013. Grace period of 180 days has been allowed to the respondent for the delay caused due to exigencies beyond the control of respondent.

Accordingly, the due date of possession was 22.04.2018 and the possession was offered to the complainant on 21.01.2019 and the possession has been delayed by nine months till the date of offer of possession. As the promoter has failed to fulfil its obligation under section 11(4)(a) of the Act *ibid*, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 22.04.2018 till 21.01.2019 as per provisions of proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 read with rule 15 of the Rules.

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**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 complainant 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. The authority has complete jurisdiction to decide the complaint regarding 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.
22. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon

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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 obligations.

23. Since the respondent is not present despite service, in the interest of justice, the authority by taking cognizance of reply filed by the respondent, is proceedings in the matter.
24. As per clause 11(a) of the apartment buyer's agreement dated 22.10.2013 for unit no. A 202, 2<sup>nd</sup> floor, tower/block B3 in project Emerald Bay, Gurugram, possession was to be handed over to the complainant within a period of 48 months + 180 days grace period which comes out to be 22.04.2018. However, the respondent has not delivered the unit in time. The respondent has already offered the possession to the complainant on 21.01.2019. As such complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 22.04.2018 as per provisions of proviso to section 18(1) of the Act ibid till offer of possession i.e. 21.01.2019.

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**DECISION AND DIRECTIONS OF THE AUTHORITY:**

25. After taking into consideration all the material facts adduced 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:
- a. Respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 22.04.2018 as per provisions of proviso to section 18(1) of the Act ibid till offer of possession i.e. 21.01 2019.
  - b. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.
  - c. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
  - d. The promoter shall not charge anything from the complainant which is not a part of the apartment buyer's agreement.

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- e. Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as being granted to the complainant in case of delayed possession.
26. The order is pronounced.
27. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 18.07.2019

Judgement uploaded on 23.07.2019