

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

Complaint no. : 1421 of 2018
First date of hearing : 30.01.2019
Date of decision : 29.05.2019

1.Mr. Jitender Kumar
2.Mr. Rajesh Dua
Both R/o H no: 885, Sector 7 extention,
Gurugram: 122001,Haryana.

...Complainants

Versus

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

...Respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Shri Sanjeev Sharma

Advocate for the complainant

Shri Ketan Luthra on behalf of
respondent company alongwith
Shri Ishaan Dang

Advocate for the respondent

ORDER

1. A complaint dated 30.10.2018 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. Jitender Kumar and Mr. Rajesh Dua, against the promoter M/s Emaar MGF Land Limited, on account of violation of the clause 16(a) of retail space buyer's agreement executed on 28.06.2010 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 17.10.2018 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 retail space buyer's agreement has been executed on 28.06.2010 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 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
3.	Project area	3.963 Acres
4.	Nature of the project	Commercial Complex
5.	DTCP license no	10 dated 21.05.2009
6.	Registered/Not Registered	Not Registered
7.	Agreement to sale	29.11.2016
8.	Unit no.	EPS-FF-049
9.	Unit measuring as per the said agreement	347.83 sq. ft.
10.	Revised area of unit(as per offer of possession letter)	446.52 sq. ft.
11.	Date of retail space buyer's agreement	28.06.2010
12.	Total consideration as per statement of account dated 06.11.2018	Rs 35,98,680/-
13.	Total amount paid by the	Rs 37,22,997/-

	complainant as per statement of account dated 06.11.2018	
14.	Date of delivery of possession as per clause 16(a)(i)and(ii) of retail space buyer's agreement Within 30 months+ 120 days grace period from execution of agreement	28.04.2013
15.	Delay of number of months/ years till date	4 years 8 months 26 days
16.	Penalty clause as per retail space buyer agreement	Clause 18(a) of the said agreement i.e. interest calculated at 9% p.a. (simple interest) on the amount(s) paid by the allottee for such period of delay.
17.	Occupation certificate	08.01.2018
18.	Offer of possession	23.01.2018
19.	Unit handover letter	06.08.2018

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)(i)and(ii) of the retail space buyer's agreement dated 28.06.2010, the due date of handing over possession was 28.04.2013 and the possession was offered to the complainants on 23.01.2018. The respondent has refused to give interest on delayed possession @ 9% per annum as per clause 18(a) of the retail space buyer's agreement

executed by the parties. Therefore, the promoter has not fulfilled their committed liability.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Vide order on 30.01.2019 the matter was adjourned sine dine and the matter reopened on 29.05.2019. The reply has been filed on behalf of the respondent which has been perused.

FACTS OF THE CASE:

6. The complainants submitted that the Emaar MGF Land Ltd. a company incorporated under the company's act mainly based in Middle East and UAE entered into the emerging and booming real estate market in India during the first decade of 21st century. All the formalities laid down by the central government were fulfilled before commencing the business. Company purchased hundreds of acres of land in Gurgaon and other major cities of India.
7. The complainants submitted that company conceived, planned and was in the process of constructing and developing a residential plotted colony "*Emerald Hills*" to be developed on a piece of land admeasuring 102.471 acres in sector 65 urban estate Gurgaon.

8. The complainants submitted that Director, Town and country planning, Government of Haryana has granted license bearing no.-10 dt. 21.05.2009 to develop the project. The further “*Emerald Plaza Retail*” was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space. However it is must to mention here that at present when the possession of the units are being offered by the respondent it has come to the light that instead of 3 level basement parking only two levels have been constructed and which fact was never ever informed to the complainant.
9. The complainants submitted that one Mr. Umashanker purchased a shop / office / unit no. EPS-FF-049 admeasuring a super area of 347.83 sq. ft situated on the first floor. @ 6000/- per square feet on the assurance that construction shall be complete in time and possession would be handed over in time.
10. The complainants submitted that the space buyer agreement dated 28.06.2010 is signed between both the parties i.e. M/s Emaar MGF Land Ltd. and Mr. Umashanker 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 i.e. possession of the unit in question was to be handed over lastly by December 2012. However though having paid the instalments as demanded the unit in question was far away from completion on the scheduled date of possession. That further the complainant also charges Rs. 4,00,000/- toward car parking charges.

11. The complainants submitted that on 29.11.2016 the complainants herein purchased the above said unit from the Sh. Umashanker vide duly executed agreement to sell and acknowledging which sale the respondent also transferred the unit in question to the complainant after charging transfer fee which allotment of unit in the name of the complainant is acknowledged by the respondent by way of endorsement on the original space buyer agreement in favour of the Complainant herein. That all the rights of the original allottee stood transferred to the complainants herein.

12. The complainants submitted that the respondent vide their letter dated 21.02.2107 informed the complainants herein that the unit in question stood transferred from the name of the original owners to the complainants herein. Further vide the

said letter the respondent acknowledged the receipt of Rs. 23,62,578/- from the complainants herein.

13. The complainants submitted that the complainant after an exorbitant delay of almost 6 years received letter for offer of possession dated 23.01.2018 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, however no interest for the delayed period was offered by the respondent to the complainants and aggrieved of which the complainants visited their office of the respondent with the request to pay interest for the delayed possession but the same were in vain. Further at the time of handing over the possession of the unit in question the area of the unit was increased from 347.83 Sq. Ft to 446.52 sq. ft and which increase of area was done without the consent of the complainant.

ISSUE RAISED BY THE COMPLAINANTS:

13. The following issue has been raised by the complainants:
- After an amendment to the complaint dated 17.10.2018, 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 COMPLAINANTS

14. The following relief has been prayed for:

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

REPLY BY THE RESPONDENT

15. 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.

16. 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.

17. 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 28.06.2010.
18. The respondent submitted that the complainants have agreed to purchase commercial unit number EPS-FF-049, Emerald Plaza, Sector 65, Gurugram, Haryana from the respondent. Office space buyer's agreement was executed between the parties on 28.06.2010.
19. The respondent submitted that the contractual relationship between the complainants and the respondent is governed by the terms and conditions of the office space buyer's agreement dated 28.06.2010. The said agreement was voluntarily and

consciously executed by the complainants. Once a contract is executed between the parties, the rights and obligations of the parties are determined entirely by covenants incorporated in the contract. No party to a contract can be permitted to assert any right of any nature at variance with the terms and conditions incorporated in the contract.

20. The respondent submitted that the complainants were offered possession of the above mentioned unit through letter of offer of possession dated 23.01.2018. Subsequently, possession reminder letter dated 26.02.2018 had been got sent to the complainants. Consequently, possession was handed over to the complainants and unit handover letter dated 06.08.2018 had got signed in favor of the complainants.
21. The respondent submitted that right from the beginning, the complainants were extremely irregular as far as payment of instalments was concerned. It is further 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 and there is no default or lapse on the part of the respondent.
22. The respondent submitted that area of the unit in question has been increased from 347.83 sq. ft. to 446.52 sq. ft. it is submitted

that the parties to the buyer's agreement dated 28.06.2010 had prior knowledge of the fact that the area of the unit in question was tentative and the final area was to be measured at the time of completion of construction and on receipt of the occupation certificate. The complainants are intentionally and maliciously indulging in falsehood to obtain wrongful gain and cause wrongful loss to the respondent.

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:

23. 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. 28.06.2010. Therefore, due date of possession shall be computed from 28.06.2010. 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 28.04.2013. However, the respondent sent letter of offer of possession to the complainants on 23.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession i.e. 28.04.2013 till handing over of possession i.e. 23.01.2018. The possession has been delayed by four years eight months and twenty six days from due date of possession till the offer of possession. The complainants have taken possession vide unit handover letter dated 06.08.2018.

24. As the possession of the apartment was to be delivered by 28.04.2013, 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:

25. 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.

26. Arguments heard: As per clause 16 of the retail space buyer's agreement dated 28.6.2010 for unit no.EPS-FF-049, in project "Emerald Plaza" Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 30 months from the date of execution of retail space buyer's agreement + 120 days grace period which comes out to be 28.04.2013.
27. The respondent has received the occupation certificate on 08.01.2018 and the possession was offered to the complainant on 23.01.2018 and physical possession of the unit has also been handed over to the complainant on 06.08.2018. Complainant has already paid Rs.37,22,997/- to the respondent against a total sale consideration of Rs.35,98,680/-.

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 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. 10.65% for every month of delay from the due date of possession i.e. 28.04.2013 till offer of possession i.e. 23.01.2018.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent is directed not to charge anything from the complainant which is not part of the retail space buyer's agreement.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
 - v. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
29. The order is pronounced.
30. Case file be consigned to the registry

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.05.2019

Judgement uploaded on 13.06.2019