

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

**Complaint No. : 1879 of 2018**  
**Date of first hearing: 12.03.2019**  
**Date of Decision : 23.07.2019**

Mr. Dhiraj Sheoran  
R/o : D-006, Rail Vihar, Sector-15, Part-II,  
Gurugram

**Complainant**

Versus

M/s Emaar MGF Land Limited  
Registered office: ECE House, 28 Kasturba  
Gandhi Marg,  
New Delhi-110001  
Also at: Emaar MGF Business Park,  
Mehrauli-Gurgaon Road, Sikanderpur Chowk  
Sector 28, Gurugram-122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Mandeep Singh  
Shri Ketan Luthra

Advocate for the complainant  
Authorized representative on the  
respondent

**EXPARTE-BRIEF**

1. A complaint dated 17.12.2018 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 Mr. Dhiraj

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Sheoran, against the promoter M/s Emaar MGF Land Limited on account of violation of clause 11(a) of the buyer's agreement executed on 05.04.2010 for not giving possession on the due date i.e. 26.02.2014 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 05.04.2010, 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 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 Hills" in Sector 65, Village, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	EEA-J-F01-05
4.	Unit area admeasuring	1020 sq. ft.
5.	Registered/ not registered	<b>162 of 2017 dated 29.08.2017</b>
6.	Revised Registration Date	<b>28.08.2022</b>

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7.	DTCP license	06 dated 17.01.2008
8.	Date of buyer's agreement	05.04.2010
9.	Total consideration	Rs. 42,99,948 /- As per statement of account in 20.09.2018
10.	Total amount paid by the complainant	Rs. 41,04,415 /- As per statement of account 20.09.2018
11.	Payment plan	Construction linked plan
12.	Date of delivery of possession	<b>26.02.2014</b> <b>Date of construction: 26.08.2010 (As per the statement of account dated 20.09.2018)</b> Clause 11(a)- 36 months from date of start of construction+ 6 months grace period
13.	Delay of number of months/ years	5 years, 4 months and 27 days
14.	Penalty clause as per buyer's agreement dated 05.04.2010	Clause 13(a)- Rs. 5/- per sq. ft. per month of the super area.

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. A buyer's agreement dated 05.04.2010 is available on record according to which the possession of the aforesaid unit was to be delivered by 26.02.2014. The promoter has failed to deliver the possession

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of the said unit to the complainant. Therefore, the promoter has not fulfilled his 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 12.03.2019, 09.04.2019, 28.05.2019 and 23.07.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply nor cost imposed on previous dates have been deposited. Hence, ex-parte proceedings have been initiated against the respondent.

#### **Facts of the complaint**

6. Briefly stated the facts of the case the complaint that the present complaint is being filed by the complainant through his special power Sh. Prashant Sheoran who is real brother of the complainant and well conversant with the facts and circumstances of the present case and has been duly authorised vide SPA dated 21.09.2018 to institute the instant complaint, sign the complaint, pleadings, vakalatnama, affidavit, applications, to appear in the court, to engage

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counsel, give statements, compromise the matter and to do all other acts that may be necessary with respect to the present complaint on behalf of the complainant.

7. The complainant submitted that in the year 2010, the respondent advertised their proposed project called 'Emerald Hills', at Emerald Estate, Gurgaon, Haryana, wherein the respondent specifically stated that the possession of the units shall be delivered within 36 months of signing of the builder buyer's agreement/application letter. From the aforesaid advertisements of the respondent many more people were induced by the respondent to part with their hard-earned money for booking the promised flat.
8. The complainant submitted that he booked the flat on 21.08.2009 by giving Rs. 5 lacs by way of cheque in favour of respondent. After receiving the amount from the respondent duly signed and executed a buyer agreement dated 05.04.2010 and allotted a unit No.EEA-J-F01-05 in favour of complainant. Thereafter the complainant started paying the amount of instalments as per the demand of the respondent on time and the respondent received the

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same from time to time accordingly while assuring the timely delivery of possession which fell due on 05.04.2013 but never delivered the possession of the aforesaid flat on time and even till date the respondent has been miserably failed to handover the possession of the aforesaid flat to the complainant despite there being inordinate delay of more than 5 years from the due date. The respondent even cannot count the grace period in the total period agreed for handing over the actual physical possession of the apartment as the same can only be considered when the respondent is able to deliver the actual physical possession of the allotted apartment within the grace period, failing which the respondent is liable to pay the interest and penalty for this period also.

9. The complainant submitted that the respondent continued to accept money from the complainant without any intention to deliver the possession from the beginning.
10. The complainant duly adhered their part of the contractual stipulations and the respondent however, with mala-fide intentions, even after taking amount as per the prescribed

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payment schedule stopped adhering to their contractual stipulation and liabilities. The complainant purchased the aforesaid flat with the hope that they would shift. However due to inordinate delay have to shift at their present address and he is facing a lot of problems.

11. The complainant submitted that the respondent after receiving the substantial amount of Rs.41,04,415/- till 20.09.2018 from the complainant and has been failed to handover the possession of the flat in question which is yet not complete to the notice and knowledge of the complainant. The complainant obtained a loan from the State Bank of India for purchasing the aforesaid flat for a sum of Rs.20 lacs and cleared the said loan amount within the stipulated period by regularly depositing the instalments of the same and paid substantial amount towards interest.
12. The complainant submitted that he and many other people have invested their hard-earned money with hope of having a residential flat, which they could use for their personal use, but now they are left with nowhere to go except approaching this hon'ble Authority.

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13. It is submitted that the modus operandi of the respondent has caused tremendous financial pressure upon the complainant herein for which the complainant is entitled to be reimbursed forthwith as well as for the mental agony caused to the complainant by the acts, omissions and mala fide conduct on the part of the respondent.
14. It is submitted that the conduct of the respondent has resulted in wrongful loss to the complainant and wrongful gain to the respondent herein, for which the respondent is liable to be prosecuted under Indian Penal Code.
15. The complainant submitted that the Act of taking hard earned money from the complainant and not making delivery of the aforesaid flat after passing of 5 years from the date of possession wilfully and knowingly amounts to an act of fraud and deliberate delay for which respondent is solely liable to pay damages also. However the complainant is filing the present complaint without prejudice to rights for filing the separate claim for damages, the complainant is filing the present complaint only for compensation on account of delay in handing over the possession of the aforesaid flat.

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16. The present complaint has been filed by the complainant without prejudice to claim further damages suffered by the complainant on account of inordinate delay committed by the respondent in handing over the possession of the allotted flat to the complainant, by filing their claim before the "adjudicating officer" to be appointed under the RERA Act 2016.

**17. Issues raised by the complainant**

The relevant issues as culled out from the complaint are as follows:

- I. Whether there is delay in handing over the actual physical possession of the Unit No.EEA-J-F01-05 and how long time?
- II. Whether the complainant is entitled to interest @ 18% per annum from the date of delay in handing over the possession?

**18. Relief sought**

- I. Direct the respondent to hand over the possession of the unit to the complainant as per allotment (with all

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approvals qua completion) along with penalty for delayed possession @ 24% per annum compounded half yearly (interests rate levied by the respondent) for every year of delayed possession to be calculated proportionately to every day of delay from date of payment till realization.

- II. Direct the respondent to pay an interest @ 24% per annum compounded half yearly may be paid to the Complainant till the date of payment of said interest.
- III. Direct the respondent to pay interest at the rate of 24% per annum on the entire payment made by the complainant to the respondent from the date of handing over possession till the flat is transferred in the name of the complainant.

#### **Determination of issues**

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

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19. With respect to the **first issue raised** by the complainant, as per clause 11(a) of the buyer's agreement dated 05.04.2010, the possession was to be handed over to the complainant within a period of 36 months from the date of construction plus grace period of 6 months. Therefore, the due date comes out to be 26.02.2014. The promoters have violated the buyer's agreement by not giving the possession on the due date, thus, 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.
20. With respect to the **second issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession under section 18(1).

#### **Findings of the authority**

21. The respondent admitted the fact that the project "Emerald Hills" is situated in Sector-65, Gurugram,

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therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

22. 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.

23. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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24. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
25. Neither the reply on behalf of respondent filed despite giving several opportunities nor the costs imposed on previous dates has been deposited.
26. Application dated 01.07.2019 filed on behalf of the respondent for waiver of costs has been considered and the prayer made in the application is declined. In view of the facts and circumstances of the matter, respondent is proceeded ex-parte.
27. As per clause 11 (a) of the buyer's agreement dated 5.4.2010 for unit No.EEA-J-F01-05, in project "Emerald Hills", Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of construction i.e. 26.8.2010 + 6 months grace period which comes out to be 26.02.2014. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.41,04,415/- to the respondent against a total sale

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consideration of Rs.42,99,948/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 26.02.2014 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

**Decision and directions of the authority:**

28. 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:

- (i) The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 10.60% p.a. on the paid amount of the complainants from the due date of delivery of possession as calculated above i.e. 26.02.2014 till offer of possession.
- (ii) 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.

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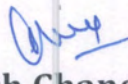
- (iii) Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iv) The promoter shall not charge anything from the complainant which is not part of the BBA.
- (v) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

29. The complaint is disposed of accordingly.

30. The order is pronounced.

31. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2019

Judgement Uploaded on 06.08.2019

