



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

Complaint no. : 2141 of 2018
First date of hearing: 12.03.2019
Date of decision : 23.07.2019

Jyotsna Soni
R/o: Strategic Food International Co.,
PO Box no: 53193, Dubai, UAE.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Emaar Business Park, M.G. Road, Sikanderpur
Chowk, Sector- 28, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Parmanand Yadav
Shri Ketan Luthra AR on
behalf of respondent

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint relates to buyer's agreement dated 08.04.2013 executed between the complainant and the respondent/promoter, which is registered with this authority, in respect of apartment measuring 2025 sq. ft. super area bearing no. IG-04-0701, 7th floor, tower no. 04 of the project namely, "Imperial Gardens" situated in Sector 102, Gurugram, for a basic sale price of Rs.12,700,800/- and other

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LEGAL ASSISTANT



charges as per the buyer's agreement dated 08.04.2013 and the complainants opted for construction linked payment plan.

2. Notice of the complaint has been issued to the respondent.

Despite service of notice the respondent has preferred not to file the reply to the complaint, even the cost imposed upon has not been paid till date. Application dated 1.7.2019 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.

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

1.	Name and location of the project	"Imperial gardens", Sector 102, Gurugram.
2.	Nature of the project	Group housing colony
3.	DTCP license no.	107 of 2012 dated 15.10.2012
4.	RERA registered/ unregistered.	Registered vide no. 208 of 2017
5.	Allotted apartment/unit no.	IG-04-0701, 7 th floor, building 4
6.	Unit admeasuring super area	2025 sq. ft.
7.	Payment plan	Construction linked payment plan
8.	Date of execution of buyer's agreement	08.04.2013
9.	Total consideration as per statement of accounts dated 03.11.2019	Rs. 1,54,04,836/-
10.	Total amount paid by the	Rs. 1,45,59,796/-



	complainant till date as per statement of accounts dated 03.11.2018	
11.	Due date of delivery of possession Clause 14(a): 42 months plus 3 months grace period from the start of construction.	11.08.2017 Note - As per SOA dated 03.11.2018 construction was commenced on 11.11.2013
12.	Delay in handing over possession till date	1 years 11 months 12 days
13.	Revised date of delivery of possession as per RERA the registration certificate	31.12.2018. (already expired but applied for extension)

3. As per clause 14(a) of the buyer's agreement, the respondents had agreed to handover the possession of the subject flat to the complainants within 42 months from the start of construction with an additional grace period of 3 months. However, the respondent has not received the occupation certificate for the same project till now.
4. The complainant submitted that despite more than 95% of the payments, the complainants was not delivered the possession of the apartment and the respondent has been delaying delivery of the possession of the apartment. However, the respondent has siphoned of a huge sum of money from the amount received from the customers of the project. The complainant has requested the respondent several times to deliver the apartment of the complainant.

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5. **Issues raised by the complainants are as follows:**

i. 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?

6. **Reliefs sought:**

The complainant is seeking the following reliefs:

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

Issue wise findings of the authority: -

i. **With respect to issue:-** With respect to the **sole issue** raised by the complainant, As per clause 14(a) of the buyer's agreement is reproduced hereunder:

"42 months from the start of construction+ 3 months grace period"

The due date comes out to be 11.08.2017 which means that there is a delay of 1 year 11 months 12 days till the date of decision. Regarding payment of interest for delay in delivery of possession the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.



8. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the buyers' agreement as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate on the amount deposited by the complainant with the promoter from the due date of possession i.e. 11.08.2017 up to the date of offer of possession.

FINDINGS OF THE AUTHORITY

9. 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.
10. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate i.e. 10.60%, for every month of delay till the handing over of possession.



Arguments on behalf of the complainant heard

Neither the reply on behalf of respondent filed despite giving several opportunities nor the costs imposed on previous dates has been deposited. Application dated 1.7.2019 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.

As per clause 14 (a) of the Builder Buyer Agreement dated 8.4.2013 for unit No.IG-04-0701, 7th floor, building No.4, in project "Imperial Gardens", Sector-102, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of start of construction i.e. 11.11.2013 + 3 months grace period which comes out to be 11.8.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,45,59,796/- to the respondent against a total sale consideration of Rs.1,54,04,836/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 11.8.2017 as per the provisions of section 18



(1) of the Real Estate (Regulation & Development) Act, 2016
till offer of possession.

Directions of the authority

11. 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. Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 11.8.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 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 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



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- iv. The promoter shall not charge anything from the complainant which is not part of the buyer's agreement.
- 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.

12. The order is pronounced.

13. Case file be consigned to the registry.



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2019

Judgement uploaded on 25.07.2019

