

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

**Complaint no. : 1083 of 2018**  
**Date of first hearing: 02.01.2019**  
**Date of decision : 29.05.2019**

Mr. Akash Kapoor  
R/o: Flat no. 102, The Magnolias,  
Golf Course Road, Sector-42,  
Gurugram, Haryana-122002

**Complainant**

Versus

M/s Emaar MGF Land Limited  
Office at: Emaar Business Park, MG Road,  
Sikanderpur , Sector 28, Gurugram-122001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Sharma and Shri Ganesh Kamath Advocate for the complainant  
Shri Ishaan Dang Advocate for the respondent  
Shri Ketan Luthra Authorise representative of on behalf of respondent company

**ORDER**

1. A complaint dated 16.10.2018 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 complainant Mr. Akash

Kapoor, against the promoter M/s Emaar MGF Land Limited, on account of violation of clause 16(a) of retail space buyer's agreement dated 29.12.2010 in respect of retail space described below for not handing over possession by the due date which is in violation of obligation of promoter under section 11(4)(a) of Act *ibid*.

2. Since, the retail space buyer's agreement has been executed on 29.12.2010 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 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" Sector 65, Gurugram
2.	Total area of project	3.963 acres
3.	Nature of project	Commercial project
4.	Unit no.	EPS-FF-084
5.	Unit area	777.1 sq. ft'
6.	HRERA registered/ not registered	<b>Not registered</b>
7.	D'TCP license no.:	10 of 2009 dated

		21.05.2009
8.	Date of retail space buyer's agreement	29.12.2010
9.	Total consideration (as per statement of account dated 01.10.2018, page 115)	Rs.53,13,790/-
10.	Total amount paid by the complainant (as per statement of account dated 01.10.2018)	Rs.48,41,563/-
11.	Percentage of amount paid	91.11%
12.	Payment plan	Construction linked plan
13.	Application for OC	26.05.2017
14.	Receipt of OC	08.01.2018
15.	Offer of possession	<b>25.01.2018</b>
16.	Due date of delivery of possession. (Clause 16 (a) i.e. 30 months from the execution of agreement + 120 days grace period)	29.10.2013
17.	Delay in handing over possession till date of decision	5 years 7 months 1 day (approx.)
18.	Penalty clause as per retail space buyer's agreement dated 29.12.2010	Clause 18 i.e. Interest calculated @9% p.a simple interest on the amount paid by allottee.

4. The details provided above which have been checked as per record of the case file. A retail space buyer's agreement is available on record for commercial space no. FPS-FF-084 according to which the possession of the aforesaid unit was to be delivered by 29.10.2013 and the possession was offered

to the complainant on 25.01.2018. The promoter has failed to deliver the possession of the said unit to the complainants by the due date and has not paid any interest for the period he delayed in handing over possession. 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 02.01.2019, 05.02.2019, 29.05.2019. The reply filed by the respondent on 05.11.2018 has been perused by the authority.

#### **FACTS OF THE CASE**

6. Emaar is developing a residential plotted colony "Emerald Hills" (herein after called project) on a piece of land admeasuring 102.471 acres in Sector 65, Gurugram. Director, Town and Country Planning, Government of Haryana has granted license bearing no.-10 dated 21.05.2009 to develop the project.
7. The complainant purchased units in the multi-storied commercial complex "Emerald Plaza" admeasuring 3.963 acres forming part of the land on which license no.-10 dated 21.05.2009 admeasuring 102.471 acres is obtained.

8. The “Emerald Plaza” was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space. The complainant purchased unit no. FF-084 measuring 777.1 sq. ft’ retail shop / office space in the name of Mr. Akash Kapoor and paid booking amount of Rs.4,66,260/- on 21.05.2010 @Rs.6000/- per sq. ft’.
9. At the time of booking the unit, it was assured by the promoter M/s Emaar Land Ltd. that project shall be delivered to the buyers within thirty months of the execution of agreement plus (120) one hundred twenty days as grace period. Believing the representation, assurances and goodwill which the promoter commanded, the complainant paid the booking amount on 21.05.2010 and subsequently executed buyer’s agreement on 29.12.2010.
10. The complainant made regular payments as demanded by the promoter time and again and paid as demanded up to date. There was no default on account of making payment to the promoter as per agreement to hand over the possession to the complainant. 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 promoter only raised construction upto 5<sup>th</sup> floor slab till the time due for handing over the possession in January 2013 but still complainant paid the payments of instalments as demanded by the promoter. In January 2018 builder offered the possession and raised arbitrary demands.
12. On receiving the demand letter and letter for possession, the complainant was aghast. There was no mention of delayed possession interest, compensation for delayed possession etc. but only demand for more money.
13. Complainant visited the office of promoter and tried his level best to meet the senior officials but CRM (customer relation managers) did not allow to meet them, so the complainant sent a legal notice to the promoter. Respondent company did not bother to reply and didn't even acknowledge the notice hence this complaint is filed to the Haryana Real Estate Regulatory Authority at Gurugram.
13. **ISSUES RAISED BY THE COMPLAINANT**
  - I. Whether the respondent should have got its project "Emerald Plaza" of "Emerald Hills", Sector-65 registered with the authority upto 31.07.2017?

- II. Whether incomplete application as per sub code 4.10 of Haryana Building Code 2017 would protect the promoter company and exempt it from the definition of “on-going project” as referred under rules 2(o) of the rules *ibid*?
- III. Whether respondent has caused exorbitant delay in handing over possession of unit to the complainant and for which the respondent is liable to pay interest to the complainant on amount received by the respondent from the complainant?
- IV. Are open parking space and parking in common basements to be sold to the allottees as separate unit by the promoter, which the respondent has sold as separate units in certain cases and if not then the amount so collected be returned back to the allottees from whom charged ?
- V. Whether the respondent is liable to refund the GST amount collected from the complainant as the said tax became payable only due to delay in handing over the possession by the respondent?

VI. Whether the act of respondent to get the plain application format signed from the allottees to join the association of owners/allottees formed by the respondent is legal?

**14. RELIEF SOUGHT**

The complainant is seeking the following reliefs:

- I. The complainant requests the authority to order refund of the money charged on account of increased unit area without the consent obtained and moreover the increased area is part of common area and not carpet area of the unit.
- II. The promoter has sold the super area which includes the common areas. The monetary consideration should have been only for carpet area. The excess amount on account of any area in excess of carpet area of the unit should be ordered to be refunded back to the complainant with interest.
- III. The promoter shall make payment of interest accrued on account of delayed offer for possession of five years



@24% as charged him from the allottees on delayed payments if any.

- IV. The amount of GST service tax etc collected from the complainant, which accrued for the reason of delayed offer of possession be refunded back to the complainant.
- V. Any common area car parking including basement car park, which is not garage if sold than the money collected on such account shall be refunded along with interest.

#### **REPLY ON BEHALF OF THE RESPONDENTS**

14. The respondent stated that the present complaint is not maintainable in law or facts. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. Application for occupation certificate was made on 26.05.2017 which is before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017 and the same was received on 08.01.2018. Thus, the project is not an 'on-going project'.
15. The respondent submitted that the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the unit

booked by the complainant. Thus, it was further submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the said Act read with rule 29 of HARERA Rules, 2017 and not by this authority.

16. The offer of possession was made to the complainant on 25.01.2018 and the complainant was called upon to remit the balance payment including the delayed payment charges, but the complainant did not complete the necessary formalities for obtaining possession, which is a lapse on the part of the complainant.
17. Respondent further submits that the complainant had been irregular in making payments due to which many reminders were sent and even demand notices were sent to the complainant to clear their outstanding dues. As till the date of 8.9.2018 the outstanding liability of the complainant is Rs.6,49,697/-
18. Respondent submitted that the construction of the project/apartment in question stands completed and the respondent had already applied for the occupation certificate and same has been granted. The respondent company has

already handed over the possession to many allottees and the conveyance deed for the same has been executed.

19. Respondent submits that the demand raised by the promoter is as per the retail space buyer's agreement and there is no lapse or default on the part of respondent. It is the complainant who has defaulted on not obtaining the possession on time and have initiated a false and frivolous complaint.

#### **DETERMINATION OF ISSUES**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

20. With respect to the **first and second issue** raised by the complainant, the same has already been decided by the hon'ble authority in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd. (7 of 2018), on 21.08.2018..*
21. With respect to **third issue** raised by the complainant, the clause 16(a) of the agreement is reproduced hereunder:

*"...30 months from the execution of agreement + 120 days grace period"*

The due date comes out to be 29.10.2013 and the possession was offered on 25.01.2018 which means that there is a delay

of 4 years 2 months 27 days till the offer of possession i.e. 25.01.2018. 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 i.e. 10.65%, for every month of delay till the offer of possession. The issue on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale decided in favour of complainant.

22. With respect to the **fourth issue**, clause 1.3(a)(i) of the agreement is reproduced as under:

*“The retail space allottees agrees and understands that the company shall grant an exclusive right to use one car park space for retail space allottees, for which the cost of Rs.4,00,000/- is included in the sales consideration, in the multi-level basement parking space of the building. The allottees agree and understand that the car park space assigned/transferred to the allottee shall be understood to be together with the retail space and the same shall not have any independent legal entity, detached or independent, from the said retail space.”*

The open parking spaces cannot be sold separately to the allottees and the multi-level basement parking cost has already been attached in the retail sale price.

23. With respect to the **fifth issue**, the complainant is directed to approach the appropriate forum for the levy of GST.

### **FINDINGS OF THE AUTHORITY**

24. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.
25. 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.

### **Decision and directions of the authority**

26. 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 the interest at the prescribed rate i.e. 10.65% for every month of delay from the due date of possession i.e. 29.10.2013 till the letter of offer of possession date 25.01.2018. The interest so accrued shall be paid within 90 days from the date of this order.
- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

27. 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.

28. The order is pronounced.

29. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:29.05.2019