

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

**Complaint No. : 976 of 2018**  
**First date of hearing : 21.12.2018**  
**Date of Decision : 29.05.2019**

1. Mrs. Shabnam Aggarwal  
2. Mr. Rakesh Aggarwal  
Both R/o. H-206, Palm Drive, Sector- 66,  
Guugram, Haryana.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.,  
(Through its Directors)  
Address: MG road, Sikanderpur,  
Sector -28, Gurugram - 122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Rakesh Aggarwal  
Shri Ketan Luthra

Complainant in person  
Authorized representative of  
the respondent Company  
Advocate for the respondent  
Company

Shri Ishaan Dang

**ORDER**

1. A complaint dated 26.09.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants, Mrs. Shabnam Aggarwal and Mr. Rakesh Aggarwal, against the promoter, M/s. Emaar MGF Land

Ltd. on account of violation of clause 14(a) of buyer's agreement dated 26.02.2008 for the delay in handing over the possession, which is an obligation under section 11(4)(a) of the Act ibid, in respect of apartment no. H-206, in Tower H, with revised admeasuring 2202 sq. ft. super area of the project, namely 'Palm Drive', Gurugram, Haryana. The respondent has obtained the occupancy certificate from the DTCP on 25.01.2018 and has offered possession vide letter dated 23.02.2018.

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

1.	Name and location of the Project	'Palm Drive', Gurugram, Haryana <b>(Pg. 82 of the complaint)</b>
2.	Apartment/Unit no.	H-206, tower H
3.	Nature of real estate project	Residential apartment complex
4.	Admeasuring area of the apartment	2202 sq. ft. super area.
5.	DTCP license no.	DS 2007/24799 dated 27.09.2007
6.	RERA registered/unregistered.	<b>unregistered</b>
7.	Date of execution of buyer's agreement	26.02.2008 <b>(Annx 19)</b>
8.	Payment plan	Construction linked payment plan
9.	Total consideration as per the as per statement of account	Rs.1,22,18,878/-
10.	Total amount paid by the complainant till date	Rs.1,22,64,249/- <b>(statement of account - Annx R 20)</b>
11.	Date of commencement of construction as per statement of accounts	10.07.2008
12.	Due date of delivery of possession as per clause 14(a) of the buyer's agreement dated 26.02.2008	31.03.2011 (December, 2010 + 90 days' grace period)

13.	Date of receipt of occupation certificate	25.01.2018 <b>(Annx R2)</b>
14.	Date of offer of possession letter	23.02.2018 <b>(Annx R4)</b>
15.	Total delay in offer of possession	6 years and 11 months
16.	Penalty Clause 16(a) as per apartment buyer's agreement dated 05.03.2008	Compensation at the rate of Rs. 5/- per sq. ft. per month of super area till notice of possession.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 26.02.2008 (reference clause 14(a) of the agreement) for the abovementioned allotted apartment/unit in question. The respondent has not delivered the possession of the unit to the complainants within stipulated period which is in violation of section 11(4)(a) of the Act.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 31.01.2019. The case came up for hearing on 21.12.2018, 31.01.2019 and 29.05.2019. The reply filed on behalf of the respondent on 12.11.2018, which has been perused by the authority.

**Facts of the complaint:-**

5. Briefly stated facts relevant for the disposal of the present complaint are that in December, 2007, complainants jointly booked an apartment in the respondent's project, namely 'the palm drive' located at sector 66, golf course extension road, Gurugram. In pursuant to aforesaid booking of the complainant, the respondent allotted apartment/unit no. H-206 in tower H, admeasuring 2120 sq. ft. super area in favour of the complainants.
6. On 26.02.2008, buyer's agreement for the allotted apartment number was executed between the parties. The total consideration of the apartment was fixed at Rs. 1,07,36,675/- as against which the complainant has made total payment of Rs. 1,22,64,249/- to the respondent under the construction linked payment plan on various dates. As per clause 14(a) of the buyer's agreement, possession of the apartment was to be delivered by December, 2010 with a grace period of 90 days i.e. by 31.03.2011.
7. It was alleged by the complainant that the possession was offered by the respondent 23.02.2018 i.e. after a delay of 7 years approx. The complainant further alleged that the respondent has charged a sum of Rs. 16,703/- towards

delayed payment charges and Rs. 6,705/- towards holding charges which is illegal and arbitrary.

8. The complainant alleged that the delay compensation granted by the respondent at the rate of Rs.5/- per sq. ft. per month of the super area in terms of clause 16(a) of the buyer's agreement is not in consonance of the rate of interest charged @ 15% p.a. by the respondent in regard to the delayed penal interest for late payment.
9. Hence, the complainant has filed the instant complaint seeking delayed interest at the prescribed rate in terms of the provisions of the Real Estate (Regulation and Development) Act, 2016.

**Issues to be decided: -**

- i. Whether the delay of 7 years in handing over possession of apartment beyond stipulated period is justified?
- ii. Whether the interest of Rs. 23,328/- charged on 08.04.2008, Rs. 5,332/- charged on 01.09.2010 and holding charges of Rs. 16,703/- and Rs. 6,705/- was justified?

**Reliefs sought: -**

- i. Direct the respondent to pay interest @ 10.65% per annum for delayed period which comes to Rs. 69,69,701/-

bifurcation of the reliefs claimed is given at annexure 33 of the complaint.

**Respondent's reply: -**

10. The respondent contended that the present complaint is not maintainable and the hon'ble authority has no jurisdiction to entertain the present complaint. 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 apartment in question was made on 01.07.2017 i.e. before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017. The occupation certificate has been thereafter issue on 25.01.2018. Thus, the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. The project does not require registration and consequently has not been registered under the provision of the Act.
11. The respondent contended that the complainants have no locus standi or cause of action to file the present complaint. It is stated that the complainant is no longer an allottee in the project as the complainant have got the conveyance deed executed for the apartment in question and the same

has been registered with the competent authority. The present complaint is nothing but an abuse of process of law.

12. The respondent submitted that the complainants were offered possession of the abovementioned unit through letter of offer of possession dated 23.02.2018. The complainants were called upon to remit the balance payment including the delayed payment charges and to complete the necessary formalities for handover of possession or to pay the balance amount liable to be paid by them. However, the complainants did not take any step to complete the necessary formalities or to pay the balance amount liable to be paid by them.

13. The respondent submitted that the complainants had been irregular as far as payment of instalments were concerned. The respondent was compelled to issue demand notices, reminders, etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants.

14. The respondent submitted that they have issued demand note and request on various occasions vide letters dated 05.11.2009, 12.01.2010, 08.03.2010, 27.04.2010, 26.07.2010, 06.09.2010, 05.10.2010, 07.01.2011, 01.04.2011 and 06.09.2011. It was further submitted by the respondent that the complainants have executed an indemnity cum

undertaking dated 12.06.2018 and further a unit handover letter dated 19.07.2018 whereby the complainants had accepted that upon obtaining possession of the subject apartment, the liabilities and obligations of the respondent as enumerated in the allotment letter or buyer's agreement would stand satisfied.

15. The respondent submitted that in the present case the complainants are not entitled for the delayed compensation in terms of buyer's agreement dated 26.02.2008 since they have defaulted in remittance of payments as per schedule of payments.

16. It was further submitted by the respondent that the construction of the project or allotted unit in question stands completed and the complainants have already obtained possession of the apartment in question. Thus, the present complaint deserves to be dismissed at the very threshold.

**Determination of issues: -**

After considering the facts submitted by both the parties and perusal of record available in the file, the issue wise findings of the authority are as under: -

17. As regards **issue no. 1** raised by the complainant, it is evident from clause 14(a) of the buyer's agreement dated



26.02.2008, the respondent was liable to deliver the possession of the apartment by December, 2010 plus 90 (ninety) days' grace period for applying and receiving of occupation certificate i.e. by 31.03.2011, however, the possession was offered to the complainant by the respondent vide letter dated 23.02.2018 (**Annexure R4**) after receipt of occupation certificate on 25.01.2018 (**Annexure R2**). Hence, there is a delay of 6 years and 11 months approximately in giving possession to the complainants.

18. Therefore, this authority is of the view that the respondent is liable to pay delayed possession charges at the prescribed rate of interest of 10.65% per annum for every month of delay in delivery of possession in terms of section 18 (1) proviso of the Real Estate (Regulation and Development) Act, 2016.

19. As regards **issue no. 2** raised by the complainants, it is evident from the perusal of statement of accounts that the respondent has imposed interest of delayed payment and holding charges as per the terms of agreement, moreover, the payment have been made by the complainant without any protest in this regard, so after making payment and taking over the possession is deemed waiver of protest and

the complainant cannot raise this issue at this belated stage.

Hence, this issue becomes infructuous.

**Findings of the authority:-**

20. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

21. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

22. Arguments heard. The project in question is registered with the authority. The respondent has received the

occupation certificate on 25.01.2018 and the possession has been taken over by the complainant vide letter dated 19.07.2018. Conveyance deed has already been executed in favour of the complainant. As such, complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.65% per annum as per the provisions of Section 18 (1) proviso of the Real Estate (Regulation and Development) Act, 2016.

**Decision and directions of the authority: -**

23. 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 duty bound to pay the interest at the prescribed rate i.e. 10.65% per annum for every month of delay from the due date of delivery of possession i.e. 31.03.2011 till 23.02.2018 (date of offer of possession).
- (ii) Respondent is entitled to adjust Rs 6,67,250/- as already paid to the complainants in the form of

delayed compensation from the amount of delayed possession charges to be paid to the complainants.

- (iii) The respondent shall not charge anything from the complainants which is not a part of the buyer's agreement.
- (iv) The arrears of interest accrued so far from the due date of delivery of possession till this date shall be paid to the complainants within a period of 90 days from the date of this order.
- (v) The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent under section 59 of the Act by the registration branch. A Copy of this order be endorsed to registration branch.

24. The order is pronounced.

25. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated : 29.05.2019