

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

Complaint No. : 804 of 2018
First date of Hearing : 20.12.2018
Date of Decision : 20.12.2018

Mr. Vinod Narayanan
Ms. Anjana Vinod
H. No. 216 E, Space Nirvana Country, Sector 50, **Complainants**
Gurugram

Versus

Emaar MGF Land Limited.
Address: Emaar Business Park,
MG Road, Sikanderpur, Sector 28,
Gurugram-122001, Haryana. **Respondent**

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for the complainant
Shri Ankit Mehta Advocate for the respondent

**HARERA
GURUGRAM
ORDER**



1. A complaint dated 10.09.2018 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. Vinod Narayanan and Ms. Anjana Vinod, 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 05.08.2010 in respect of retail space described as below for not handing over possession by the due date i.e.05.06.2013, 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 05.08.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual 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 case are as under: -

DTCP licence no. 10 dated 21.05.2009

Nature of project : Commercial

1.	Name and location of the project	"Emerald Plaza" in Emerald Hills, Sector 65, Gurugram, Haryana.
2.	RERA registered/ not registered	Not registered





3.	Applied for occupation certificate on	22.05.2017
4.	Occupation granted on	08.01.2018
5.	Allotment letter	07.04.2010
6.	Retail space/unit no.	EPS-GF-105, ground floor
7.	Retail space measuring	1090.78 sq. ft. but revised 1085.56 sq. ft. as per letter of possession
8.	Booking amount paid	Rs.6,54,468/-
9.	Retail space buyer's agreement executed on	05.08.2010
10.	Payment plan	Construction linked payment plan
11.	Total sale consideration	Rs.80,16,879/- as per statement of account
12.	Total amount paid by the complainants till date	Rs.80,22,851/- as per statement of accounts
13.	Percentage of consideration amount	Approx. 100 percent
14.	Date of delivery of possession as per clause 16(a). (30 months + 120 days grace period from the date of execution of this agreement)	05.06 2013
15.	Letter of offer of possession sent to the complainant on	31.01.2018
16.	Unit handover letter date	08.06.2018
17.	Delay in handing over possession from due date till offer of possession	11 months 19 days
18.	Penalty clause as per retail space buyer's agreement	Clause 18.a of the agreement i.e. interest calculated at 9% p.a. (simple interest) on the amount(s) paid by the allottee for such period of delay.



4. The details provided above have been checked on the basis of record available in the case file which have been provided by



the complainant and the respondent. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 19.04.2018. The case came up for hearing on 02.08.2018, 02.08.2018 and 05.09.2018. The reply has been filed on behalf of the respondent has been perused.

Brief facts of the complaint

5. 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" 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 complainants.
6. The complainants submitted that Mr. Vinod Narayanan and Mrs. Anjana Vinod (being the joint owners) on the basis of tall claims of the respondent that the project shall be state of art





project and that the same shall be completed on time with best of the infrastructure, jointly purchased a shop / office / unit No EPO-GF-105 admeasuring a super area of 1090.78 Sq. Ft situated on the ground floor @ Rs. 6000 per Sq. Ft on the assurance that construction shall be complete in time and possession would be handed over in time.

7. The complainants submitted that the respondent on the basis of above basis issued allotment letter dated 07.04.2010 to the complainants vide which allotment letter the respondent allotted office / unit no EPO-GF-105 admeasuring a super area of 1090.78 Sq. Ft situated on the ground floor along with one car parking space for additional price of Rs.4,00,000/-. Further vide the same letter the respondent also confirmed having received the booking amount of Rs. 6,54,468/- vide cheque No. 744818 dated 18.03.2010 drawn on HDFC Bank, Chennai.

8. The complainants submitted that after the booking of the above described unit a space buyer agreement dated 05.08.2010 was duly signed and executed between both the parties i.e. respondent herein M/s Emaar MGF Land Ltd. on one hand and the complainants on the other hand the terms





and conditions as laid down by the respondent. 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.

9. The complainants submitted that complainant made regular payments as demanded by the promoter time and again and that has till date paid a total amount of Rs. 80,23,711/- to the respondent.
10. The complainants submitted that the complainant after an exorbitant delay of almost 5 years received Letter for offer of possession on January 2018 i.e. on 30.01.2018 with respect to the unit in question, however though the respondent offered the possession of the unit in question after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant as also visited the office of the respondent with the request/demand to pay interest for the delayed possession but the same were in vain.



11. The complainants submitted that after repeated request of the complainants the respondent granted Rs. 9,65,370/- to the complainants as interest on delayed Possession which amount as to how was calculated was never intimated to the complainants and that the said amount was accepted under protest by the complainants, which is evident from the fact that the complainants also wrote an email dated 30.07.2018 to the respondent protesting the discrepancies in the calculation of delayed interest Payment.
12. The complainants submitted that it is also pertinent to mention here that at the time of issuance of letter of offer of possession the respondent for the first time informed the complainants that the area of the unit in question was decreased from 1090.78 sq. ft to 1085.56 sq. ft which decrease was done without the consent of the complainant.
13. The complainants submitted that on receiving the demand letter and letter for possession, the complainant was aghast as there was no mention of delayed possession interest, compensation for delayed possession etc but demand and only demand for more money. However, to protect their hard





earned monies the complainants further on 08.06.2018 took the hand over/possession of the Unit in Question vide hand over letter dated 08.06.2018 issued by the respondent. It is again pertinent to mention here that even in handing over the possession after the Offer of possession letter the respondent still made a delay of 100 days as all the formalities required to be made by the complainants for taking possession of the Unit were completed by the complainants on 01.03.2018

14. The complainants submitted that after writing of the email dated 30.07.2018 as mentioned above vide which the complainants agitated discrepancies in calculations, the complainant visited the office of promoter and tried their level best to meet the senior officials but CRM (customer relation managers) did not allow to meet, however repeated demands were raised by the complainants for their right of getting interest on the delayed possession as per law which all demands were in vain as the respondent completely shut his doors to the grievances of the complainant, hence this complainants to this hon'ble haryana real estate regulatory



authority at Gurugram. On the Grounds which are raised in issues to decided.

15. The issues raised by the complainants are as follow:

- i. Whether the respondent should have got its project "Emerald Plaza" of "Emerald Hills", Sector 65 registered with the authority up to 31st July 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 section 3(1) proviso of the Act.
- iii. Whether the respondent needs to provide interest for inordinate delay of over 5 years in offer of possession at the same rate of 24% that it has been charging the petitioners for delay in making due payments.



- iv. Whether the respondent needs to provide compensation for inordinate delay of over 5 years in offer of possession?
- v. Whether open parking space and parking in common basements included in the definition common area as defined u/s 2(n) of the Acts? Can these parking which are not garage (section 2(4) of the Act) be sold to the allottees as separate unit by the promoter "M/s Emaar MGF Land Ltd." if not than shouldn't it be returned back to the allottees from whom charged?
- vi. Whether the promoter M/s Emaar MGF Land Ltd. is right in selling super area in place of carpet area to the allottees. Shouldn't the promoter return the extra money if charged from allottees on account of selling super area for monetary consideration?
- vii. Whether the structural changes made by the promoter like constructing 2 basement parking in place of three (3) basement parking promised



as per space buyer agreement and increase or decrease in the area of units allotted is illegal as per section 14 of the Act?

- viii. The possession was to be handed over in (30) thirty months time i.e. maximum by June 2013 to the allottees for offer of possession. Goods and Service Tax came on statute and implemented from 15th of July 2017. Should allottees bear the tax burden caused because of delay in possession?
- ix. Whether possession of the of the common area would remain with the company inspite of allottees having their own registered association of allottees?
- x. Whether or not is legal to get the plain application format signed from the allottees to join the association of owners / allottees formed by the company?



xi. Whether the common area be transferred to association of owners/allottees through conveyance deed required as per the Act? and whether promoter has right to install movable or immovable goods in the common area for commercial gains or otherwise?

xii. Whether the builder/ promoter has obtained insurances as prescribed under section 16 of the Act?

xiii. Whether the respondent can increase or decrease the area of the unit without the consent of the allottee?

16. Relief sought

The complainant is seeking the following reliefs:

- i. That the respondent/ promoter be ordered to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas and which sale of common area is in total



contradiction of the Act, for the reason as per the Act the monetary consideration can only be for the Carpet Area.

- ii. The respondent/promoter be ordered to make payment of interest accrued on amount collected by the Respondent from the Complainant, account of delayed offer for possession and which interest should be @24% P.A from the date as and when the amount was received by the respondent from the complainant.
- iii. Direct the respondent to refund the amount of GST service tax etc collected from the complainant, which had to be paid by the complainants only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST service tax would have arise as on such date GST service tax was not in existence.
- iv. That the respondent should be directed to refund monies collected from the sale of any common





area as car parking including basement car park, which is not garage as sold by the respondent in the present case.

- v. That the respondents should be directed to adjust the monies received toward the excess of area as allotted by the respondent i.e. the area decreased from the original allotment.
- vi. That orders may be passed against the respondent in terms of Section 59 of the RERA Act, 2016 for the failure on part of the respondent to register itself with this hon'ble authority under the RERA Act, 2016

Respondent's reply

17. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the





rights and contentions of the respondent contained in the said application.

18. The respondent submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in a summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by a civil court. The present complaint therefore deserves to be dismissed on this short ground alone.
19. The respondent submitted that the present complaint is even otherwise liable to be dismissed as **Firstly**, the complainant has no locus standi to file the present complaint. **Secondly**, it is submitted that as per applicable Act and the rules, a complaint may be filed by a person only if the respondent has committed any act in violation of The Real Estate (Regulation & Development) Act, 2016 and/or the Haryana Real Estate (Regulation & Development) Rules, 2017. It is submitted that the complainant herein has failed to bring on record any





document, evidence etc. which may even allude let alone prove that the respondent has violated the provisions of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act") or the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as "HARERA Rules"). The same goes to the root of the matter and as such the complaint is liable to be dismissed on this ground alone. **Thirdly**, that the project in question namely Emerald Plaza at Emerald Hills, Sector-65, Gurgaon, Haryana (hereinafter referred to as the "said Project") of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the "said Rules") nor is the said project of the respondent registered with this hon'ble regulatory authority. As per the definition of "ongoing projects" under Rule 2(o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this hon'ble regulatory authority





20. The respondent submitted that the respondent had applied for grant of the occupation certificate for the said project on 26.05.2017, which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per Rule 2(o)(i) and the present case is squarely covered under the first exception provided under Rule 2(o) and therefore this hon'ble regulatory authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. A copy of the application for OC dated 26.05.2017. It is pertinent to mention here that even the actual occupation certificate has also been granted on 08.01.2018. A copy of the occupation certificate dated 08.01.2018. Thereafter the respondent had applied for part completion certificate for the project where the services are complete and hence the project does not fall in the definition of ongoing projects. As such the project does not come under the purview of RERA and same has not been registered under the provision of the Act. That possession of the concerned unit has already been offered by the respondent to the complainants vide letter of possession dated





30.01.2018. Further complainant has also taken over of physical possession of the unit in question 08.06.2018. The Conveyance Deed was executed on 18.05.2018. It is submitted that the complainant no more remains an allottee after the execution of conveyance deed. Thus, no cause of action can be said to have arisen to the complainants in any event to assert the reliefs claimed. Thus, no relief, as sought, can be granted to the complainants.

21. The respondent submitted that the complainants are not consumers in terms of the definition of consumer under consumer protection Act, 1986. The Act does not provide any definition for the consumer so the same has to be derived from the consumer protection Act, 1986. The statement of objects and reasons as well as the preamble to the Act, clearly state that the Act is enacted for effective consumer protection. It is submitted that apparently, the complainants are mere speculative investors having invested with a view to earn quick profit. But, due to slowdown in the market conditions and having failed to resell the said unit, complainants had apparently developed an intention to raise false and frivolous





issues to engage the respondent in unnecessary and false litigation. Thus, the complainants had sought to reap financial benefit and the burden of proof to prove the contrary is on the complainant which the complainants have failed to discharge.

22. The respondent submitted that complainants have now instituted the present false and frivolous complaint. It is evident from the entire sequence of the events that no illegality can be attributed to the respondent. A copy each of letter of possession dated 30.01.2018, Indemnity-cum-undertaking dated 16.03.2018 and unit handover letter dated 08.06.2018.

23. The respondent submitted that many of the allottees of the project defaulted/delayed in making payment of the amounts which resulted in slowdown in pace of the development. It is submitted that the development of the project was dependent upon the availability of funds from the allottees, who were under a contractual obligation to make payments as per the schedule of payment opted by the them. delayed payments have an adverse impact on the project deliverables. That it is specifically pointed out that delay payment charges were





levied on the unit in question. It is relevant to point out that as per statement of accounts 29.09.2018 for subject unit, a sum of Rs. 5332/- has been levied as delayed payment charges. apparently, the complainant had defaulted/ delayed in remittance of payments as per the agreed schedule. It is therefore, wrong and denied that the complainant made regular payments towards the units in question. In fact the complainant has also annexed copy of statement of account dated 17.07.2018 (on page no. 55) with respect to the subject unit and which also reflects that delayed payment charges were levied. It is also relevant to point out that the unit in question herein has been given early payment rebate (EPR) of Rs. 31,533/- and on time payment rebate (OTPR) On Time Payment Rebate of Rs. 1,00,000/- for the unit in question. In addition, after discussions with the complainant, compensation of Rs. 9,93,529/- was also given. It is absolutely clear that the complainant has filed this complaint as an after thought statement of account dated 29.09.2018.

24. The respondent submitted that the complainant has failed to advance averments in support of the issues that they seek to





take before this hon'ble regulatory authority such as with respect to interest free maintenance security, applicability of GST, whether the respondent can sell the super area or the carpet area, registration of the concerned project under the RERA Act and other issues. It is most respectfully submitted that the respondent reserves it rights to specifically make submissions towards the issues raised for which no corresponding averments have been made in the complaint. Be that as it may, it is categorically stated that the respondent moves within the contours of the law of the land such that the buyers agreement executed by the parties is valid, binding upon the parties. Any and every payment that has been sought from the complainant is within the four corners of the buyers agreement agreed and executed between the parties.

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:



25. **First and second issues** raised by the complainant 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.*
26. With respect to **third issue raised** by the complainants regarding payment of interest @ 24% that has been charged by the respondent cannot be allowed as the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. 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 agreement for sale 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 of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 05.06 2013 upto the date of offer of possession i.e. 31.01.2018.



27. With respect to **the fourth issue raised** by the complainants, the complainant made a statement 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. Therefore, the said issue raised by the complainant regarding compensation becomes superfluous.
28. With respect to **fifth issue** raised by complainants, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the space buyer agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016. As per clause 1.3(a)(i) the following provisions have been made regarding parking space:

"The Retail Space Allottee(s) agrees and understands that the company shall grant an exclusive right to use one car park space for Retail Space Allottee(s) for which the cost of Rs.4,00,000/- (Rupees four lakhs only) is included in the Sales Consideration, in the multi-level basement parking space of the building. The Allottee(s) agrees and understands that the car par space assigned/transferred to the Allottee(s) 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 cost of parking of Rs.4,00,000/- (Rupees four lakhs only) has already been included in the sale consideration, accordingly, the promoter has no right to charge it separately from the buyer. If it has been separately charged, then the amount be returned by the promoter to the allottee.

29. With respect to the issues numbered as **(vi) & (vii)**, the complainant has not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issues become infructuous.
30. With respect to **eighth issue raised** by the complainant, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
31. The issues numbered as **(ix) to (xii)**, the complainant has not been pressed at the time of arguments and no relief has been claimed in the complaint regarding these issues.
32. With respect to **xiii issue** raised by complainants, as per clause 6(a) of the buyer's agreement the respondent at its sole option and discretion till the grant of an occupation certificate and at any time even after the building plans are sanctioned carries out any addition, alterations or modifications as it may





consider necessary. Therefore, the area of the said unit is decreased by the respondent from 1090.78 sq. ft. to 1085.56 sq. ft. as per letter of possession dated 31.01.2018.

Findings of the authority

33. 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.
34. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
35. The complainant 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 obligation.
36. 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 complainants, at the prescribed rate, for every month of delay till the handing over of possession.



37. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation And Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.
38. Project is not registered with the authority. Occupation certificate has been received on 8.1.2018 and possession offered to the complainant vide letter dated 31.1.2018.
39. As per clause 16 (a) of the builder buyer agreement dated 5.8.2010 for unit no. EPS-GF 105, in project "Emerald Plaza in Emerald Hills" Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 30 months + 120 days grace period which comes out to be **5.6.2013**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.80,22,851/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **5.6.2013 till 31.1.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016.





40. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Decision and directions of the authority

41. 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 delay possession charges @ 10.75% p.a. on the paid amount by the complainants i.e. ~~Rs. 80,16,879/-~~ ^{80,22,851/-} to the complainants from the due date of delivery of possession i.e. 05.06.2013 till 31.01.2018 (date of offer of possession) amounting to ~~Rs. 8,35,480.06/-~~ ^{40,16,297/-}
- ii. The arrears of interest so accrued @ 10.75% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Thereafter monthly payment of interest of Rs. 7,484.51/- till handing over the possession shall be paid before 10th of subsequent month.


Corrected vide order dated 27/05/19.



42. The order is pronounced.

43. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.12.2018

Corrected Judgement uploaded on 13.09.2019



HARERA
GURUGRAM



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Versus

Emaar MGF Land Limited.
Address: Emaar Business Park,
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6. The complainants submitted that Mr. Vinod Narayanan and Mrs. Anjana Vinod (being the joint owners) on the basis of tall claims of the respondent that the project shall be state of art



project and that the same shall be completed on time with best of the infrastructure, jointly purchased a shop / office / unit No EPO-GF-105 admeasuring a super area of 1090.78 Sq. Ft situated on the ground floor @ Rs. 6000 per Sq. Ft on the assurance that construction shall be complete in time and possession would be handed over in time.

7. The complainants submitted that the respondent on the basis of above basis issued allotment letter dated 07.04.2010 to the complainants vide which allotment letter the respondent allotted office / unit no EPO-GF-105 admeasuring a super area of 1090.78 Sq. Ft situated on the ground floor along with one car parking space for additional price of Rs.4,00,000/-. Further vide the same letter the respondent also confirmed having received the booking amount of Rs. 6,54,468/- vide cheque No. 744818 dated 18.03.2010 drawn on HDFC Bank, Chennai.

8. The complainants submitted that after the booking of the above described unit a space buyer agreement dated 05.08.2010 was duly signed and executed between both the parties i.e. respondent herein M/s Emaar MGF Land Ltd. on one hand and the complainants on the other hand the terms



and conditions as laid down by the respondent. 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.

9. The complainants submitted that complainant made regular payments as demanded by the promoter time and again and that has till date paid a total amount of Rs. 80,23,711/- to the respondent.
10. The complainants submitted that the complainant after an exorbitant delay of almost 5 years received Letter for offer of possession on January 2018 i.e. on 30.01.2018 with respect to the unit in question, however though the respondent offered the possession of the unit in question after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant as also visited the office of the respondent with the request/demand to pay interest for the delayed possession but the same were in vain.



11. The complainants submitted that after repeated request of the complainants the respondent granted Rs. 9,65,370/- to the complainants as interest on delayed Possession which amount as to how was calculated was never intimated to the complainants and that the said amount was accepted under protest by the complainants, which is evident from the fact that the complainants also wrote an email dated 30.07.2018 to the respondent protesting the discrepancies in the calculation of delayed interest Payment.
12. The complainants submitted that it is also pertinent to mention here that at the time of issuance of letter of offer of possession the respondent for the first time informed the complainants that the area of the unit in question was decreased from 1090.78 sq. ft to 1085.56 sq. ft which decrease was done without the consent of the complainant.
13. The complainants submitted that on receiving the demand letter and letter for possession, the complainant was aghast as there was no mention of delayed possession interest, compensation for delayed possession etc but demand and only demand for more money. However, to protect their hard





earned monies the complainants further on 08.06.2018 took the hand over/possession of the Unit in Question vide hand over letter dated 08.06.2018 issued by the respondent. It is again pertinent to mention here that even in handing over the possession after the Offer of possession letter the respondent still made a delay of 100 days as all the formalities required to be made by the complainants for taking possession of the Unit were completed by the complainants on 01.03.2018

14. The complainants submitted that after writing of the email dated 30.07.2018 as mentioned above vide which the complainants agitated discrepancies in calculations, the complainant visited the office of promoter and tried their level best to meet the senior officials but CRM (customer relation managers) did not allow to meet, however repeated demands were raised by the complainants for their right of getting interest on the delayed possession as per law which all demands were in vain as the respondent completely shut his doors to the grievances of the complainant, hence this complainants to this hon'ble haryana real estate regulatory



authority at Gurugram. On the Grounds which are raised in issues to decided.

15. The issues raised by the complainants are as follow:

- i. Whether the respondent should have got its project "Emerald Plaza" of "Emerald Hills", Sector 65 registered with the authority up to 31st July 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 section 3(1) proviso of the Act.**
- iii. Whether the respondent needs to provide interest for inordinate delay of over 5 years in offer of possession at the same rate of 24% that it has been charging the petitioners for delay in making due payments.**



- iv. Whether the respondent needs to provide compensation for inordinate delay of over 5 years in offer of possession?
- v. Whether open parking space and parking in common basements included in the definition common area as defined u/s 2(n) of the Acts? Can these parking which are not garage (section 2(4) of the Act) be sold to the allottees as separate unit by the promoter "M/s Emaar MGF Land Ltd." if not than shouldn't it be returned back to the allottees from whom charged?
- vi. Whether the promoter M/s Emaar MGF Land Ltd. is right in selling super area in place of carpet area to the allottees. Shouldn't the promoter return the extra money if charged from allottees on account of selling super area for monetary consideration?
- vii. Whether the structural changes made by the promoter like constructing 2 basement parking in place of three (3) basement parking promised



as per space buyer agreement and increase or decrease in the area of units allotted is illegal as per section 14 of the Act?

- viii. The possession was to be handed over in (30) thirty months time i.e. maximum by June 2013 to the allottees for offer of possession. Goods and Service Tax came on statute and implemented from 15th of July 2017. Should allottees bear the tax burden caused because of delay in possession?
- ix. Whether possession of the of the common area would remain with the company inspite of allottees having their own registered association of allottees?
- x. Whether or not is legal to get the plain application format signed from the allottees to join the association of owners / allottees formed by the company?



xi. Whether the common area be transferred to association of owners/allottees through conveyance deed required as per the Act? and whether promoter has right to install movable or immovable goods in the common area for commercial gains or otherwise?

xii. Whether the builder/ promoter has obtained insurances as prescribed under section 16 of the Act?

xiii. Whether the respondent can increase or decrease the area of the unit without the consent of the allottee?

16. Relief sought

The complainant is seeking the following reliefs:

- i. That the respondent/ promoter be ordered to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas and which sale of common area is in total



contradiction of the Act, for the reason as per the Act the monetary consideration can only be for the Carpet Area.

- ii. The respondent/promoter be ordered to make payment of interest accrued on amount collected by the Respondent from the Complainant, account of delayed offer for possession and which interest should be @24% P.A from the date as and when the amount was received by the respondent from the complainant.
- iii. Direct the respondent to refund the amount of GST service tax etc collected from the complainant, which had to be paid by the complainants only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST service tax would have arise as on such date GST service tax was not in existence.
- iv. That the respondent should be directed to refund monies collected from the sale of any common



area as car parking including basement car park, which is not garage as sold by the respondent in the present case.

- v. That the respondents should be directed to adjust the monies received toward the excess of area as allotted by the respondent i.e. the area decreased from the original allotment.
- vi. That orders may be passed against the respondent in terms of Section 59 of the RERA Act, 2016 for the failure on part of the respondent to register itself with this hon'ble authority under the RERA Act, 2016

Respondent's reply

17. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the



rights and contentions of the respondent contained in the said application.

18. The respondent submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in a summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by a civil court. The present complaint therefore deserves to be dismissed on this short ground alone.
19. The respondent submitted that the present complaint is even otherwise liable to be dismissed as **Firstly**, the complainant has no locus standi to file the present complaint. **Secondly**, it is submitted that as per applicable Act and the rules, a complaint may be filed by a person only if the respondent has committed any act in violation of The Real Estate (Regulation & Development) Act, 2016 and/or the Haryana Real Estate (Regulation & Development) Rules, 2017. It is submitted that the complainant herein has failed to bring on record any



document, evidence etc. which may even allude let alone prove that the respondent has violated the provisions of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "the Act") or the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as "HARERA Rules"). The same goes to the root of the matter and as such the complaint is liable to be dismissed on this ground alone. **Thirdly**, that the project in question namely Emerald Plaza at Emerald Hills, Sector-65, Gurgaon, Haryana (hereinafter referred to as the "said Project") of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the "said Rules") nor is the said project of the respondent registered with this hon'ble regulatory authority. As per the definition of "ongoing projects" under Rule 2(o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this hon'ble regulatory authority



20. The respondent submitted that the respondent had applied for grant of the occupation certificate for the said project on 26.05.2017, which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per Rule 2(o)(i) and the present case is squarely covered under the first exception provided under Rule 2(o) and therefore this hon'ble regulatory authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. A copy of the application for OC dated 26.05.2017. It is pertinent to mention here that even the actual occupation certificate has also been granted on 08.01.2018. A copy of the occupation certificate dated 08.01.2018. Thereafter the respondent had applied for part completion certificate for the project where the services are complete and hence the project does not fall in the definition of ongoing projects. As such the project does not come under the purview of RERA and same has not been registered under the provision of the Act. That possession of the concerned unit has already been offered by the respondent to the complainants vide letter of possession dated





30.01.2018. Further complainant has also taken over of physical possession of the unit in question 08.06.2018. The Conveyance Deed was executed on 18.05.2018. It is submitted that the complainant no more remains an allottee after the execution of conveyance deed. Thus, no cause of action can be said to have arisen to the complainants in any event to assert the reliefs claimed. Thus, no relief, as sought, can be granted to the complainants.

21. The respondent submitted that the complainants are not consumers in terms of the definition of consumer under consumer protection Act, 1986. The Act does not provide any definition for the consumer so the same has to be derived from the consumer protection Act, 1986. The statement of objects and reasons as well as the preamble to the Act, clearly state that the Act is enacted for effective consumer protection. It is submitted that apparently, the complainants are mere speculative investors having invested with a view to earn quick profit. But, due to slowdown in the market conditions and having failed to resell the said unit, complainants had apparently developed an intention to raise false and frivolous



issues to engage the respondent in unnecessary and false litigation. Thus, the complainants had sought to reap financial benefit and the burden of proof to prove the contrary is on the complainant which the complainants have failed to discharge.

22. The respondent submitted that complainants have now instituted the present false and frivolous complaint. It is evident from the entire sequence of the events that no illegality can be attributed to the respondent. A copy each of letter of possession dated 30.01.2018, Indemnity-cum-undertaking dated 16.03.2018 and unit handover letter dated 08.06.2018.

23. The respondent submitted that many of the allottees of the project defaulted/delayed in making payment of the amounts which resulted in slowdown in pace of the development. It is submitted that the development of the project was dependent upon the availability of funds from the allottees, who were under a contractual obligation to make payments as per the schedule of payment opted by the them. delayed payments have an adverse impact on the project deliverables. That it is specifically pointed out that delay payment charges were





levied on the unit in question. It is relevant to point out that as per statement of accounts 29.09.2018 for subject unit, a sum of Rs. 5332/- has been levied as delayed payment charges. apparently, the complainant had defaulted/ delayed in remittance of payments as per the agreed schedule. It is therefore, wrong and denied that the complainant made regular payments towards the units in question. In fact the complainant has also annexed copy of statement of account dated 17.07.2018 (on page no. 55) with respect to the subject unit and which also reflects that delayed payment charges were levied. It is also relevant to point out that the unit in question herein has been given early payment rebate (EPR) of Rs. 31,533/- and on time payment rebate (OTPR) On Time Payment Rebate of Rs. 1,00,000/- for the unit in question. In addition, after discussions with the complainant, compensation of Rs. 9,93,529/- was also given. It is absolutely clear that the complainant has filed this complaint as an after thought statement of account dated 29.09.2018.

24. The respondent submitted that the complainant has failed to advance averments in support of the issues that they seek to





take before this hon'ble regulatory authority such as with respect to interest free maintenance security, applicability of GST, whether the respondent can sell the super area or the carpet area, registration of the concerned project under the RERA Act and other issues. It is most respectfully submitted that the respondent reserves it rights to specifically make submissions towards the issues raised for which no corresponding averments have been made in the complaint. Be that as it may, it is categorically stated that the respondent moves within the contours of the law of the land such that the buyers agreement executed by the parties is valid, binding upon the parties. Any and every payment that has been sought from the complainant is within the four corners of the buyers agreement agreed and executed between the parties.

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:



25. **First and second issues** raised by the complainant 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.*
26. With respect to **third issue raised** by the complainants regarding payment of interest @ 24% that has been charged by the respondent cannot be allowed as the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. 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 agreement for sale 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 of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 05.06 2013 upto the date of offer of possession i.e. 31.01.2018.



27. With respect to **the fourth issue raised** by the complainants, the complainant made a statement 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. Therefore, the said issue raised by the complainant regarding compensation becomes superfluous.

28. With respect to **fifth issue** raised by complainants, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the space buyer agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016. As per clause 1.3(a)(i) the following provisions have been made regarding parking space:

"The Retail Space Allottee(s) agrees and understands that the company shall grant an exclusive right to use one car park space for Retail Space Allottee(s) for which the cost of Rs.4,00,000/- (Rupees four lakhs only) is included in the Sales Consideration, in the multi-level basement parking space of the building. The Allottee(s) agrees and understands that the car par space assigned/transferred to the Allottee(s) 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 cost of parking of Rs.4,00,000/- (Rupees four lakhs only) has already been included in the sale consideration, accordingly, the promoter has no right to charge it separately from the buyer. If it has been separately charged, then the amount be returned by the promoter to the allottee.

29. With respect to the issues numbered as **(vi) & (vii)**, the complainant has not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issues become infructuous.
30. With respect to **eighth issue raised** by the complainant, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
31. The issues numbered as **(ix) to (xii)**, the complainant has not been pressed at the time of arguments and no relief has been claimed in the complaint regarding these issues.
32. With respect to **xiii issue** raised by complainants, as per clause 6(a) of the buyer's agreement the respondent at its sole option and discretion till the grant of an occupation certificate and at any time even after the building plans are sanctioned carries out any addition, alterations or modifications as it may



consider necessary. Therefore, the area of the said unit is decreased by the respondent from 1090.78 sq. ft. to 1085.56 sq. ft. as per letter of possession dated 31.01.2018.

Findings of the authority

33. 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.
34. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
35. The complainant 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 obligation.
36. 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 complainants, at the prescribed rate, for every month of delay till the handing over of possession.



37. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation And Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.
38. Project is not registered with the authority. Occupation certificate has been received on 8.1.2018 and possession offered to the complainant vide letter dated 31.1.2018.
39. As per clause 16 (a) of the builder buyer agreement dated 5.8.2010 for unit no. EPS-GF 105, in project "Emerald Plaza in Emerald Hills" Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 30 months + 120 days grace period which comes out to be **5.6.2013**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.80,22,851/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **5.6.2013 till 31.1.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016.



40. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Decision and directions of the authority

41. 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 delay possession charges @ 10.75% p.a. on the paid amount by the complainants i.e **Rs.80,16,879/-** to the complainants from the due date of delivery of possession i.e. 05.06.2013 till 31.01.2018 (date of offer of possession) amounting to ~~Rs.8,35,480.06/-~~ **40,16,297/-**
- ii. The arrears of interest so accrued @ 10.75% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Thereafter monthly payment of interest of **Rs. 7,484.51/-** till handing over the possession shall be paid before 10th of subsequent month.


*Corrected vide order
dated 27/05/19.*



42. The order is pronounced.

43. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.12.2018

Corrected Judgement uploaded on 27.05.2019



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 20.12.2018
Complaint No.	804/2018 Case titled as Vinod Narayanan And Anjana Vinod V/S Emaar MGF Land Limited
Complainant	Vinod Narayanan And Anjana Vinod
Represented through	Shri. Sanjeev Sharma, Advocate for the respondent.
Respondent	Emaar MGF Land Limited
Respondent Represented through	Shri Ketan Luthra, authorized representative with Shri Ishaan Dang, Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.

Shri Ishaan Dang Advocate has appeared on behalf of the respondent and filed power of attorney today.

Arguments heard.

Project is not registered with the authority. Occupation certificate has been received on 8.1.2018 and possession offered to the complainant vide letter dated 31.1.2018.

As per clause 16 (a) of the Builder Buyer Agreement dated 5.8.2010 for unit No.EPS-GF 105, in project "Emerald Plaza in Emerald Hills" Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 30 months + 120 days grace period which comes out to be 5.6.2013. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.80,22,851/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 5.6.2013 till 31.1.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)
20.12.2018

Subhash Chander Kush
(Member)
20.12.2018

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

Complaint No. : 804 of 2018
First date of Hearing : 20.12.2018
Date of Decision : 20.12.2018

Mr. Vinod Narayanan
Ms. Anjana Vinod
H. No. 216 E, Space Nirvana Country, Sector 50, **Complainants**
Gurugram

Versus

Emaar MGF Land Limited.
Address: Emaar Business Park,
MG Road, Sikanderpur, Sector 28,
Gurugram-122001, Haryana. **Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for the complainant
Shri Ankit Mehta Advocate for the respondent

ORDER

1. A complaint dated 10.09.2018 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. Vinod Narayanan and Ms. Anjana Vinod, 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 05.08.2010 in respect of retail space described as below for not handing over possession by the due date i.e.05.06.2013, 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 05.08.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual 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 case are as under: -

DTCP licence no. 10 dated 21.05.2009

Nature of project : Commercial

1.	Name and location of the project	"Emerald Plaza" in Emerald Hills, Sector 65, Gurugram, Haryana.
2.	RERA registered/ not registered	Not registered



3.	Applied for occupation certificate on	22.05.2017
4.	Occupation granted on	08.01.2018
5.	Allotment letter	07.04.2010
6.	Retail space/unit no.	EPS-GF-105, ground floor
7.	Retail space measuring	1090.78 sq. ft. but revised 1085.56 sq. ft. as per letter of possession
8.	Booking amount paid	Rs.6,54,468/-
9.	Retail space buyer's agreement executed on	05.08.2010
10.	Payment plan	Construction linked payment plan
11.	Total sale consideration	Rs.80,16,879/- as per statement of account
12.	Total amount paid by the complainants till date	Rs.80,22,851/- as per statement of accounts
13.	Percentage of consideration amount	Approx. 100 percent
14.	Date of delivery of possession as per clause 16(a). (30 months + 120 days grace period from the date of execution of this agreement)	05.06 2013
15.	Letter of offer of possession sent to the complainant on	31.01.2018
16.	Unit handover letter date	08.06.2018
17.	Delay in handing over possession from due date till offer of possession	11 months 19 days
18.	Penalty clause as per retail space buyer's agreement	Clause 18.a of the agreement i.e. interest calculated at 9% p.a. (simple interest) on the amount(s) paid by the allottee for such period of delay.



4. The details provided above have been checked on the basis of record available in the case file which have been provided by

the complainant and the respondent. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 19.04.2018. The case came up for hearing on 02.08.2018, 02.08.2018 and 05.09.2018. The reply has been filed on behalf of the respondent has been perused.

Brief facts of the complaint

5. 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” 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 complainants.
6. The complainants submitted that Mr. Vinod Narayanan and Mrs. Anjana Vinod (being the joint owners) on the basis of tall claims of the respondent that the project shall be state of art



project and that the same shall be completed on time with best of the infrastructure, jointly purchased a shop / office / unit No EPO-GF-105 admeasuring a super area of 1090.78 Sq. Ft situated on the ground floor @ Rs. 6000 per Sq. Ft on the assurance that construction shall be complete in time and possession would be handed over in time.

7. The complainants submitted that the respondent on the basis of above basis issued allotment letter dated 07.04.2010 to the complainants vide which allotment letter the respondent allotted office / unit no EPO-GF-105 admeasuring a super area of 1090.78 Sq. Ft situated on the ground floor along with one car parking space for additional price of Rs.4,00,000/-. Further vide the same letter the respondent also confirmed having received the booking amount of Rs. 6,54,468/- vide cheque No. 744818 dated 18.03.2010 drawn on HDFC Bank, Chennai.
8. The complainants submitted that after the booking of the above described unit a space buyer agreement dated 05.08.2010 was duly signed and executed between both the parties i.e. respondent herein M/s Emaar MGF Land Ltd. on one hand and the complainants on the other hand the terms



and conditions as laid down by the respondent. 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.

9. The complainants submitted that complainant made regular payments as demanded by the promoter time and again and that has till date paid a total amount of Rs. 80,23,711/- to the respondent.
10. The complainants submitted that the complainant after an exorbitant delay of almost 5 years received Letter for offer of possession on January 2018 i.e. on 30.01.2018 with respect to the unit in question, however though the respondent offered the possession of the unit in question after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant as also visited the office of the respondent with the request/demand to pay interest for the delayed possession but the same were in vain.



11. The complainants submitted that after repeated request of the complainants the respondent granted Rs. 9,65,370/- to the complainants as interest on delayed Possession which amount as to how was calculated was never intimated to the complainants and that the said amount was accepted under protest by the complainants, which is evident from the fact that the complainants also wrote an email dated 30.07.2018 to the respondent protesting the discrepancies in the calculation of delayed interest Payment.

12. The complainants submitted that it is also pertinent to mention here that at the time of issuance of letter of offer of possession the respondent for the first time informed the complainants that the area of the unit in question was decreased from 1090.78 sq. ft to 1085.56 sq. ft which decrease was done without the consent of the complainant.

13. The complainants submitted that on receiving the demand letter and letter for possession, the complainant was aghast as there was no mention of delayed possession interest, compensation for delayed possession etc but demand and only demand for more money. However, to protect their hard



earned monies the complainants further on 08.06.2018 took the hand over/possession of the Unit in Question vide hand over letter dated 08.06.2018 issued by the respondent. It is again pertinent to mention here that even in handing over the possession after the Offer of possession letter the respondent still made a delay of 100 days as all the formalities required to be made by the complainants for taking possession of the Unit were completed by the complainants on 01.03.2018

14. The complainants submitted that after writing of the email dated 30.07.2018 as mentioned above vide which the complainants agitated discrepancies in calculations, the complainant visited the office of promoter and tried their level best to meet the senior officials but CRM (customer relation managers) did not allow to meet, however repeated demands were raised by the complainants for their right of getting interest on the delayed possession as per law which all demands were in vain as the respondent completely shut his doors to the grievances of the complainant, hence this complainants to this hon'ble haryana real estate regulatory



authority at Gurugram. On the Grounds which are raised in issues to decided.

15. The issues raised by the complainants are as follow:

- i. Whether the respondent should have got its project "Emerald Plaza" of "Emerald Hills", Sector 65 registered with the authority up to 31st July 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 section 3(1) proviso of the Act.**
- iii. Whether the respondent needs to provide interest for inordinate delay of over 5 years in offer of possession at the same rate of 24% that it has been charging the petitioners for delay in making due payments.**



- iv. Whether the respondent needs to provide compensation for inordinate delay of over 5 years in offer of possession?
- v. Whether open parking space and parking in common basements included in the definition common area as defined u/s 2(n) of the Acts? Can these parking which are not garage (section 2(4) of the Act) be sold to the allottees as separate unit by the promoter "M/s Emaar MGF Land Ltd." if not than shouldn't it be returned back to the allottees from whom charged?
- vi. Whether the promoter M/s Emaar MGF Land Ltd. is right in selling super area in place of carpet area to the allottees. Shouldn't the promoter return the extra money if charged from allottees on account of selling super area for monetary consideration?
- vii. Whether the structural changes made by the promoter like constructing 2 basement parking in place of three (3) basement parking promised



as per space buyer agreement and increase or decrease in the area of units allotted is illegal as per section 14 of the Act?

- viii. The possession was to be handed over in (30) thirty months time i.e. maximum by June 2013 to the allottees for offer of possession. Goods and Service Tax came on statute and implemented from 15th of July 2017. Should allottees bear the tax burden caused because of delay in possession?
- ix. Whether possession of the of the common area would remain with the company inspite of allottees having their own registered association of allottees?
- x. Whether or not is legal to get the plain application format signed from the allottees to join the association of owners / allottees formed by the company?



- xi. Whether the common area be transferred to association of owners/allottees through conveyance deed required as per the Act? and whether promoter has right to install movable or immovable goods in the common area for commercial gains or otherwise?
- xii. Whether the builder/ promoter has obtained insurances as prescribed under section 16 of the Act?
- xiii. Whether the respondent can increase or decrease the area of the unit without the consent of the allottee?

16. Relief sought

The complainant is seeking the following reliefs:

- i. That the respondent/ promoter be ordered to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas and which sale of common area is in total



contradiction of the Act, for the reason as per the Act the monetary consideration can only be for the Carpet Area.

- ii. The respondent/promoter be ordered to make payment of interest accrued on amount collected by the Respondent from the Complainant, account of delayed offer for possession and which interest should be @24% P.A from the date as and when the amount was received by the respondent from the complainant.
- iii. Direct the respondent to refund the amount of GST service tax etc collected from the complainant, which had to be paid by the complainants only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST service tax would have arise as on such date GST service tax was not in existence.
- iv. That the respondent should be directed to refund monies collected from the sale of any common



area as car parking including basement car park, which is not garage as sold by the respondent in the present case.

- v. That the respondents should be directed to adjust the monies received toward the excess of area as allotted by the respondent i.e. the area decreased from the original allotment.
- vi. That orders may be passed against the respondent in terms of Section 59 of the RERA Act, 2016 for the failure on part of the respondent to register itself with this hon'ble authority under the RERA Act, 2016

Respondent's reply

17. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the



rights and contentions of the respondent contained in the said application.

18. The respondent submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in a summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by a civil court. The present complaint therefore deserves to be dismissed on this short ground alone.

19. The respondent submitted that the present complaint is even otherwise liable to be dismissed as **Firstly**, the complainant has no locus standi to file the present complaint. **Secondly**, it is submitted that as per applicable Act and the rules, a complaint may be filed by a person only if the respondent has committed any act in violation of The Real Estate (Regulation & Development) Act, 2016 and/or the Haryana Real Estate (Regulation & Development) Rules, 2017. It is submitted that the complainant herein has failed to bring on record any



document, evidence etc. which may even allude let alone prove that the respondent has violated the provisions of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as “the Act”) or the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as “HARERA Rules”). The same goes to the root of the matter and as such the complaint is liable to be dismissed on this ground alone. **Thirdly**, that the project in question namely Emerald Plaza at Emerald Hills, Sector-65, Gurgaon, Haryana (hereinafter referred to as the “said Project”) of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the “said Rules”) nor is the said project of the respondent registered with this hon’ble regulatory authority. As per the definition of “ongoing projects” under Rule 2(o) of the said rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this hon’ble regulatory authority



20. The respondent submitted that the respondent had applied for grant of the occupation certificate for the said project on 26.05.2017, which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per Rule 2(o)(i) and the present case is squarely covered under the first exception provided under Rule 2(o) and therefore this hon'ble regulatory authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. A copy of the application for OC dated 26.05.2017. It is pertinent to mention here that even the actual occupation certificate has also been granted on 08.01.2018. A copy of the occupation certificate dated 08.01.2018. Thereafter the respondent had applied for part completion certificate for the project where the services are complete and hence the project does not fall in the definition of ongoing projects. As such the project does not come under the purview of RERA and same has not been registered under the provision of the Act. That possession of the concerned unit has already been offered by the respondent to the complainants vide letter of possession dated



30.01.2018. Further complainant has also taken over of physical possession of the unit in question 08.06.2018. The Conveyance Deed was executed on 18.05.2018. It is submitted that the complainant no more remains an allottee after the execution of conveyance deed. Thus, no cause of action can be said to have arisen to the complainants in any event to assert the reliefs claimed. Thus, no relief, as sought, can be granted to the complainants.

21. The respondent submitted that the complainants are not consumers in terms of the definition of consumer under consumer protection Act, 1986. The Act does not provide any definition for the consumer so the same has to be derived from the consumer protection Act, 1986. The statement of objects and reasons as well as the preamble to the Act, clearly state that the Act is enacted for effective consumer protection. It is submitted that apparently, the complainants are mere speculative investors having invested with a view to earn quick profit. But, due to slowdown in the market conditions and having failed to resell the said unit, complainants had apparently developed an intention to raise false and frivolous



issues to engage the respondent in unnecessary and false litigation. Thus, the complainants had sought to reap financial benefit and the burden of proof to prove the contrary is on the complainant which the complainants have failed to discharge.

22. The respondent submitted that complainants have now instituted the present false and frivolous complaint. It is evident from the entire sequence of the events that no illegality can be attributed to the respondent. A copy each of letter of possession dated 30.01.2018, Indemnity-cum-undertaking dated 16.03.2018 and unit handover letter dated 08.06.2018.

23. The respondent submitted that many of the allottees of the project defaulted/delayed in making payment of the amounts which resulted in slowdown in pace of the development. It is submitted that the development of the project was dependent upon the availability of funds from the allottees, who were under a contractual obligation to make payments as per the schedule of payment opted by the them. delayed payments have an adverse impact on the project deliverables. That it is specifically pointed out that delay payment charges were



levied on the unit in question. It is relevant to point out that as per statement of accounts 29.09.2018 for subject unit, a sum of Rs. 5332/- has been levied as delayed payment charges. apparently, the complainant had defaulted/ delayed in remittance of payments as per the agreed schedule. It is therefore, wrong and denied that the complainant made regular payments towards the units in question. In fact the complainant has also annexed copy of statement of account dated 17.07.2018 (on page no. 55) with respect to the subject unit and which also reflects that delayed payment charges were levied. It is also relevant to point out that the unit in question herein has been given early payment rebate (EPR) of Rs. 31,533/- and on time payment rebate (OTPR) On Time Payment Rebate of Rs. 1,00,000/- for the unit in question. In addition, after discussions with the complainant, compensation of Rs. 9,93,529/- was also given. It is absolutely clear that the complainant has filed this complaint as an after thought statement of account dated 29.09.2018.

24. The respondent submitted that the complainant has failed to advance averments in support of the issues that they seek to



take before this hon'ble regulatory authority such as with respect to interest free maintenance security, applicability of GST, whether the respondent can sell the super area or the carpet area, registration of the concerned project under the RERA Act and other issues. It is most respectfully submitted that the respondent reserves its rights to specifically make submissions towards the issues raised for which no corresponding averments have been made in the complaint. Be that as it may, it is categorically stated that the respondent moves within the contours of the law of the land such that the buyers agreement executed by the parties is valid, binding upon the parties. Any and every payment that has been sought from the complainant is within the four corners of the buyers agreement agreed and executed between the parties.

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:



25. **First and second issues** raised by the complainant 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.***

26. With respect to **third issue raised** by the complainants regarding payment of interest @ 24% that has been charged by the respondent cannot be allowed as the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. 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 agreement for sale 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 of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 05.06 2013 upto the date of offer of possession i.e. 31.01.2018.



27. With respect to **the fourth issue raised** by the complainants, the complainant made a statement 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. Therefore, the said issue raised by the complainant regarding compensation becomes superfluous.

28. With respect to **fifth issue** raised by complainants, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the space buyer agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016. As per clause 1.3(a)(i) the following provisions have been made regarding parking space:

“The Retail Space Allottee(s) agrees and understands that the company shall grant an exclusive right to use one car park space for Retail Space Allottee(s) for which the cost of Rs.4,00,000/- (Rupees four lakhs only) is included in the Sales Consideration, in the multi-level basement parking space of the building. The Allottee(s) agrees and understands that the car par space assigned/transferred to the Allottee(s) 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 cost of parking of Rs.4,00,000/- (Rupees four lakhs only) has already been included in the sale consideration, accordingly, the promoter has no right to charge it separately from the buyer. If it has been separately charged, then the amount be returned by the promoter to the allottee.

29. With respect to the issues numbered as **(vi) & (vii)**, the complainant has not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issues become infructuous.
30. With respect to **eighth issue raised** by the complainant, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
31. The issues numbered as **(ix) to (xii)**, the complainant has not been pressed at the time of arguments and no relief has been claimed in the complaint regarding these issues.
32. With respect to **xiii issue** raised by complainants, as per clause 6(a) of the buyer's agreement the respondent at its sole option and discretion till the grant of an occupation certificate and at any time even after the building plans are sanctioned carries out any addition, alterations or modifications as it may



consider necessary. Therefore, the area of the said unit is decreased by the respondent from 1090.78 sq. ft. to 1085.56 sq. ft. as per letter of possession dated 31.01.2018.

Findings of the authority

33. 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.
34. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
35. The complainant 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 obligation.
36. 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 complainants, at the prescribed rate, for every month of delay till the handing over of possession.



37. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation And Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.
38. Project is not registered with the authority. Occupation certificate has been received on 8.1.2018 and possession offered to the complainant vide letter dated 31.1.2018.
39. As per clause 16 (a) of the builder buyer agreement dated 5.8.2010 for unit no. EPS-GF 105, in project "Emerald Plaza in Emerald Hills" Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 30 months + 120 days grace period which comes out to be **5.6.2013**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.80,22,851/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **5.6.2013 till 31.1.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016.



40. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Decision and directions of the authority

41. 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 delay possession charges @ 10.75% p.a. on the paid amount by the complainants i.e **Rs.80,16,879/-** to the complainants from the due date of delivery of possession i.e. 05.06.2013 till 31.01.2018 (date of offer of possession) amounting to **Rs.8,35,480.06/-**
- ii. The arrears of interest so accrued @ 10.75% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Thereafter monthly payment of interest of **Rs. 7,484.51/-** till handing over the possession shall be paid before 10th of subsequent month.



42. The order is pronounced.

43. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.12.2018



HARERA
GURUGRAM



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