

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 09.08.2018
Complaint No.	139/2018 case titled as Mr. Gulshan Mehta versus M/s Emaar MGF Land Limited
Complainant	Mr. Gulshan Mehta
Represented through	Ms. Srishti Girdhar, Advocate for the complainant.
Respondent	M/s Emaar MGF Land Limited
Respondent Represented through	Shri Ketan Luthra, authorized representative on behalf of the respondent-company with Shri Ishaan Dang, Advocate
Last date of hearing	26.7.2018

PROCEEDINGS

The project is registered.

Arguments heard.

The authorized representative appearing on behalf of the respondent made a statement that the delay in handing over the possession to the complainant by them as they have not received requisite approvals from the various authorities which are beyond their control. He has further stated that the internal finishing work in the apartment is in progress and the possession of apartment will be handed over upto **October 2018** on receipt of occupation certificate. The complainant has stated that the possession was to be handed over on 15.10.2012 as per clause 13 of the Buyer Agreement dated 15.1.2010 (i.e. within 27 months + 6 months grace period =33 months)

but the respondent has failed to give the possession on the due date. It means that the construction of the project is almost completed and they shall offer the possession of the unit to the complainant upto **October 2018** so the amount cannot be refunded to the complainant. The respondent is bound to give interest at the prescribed rate i.e. 10.15% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 15.10.2012 till the handing over the possession of the unit. If the possession is not given on the date committed (October 2018) by the respondent then the complainant shall be at liberty to further approach the Authority for the remedy as provided under the provisions of the RERA Act. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
9.8.2018

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

Complaint No. : 139 of 2018
Date of Institution : 06.04.2018
Date of Decision : 09.08.2018

Mr. Gulshan Mehta, R/o A-403 Hind
Apartments, plot no. 12, sector-5, New
Delhi.

...Complainant

Versus

M/s Emaar MGF Land Limited
Office at: 306-308, Square One, C-2, district
Centre, Saket

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

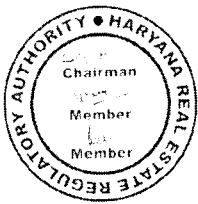
**Chairman
Member
Member**

APPEARANCE:

Shri Sanchit Kumar
Shri Ketan Luthra, legal
representative with Shri
Ishaan Dang

Advocate for the complainant

Advocate for the respondent



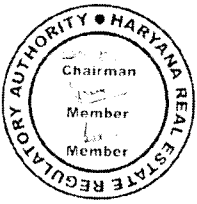
ORDER

1. A complaint dated 06.04.2018 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 complainant (Mr. Gulshan

Mehta) against the promoter (M/s Emaar MGF land limited) on account of violation of clause 11 of the builder-buyer agreement executed on 15.02.2010 for unit no. EFP-26-0501 in the project "Emerald Floors Premier" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

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

1.	Name and location of the project	"Emerald Floors Premier" in sector 65, Gurugram
2.	Unit No.	EFP-26-0501
3.	Project area	25.499 Acres
4.	Registered/ Not Registered	Registered
5.	DTCP license	06 of 2008
6.	Date of booking	15.11.2009
7.	Date of builder buyer agreement	15.02.2010
8.	Total consideration	Rs. 88,31,501/-
9.	Total amount paid by the complainant	Rs. 84,05,732/-
10.	Payment plan	Construction Linked Plan
11.	Date of delivery of possession.	Clause 11 – 36 months from date of agreement + 3 months grace period i.e. 15.05.2013
12.	Delay of number of months/ years upto 09.08.2018	5 years 2 months and 24 days
13.	Penalty clause as per builder buyer agreement dated 09.08.2018	Clause 13(a) - Rs. 5/- per sq. ft. per month



3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for Unit No. EFP-26-0501 according to which the possession of the aforesaid unit was to be delivered by 15.05.2013. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 15.05.2018. The case came up for hearing on 15.05.2018, 14.06.2018, 10.07.2018, 12.07.2018, 25.07.2018 and 09.08.2018. The reply has been filed on behalf of the respondent on 01.05.2018.

FACTS OF THE CASE



5. On 15/11/2009, the complainant booked a unit in the project named "Emerald Floors Premier" in sector-65, Gurugram by paying an advance amount of Rs 5,00,000/- to the respondent. Accordingly the complainant was allotted a unit bearing EFP-26-0501 on the 5th floor.

6. On 15.02.2010, builder buyer Agreement was entered into between the parties wherein as per clause 11, the construction

should have been completed within 36 months + 3 months grace period from the date of execution of agreement. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 84,05,732/-.

7. The complainant even availed a housing loan of Rs 71,40,000/- from HDFC bank in order to purchase the said unit and has been consistently paying EMIs to the bank. The said housing loan is running at a floating rate of 8.6 % and accordingly the complainant will have to pay a total of Rs 25,24,350/- as interest for home loan.
8. The complainant submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Complainant further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.



9. As per clause 13.3 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 29.05.2015. The clause regarding possession of the said unit is reproduced below:

“ 11 Possession

11(a)- “..... the company proposes to handover the possession of the said unit within 36 months from date of execution of buyers agreement. The allottee(s) agrees and understands that the company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.

ISSUES RAISED BY THE COMPLAINANT

- I. Whether the respondent is liable to refund along with interest as stipulated in clause 1.2(c) on the total amount of Rs 84,05,732/- paid by complainant.
- II. Whether the respondent is liable to pay penalty as stipulated in the agreement for delay in possession.



RELIEF SOUGHT

- I. To fully refund the amount paid by the complainant amounting to Rs 84,05,732.
- II. To provide the interest as per clause 1.2© of the agreement on amount of Rs 84,05,732 from date of receipt till the date of final settlement.

REPLY

10. The respondent stated that the present complaint is not maintainable in law or facts. The provisions of Real Estate(Regulation and Development) Act,2016 are not applicable to the project in question. Application for occupation certificate was made on 30.06.2017 which is before the notification of the Haryana Real Estate (Regulation and Development) Rules 2016. Thus, the project is not an 'on-going project'. The present complaint is liable to be dismissed on this ground alone.



11. The respondent submitted that the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the apartment booked by the complainant. Thus it was further

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

12. The present complaint has only been filed by Mr Gulshan Mehta and the co-allottee Mrs Mukti Mehta has not been impleaded as a party to the present complaint. Whereas Mrs Mukti Mehta as a co-allottee is a necessary and proper party to the complaint in absence of whom, the present complaint cannot and should not be decided. Thus, the relief sought in the present complaint cannot be granted to only one of the co-allottees of the apartment.

13. Respondent further submits that the contractual relationship between the complainant and the respondent is governed by the terms and conditions of the buyer's agreement dt. 15.02.2010. Clause 11 of the agreement clearly states that time period for delivery of possession shall stand extended on occurrence of delay for reasons beyond the control of the respondent. Respondent further states that the complainant having defaulted in payment of instalments, is thus not entitled to any compensation under the buyer's agreement.



14. Respondent submitted that the construction of the project/apartment in question stands completed and the respondent had already applied for the occupation certificate and had been granted the same for various towers including the that in which the unit of the complainant is situated. However, the fire NOC for this part of the project is awaited from the authorities.

ISSUES RAISED BY RESPONDENT

- I. Whether provisions of RERA are applicable to the project in question.
- II. Whether this Authority has jurisdiction to try and decide the present complaint.
- III. Whether complaint has been instituted in accordance with the Act.
- IV. Whether complainant has defaulted in performance of his obligations under buyer's agreement dt. 15.02.2010
- V. Whether the complainant can demand possession without making complete payment for the same as per buyer agreement.



15. Arguments were heard and the Hon'ble Authority recorded the said observations:-

- a) Keeping in view the status of the project and assurance given by the respondent, it shall not be justified to allow refund to the complainant. However, respondent shall be bound to give interest at the prescribed rate on amount deposited by the complainant for every month of delay.
- b) The respondent shall not be liable to pay penalty as stipulated in the agreement for delay in possession.
- c) The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer.
- d) The Real Estate (Regulations & Development) Act, 2016 came into force on 01.05.2017 and on that date the respondent had not received completion certificate from the concerned authorities and thus the respondent was under a legal obligation to get the project registered with this authority within three months from 01.05.2017 which the respondent has failed to do so Further even on this ground itself this authority has the jurisdiction to adjudicate the present complaint and further to initiate



action against the respondent as per the Act for their non-compliance of getting their project registered under the Act.

e) That the mere filing of the application for part of the project for occupancy certificate by the respondent under the sub-code 4.10 of the Haryana Building Code, 2017 does not dissolve the liability of the respondent from getting their project registered with this authority and moreover in the light that the application itself filed by the respondent was not as per the law.

f) It is admitted by the respondent itself that the occupation certificate was granted inadvertently as the fire NOC for this part of the project is still awaited from the authorities. Therefore since the occupation certificate stands invalid and the project is not registered with the authority a separate penal proceeding shall be instituted.

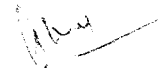



16. During the last hearing dt. 09.08.2018, the respondent stated that the project is almost complete and they shall offer the possession of the unit to the complainant upto October 2018.

Thus, keeping in view the status of the project and assurance given by the respondent, it shall not be justified to allow refund to the complainant. However, respondent shall be bound to give

interest at the prescribed rate on amount deposited by the complainant for every month of delay.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

