

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

**Complaint No. : 138 of 2018**

**First date of hearing : 15.05.2018**

**Date of Decision : 09.08.2018**

Mr. Amandeep Saxena  
R/o B 268, 1<sup>st</sup> Floor, Greater kailash-I, New Delhi-  
110048

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd  
Regd. Office: ECF House, 28 KG Marg, New Delhi-  
110001

**Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Shri Sanchit Kumar Advocate for the complainant  
Shri Ketan Luthra Legal Representative for  
respondent  
Shri Ishaan Dang 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.



Amandeep Saxena against the promoter M/s Emaar MGF land Ltd. on account of violation of clause 13(i) of the buyers agreement executed on 15.01.2010 in respect of unit no. EHF-267-A-SF-052, 2<sup>nd</sup> floor, Sector 65, Gurgaon described as below for not handing over possession on the due date i.e. by 15.10.2012 which is an obligation 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 Hills-Floors, Sector 65
2.	Commercial unit no.	Unit No. EHF-267-A-SF-052
3.	Registered / not registered	<b>Registered</b>
4.	DTCP license no.	10 of 2009
5.	Date of Execution of BBA	15.01.2010
6.	Total consideration as per BBA	Rs 43,14,000/-
7.	Total amount paid by the complainant till date	Not clearly mentioned in the agreement.
8.	Date of delivery of possession as per Builder Buyer Agreement dated 15.01.2010	15.10.2012(27 months + 6 months from the date of execution of agreement)
9.	Delay for number of months/ years	Almost 6 years



3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement is available on record.

4. Taking cognizance of the complaint, the respondent appeared on 15.05.2018. The case came up for hearing on

15.05.2018, 14.06.2018, 10.07.2018, 18.07.2018, 26.07.2018 and 09.08.2018. The reply has been filed on behalf of the respondent on 31.05.2018.

5. Briefly stated, the facts of the case as culled out from the case of complainant are that the complainant has been allotted a unit bearing no. EHF-267A-SF-052 on 2<sup>nd</sup> floor in the project "Emerald Floors", Emerald Hills.
6. That on 15.01.2010 the builder buyer agreement was executed and as per clause 13, the construction of the unit shall be completed within 27 months with 6 months grace period from the date of execution of agreement. Accordingly, the date of possession should have been on 15.10.2012.
7. That the complainant has availed housing loan of Rs 36, 60,000/- in order to purchase the said unit.
8. Despite repeated calls and meetings no definite commitment was shown to the timely completion of project and no appropriate action was taken to address the concerns.



### Issues Raised

- i. Whether the respondent is liable to refund the amount along with the interest for the delayed possession?
- ii. Whether the respondent is liable to pay the penalty as stipulated in the agreement for the delayed possession?
- iii. Whether the respondent is liable to pay compensation for the financial burden caused to the complainant?

**Relief:**

- i. To fully refund the amount paid by the complainant.
- ii. To provide the interest as per Clause 1.2(c) of the agreement.

**Respondent's Reply:**

9. The facts stated by the respondent in their reply are as follow:
10. The respondent submitted that the present complainant is not maintainable before the authority as the matter relating to refund, interest and compensation would lie before the adjudicating officer u/s 71 r/w 29 of the Haryana Estate (Regulation and Development) Rules, 2017.
11. The present complaint is stated to be filed through one Centrik Business Solution Pvt Limited, an authorized representative of Mr. Lakshay Soni. However, the complaint does not disclose the constitution of the said entity. The complaint can be filed by an individual and not company.
12. The respondent submits that the complainant had been irregular with regard to payment of instalments, as the outstanding balance is amounting to Rs 3, 62,800/- while calling upon him to pay the instalment due and he did not pay the due amount.
13. The apartment buyer agreement was executed by the parties on 15.01.2011. As per clause 13 the due date of possession has been extended.



14. Furthermore, the complainant is estopped from claiming refund or any other amount from the respondent in view of the tripartite agreement executed between the complainant, respondent and HDFC Ltd. The tripartite agreement specifically provides that in the event of cancellation of allotment, the complainant's right to receive any amount stands subrogated to HDFC Limited.
15. That the respondent submits that the authority does not have the jurisdiction to try the present complaint, and the present complaint has been drafted in a negligent and extremely casual manner and the information in many paragraphs have not been provided.

### Proposed Issues

- i. Whether the hon'ble authority has the jurisdiction to try and decide the present complaint?
- ii. Whether the complaint has been instituted in accordance with the Act and whether the complaint is maintainable in law?
- iii. Whether the complainant has defaulted in performance of his obligations under the BBA dated 15.01.2011?
- iv. Whether the allotment can be cancelled without affording an opportunity to HDFC Ltd.?



### Determination of Issues

16. In respect to the first issue raised by the complainant the authority decides that as per clause 13(1) of apartment

buyer's agreement, the possession of the flat was to be handed over within 27 months with a grace period of 6 months) from execution of agreement. Therefore, the due date of handing over possession is 15.10.2012. The respondent has failed to deliver the possession of the said unit within the due date of handing over the possession. However, the refund could not be allowed at this stage, as the project is almost completed and internal finishing work in the apartment is in progress and allowing refund at this stage will hamper the development of the project and will have adverse effect on other allottees. The clause regarding the possession of the said unit is reproduced below:

*"13(1) offer of possession*

*...the Developer proposes to handover the possession of the said flat within period of (27) Months with grace period of 6 Months, from the date of execution of this agreement....."*

17. In respect to the second issue raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the*



*allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

18. Accordingly, the due date of possession was 15.10. 2012. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the super area of the said flat as per clause 15 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

19. In respect to the third issue raised by the complainant, the authority has no jurisdiction to entertain the present issue regarding the compensation, as the complainant shall make



separate application before the adjudicating officer under section 71 read with rule 29 of Haryana Rules, 2017

20. As the possession of the flat was to be delivered by 15.10.2012 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*



21. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority –**

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate



agents under this Act and the rules and regulations made thereunder.

22. 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 which is reproduced below:



**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

23. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



**Decision and directions of the authority**

24. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to give interest @ 10.15% 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 committed date i.e. October 2018 by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provision of the RERA Act
- (ii) The respondent is directed to pay interest accrued from 15.10.2012 to 09.08.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10<sup>th</sup> of every succeeding month.

25. The order is pronounced.

26. Case file be consigned to the registry.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 09.08.2018



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 09.08.2018
Complaint No.	138/2018 case titled as Amandeep Saxsena versus M/s Emaar MGF Land Ltd.
Complainant	Amandeep Saxsena
Represented through	Ms. Srishti Girdhar, Advocate for the complainant.
Respondent	M/s Emaar MGF Land Ltd.
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

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**


हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम


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नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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)

  
Dr. K.K. Khandelwal  
(Chairman)  
9.8.2018

  
Subhash Chander Kush  
(Member)