

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

**Complaint No. : 405 of 2018**  
**First date of hearing: 02.08.2018**  
**Date of Decision : 05.09.2018**

Smt. Jaishree Jain  
R/o F-1303, Celebrity Homes,  
Palam Vihar Gurgaon-122017

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
Corporate Office at Emaar MGF Business Park,  
Mehrauli Gurgaon Road, Sector-28, Sikander  
Pur Chowk, Gurgaon-122002

**Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Apoorv Jain Advocate for the complainant  
Shri Ketan Luthra, authorized Advocate for the respondent  
representative on behalf of the  
company with Shri Ishaan  
Dang



**ORDER**

1. A complaint dated 07.06.2018 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 Smt. Jaishree Jain against the promoter M/s Emaar MGF Land Ltd. on account of violation of Clause 14(a) of the builder-buyer agreement executed on 05.06.2013 for unit no. IG-06-0102, tower no. 06 having 2025 sq. ft. approx. in the project “Imperial Garden”, Sector-102, Gurugram 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	“Imperial Garden”, sector 102, Gurugram.
2.	Flat/Apartment/Unit no.	IG-06-0102
3.	Flat measuring	2025 sq. ft.
4.	RERA registered / not registered.	<b>Registered</b>
5.	Allotment letter dated	18.11.2009
6.	Date of execution of BBA	<b>05.06.2013</b>
7.	Total amount paid by the complainant till date	Rs. 1,53,55,759/-
8.	Total consideration	Rs. 1,60,08,011/-
9.	Date of start of construction	11.11.2013
10.	Due date of possession	Clause 14 - 42 months from start of construction + 3 months grace period i.e. 11.08.2017
11.	Delay in possession	1 year approx...



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. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 02.08.2018. The case came up for hearing on 02.08.2018 and 05.09.2018. The reply has been filed on behalf of the respondent on 23.08.2018 which has been perused. The rejoinder has been filed on behalf of the complainant on 30.08.2018.

#### **Facts of the complaint**

4. Briefly stated, the facts of the case as culled out from the case of complainant are that the complainant is a senior citizen of 67 years of age & has booked a unit with the respondent named as EMAAR MGF Limited in the project of Imperial Garden, flat no. IG-06-0102, tower-6 on dated 10.01.2013 situated at Sector 102, Village khekri, Majra Dhankot, Tehsil & District Gurgaon Haryana along with car parking.
5. The complainant submitted that she refused to sign the buyer's agreement because of its containing one sided terms, all favouring the respondent and without conforming to the guidelines laid down by the competition commission of India



as contained in their order dated 03.01.2013 the case of Belaire Owner's Association Vs. DLF. Thereafter, the complainant made a representation on 01.06.2013 to the CREDAI with regard pressure being exerted by the respondent on the complainant to sign the BBA.

6. The complainant submitted that the complainant was threatened by the respondent that if she does not sign the BBA, the allotment of the said unit to the complainant shall be cancelled and her deposits shall be forfeited. Being afraid, the complainant was left with no choice but to sign the agreement much against her will.
7. The complainant submitted that the complainant has deposited with the respondent an amount of Rs. 1,53,55,759/-.
8. The complainant wrote on 16.05.2018 to the respondent that as per the builder buyer agreement the possession of the flat was agreed to be handover with in the period of 42 months form the date of start of construction with grace period of 3 months, the possession of the flat should be hand over on or before March 2017. The construction of which has already been delayed and is not certain as to when would get an OC from the govt & made a demand withdrawing from the



project and seeking refund of her deposits along with interest and compensation.

**9. Following issues have been raised by the complainant**

- i. Whether the promoter is obliged to refund the entire amount along with interest & compensation in accordance with the RERA Act read with HRERA, Rules?
- ii. Whether the promoter is liable to pay interest @ 24 % per annum to the complainant?

**10. RAISED RELIEF SOUGHT BY THE COMPLAINANT**

That the complainant hereby prays to direct the respondent to refund the total amount of Rs. 1,53,55,759/- to the complainant along with interest.

**RESPONDENT REPLY**

The respondent submitted various preliminary objections and submissions. They are as follow:

11. That the complaint is not maintainable before this hon'ble authority. The complainant has filed the present complaint seeking refund of the payment made to the respondent, compensation and interest for alleged delay in delivery of possession of the apartment booked by the complainant. It is respectfully submitted that complaints pertaining to



compensation and refund are to be decided by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016.

12. The respondent is covered under the definition of ongoing projects and is partly registered with this hon'ble regulatory authority and complaint, if any is still required to be filed before the adjudicating officer under rule -29 of the said rules.
13. The respondent submitted that RERA has been enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA has not been enacted to protect the interest of investors.
14. That the complainant has got no locus standi or cause of action to file the present complaint. The present is based on an erroneous interpretation of the provisions of the Act as well as a correct understanding of the terms and conditions of the buyer's agreement.

### **Reply on Merits**

15. The respondent submitted that the allotment letter which has been admitted by the complainant categorically obligates the allottee in clauses 9 and 26 to duly execute & send a copy of BBA within 30 days from the dispatch of the same by the



company. The terms further record that in the event of failure of the allottee to do so the company shall be released and discharged from all the liabilities & obligations under the allotment letter & BBA & shall also be entitled to forfeit the earnest money along with other non-refundable amounts as the case may be. Therefore, the letters referred to as “threatening” were just valid, legal and in compliance of the terms entered into by the parties.

16. The respondent submitted that the complainant has consciously executed the buyer’s agreement and to conceal her defaults in honouring her part of the contract in terms of the allotment letter and buyer’s agreement is intentionally.
17. The respondent denied that the complainant has paid an interest @ 24 % p.a. for each day’s delay in payment of the respective instalment. The complainant has time and again wilfully defaulted in payment of instalments compelling the respondent to issue various payment request letters.
18. The respondent submitted that the structure of the tower in which unit is located is complete and finishing works are on and the possession of the unit would be offered on receipt of the same from the competent authorities.



## Rejoinder

19. The facts of the complainant are re- asserted in the rejoinder.

### 20. Determination of issues

I. Regarding **first issue**, the refund cannot be allowed in the present case as the project is almost complete. The respondent has committed to complete the project by 31<sup>st</sup> December, 2018 as per HRERA registration certificate. Allowing refund at this stage will hamper the development of the said project and will also adversely affect the interest of other allottees in the said project and the complainant can seek compensation from the adjudicating officer under the RERA Act.

II. Regarding the **second issue**, the promoter was under a legal obligation for handing over the possession as per the BBA. However, they committed a default in doing the same and thus, they are liable to pay delayed interest under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.45%, for every month of delay till the handing over of possession.

21. As per clause 14 of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 11.08.2017. The clause regarding possession of the said unit is reproduced below:





**“14 POSSESSION OF FLOOR**

*The company shall endeavour to complete the construction of the said apartment within 42 months from the date of start of construction and the company shall be entitled to 3 months additional period .....*”

Accordingly, the due date of possession was 11.08.2017.

As far as the penalty clause in case of delay in possession is concerned which is Rs. 7.50/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in ***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.*”

22. As the possession of the flat was to be delivered by 11.08.2017 as per the clause referred above, the authority is of the view that the promoter has violated 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.”

23. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

**“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.”*

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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.*



24. As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount paid by the complainant along with interest at the prescribed rate as the promoter has not fulfilled his obligation. 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.*



The complainant reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

25. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.
26. 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**

27. 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:

- (i) The respondent is directed to give the physical possession of the said flat to the complainant on the date committed by the respondent i.e. 31.12.2018 for handing over the possession.



(ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay from the due date of possession i.e. 11.08.2017 till 05.09.2018 within 90 days of this order and thereafter, on 10<sup>th</sup> of every month of delay till the handing over of possession.

(iii) If the possession is not given on the date committed by the respondent in the registration application then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. section 19(4) of the Act *ibid*.

28. The complaint is disposed of accordingly.

29. The order is pronounced.

30. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**HARERA**  
GURUGRAM

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

Chairman

Haryana Real Estate Regulatory Authority, Gurugram



Dated : 05.09.2018

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 05.09.2018
Complaint No.	405/2018 Case titled as Ms. Jaishree Jain V/s M/s Emaar MGF land ltd. & Ors.
Complainant	Ms. Jaishree Jain
Represented through	Shri Apoorv Jain Advocate for the complainant
Respondent	M/s Emaar MGF land Ltd. & Ors.
Respondent Represented through	Shri Ketan Luthra authorized representative on behalf of the company with Shri Ishaan Dang, Advocate for the respondent
Last date of hearing	2.8.2018

**Proceedings**

**The project is registered.**

The complainant has filed application for amendment of the complaint.

Arguments advanced by the counsel for both the parties heard.

During the course of arguments, the below noted facts were transpired:-

- (i) Date of execution of agreement was 5.6.2013
- (ii) Total consideration of Rs.1,60,08,011/-
- (iii) Total amount paid by the complainant: 1,53,55,759/-
- (iv) Date of construction: 11.11.2013
- (v) Due date of possession 11.7.2017 (42+3=45 months)

Counsel for the respondent averred that the project is registered and is likely to be completed. The respondent- shall be delivering the possession of the flat by 31.12.2018. However, whatever delay will be there

that will be on account of the fact that the occupation certificate is being held by the Department. In view of the circumstances stated above the complainant is directed to take over the possession of the flat. However, as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, respondent is directed to hand over the flat to the buyer by 31.12.2018. However, the complainant is entitled for interest for the delayed period of possession at the prescribed rate of 10.45%. The respondent is directed to file an affidavit w.r.t. to delivery of possession at the earlier. Order pronounced accordingly. Detailed order will follow. File be consigned to the Registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
05.09.2018