

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

Complaint No. : 402 of 2018
First date of Hearing : 02.08.2018
Date of Decision : 05.09.2018

Mr. Sanjeev Kumar Sharma
R/o :A-170, 2nd Floor, Blossoms-I,
Sector 47, Gurgaon, Haryana.

Complainant

Versus

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

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Vibhor Bagga Advocate for the complainant
Shri Sanjeev Kumar Sharma Complainant in person
Shri Ishaan Dang Advocate for the respondent
Shri Kethan Luthra Authorized representative on
behalf of the respondent
company.

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 complainants, Mr. Sanjeev Kumar Sharma, 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 29.12.2010 in respect of retail space described as below for not handing over possession on the due date i.e. 30th November 2015, which is an obligation under section 11(4)(a) of the Act ibid.

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

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	26 th May 2017
4.	Occupation granted on	08 th January 2018
5.	Retail space/unit no.	EPS-GF-026, ground floor
6.	Retail space measuring	973.93 sq. ft.
7.	Booking amount paid	Rs.5,83,000/-
8.	Retail space buyer's agreement executed on	29 th December 2010
9.	Basic sale consideration	Rs.72,56,905/-
10.	Total amount paid by the complainants till date	Rs.54,69,844/-
11.	Percentage of consideration amount	Approx. 75.37 percent
12.	Date of delivery of possession as per clause 16(a). (30 months + 120 days grace period from the date of execution of this agreement)	29 th December 2013
13.	Letter of offer of possession sent to the complainant on	24 th January 2018
14.	Delay in handing over possession from due date till offer of	4 Years and 26 days



	possession	
15.	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.

3. 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

4. Briefly stated, the facts of the complaint are that Emaar MGF Land Ltd. is a company incorporated under the Company's Act mainly based in Middle East and UAE entered into the emerging and booming real estate market in India during the first decade of 21st Century. All the formalities laid down by the central government were fulfilled before commencing the business. Company purchased hundreds of acres of land in Gurgaon and other major cities of India.



5. The complainant submitted that company conceived, planned and was in the process of constructing and developing a residential plotted colony "Emerald Hills" (herein after called project) to be developed on a piece of land measuring 102.471 acres in Sector 65. Urban Estate, Gurugram. The Director, Town and Country Planning, Government of Haryana has granted license bearing no. 10 dated 21.05.2009 to develop the project.
6. The complainant submitted that he purchased a unit in the multi-storeyed commercial complex "Emerald Plaza" measuring 3.963 acres forming part of the land on which license no. 10 dated 21.05.2009 measuring 102.471 obtained. The "Emerald Plaza" was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space.
7. The complainant submitted that complainant submitted that believing the representation, assurances and goodwill which the promoter command, the complainant paid the booking amount on 09.03.2010 and subsequently signed buyer's agreement on 29.12.2010.
8. The complainant submitted that he purchased unit no. EPS-GF-026 measuring 973.93 sq. ft. retail shop/office space in



the name of Sh. Sanjeev Kumar Sharma S/o Late Sh. Rajinder Kumar Sharma and paid booking amount of Rs.4,83,000/- on 09.03.2010 & Rs.1,00,000/- on 09.03.2010 in the year 2010 at the rate of Rs.6000/per sq. ft.

9. The complainant submitted that at the time of booking the unit, it was assured by the promoter M/s Emaar Land Ltd. that project shall be delivered to the buyers within (30) thirty months of the execution of agreement plus (120) one hundred twenty days as grace period.
10. The complainant submitted that he made regular payments as demanded by the promoter time and again and paid Rs.43,69,884 till June 2013. There was no default on account of making payment to the promoter till June 2013, which was the time as per agreement to hand over the possession to the complainant. Later on, Rs.11,00,000/- were paid to the builder total amounting to Rs.54,69,900/-. Complainant visited the construction site several time and visited the office of the promoter to enquire about the slow construction and time of handing over the possession.
11. The complainant submitted that the promoter only raised construction for 5th floor slab up to the time of handing over



the possession in June 2013 so the complainant also slowed down the payments of instalments.

12. The complainant submitted that in January 2018, builder offered possession and raise a demand of Rs.32,80,976/- which accounted the details such as overdue amount, GST amount, electricity connection amount, IFMS, etc. The complainant submitted that on receiving the demand letter and letter for possession, the complainant was aghast. There was no mention of delayed possession interest, compensation for delayed possession etc. but demand and only demand for more money.
13. The complainant submitted that the complainant submitted that visited the office of promoter and tried his level best to meet the senior officials but CRM (Customer Relation Managers) did not allow to meet, so complainant send legal notice to the promoter. Respondent company didn't bother to reply and did not acknowledge the notice hence this complainant to the Haryana Real Estate Regulatory Authority at Gurugram was filed.



14. **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 15t 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 interest free maintenance security be, not transferred to the account of association of owners/allottees, once conveyance deed is made in their name, of the common areas?
- xiii. Whether the builder/ promoter has obtained insurances as prescribed under section 16 of the Act?

15. Relief sought

The complainant is seeking the following reliefs:

- i. The complainant requests the authority to order refund of the money charged on account of increased unit area from 979 sq. feet to 989 sq. feet without the consent obtained and moreover the increased area is part of common area and not carpet area of the unit.
- ii. The promoter has sold the super area which includes the common areas. The monetary consideration should have been only for carpet area. The excess amount on account of any area in excess of carpet area of the unit be



ordered to refunded back to the complainant with interest.

- iii. The promoter shall make payment of interest accrued on account of delayed offer for possession of five years @24% as charged by him from the allottees on delayed payments if any.
- iv. The complainant requires to be compensated and paid interest on different contraventions of the Act but compensation to be adjudicated by the adjudicating officer. In absence of any such adjudicating officer either the authority accepts and hear the complaints u/s 31 of the Act or keep the compensation part pending for the proper adjudicating officer to be appointed by the authority in consultation with the government?
- v. The amount of GST, service tax, etc. collected from the complainant, which accrued for the reason of delayed offer of possession be refunded back to the complainant?
- vi. Any common area car parking including basement car park, which is not garage if sold than the money collected on such account shall be refunded along with interest?



Respondent's reply

Preliminary objections raised by the respondent are as follow:

16. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the unit in question was made on 26.05.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The occupation certificate has been thereafter issued on 08.01.2018. Thus, the project in question is not an 'ongoing project" under rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This hon'ble authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

17. The respondent submitted that the complainant has filed the present complaint seeking possession, interest and compensation for alleged delay in delivering the possession of the said unit booked by the complainant. The respondent submitted that complaints pertaining to possession,



compensation and refund are to be decided by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

18. The respondent submitted that the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the retail space buyer's agreement dated 29.12.2010.
19. The respondent submitted that the complainant has booked the office space in question, bearing number EPS-GF-026, situated in the commercial complex developed by the respondent, known as "Emerald Plaza", Sector 65, Gurugram, Haryana. Space buyer's agreement was executed between the parties on 29.12.2010.
20. The respondent submitted that the complainant was offered possession of the above-mentioned unit through letter of offer of possession dated 24.01.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the



office space to the complainant. However, the complainant did not take any steps to complete the necessary formalities or to pay the balance amount payable by him.

21. The respondent submitted that right from the beginning, the complainant was extremely irregular as far as payment of installments was concerned. The respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/installment plan dated 11.10.2010 opted by the complainant.
22. The respondent submitted that it is pertinent to mention that only such allottees, who have complied with all the terms and conditions of the space buyer agreement including timely payment of installments are entitled to receive compensation under the buyer's agreement. In the present complaint, the complainant had delayed payment of installments and was consequently not eligible to receive any compensation from the respondent. As per statement of account dated 13.06.2018, the outstanding amount including the delayed payment charged payable by the complainant to the respondent is Rs.27,43,198/-.



23. The respondent submitted that instead of seeing reasons and instead of clearing outstanding dues and taking possession of the office space in question, the complainant has proceeded to file the present false and frivolous complaint.
24. The respondent submitted that clause 18 of space byer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of the agreement and who have not defaulted in payment as per the payment plan. The complainant, having defaulted in payment of installments, is thus not entitled to any compensation under the buyer's agreement.
25. The respondent submitted that the construction of the project/allotted unit in question stands completed and the respondent is in receipt of the occupation certificate in respect of the same. It is submitted that as soon as the balance payment is remitted by the complainant and the necessary formalities completed, the respondent shall hand over the possession of the said unit to the complainant. It is pertinent to mention that respondent has already handed over the possession to number of allottees and conveyance deeds have also been executed in their favour.



26. The respondent submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse on the part of the respondent. It is the complainant who has consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses.

Reply on merits

27. The respondent submitted that the complainant purchased unit in the project known as Emerald Plaza located at Emerald Hills, Sector 65, Gurugram. It is pertinent to mention that the construction process on site has been completed and possession has already been offered and handed over to several allottees in the abovementioned project. The respondent denied that project had three level basement car parking spaces. The respondent submitted that the complainant paid a total amount of Rs.5,83,000/- at the time of booking the unit.

28. The respondent denied that the respondent gave any assurances to the complainant at the time of booking that possession shall be offered to the complainant within 30 months of execution of the space buyer's agreement dated



29.12.2010 plus 120 days as grace period. It is pertinent to mention that clause 16 of the space buyer's agreement dated 29.12.2010 provides that subject to the allottee having complied with all the terms and conditions of the agreement and not being in default of the same, possession of the office space would be handed over within 30 months plus a grace period of 120 days from the date of execution of the agreement. It was further provided in the aforesaid contract that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In the event of default in payment of amounts demanded by the respondent under the space buyer's agreement, the time for delivery of possession shall also stand extended. The complainant has not made the full payment as per the payment plan agreed upon by him.

29. The respondent submitted that the above-mentioned agreement was signed voluntarily by the complainant after reading and understanding the terms and conditions incorporated therein to his complete satisfaction. The complainant had taken an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent. The respondent denied that the complainant paid the above-mentioned amount and signed the agreement



solely on the basis of alleged assurances given to him by the respondent.

30. The respondent denied that the complainant did not default in making payments to the respondent till June 2013. Various payment request letters and reminders had been issued by the respondent to the complainant before and after June 2013. Moreover, the complainant had also incurred delayed payment charges due to his defaults. The respondent submitted that till date the complainant has only paid Rs.54,69,900/- to the respondent.

31. The respondent denied that the complainant visited the construction site several times. The respondent denied that the complainant also visited the office of the respondent to enquire about the pace of construction and the time period in which possession was to be handed over. It is wrong and denied that the pace of the construction was slow. The respondent submitted that as on date, the construction of the office space stands completed and the respondent is in receipt of the occupation certificate in respect of the same and has also offered possession of the unit to the complainant as well as other allottees of the project. In fact, the process of getting the conveyance deeds registered in favour of allottees has also commenced.



32. The respondent denied that the respondent had only completed the fifth-floor roof slab till June 2013. The respondent submitted that possession had been offered to the complainant in January 2018 vide letter of offer of possession dated 24.01.2018. It is a matter of record that a sum of Rs.32,80,976/- had been demanded from the complainant through the above-mentioned letter. The demanded amount mentioned hereinabove included overdue amount, electricity connection charges, water and sewerage connection charges, interest free maintenance security, delayed payment charges etc. The above-mentioned amounts demanded from the complainant are in accordance with the buyer's agreement duly signed and executed between the parties.

33. The respondent denied that the respondent was liable to pay any kind of interest or compensation towards alleged delay in handing over of possession. Since the complainant has defaulted in payment of instalments as per the payment plan, the complainant is not entitled to any compensation as it is.

34. The respondent denied that the complainant had visited the office of the respondent or that he had tried his level best to meet the senior officials. It is denied that the Customs Relations Managers(CRM) prevented the complainant from



meeting the senior officials of the respondent. The respondent has not received any legal notice from the complainant as alleged by the complainant.

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:

35. 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.***
36. With respect to third issue raised by the complainant 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 10.45% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 29th December 2013 upto the date of offer of possession i.e. 24.01.2018.

37. With respect to the fourth issue raised by the complainant, the complainant during proceeding dated 02.08.2018 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.

38. Regarding issue no.5, 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.

39. 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.
40. 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.
41. The issues numbered as (ix) to (xiii), the complainant has not been pressed at the time of arguments and no relief has been claimed in the complaint regarding these issues.



Findings of the authority

42. 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.
43. Regarding first relief, for increase in super area from 979 sq. ft. to 989 sq. ft. without consent, the complainant himself has signed the buyer's agreement and clause 6(a) of the buyer's agreement gives the liberty to the respondent to increase or decrease the super area. Regarding second and sixth relief, no concrete document has been produced by the complainant to prove that how much excess amount has been received by the respondent which is sought to be refunded to the complainant.
44. Regarding third and fourth relief the authority came across that as per clause 16(a) of apartment buyer agreement, the possession of the said unit was to be handed over within 30 months plus grace period of 120 days from the execution of



the said agreement. Therefore, due date of possession shall be 29.12.2013. The clause regarding the possession of the said unit is reproduced below:

“15(a) Time of handing over the possession

- (i.) *That the possession of the retail spaces in the commercial complex shall be delivered and handed over to the allottee(s) within 30 months of the execution hereof, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee(s) under this agreement having been paid in time to the company. The company shall give notice to the allottee(s), offering in writing, to the allottee to take possession of the retail spaces for his occupation and use (notice of possession)*
- (ii.) *The allottees(s) agrees and understands that the company shall be entitled to a grace period of one hundred and twenty (120) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the commercial complex.”*

The retail space buyer agreement was executed on 29th December 2010 and the due date of handing over possession as per the said agreement is 29.12.2013. However, the respondent sent letter of offer of possession to the complainant on 24.01.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till the letter of offer of possession and accordingly the possession has been delayed by four year and



twenty-six days. The delay compensation payable by the respondent is simple interest @ 9% p.a. on the amount(s) paid by the allottee(s) for such period of delay as per clause 18(a) of retail space buyer agreement. Now the matter is before the authority not for compensation but for fulfilment of obligation by the promoter as per section 18(1) due to failure to give possession on the due date as per agreement for sale.

46. As the possession of the apartment was to be delivered by 29th December 2013, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the 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.”



47. 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.

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.

48. 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.

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.

49. The complainant during proceeding dated 02.08.2018 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.

Decision and directions of the authority

50. 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 the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 29.12.2013 till the letter of offer of possession date 24.01.2018.
- (ii) The complainant is also directed to take possession as the offer of possession has been made by the respondent even before the filing of the complaint to this authority.

51. The order is pronounced.

52. 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: 05.09.2018

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 05.09.2018
Complaint No.	402/2018 Case titled as Mr. Sanjeev kumar & Another V/s M/s Emaar MGF Land Ltd.
Complainant	Mr. Sanjeev Kumar
Represented through	Complainant in person with S/Shri Sanjeev Sharma and Vibhor Bagga, Advocates.
Respondent	M/s Emaar MGF Land Ltd.
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 not registered.

It was brought to the notice of the authority that the project is registerable but so far it has not been registered which is violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent has been asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act ibid, where under the penalty amount may extend upto 10% of the estimated costs of the Project.

Counsel for the complainant has filed written arguments.

Today the case was fixed for arguments. Just at the beginning, Shri J.K.Dang, Advocate counsel for the respondent-company has stated that since detailed judgment in complaint bearing No.07 of 2018 titled as Simmi Sikka versus M/s Emaar MGF Land Limited has come up and the authority has decided the issue w.r.t. applicability of the Act and registration of the project. As such, since the present case is of similar nature, the ratio of judgment in the Simmi Sikka's case ibid shall be applicable, both the parties intend to settle their matter outside the authority proceedings in the light of judgment ibid. Shri Sanjeev Sharma, counsel for the complainant too agreed to the proposal extended by the counsel for the respondent. As such, the matter stands settled in the eyes of law as per the judgment in Simmi Sikka's case. 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