

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 06.09.2018
Complaint No.	347/2018 Case titled as Mrs. Ruchika Arun V/s M/s Emaar MGF Land Ltd.
Complainant	Mrs. Ruchika Arun
Represented through	Complainant in person
Respondent	M/s Emaar MGF Land Ltd.
Respondent Represented through	Shri Ketan Luthra, Legal executive on behalf of the respondent with Shri Dheeraj Kapoor, Advocate for the respondent.
Last date of hearing	25.7.2018

**Proceedings**

**The project is not registered.**

Today the case came up for hearing. Both the parties are present. Capt. Arun Kumar Jindal-husband of the complainant pleaded his case. He has mainly raised three issues i.e. (a) that he had booked his flat No.EFP-03-0102, First Floor, Sector-65, Gurugram on 2.10.2009 for which he has already made payment of Rs.75 Lakh approximately (b) the company was supposed to deliver the possession by **May 2013**. The project is delayed by 5 ½ years till date and he has not got the possession (c) He says that as per provisions of the Real Estate (Regulation & Development) Act 2016, he is entitled to get interest on the delay possession as the builder has failed in his obligations for timely delivery of the flat/unit.

The counsel for the respondent raised the following points: -

- (a) That since Hon'ble Chairman is not there, as such, the judgment should be signed only by two Members.
- (b) He has raised the issue of Coram which shall be dilated in detail in the judgment
- (c) As per the provisions of Section 18 (1) of the Act *ibid*, the builder/company is under obligation to deliver the possession in timely manner failing which he will have to give prescribed rate of interest (i.e. 8% + 2.45% = 10.45%) for the period for which the possession has been delayed. The interest shall accrue exactly from the committed date of possession as per Builder Buyer Agreement dated 1.11.2009 i.e. from 1.5.2013 till handing over the possession of the unit to the complainant.

It has further been averred by the counsel for the respondent that they have applied for occupation certificate, as such, the possession will be delivered as soon as the occupation certificate is received by the respondent which will be tentatively received in two days. 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)  
6.9.2018

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

Complaint No. : 347 of 2018  
First date of  
hearing : 25.07.2018  
Date of Decision : 06.09.2018

Smt. Ruchika Arun, R/o E-21, East of Kailash,  
New Delhi-110065

**...Complainant**

Versus

M/s Emaar MGF Land Limited  
306-308, 3<sup>rd</sup> Floor, Square one, C-2, District  
Center, Saket, New Delhi-110017

**...Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Complainant in person

Advocate for the complainant

Sh. Dheeraj Kapoor with Sh.  
Ketan Luthra, legal executive  
on behalf of the respondent

Advocate for the respondent



**ORDER**

1. A complaint dated 29.05.2018 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. Ruchika Arun, against the promoter M/s Emaar MGF land limited, on

account of violation of clause 11(a) of the builder-buyer agreement executed on 01.02.2010 for unit no. EFP-03-0102 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 Emerald Estate, sector 65, Gurugram
2.	Unit no.	EFP-03-0102
3.	Project area	25.499 acres
4.	Registered/ not registered	Not registered
5.	DTCP license	06 of 2008
6.	Date of booking	02.10.2009
7.	Date of builder buyer agreement	01.02.2010
8.	Total consideration	Rs. 78,48,274/-
9.	Total amount paid by the complainant	Rs. 74,89,509/-
10.	Payment plan	Construction Linked Plan
11.	Date of delivery of possession.	Clause 11(a) - 36 months from date of agreement + 3 months grace period i.e. 01.05.2013
12.	Delay of number of months/ years upto 06.09.2018	5 years 4 months
13.	Penalty clause as per builder buyer agreement dated 01.02.2010	Clause 13(a)- Rs. 5/- per sq. ft. per month



3. The details provided above have been checked as per record available in the case file which have been provided by the

complainant and the respondent. A builder buyer agreement is available on record for unit no. EFP-03-0102 according to which the possession of the aforesaid unit was to be delivered by 01.05.2013. 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 25.07.2018. The case came up for hearing on 25.07.2018 and 06.09.2018. The reply has been filed on behalf of the respondent on 13.08.2018.

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

5. On 02.10.2009, 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-03-0102 on the 1<sup>st</sup> floor.
6. On 01.02.2010, a builder buyer agreement was entered into between the parties wherein as per clause 11(a), 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 74,89,509/-.

7. The complainant submitted that despite repeated calls, meetings with 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.
8. As per clause 11(a) of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 01.05.2013. 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."*



**9. Issues raised by the complainants are as follows:**

- I. Whether there is any reasonable justification for the delay in handing over the unit to the complainant?
- II. Whether the grace period for determining the date of delivery of possession to be considered as 3 months?

- III. Whether the respondent is liable to pay the interest and compensation due to delay in handing over the possession?
- IV. Whether the respondent should reimburse the preferential location charges charged as there is no open green space behind the unit booked as the club house has been built in the allocated open space?
- V. Whether the builder is liable to refund excess interest charges on delayed payment charged by them?
- VI. Whether the respondent is liable to pay penalty as stipulated in the agreement for delay-in-possession?

**10. Relief sought:**

- I. To fully refund the amount paid by the complainant amounting to Rs 74,89,509 including the preferential location charges (PLC) of Rs. 3,09,292.50 charged on account of open green space at the back of the unit booked.
- II. To provide the interest on amount of Rs. 74,89,509 from date of receipt till the date of final settlement.



**Respondent's reply**

11. 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 29.06.2017 which is before the notification of the Haryana Real Estate (Regulation and Development) Rules 2017. Thus, the project is not an 'on-going project'. The present complaint is liable to be dismissed on this ground alone.

12. 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 complaint 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.

13. It is submitted that this Hon'ble Regulatory Authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the Agreement. The buyer agreement dated 01.02.2010 was executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for interest and compensation as provided under section 12, 14, 18 and 19 of said Act, has to be in reference to the agreement for sale executed in terms of said act and said rules and no other agreement. This submission of the respondent inter alia, finds supports form reading of the provisions of the said act and the said rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.





14. The respondent submitted that the statement of objects and reasons as well as the preamble of the said Act clearly states that the RERA is enacted for effective consumer in the real estate sector. RERA is not enacted to protect the interest of investors. As the said act has not defined the term consumer, therefore the definition of consumer as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer as he is already the owner and resident of E-21, Ground Floor, East of Kailash, New Delhi-110065.
15. The respondent submitted that despite several adversities, the respondent has completed the construction of the said project and has already obtained the occupation certificate ON08.01.2018 for the said apartment in questions i.e. EFP-03-0102. However, as the complainant is only a speculative investor and not interested in taking over the possession of the said unit and because of slump in the real estate market, the complainant failed to make the payments in time and the current outstanding amount as on 07.06.2018 is Rs 1,570/-. Having failed to resell the said apartment due to general recession, the complainant could not make the payments in time and has now developed an intention to raise false and frivolous issues to engage the respondent in unnecessary, protracted and frivolous litigation.



### Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

16. In respect of first issue raised by the complainant, as the possession of the flat was to be delivered by 01.05.2013 as per the clause 11(a) of the agreement, 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.”*



The respondent has failed to furnish a reasonable justification for the same.

17. In regard to the second issue raised by the complainant, as per the agreement, the grace period of 3 months shall be included while calculating the due date for delivery of possession.
18. In regard to the third issue of the complainant, the promoter is liable to pay the interest accrued from the date of delay in delivery of possession, i.e. 01.05.2013 till the actual date of handing over of possession.
19. In regard to the fourth and fifth issue of the complainant, there are not allowed by the authority.
20. 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.*

### Findings of the authority

21. **Jurisdiction of the authority**-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.

22. The due date of possession was 01.05.2013 and the possession has been delayed by five years four months and nine days till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said flat as per clause 13(a) of flat 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."*



23. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondents have failed to deliver the possession of the apartment in question to the complainant by the committed date i.e. 01.05.2013 as per the said agreement. However, the respondent is bound and committed to handover the possession as soon they receive the occupation certificate which will be received in two days. Similarly the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants for every month of delay on the 10<sup>th</sup> of every succeeding month from 1.05.2013 till the handing over the possession of the unit. The respondents are also directed to pay the amount of interest at the prescribed rate from 01.05.2013 to 06.09.2018 on the deposited amount within 90 days from the day of this order. The complainant must wait for the respondents to fulfil their commitment and deliver the possession and in case of any default in the handing over of possession, penal consequences may follow and the complainant can approach this authority for redressal of his grievance. Further, the interest accrued so far shall either be adjusted, if payment is due towards the complainant and the balance shall be paid by the complainant within 90 days of this order.



24. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

### Decision and directions of the authority

25. 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 complainants as committed by them.
- (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 in handing over the possession. The interest will be given from 01.05.2013 to 06.09.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10th of every succeeding month.
- (iii) The interest accrued so far shall either be adjusted, if payment is due towards the complainant and the balance shall be paid by the complainant within 90 days of this order.
- (iv) If the possession is not given on the date committed by the respondent, 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*.

26. The complaint is disposed of accordingly.



27. The order is pronounced.
28. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

