

Day and Date	Thursday and 06.09.2018
Complaint No.	360/2018 Case titled as Mrs. Ranjana Goyal & Another V/s M/s Emaar MGF land Ltd.
Complainant	Mrs. Ranjana Goyal & Another
Represented through	Complainant in person
Respondent	M/s Emaar MGF land Ltd.
Respondent Represented through	Shri Ketan Luthra, legal representative on behalf of the respondent with S/Shri Ishaan Dang, Advocate and Ankit Mehta, Advocate
Last date of hearing	26.7.2018

### **Proceedings**

#### **The project is registered.**

Rejoinder filed by the complainant. Copy given to the respondent. The counsel for the respondent alongwith representative of the company made a statement that the construction of the project is almost complete. They assured that they will give possession of the unit by 31.12.2018 so the amount cannot be refunded to the complainant but the respondent is bound to give interest at the prescribed rate i.e. 10.45% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 1.2.2017 (42+3=45) as per clause 14 (a) of the Builder Buyer Agreement dated 1.5.2013. If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the Authority to avail the remedy under the provisions of

the RERA Act. If at all there are any dues against the allottee, the interest amount shall be adjusted first against the dues and after satisfying the dues, the promoter shall make payment to the allottee before 10<sup>th</sup> of every coming month. 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)  
6.9.2018

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

**Complaint No.** : 360 of 2018  
**First date of hearing** : 26.07.2018  
**Date of Decision** : 06.09.2018

Mrs.Ranjana Goyal (C1)  
Mr Naman Goyal (C2)  
R/o E-1102, Suncity Heights, Sector-54,  
Gurgaon

**...Complainants**

Versus

M/s Emaar MGF Land Limited  
Office : ECE House,28, Kasturba Marg, New  
Delhi-110001

**...Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Complainant in Person  
Shri Ketan Luthra, legal  
representative on behalf of the  
respondent with Shri Ishaan  
Dhang, Advocate and Shri  
Ankit Mehta, Advocate

Advocate for the complainant  
Advocate for the respondent



**ORDER**

1. A complaint dated 30.05.2018 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 complainants Mrs. Ranjana Goyal & Mr Naman Goyal against the promoter M/s Emaar MGF land limited on account of violation of clause 14 (a) of the builder-buyer agreement executed on 01.05.2013 for unit no.IG-08-0601 in the project "Imperial Gardens" 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 Gardens" in Sector 102, Gurugram
2.	Unit no.	IG-08-0601
3.	Project area	12 Acres
4.	Registered/ not registered	Registered
5.	RERA Registration No	208 of 2017
6.	Date of booking	27.02.2013
7.	Date of builder buyer agreement	01.05.2013
8.	Total consideration	Rs.1,45,85,825/- (Exclusive of Service Tax)
9.	Total amount paid by the complainant	Rs. 1,29,73,464/-
10.	Payment plan	Construction Linked Plan
11.	Date of delivery of possession.	Clause 14 (a) - 42 months from the date of start of construction + 3 months grace period i.e. 1.02.2017



12.	Delay of number of months/ years upto 06.09.2018	1 year 7 months and 6 days
13.	Penalty clause as per builder buyer agreement dated 01.05.2013	Clause 16 (a)- Rs 7.50 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. IG-08-0601 according to which the possession of the aforesaid unit was to be delivered by 01.02.2017. 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 26.07.2018. The case came up for hearing on 26.07.2018, 06.09.2018. The reply has been filed on behalf of the respondent on 20.08.2018.



#### FACTS OF THE CASE

5. The information of the complainant concerned regarding the respondent is a company and engaged in the real estate development. The respondents gave advertisement in

various leading newspapers about their forthcoming project named "Imperial Garden", Sec 102, Gurugram. Promising various advantages like world class amenities and timely completion of the project etc.

6. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, The complainant has booked an apartment/flat no.IG-08-0601in 'Imperial Garden' Sector 102, Gurugram for total consideration of Rs. 1,45,85,825/-which includes BSP, car parking, IFMS, Club Membership, PLC etc and excludes taxes. Out of the total sale consideration amount, the complainants made a payment of Rs 1,29,73,464/- to the respondent vide different cheques on different dates
7. As per clause 14 (a) of the builder buyer agreement, the respondent had agreed to deliver the possession of the Flat within 42 months from the date of signing of the builder buyer agreement with an extended period of 3 months and accordingly the Flat had to be delivered till 1.02.2017. Respondent failed to deliver the possession of booked unit on assured date of 1.02.2017



8. The terms of Builder Buyer Agreement were totally unreasonable and one sided and the Complainant were made to sign the same.
9. The Complainants regularly visited the project site but was surprised to see that the construction was very slow. The Respondent constructed the basic structure which was linked to the payments and majority of demands were made too early. There has been very little progress in the construction of the project after erection of the civil structure as the structure alone was related to the majority of the payments in the construction linked plan. This showed the respondent mala fide and dishonest motives.
10. The Complainant submitted that the Respondent despite of receiving 85 % (approx.) payment by 28.09.2015 of all the demands raised by him and despite of repeated requests and reminders over phone calls and personal visits of the complainants, the respondent have failed to deliver the possession of the allotted Flat to the complainants by assured date of 1.02.2017.
11. As per the compensation clause i.e Clause 16 (a) of the Builder Buyer Agreement dated 01.05.2013. The respondent agreed to pay compensation @ Rs 7.50/-per sq ft per month



of the super area of the unit booked for the period of delay. In terms of calculation of financial charges, it comes to be approximately @ 1.5% per annum rate of interest and whereas as per builder buyer agreement and demand letters, the respondent charges 24% per annum interest on delayed payment. The Complainant raised the same ground of disparity and unfair trade practise.

12. The complainant submitted that after making about 90% payment to the respondent by 28.09.2015 stopped making the payments as the respondent was not sticking to the schedule for the delivery of the flat.

13. The respondent continued to charge interest @ 24% per annum to the complainants without adjusting the delay compensation amount or giving delivery of the booked flat.

#### ISSUES RAISED BY THE COMPLAINANT



- I. Whether the respondent has delivered the possession of the flat to the complainant?
- II. Whether the respondent should be directed to cancel the agreement and refund the total amount of Rs 1,29,73,464/- along with the interest calculated @ 24% per annum from the date of deposit of the said amounts upto the date of the filling of the present case thus a total sum of Rs 2,53,17,064/-?



- III. Whether the respondent should be directed to pay delay interest calculated @ 24% per annum on compound rate from the committed date of possession?
- IV. Whether the interest cost being demanded by the respondent @ 24% per annum is unreasonable?

### RELIEF SOUGHT

- I. To fully refund the amount paid by the complainant amounting to Rs 1,29,73,464/- along with the interest for delay in possession calculated @ 24% per annum on compound rate from the committed date of possession i.e 20.05.2017

or

To provide immediate delivery of the flat along with the interest calculated @ 24% per annum on compound rate from the committed date of possession i.e 20.05.2017.

- II. To provide waiver on the delayed payment interest charged to the complainant @ 24 % per annum
- III. To Provide a compensation cost of Rs 5,00,000/- (Rs Five Lacs Only) for the sufferings of mental agony, harassment and physical torture in the circumstances of the case.
- IV. To Provide a sum of Rs 30,000/- (Rs Thirty thousand only) for cost of litigation.



- V. And may also grant any other relief as deemed fit and proper by the Hon'ble Court in the circumstances of the case.

### REPLY

14. The respondent stated that the present complaint is not maintainable in law or facts. The respondent submitted that the present complaint is not maintainable before this Hon'ble Authority. The Hon'ble Authority has no jurisdiction to entertain the present complaint. The Respondent had filled a separate application for rejection of the complaint on the ground of jurisdiction. The Respondent submitted that according to Section 17 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of the The Real Estate (Regulation & Development) Act,2016 is maintainable only before the adjudicating officer.
15. The respondent also submitted that the Complainant has no locus standi to file the present complaint as complaint can be filled before the Hon'ble Authority only when the respondent has committed any act in violation of provisions of The Real Estate (Regulation & Development) Act,2016 and/or the Haryana Real Estate (Regulation & Development) Rules,2017.



16. The respondent submitted that the complainant had defaulted in making payments. In fact The complainant had booked three units in projects of the respondent, namely unit no GGN-11-0302 in Gurgaon Greens Project and unit no IG-08-0802 and IG-08-0601 in Imperial Gardens Project. He also availed loans from the bank and requested the respondent to adjust the funds paid again Unit No IG-08-0802 towards the other two units namely GGN-11-0302 and IG-08-0601 so to clear the over dues. The Respondent accepted the request of the Complainant.

17. The respondent submitted that a tripartite Agreement dated 01.04.2015 had also been signed between the complainants, respondent and Kotak Mahindra Bank. Copy of the said tripartite agreement dated 01.04.2015 is annexed as Annexure R/3 with the reply filled by the respondent. The said agreement clearly shows that Kotak Mahindra Bank has a lien over the property/subject unit and Kotak Mahindra Bank is a necessary and proper party for the purposes of adjudication of the present case.



18. The respondent also submitted that despite of adversities and non payment by various allottees, the respondent has already applied for occupation certificate for few towers in

the project including the Tower wherein the unit in dispute is located and in the balance towers, the structure works are complete and finishing works are going on and the respondent will endeavour to offer possession within the timelines given to the authority.

19. The respondent submitted that the complainant signed the builder buyer agreement only after going through all the terms and conditions of allotment. The complainant never objected to the terms and conditions. The same are valid, subsisting and binding between the parties.
20. The respondent submitted that the as per usual commercial practise in the industry, if the subject unit is eligible for the any compensation as per the terms and conditions of the builder buyer agreement is adjusted only at the stage of last instalment.



### Determination of issues

21. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority is as under:

With respect to the **first issue** raised by the complainant, the authority came across that the respondent has failed to deliver the possession of the booked unit till date and as per

clause 14 (a) of apartment buyer's agreement, the possession of the flat was to be handed over within 42 months from the date of commencement of construction (with a grace period of 3 months) upon receipt of all project related approvals. In the present case, the due date of possession was 1.02.2017 and the possession has been delayed by one year seven months and six days till the date of decision.

As the possession of the flat was to be delivered by 1.02.2017 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 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 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.*

With respect to the **second issue**, the respondent cannot be directed to cancel the builder buyer agreement and refund total amount paid by the complainant as the project is almost complete and the respondent has committed to deliver the possession of the project by 31 December 2018.

With respect to the **third 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 i.e 10.45%, 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*

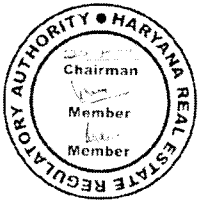


*specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice 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.*

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

With respect to **fourth issue** raised by complainant, the authority is of the view that the interest rate of 24% imposed on delay payments by complainant is unreasonable in nature as the delay interest paid by the respondent company for delay in delivery of possession is Rs 7.5 per sq ft per month only. This clearly shows that this clause merely one sided in nature and in favour of respondent company. Therefore The delay compensation payable by the respondent @ Rs.7.5/- per sq. ft. per month of the super area of the said apartment as per clause 16 (a) 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."*

#### **Findings of the authority**

22. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the apartment number IG-08-0601 to the complainant by the committed date i.e. 01.02.2017 as per the said agreement and the possession has been delayed by 1 year 7 months 6 days till the date of decision i.e. 06.09.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession. The complainant intended to continue with the said project and is seeking interest at the prescribed rate for every month of delay till actual date of handing over of possession. Further, the respondent has submitted during the





oral arguments that the construction of the project is almost complete and they shall offer the possession of the unit to the complainant by December 2018.

**Decision and directions of the authority**

23. 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 duty bound to hand over the possession of the said unit by 31<sup>st</sup> December 2018 as committed by the respondent.
- (ii) The respondent is duty bound 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. 01.02.2017 till the actual date of handing over of the possession.
- (iii) The respondent is directed to pay interest accrued from 02.06.2017 to 05.09.2018 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.

(iv) The respondent is directed to allow the  
complainant to visit the project site freely.

24. The order is pronounced.

25. Case file be consigned to the registry. Copy of this order  
be endorsed to registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

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

Haryana Real Estate Regulatory Authority, Gurugram



Dated : 06.09.2018