

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 11.09.2018
Complaint No.	266/2018 Case titled as Mr. Ravi Kanta Punchhi & Another V/s M/s EMAAR MGF Land Ltd
Complainant	Mr. Ravi Kanta Punchhi & Another
Represented through	Shri Pradeep Sharma Advocate for the complainant.
Respondent	M/S Emaar MGF Land Limited
Respondent Represented through	Ms. Monika Balhara representative on behalf of the respondent company with Shri Dheeraj Kapoor, Advocate.
Last date of hearing	26.7.2018

**Proceedings**

**The project is registered.**

Counsel for the respondent has filed an application for correction of the name of the authorized representative which was allowed and agreed upon by the counsel for the complainant.

Arguments heard.

The counsel for the complainant submits that he is restricting his prayer to the extent of interest and possession. The complainant has booked a flat in the project namely, Palm Gardens, Sector 83, village Kherki Daula, Gurugram. The Builder Buyer agreement was executed on 23.5.2012 and as

per clause 10 (a) of the agreement, the possession of the said unit was to be handed over to the complainant within 36 months from the date of start of construction plus grace period of 3 months. The date of start of construction was 9.8.2012 as such, the possession was to be handed by 9.11.2015.

After hearing the pleadings of the parties, the authority has arrived at the conclusion that the complainant is entitled to claim the interest from the due date of possession i.e. 9.11.2015 at the prescribed rate of interest till the handing over possession of the unit. Thus, the respondent is directed to give interest at the prescribed rate i.e. 10.45% from due date of possession i.e. 9.11.2015 within 90 days till today. Thereafter the respondent shall pay interest by 10<sup>th</sup> of every subsequent month till actual handing over the possession. 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)  
11.09.2018

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

**Complaint No. : 266 of 2018**  
**Date of First Hearing: 11.05.2018**  
**Date of Decision : 11.09.2018**

Mr. Ravi Kanta Punchhi ,Surinder Kumar  
Punchhi R/o E-320 , Shikhar Apartments,  
GH-2 , M.D.Complex , Sector-5 , Panchkula ,  
Haryana

**...Complainants**

Versus

M/s Emaar MGF Land Ltd, Office at Emaar  
MGF Business Park, Mehrauli – Gurugram  
Road, Sikandpur Chowk, Sector-  
28,Gurugram – 12002, Haryana  
Also at: ECE House , 28 , Kasturba Gandhi  
Marg, New Delhi – 110001

**...Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Mr. Pradeep Sharma  
Shri Dheeraj Kapoor

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 11.05.2018 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



2. (Mr. Ravi Kanta Punchhi and Surinder Kumar Punchhi) against the promoter (M/s Emaar MGF Land Ltd.) on account of violation of Clause 10 of the builder-buyer agreement executed on 23.05.2012 for unit no. PGN-02-0401 in the project “Palm 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*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	Palm Gardens
2.	Area of the project	21.95 acres
3.	Date of Agreement	23.05.2012
4.	Unit no.	PGN-02 -0401
5.	Area of unit	159.85 sq mtrs
6.	DTCP License	108 dated on 18.12.2010
7.	Total Consideration	Rs. 1,16,55,026.72/-
8.	Total amount paid by the complainant	Rs. 1,16,38,748/-
9.	Date of delivery of possession.	23.08.2015
10.	Delay of number of months/ years upto 11.09.2018	3 years 18 days
11.	Penalty Clause as per builder buyer agreement dated 23.05.2012	Clause 12- Rs 7.5 per sq ft per month



3. As per the details provided by the parties in the complaint and the reply, the developer/promoter was bound to deliver the possession of unit no. PGN-02-0401 . The promoter has

failed to deliver the possession of the said unit to the complainants by the due date as per Buyer's agreement dated 23.05.2012. 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 27.06.2018, 26.07.2018. The reply has been filed by the respondent on 23.07.2018.

#### FACTS OF COMPLAINT

5. That the Respondent had been proclaiming in general public through Newspaper advertisements, marketing emails, SMS and telemarketing that they had launched an integrated residential township as 'Palm Gardens' in Sector 83, Gurugram. The said integrated residential township as claimed is being set up after necessary approvals of all the competent authorities. It was further claimed that all the necessary approvals, clearances and procedures had been duly obtained and sanctioned as regards the proposed integrated township. The Complainants booked a flat in the project, namely 'Palm Gardens' situated at Sector-83, Village Kherki Daula, Tehsil & District Gurugram, Haryana, for a



booking amount of Rs.7,50,000/- . The total cost of the Flat (as mentioned in the Buyer's Agreement dated 23.05.2012) was Rs. 1,16,55,026.72/-. Flat bearing Unit No. PGN-02-0401 ad-measuring 1720 sq. ft. approx. was allotted to the complainants as per the provisional allotment Letter dated 14.05.2018.

6. That thereafter, a buyer's agreement was executed between the respondent and the complainants on 23.05.2012 at Gurugram. According to the Buyer's Agreement Dated 23.05.2012, the possession of the flat was to be handed over within 36 months from the date of start of construction with a grace period of 3 months.
7. That in Clause No 12, of the Buyer's Agreement dated 23.05.2012 it was mentioned that in case of delay in handing over the possession to the allottee, the allottee(s) shall be entitled to compensation for delay @ Rs. 7.50/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 + 3 months till the date of notice of possession. Further under Clause No. 13 of the aforesaid agreement, it was mentioned that if the allottee fails to take the possession, the developer shall charge the holding over charges @ Rs. 7.50/- per sq. ft. of the super area of the Unit per month.



8. It was the duty of the Respondent to intimate in writing the date of start of construction, however the respondent failed to intimate the complainants in this regard. The schedule of payment was construction linked and the fourth instalment was to be paid on completion of 1st basement roof slab. On the demands raised by the respondent, the complainants had been making payments of the amount. The demand of Instalment on completion of 1st basement roof slab was made on 04.02.2013.
9. As prior to laying basement slab excavation, constructing of foundations, concreting of columns and slabs are required for which a minimum period of 6 months is required, accordingly the date of start of construction is taken as 01.09.2012. Therefore the possession of the apartment was required to be offered to the complainants on or before 31.08.2015.
10. That the buyer's agreement has been drafted in such a manner, which is beneficial for the respondent and prejudicial to the interests of the complainants. For delay in handing over the possession according to Clause No. 12, only a sum of Rs. 7.50/- per sq. ft. per month of the super area has been mentioned as compensation whereas if the allottee fails to take the possession of the apartment then according to



condition No. 13, the allottee is required to pay the holding over charges @ 7.50/- per sq. ft. of the super area and also interest @ 24% on the due amount as mentioned in the notice for possession. The respondent is legally bound to compensate the complainants for the delay in handing over possession of the Flat in question at the same rate, which the respondent would have otherwise charged the complainants that is to pay the holding over charges @ Rs 7.50/- per sq ft. of the super area and also interest @ 24% on the due amount till the time the possession of the flat in question is handed over to complainants.

11. That according to the statement of account, the complainants have paid a sum of Rs. 1,16,38,748/-, where as per the builder buyer agreement the total sale consideration was Rs1,16,55,026,72 . Therefore , barring few thousand of rupees , the total sale consideration has been paid by the complainant.

12. That the complainants have been made to pay for the super area of the Flat which also covers the area which a builder/developer cannot charge from the allottee. As per Annexure IV of the Buyer's Agreement dated 23.05.2012 the area of the apartment is 84% of the super Area. It has also





been mentioned in the same annexure that the ratio of apartment area to the super area may undergo change till the completion of the building/project. In such circumstances it has become difficult for the complainants to decipher as to how much of the excess amount has been charged by the Respondent for the area for which the respondent cannot otherwise charge with from the complainants. The respondent is under statutory obligation to disclose the carpet area and refund the amount taken for the area which is not chargeable under Real Estate (Regulation and Development) Act, 2016.

### ISSUES RAISED BY THE COMPLAINANT

- i. Whether the Promoter was under legal obligation to hand over the flat in question in terms of the buyer agreement dated 23.05.2012? If the same has not been done, then what is the effect?
- ii. Whether the Promoter is liable to pay charges @ 7.50/- per sq. ft. of the super area that is 2000 sq. ft. and also interest @ 24% on the amount of Rs. 1,16,38,748/- w.e.f. 31.08.2015 ?
- iii. Whether the Promoter is liable to disclose the carpet area of the Flat in question and refund the proportionate amount



taken for the area which is not chargeable under Real Estate (Regulation and Development) Act, 2016?

- iv. Whether the complainants are entitled for grant of compensation of for inconvenience, mental harassment and damages suffered by complainants due to deficiency in service on the part of the respondent? If so, then what is the quantum?

**RELIEF SOUGHT:**

- i. To direct the respondent to hand over the possession of the flat bearing unit No. PGN-02-0401 admeasuring 159.85 sq. mtrs. (1720 sq. ft. approx.) in the project namely 'Palm Gardens' situated at Sector 83, Village Kherki Daula, Tehsil & District Gurugram, Haryana, immediately.
- ii. Direct the respondent to pay charges @ 7.50/- per sq. ft. of the super area that is 1720 sq. ft. and also interest @ 24% on the amount of Rs. 1,16,38,748/- w.e.f. 31.08.2015, till the time the possession of the flat is handed over to the complainants;
- iii. Direct the respondent to disclose the carpet area of the flat in question and refund the proportionate amount



taken for the area which is not chargeable under Real Estate (Regulation and Development) Act, 2016;

### REPLY

13. That the respondent submits that this Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain the present complaint.
14. That the complainants pertaining to compensation and interest for a grievance under section 12,14,18,19 of the Real Estate (Regulation & Development) Act,2016 are required to be filed before the adjudicating officer under Rule - 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with Section 31 and section 71 of the said Act.
15. It is submitted that Palm Garden project at Sector- 83, Gurgaon is covered under the definition of "ongoing projects" and registered with this Hon'ble Regulatory Authority.
16. That without prejudice to the above stated provision is further vindicated by the Proviso to Section 71 which clearly states that even in case where a complaint is withdrawn from a consumer forum for the purpose of filing an application under the said act and said rules , the application, if any can only be filed before the adjudicating officer and not before the regulatory authority.



17. That this application is without prejudice to the rights of the respondent to take any other objections in the reply to the complaint or as and when the complainant approaches a court of proper jurisdiction.

18. That the respondent submitted that the complaint is not supported by an attested affidavit and as such the complaint is without proper attestation and is liable to be rejected.

19. That further it is stated that the statement of objects as well as the preamble of the said act clearly states that RERA is established for effective consumer protection but complainants are not a consumer but an investor in terms of definition of consumer under Consumer Protection Act, 1986.

20. That the respondent submits that the complainants are clearly an investor, the fact that the complainants through their daughter in law Geetika Punchhi have also invested in two more units i.e PGN -06-0505 in the same project and unit No. IG-05-1101 in another project of the respondent i.e Imperial Gardens at Sector 102 for which two separate complaints bearing NO. 267/2018 and 269/2018 which are also pending before this Hon'ble Authority .

21. The complainants are clearly investors being resident of E-320, Shikhar, Apartments, GH-2, M.D Complex, Sector-5,



Panchkula, Haryana as mentioned in the application for provisional allotment, have invested in 3 apartments.

22. That the contents of the other two complaints filed by the daughter in law of the complainant bearing No. 267/2018 and 269/2018 may kindly be treated as part and parcel of this para as well the same are not repeated herein for the sake of brevity.

23. It is further submitted that facts and documents have been deliberately concealed by the complainants from this hon'ble regulatory authority.

24. The respondent submits that the complainants are defaulters and deliberately fail to make payments of instalments within time, which results in delayed payment charges as reflected in statement of accounts. The respondent has also send several reminders to make the payments, but the complainant failed to make payment on time.

25. That the respondent submits that till the 13<sup>th</sup> instalment, complainants kept on making payments as per the payment plan, though not in time and from the date of booking till filing of present complaint the complainants have never ever raised any issue whatsoever.



26. That the respondent submits that they have made huge investments in obtaining approvals and carrying on the construction and development of 'Palm Gardens' , the respondents are in the process of completing the construction of the project and should be able to apply for OC for apartment in question by 31.12.2018.

### ISSUES RAISED BY THE RESPONDENT

- i. Whether the complainants, who are defaulters, are liable to be prosecuted under section 19(6) and 19(7) of the said Act for non-payment of instalments, interest, etc?
- ii. Whether the complainants are liable to make the balance payment of instalments , interest, etc . as per the apartment buyer agreement and under Section 19(6) and 19(7) of the said act? Further if it fails whether the respondent is entitled to cancel the allotment of the complainants and forfeit the earnest money ?

### Determination of issues:

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



1. With respect to the first issue raised by the complainant the authority came across that as per the apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction (with a grace period of 3 months) upon receipt of all project related approvals. The due date of handing over possession thus turns out to be 23.08.2015. The clause regarding the possession of the said unit is reproduced below:

*"3(a) offer of possession*

*...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."*

2. Accordingly, the due date of possession was 23<sup>rd</sup> August 2015 and the possession has been delayed by three year and eighteen days till the date of decision. The delay compensation payable by the respondent @ Rs.7.5/- per sq. ft. per month of the carpet area of the said flat as per clause 12 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.”*

3. As the possession of the flat was to be delivered by 23<sup>rd</sup> August 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 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.”*

4. The complainants 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 complainants 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.*



5. With respect to the second issue raised by the complainants, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for

every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: मेव जयते*

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

6. With respect to the third issue, the respondent is bound to disclose the correct carpet area to the complainant.

### **Findings of the authority**

7. 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.

8. 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 unit number PGN-02 -0401 to the complainant by the committed date i.e. 23<sup>rd</sup> August 2015 as per the said agreement and the possession has been delayed by 1 year 18 days till the date of decision i.e. 11.09.2018. Thus, the complainants are entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

#### **Decision and directions of the authority**

9. 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 was duty bound to hand over the possession of the said unit by 9<sup>th</sup> November 2015 as the date of construction was ascertained to be from 09.08.2012
- (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. 09.11.2015 within 90 days till today.
- (iii) Thereafter the respondent shall pay interest by the 10<sup>th</sup> of every succeeding month till the handing over of possession.
10. The complaint is disposed of accordingly.
11. Case file be consigned to the registry.
12. Copy of this order be endorsed to registration branch.

HARERA  
GURUGRAM



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

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

Date:11.09.2018



HARERA  
GURUGRAM

