

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

Complaint No. : 251 of 2018
Date of Institution : 11.05.2018
Date of Decision : 30.10.2018

Ms. Meinka Khosla,
R/o A-717, Shastri Nagar,
New Delhi- 110052.

...Complainant

Versus

M/s Emaar MGF Land Ltd, Office at: 306-
308, 3rd floor, Square One C-2, District
Centre, Saket, New Delhi

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Harshita Agarwal Advocate for the complainant
Shri Ketan Luthra, Legal Executive on behalf of the
company with Shri J.K. Dang
and Amit Chahal Advocate for the respondent

ORDER

1. A complaint dated 11.05.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Ms. Meinka Khosla against the



promoter M/s Emaar MGF Land Ltd. on account of violation of clause 13 of the builder-buyer agreement executed on 01.03.2010 for unit no. EHF-267-A-GF-072 in the project “Emerald Hills-Floors” for not giving possession by 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 Hills- Floors, Sector- 65 Gurugram |
| 2. | Whether registered/not registered | Registered |
| 3. | Date of agreement | 01.03.2010 |
| 4. | Unit no. | EHF-267-A-GF-072 |
| 5. | Area of unit | 267 sq yards |
| 6. | DTCP License | 10 of 2009 |
| 7. | Total Consideration | Rs. 55,40,000/- |
| 8. | Total amount paid by the complainant | Rs. 16,62,000/- |
| 9. | Date of delivery of possession. As per Clause 13- 27 months + 6months grace period from the date of execution of agreement | 01.12.2012 |
| 10. | Delay of number of months/ years up to filing of complaint | 5 years 11 months |
| 11. | Penalty Clause as per clause 15(a) builder buyer agreement | Rs. 10/- per sq. ft. per month |
| 12. | Revised delivery date | 28.08.2022 |



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 EHF-267-A-GF-072 according to which the possession of the aforesaid unit was to be delivered by 01.12.2012. The promoter has failed to deliver the possession of the said unit to the complainant. 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 26.06.2018. The case came up for hearing on 26.06.2018 and 24.07.2018. The reply has been filed on behalf of the respondent on 10.07.2018.

FACTS OF THE CASE

On 06.6.2009, complainant booked residential Unit No. EHF-267-A-GF-072, in Emerald Floors at Emerald Hills, Sector- 65, Urban Estate, Gurugram. Basic price was Rs. 53 lakhs and Rs 2.4 lakhs as developmental charges.



6. The construction of the said residential unit has not yet stated which is clear from the various communications exchanged between the complainant and respondent.
7. On 01.3.2010, buyer agreement was signed and possession was to be handed within 27 months+ 6 months grace period i.e. by 01.06.2012.
8. Three instalments for Rs. 16, 62,000/- has been paid but possession not given after delay of 6 years since construction not started.

ISSUES RAISED BY THE COMPLAINANT

9. Following issues have been raised by the complainant:
 - i. Whether or not the respondent has defaulted in handing over the physical possession of the residential unit?
 - ii. Whether or not the complainant is entitled for compensation? If yes, at what rate and for what period?



RELIEF SOUGHT BY THE COMPLAINANT

10. Following reliefs have been sought by the complainant:

- i. Respondent to convey the date of physical possession of the allotted residential unit.
- ii. Respondent to pay interest towards delay in handing over of the physical possession of residential unit from 1st June, 2012 till the date of filing this complaint.
- iii. Respondent to pay pendente lite and future interest @ 24% per annum compounded quarterly till the receipt of payment in full.

REPLY BY RESPONDENT

11. This authority has no jurisdiction since issue of refund, compensation and interest are to be decided by adjudicating officer u/s 71 of the Act
12. The respondent submitted that the complaint pertaining to refund and interest for grievance are required to be filed before the adjudicating officer.
13. The respondent further submitted that the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint and is seeking the relief of possession, interest and compensation. Therefore, even though the project of the respondent is covered under the



definition of “ongoing projects” and is partly registered with this authority and for the balance the respondent has received the occupation certificate.

14. The respondent further submitted that the complainant has no locus standii 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 buyers agreement.
15. The respondent submitted that the date of completion of the apartment stands extended to August 2022 as the date which has been mentioned in the date of completion in the application for registration.
16. The respondent further submitted that all the demands raised by him are strictly in accordance with the terms and conditions of the buyers agreement duly executed and agreed to between the parties. The respondent submitted that there is no default or lapse on his part.



DETERMINATION OF ISSUES:

17. In relation to **issue no. 1** of the complainant, as per clause 13(i) of the buyers agreement, the possession of the unit was to be handed

over within 27 months with a 6 months grace period from the date of execution of the said agreement. The relevant clause has been reproduced below:

Clause 13 (i) ...the company proposes to hand over the possession of the floor within 27 months from the date of execution of this agreement, the allottee agrees and understands that the company shall be entitled to a grace period of six months for applying and obtaining the occupation certificate in respect of the floor and/or the project”

Accordingly, the due date of possession was 01.12.2012 and the possession has been delayed by 5 years and 11 months. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the super area of the unit for the period of delay beyond 27 months + 6 months grace period as per clause 15(a) of 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 others. (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.”

18. In relation to **issue no 2**, the authority is of the view that the present claim of compensation is not maintainable before this authority. This authority has no jurisdiction to entertain the compensation claims. According to Section 17 of the Act, the complaints pertaining to compensation and interest under section 12,14,18 and section 19 of Real Estate (Regulation & Development) Act,2016 is maintainable only before the adjudicating officer. Also, the counsel for the complainant has made a statement during proceedings on 24.07.2018 that he is not appearing before the authority for compensation but for the



fulfilment of the obligations by the promoter as per the Real Estate (Regulation and Development) Act, 2016

FINDINGS OF THE AUTHORITY:

19. 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.
20. The authority is of the view of that the respondent has delayed the possession by approximately 5 years 11 months and thus is liable to hand over possession under section 11(4) of the Act.

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.



22. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
23. As the promoter has failed to fulfil his obligation under section 11, he is liable u/s 18 proviso to pay the complainant interest at the prescribed rate, for every month of delay till the handing over possession.
24. As per original B.B.A dated 01.03.2010 inter se both the respondent and complainant for which payment of Rs.16,62,000/- has been made to the builder against total consideration amount of Rs.55,40,000/-. As per clause 13 of the B.B.A, the possession of the flat was to be handed over to the complainant on 1.12.2012 (including six months grace period). However, on account of certain civil/legal disputes of the builder with the adjacent land owner, the matter w.r.t. the construction of the flat could not materialize, as a result of which there is delay in delivery of possession till date. The respondent has miserably failed to deliver the possession as per committed date of possession in this context.



DECISION AND DIRECTIONS OF THE AUTHORITY

25. 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 28.08.2022 as committed by the respondent.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 01.12.2012 till 28.08.2022 within 90 days of this order and thereafter on 10th of every month of delay till the handing over of possession.
- (iii) If the possession is not given on the date committed by the respondent then the complainant 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*.

- (iv) Since it is construction linked plan, complainant is also under obligation under section under 19 (a) of the Act *ibid* to make timely payments.

26. The order is pronounced.

27. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 30.10.2018

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

| | |
|--------------------------------|---|
| Day and Date | Tuesday and 30.10.2018 |
| Complaint No. | 251/2018 Case titled as Mrs. Meinka Khosla V/S M/S Emaar Mgf Land Ltd |
| Complainant | Mrs. Meinka Khosla |
| Represented through | Shri Naval Rastogi-husband of the complainant in person with Shri Pragati Bansal, Advocate. |
| Respondent | M/S Emaar Mgf Land Ltd |
| Respondent Represented through | Ms. Monika Balhara and Ketan Luthra, authorized representatives of the respondent company with Shri Ishaan Dang, Advocate |
| Last date of hearing | 3.10.2018 |
| Proceeding Recorded by | Naresh Kumari & S L Chanana |

Proceedings

Arguments heard.

As per original B.B.A dated 1.3.2010 inter se both the respondent and complainant for which payment of Rs.16,62,000/- has been made to the builder against total consideration amount of Rs.55,40,000/-. As per clause 13 of the B.B.A, the possession of the flat was to be handed over to the complainant on 1.12.2012 (including six months grace period). However, on account of certain civil/legal disputes of the builder with the adjacent land owner, the matter w.r.t. the construction of the flat could not materialize, as a result of which there is delay in delivery of possession till date. The

respondent has miserably failed to deliver the possession as per committed date of possession in this context. As per provisions 18 (1) of the Real Estate (Regulation & Development) Act 2016 the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum till the offer of possession to the complainant. It is brought on record by the assertion of the authorized representative Ms. Monika Balhara that the flat in question is under construction and the possession of the same shall be delivered. Project is registered and as per revised commitment delivery date is 28.8.2022. Since it is construction linked plan, complainant is also under obligation under section under 19 (a) of the Act ibid to make timely payments.

Complaint is disposed off. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)