

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

Complaint No. : 319 of 2018
First date of hearing: 19.07.2018
Date of Decision : 05.11.2018

1. Mr. Anshul Gupta
2. Mrs. Urvika Gupta
3. Mr. Nirmal Kumar Gupta

Complainants

R/o. E-1102 Suncity Heights, Sector-54,
Gurugram, Haryana

Versus

M/s Emaar MGF Land Ltd.
Regd. Office: 306-308, 3rd floor, Square One, c-
2, District Centre, Saket, New Delhi-110017

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for the complainants
Shri Ankit Mehta Advocate for the respondent

ORDER

1. A complaint dated 23.05.2018 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 complainants Mr. Anshul Gupta, Mrs. Urvika Gupta and Mr. Nirmal Kumar Gupta, against the promoter M/s Emaar MGF Land Ltd., on account



of violation of the clause 14(a) of the buyer's agreement executed on 29.05.2013 in respect of unit number IG-07-1802, 18th floor in the project 'Imperial Gardens' for not handing over possession on the due date i.e. 11th August 2017 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	"Imperial Gardens", Sector 102, Gurugram
2.	RERA registered/ un registered.	registered
3.	RERA Registration no.	208 of 2017
4.	Apartment/unit no.	IG-07-1802, 18 th floor
5.	Apartment space admeasuring	185.81 sq.mtrs
6.	Nature of real estate project	Group housing colony
7.	DTCP License no.	107 of 2012
8.	Date of execution of buyer's agreement	29.05.2013
9.	Payment plan	Construction linked payment plan
10.	Total sale price	Rs.1,51,20,986/-
11.	Total amount paid by the complainant till date	Rs.1,38,84,664/-
12.	Percentage of consideration amount	Approx. 91.82 percent
13.	Date of delivery of possession as per clause 14 of buyer's agreement (42 months + 3 months grace period from the date of construction)	11.08.2017 Note: Date of start of construction- 11th November, 2013 as per payment request letter dated 18th October, 2013
14.	Delay in handing over possession till date	1 year 3 months
15.	Penalty clause as per buyer's	Clause 16 of the



	agreement dated 29.05.2013	agreement i.e. Rs.7.50/- per sq. ft per month of the super area of the said unit for the period of delay beyond 42+3 months on the extended period as permitted under this agreement.
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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondent. A buyer's agreement dated 29.05.2013 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 11th August 2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.7.50/- per sq. ft per month of the super area of the said unit for the period of such delay as per clause 16(a) of buyer's agreement dated 29.05.2013. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 19.07.2018. The case came up for hearing on 19.07.2018, 30.08.2018, 04.10.2018 and 05.11.2018 . The reply was filed by the respondent on 20.08.2018.



Facts of the complaint

5. Briefly stated, the facts of the case, the complainants submitted that the respondent gave advertisements in leading newspapers about their forthcoming project name – Imperial Gardens promising various advantages, like world class amenities and timely completion/execution of the project etc.
6. As per the buyer's agreement the respondent has been allotted a unit bearing no. IG-07-1802 on 18th floor having super area of 2000 sq.ft. to the complainants.
7. The complainants regularly visited the site but was surprised to see that the construction was very slow. As the respondent constructed the basic structure which was linked to the payments and majority of payments were made too early. Subsequent to this there has been very little progress in construction of the project because the only intention of the respondent was to take payments for the flat without completing the work.
8. The respondent has received the payments linked to the floor rise. That despite receiving 90-95% payment of all the demands raised by the respondent for the said flat and



despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent have failed to deliver the possession of the allotted unit to the complainants within stipulated period.

9. The omission on the part of the respondent, the complainants have suffered from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses.

10. The clause of compensation at such nominal rate of Rs. 7.50/- per sq.ft per month for the period of delay is unjust and the opposite party has exploited the complainants by not providing the possession of flat on time. The amount in terms of financial charge comes to approximately @1.5% per annum rate of interest and whereas as per the buyer's agreement and demand letters, the opposite party charges 24% per annum interest on delayed payment.

11. **Issues raised by the complainants are as follow:**

- i. That the flat has not been handed over to the petitioner till today and there is no reasonable justification for the delay.



- ii. Direct the respondent to pay interest calculated @24% per annum on compound rate from the committed date of possession.
- iii. The interest cost being demanded by the respondent/developer is very higher i.e 24% which is unjustified and not reasonable, whereas the banks are lending the loan on @10.5% or 8.75%.

12. Relief sought:

The complainants are seeking the following relief:

- i. Direct the respondents to refund the amount of Rs. 14290618/- along with interest @24% per annum on compounded rate from the date of booking of the flat in question.
- ii. Direct the respondent to handover the flat of the respective flat to the complainants.
- iii. Direct the respondent to pay interest calculated @24% per annum on compound rate from the committed date of possession i.e 29.05.2017 on the entire sum paid by the complainants to the respondent.
- iv. Direct to pay a sum of Rs.5,00,000/- for mental agony, harassment suffered by the complainants.
- v. Direct to pay a sum of Rs.30,000/- as cost of litigation.



Respondent's reply

13. The respondent company has contended in its reply that the complaint is not maintainable in law or on facts. The hon'ble regulatory authority has no jurisdiction to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction.
14. The respondent submitted that the dispute raised in the present complaint is beyond the purview of the hon'ble authority and can only be adjudicated by a civil court.
15. The respondent submitted that the complainant have no *locus standi* to file the present complaint. Secondly, as per applicable act or rules, a complaint may be filed by a person only if the respondent has committed any act in violation of The Real Estate (Regulation and Development) Act, 2016 and/or the Haryana Real Estate (Regulation and Development) Rules, 2017. Further, the respondent added that the complainants herein have failed to bring on record any document, evidence, etc which may even allude let alone prove that the respondent has violated the provisions of the RERA Act, 2016.



16. The respondent submitted that the project 'Imperial Gardens' is covered under the definition of ongoing projects and part of it is registered with the hon'ble authority and registration of part is awaited.
17. The respondent submitted that the complainants have filed the complaint and are seeking relief of possession, refund of entire money paid, interest and compensation under the Act. The complaint for interest and compensation is maintainable only before the adjudicating officer. As per section 71 of the Act, complaint pertaining to compensation and interest under section 12, 14, 18 and 19 of the RERA Act, 2016 is required to be filed before the adjudicating officer.
18. The respondent submitted that the complainants are inherently asking that the unit is to be given to them free of cost. The present complaint is a ploy to exert undue pressure on the respondent and seeks remedies which are incomprehensible under the law of the land.
19. The respondent submitted that the complainants are seeking refund along with the interest @24%. The claim of the complainants is barred by law in terms of section 74 of the Indian Contract Act. The complainants are not entitled to any interest on the amount deposited by them. The respondent is



legally entitled to forfeit the money paid by the complainants as per the settled terms and conditions.

20. The respondent contended in the reply that complainants are not consumers in terms of the definition of consumer under Consumer Protection Act, 1986. The Act does not provide any definition for the consumer. The Act has not been enacted to protect the interest of the investors. The complainants are mere speculative investor having invested with a view to earn quick profit.

21. The respondent submitted that many of the allottees of the project defaulted in making payment of the amounts which resulted in slowdown in pace of the development. The development of the project was dependent upon the availability of funds from the allottees who were under a contractual obligation to make payments as per the schedule of payment opted by them. The respondent has already applied for occupation certificate and finishing works are on and the respondent will endeavor to offer possession within the timelines given to the authority .

22. The respondent submitted that the complaint filed is entirely premature. As per usual commercial practice, compensation if any had is adjusted only at the stage of last installment. The



authority cannot in any event travel beyond the express terms and conditions agreed between the parties.

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 are as under:

23. With respect to the **first issue** raised by the complainants, the authority came across that as per clause 14 of buyer's agreement, the possession of the flat was to be handed over within 42 months from the date of start of construction (with a grace period of 3 months). The due date of handing over possession was 11.08.2017. Thus, the possession of the said unit is delayed by 1 year and 3 months and there is no reasonable justification for the delay. The clause regarding the possession of the said unit is reproduced below:

"14 (a) time of handing over the possession:

...the Company proposes to hand over the possession of the unit within 42 months from the date of start of construction; subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 3 months after the expiry of said period of 42 months...."

24. Accordingly, the due date of possession was 11.08.2017 and the possession has been delayed by one year three months.



The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area of the said apartment as per clause 16(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 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."

25. As the possession of the flat was to be delivered by 11.08.2017 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.”

26. With respect to the **second and third issue** raised by the complainants, the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate i.e 10.45% and not at 24% per annum on compound rate which is not reasonable and justified, 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.

27. 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.

Findings of the authority

28. The respondent admitted the fact that the project Imperial Gardens is situated in Sector-102, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complaint. As the project in question is situated in planning area of Gurugram, therefore the



authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

29. 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 complainants at a later stage.

30. 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-07-1802, 18th floor in the project "Imperial Gardens" to the complainants by the committed date i.e. 11th August, 2017 as per the said agreement and the possession has been delayed by 1 year 3 months till the date of decision i.e. 05.11.2018. Thus, the complainant are entitled to interest at prescribed rate for every month of delay till the handing over of the possession. The counsel for respondent has stated that the complainants



have already paid 90% of the amount to the respondent and the project is registered with the authority. The counsel for the respondent has also stated that by December 2018, application for obtaining occupation certificate will be moved before the appropriate authority.

Decision and directions of the authority

31. 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 31st December 2018 as committed by the respondent.
- (ii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 11.08.2017 till the actual date of handing over of the possession.
- (iii) The respondent is directed to pay interest accrued from 11.08.2017 to 05.11.2018 on account of delay in handing over of possession



to the complainants within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month till actual handing over of possession.

(iv) In case, the respondent fails to handover the possession to the complainants, in due course, then the complainants can seek refund of deposited amount.

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

32. The order is pronounced.

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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Date: 05.11.2018

PROCEEDINGS OF THE DAY

Day and Date	Monday and 05.11.2018
Complaint No.	319/2018 case titled as Mr. Anshul Gupta & Ors. V/s M/s Emaar MGF Land Ltd
Complainant	Mr. Anshul Gupta & Ors.
Represented through	Mr.Sushil Yadav, advocate for the
Respondent	M/S Emaar MGF Land Ltd
Respondent Represented through	Mr JK Dang, Sr Advocate alongwith Ishan Dang, Ankit Mehta, Advocates
Last date of hearing	04.10.2018
Proceeding Recorded by	Naresh Kumari and S.L.Chanana

Proceedings

Project is registered with the authority.

Counsel for the complainant has stated that complainant has already paid 90% of the amount to the respondent for the unit No.IG-7-1802, Imperial Gardens, Sector 102, Gurugram. Counsel for the respondent has stated that by December,2018, application for obtaining occupation certificate shall be moved before the appropriate authority. Project already stands registered with the authority. In the above circumstances, the authority is of the considered opinion that prayer of the complainant to seek refund of the deposited amount is not maintainable but the complainant is entitled for delayed payment at prescribed rate of interest @ 10.75 pa. from committed date of handing over the possession i.e. 11.08.2017. Accordingly, the respondent is directed to pay interest accrued till date in lumpsum within

a period of 90 days and thereafter by the 10th of each month till actual handing over of possession. In case, respondent fails to handover the possession to the complaint, in due course, then the complainant can seek refund of deposited amount. The complaint stands disposed of in above terms. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)