

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 30.10.2018
Complaint No.	250/2018 Case titled as Mrs. Parul Rastogi V/S M/S Emaar Mgf Land Ltd
Complainant	Mrs. Parul Rastogi
Represented through	Shri Subodh 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 27.2.2010 inter se both the respondent and complainant for which payment of Rs.14,52,000/- has been made to the builder against total consideration amount of Rs.48,40,000/-. As per clause 13.1 of the B.B.A, the possession of the flat was to be handed over to the complainant on 27.11.2012 including six months grace period. However, on account of certain civil/legal disputes concerning title of land between the builder and the adjacent landowner, 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 i.e. 27.11.2012. 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 by committed date of possession in registration. Project is registered and as per revised commitment 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)

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

Complaint No. : 250 of 2018
Date of Institution : 11.05.2018
Date of Decision : 30.10.2018

Mrs. Parul Rustagi
R/o. 123, Milan Apartments,
West Enclave, Pitampura, New Delhi.

Complainant

Versus

M/s Emaar India
Regd. Office: 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 J.K. Dang with Amit Advocate for the respondent
Chahal

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 Mrs. Parul Rustagi, against the promoter M/s Emaar India, on account of violation of clause 13.1 of the buyer's agreement executed on



27.02.2010 in respect of residential unit no. EHF-267-A-FF-072 for not handing over possession on the due date of 27.11.2012 which is an obligation of 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 at Emerald Hills", Sector-65, Gurugram
2.	Nature of real estate project	Residential gated colony
3.	Residential Unit/ apartment No.	EHF-267-A-FF-072.
4.	Unit measuring	1380 sq. ft.
5.	DTCP license	10 of 2009
6.	Registered / not registered	Registered
7.	RERA registration no	162 of 2017
8.	Completion certificate as per RERA registration certificate	28.08.2022
9.	Date of booking	06.06.2009
10.	Booking amount	Rs.5,00,000/-
11.	Date of buyers agreement	27.02.2010
12.	Total consideration as per buyers agreement executed on 27.02.2010	Rs.52,41,646/-
13.	Total amount paid by the complainant till date	Rs.14,67,246/-
14.	Payment plan	Construction linked plan
15.	Date of delivery of possession as per buyer's agreement dated 27.02.2010	Clause 13.1 of BBA, 27 months + 6 months grace from the date of execution of this agreement i.e. 27.11.2012
16.	Delay for number of months/ years	5 years 11 months 3 days



17.	Penalty clause	As per clause 15(a) of BBA, Rs.10/- per sq. ft. per month of the super area till the date of notice of possession.
18.	Cause of delay in delivery of possession	No construction has started yet.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 27.02.2010 is available on record for the aforesaid residential unit according to which the possession of the said unit was to be delivered to the complainant by 27.11.2012 and the respondent has failed to deliver the possession of the said unit by the aforesaid time and the construction has not started yet for the aforesaid tower.
4. Taking cognizance of the complaint, the authority issued notice on 16.05.2018 to the respondent for filing reply and for appearance. The respondent appeared on 06.06.2018. The case came up for hearing on 06.06.2018, 24.07.2018, 28.08.2018 & 30.08.2018. The reply has been filed on behalf of the respondent on 02.07.2018.



Facts of the case

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 06-06.2010, the complainant applied for booking of a residential unit no. EHF-267-A-FF-072 in sector Amber at first floor measuring 1380 sq. ft. in the aforesaid project by filing an application and paid the booking amount of Rs.5,00,000/- vide cheque dated 04.06.2009.
6. The respondent, in furtherance of booking, issued a provisional allotment letter dated 03.07.2009 in favour of the complainant for the aforesaid residential unit.
7. The complainant submitted that the respondent has raised first three instalments of a total sum of Rs.14,52,000/- as per the schedule of payment and the same has been duly paid by the complainant. Thereafter, the respondent has not raised any demand and has not started the construction yet.
8. The complainant submitted that he has enquired from respondent several times about the status of the project but the respondent has always made a false promise and has deliberately failed to and neglected to deliver the possession of the said unit.



Issues to be decided

9. The issues raised by the complainant are as follows :-
- Whether the respondent has defaulted in handing over the possession?
 - Whether the complainant is entitled for compensation ? If yes at what rate and for what period ?

Relief sought

10. To provide interest on the amount deposited by the complainant at the prescribed rate for the delay in handing over possession.

Respondent's Reply

11. The respondent has raised various preliminary objections and submissions challenging the jurisdiction of this authority. It is as follows :

The respondent submitted that the complainant has filed the complaint seeking relief of possession, interest and compensation for the alleged delay in delivering the possession of the apartment booked. The complaint pertaining to refund and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule 29 of the Haryana Real Estate



(Regulation and Development) Rules, 2017 read with section 31 and 71 of the Act *ibid*.

12. The respondent submitted that the date of completion stands extended to February 2022 as the date which has been mentioned in the date of completion in the application for registration. Therefore, the complaint is highly premature.

Reply on merits

13. The respondent admitted the fact that the complainant has paid first three instalments amounting to Rs.14,52,000/- However, it is pertinent to note that there has been delay by the complainant's side in paying instalments and Rs.1,390/- still stands due as per statement of account dated 21.05.2018.
14. The respondent submitted that defaulting allottees such as complainant who do not make timely payment of instalments despite having agreed and undertaken to do so, make it extremely difficult for developer to undertake timely development of their project. In such cases of default, the respondent is compelled to seek external funding at high rates of interest to make up for the shortfall.
15. The respondent submitted that the above mentioned project is of a considerable magnitude, encompassing around 196 acres and the project is being developed in phases.



Determination of issues

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

- i. **First issue** : According to clause 13.1 of buyer's agreement, the respondent assured delivery of the booked unit within a period of 27 months from the date of execution of buyer's agreement along with a 6 months grace period i.e 27.11.2012 . However, in the present case the respondent has failed to offer the possession of the booked unit till date.
- ii. **Second issue** : This authority does not have jurisdiction to deal with the cases of compensation. However the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Therefore, the relief sought by the complainant regarding compensation becomes infructuous.

Findings of the Authority

17. Jurisdiction of the authority-

Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding 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.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

18. As per original buyer's agreement dated 27.2.2010 inter se both the respondent and complainant for which payment of Rs.14,52,000/- has been made to the builder against total consideration amount of Rs.48,40,000/-. As per clause 13.1 of the B.B.A, the possession of the flat was to be handed over to the complainant on 27.11.2012 including six months grace period. However, on account of certain civil/legal disputes concerning title of land between the builder and the adjacent landowner, 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 i.e. 27.11.2012. 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 by committed date of possession in registration. Project is registered and the revised commitment date is 28.08.2022. Since it is construction linked plan, the complainant is also under an obligation under section 19 (a) of the Act ibid to make timely payments.

Decision and directions of the authority

19. 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. As per provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, 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. 27.11.2012 till the actual date of offer of possession.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest shall be paid before 10th of subsequent month till handing over the possession.

20. The order is pronounced.

21. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 30.10.2018

HARERA
GURUGRAM

