

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

**Complaint No.** : 269 of 2018  
**First date of hearing :** 27.06.2018  
**Date of Decision** : 11.09.2018

Mrs. Geetika Punchhi  
R/o D-41, DLF Icon, Phase-V, Gurugram,  
Haryana

**Complainant**

Versus

M/s Emaar MGF Land Limited  
EMAAR MGF Business Park,  
Mehrauli, Gurugram Road,  
Sikandarpur chowk, Sector-28,  
Gurugram-122002, Haryana  
Also at : 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:**

Shri Pradeep Sharma  
Ms. Monika Balhara

Advocate for the complainant  
Representative on behalf of the  
respondent

Shri Dheeraj Kapoor

Advocate for the respondent

**ORDER**

1. A complaint dated 14.05.2018 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. Geetika Punchi, against the promoter M/s Emaar MGF Land Limited on account of violation of clause 14 (a) of the buyer's agreement executed on 27.05.2013 for unit no.IG-05-1101 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-05-1101
3.	Registered/ not registered	Registered
4.	RERA registration no	208 of 2017
5.	Date of booking	26.02.2013
6.	Date of buyer's agreement	27.05.2013
7.	Total consideration	Rs.1,48,81,483/- (Exclusive of Service Tax)
8.	Total amount paid by the complainant	Rs. 1,42,30,535/-
9.	Payment plan	Construction Linked Plan
10.	Date of delivery of possession.	11.08.2017 Clause 14 (a) - 42 months from the date of start of construction + 3 months grace period
11.	Delay of number of months/ years	1 year 1 month



	upto 11.09.2018	
12.	Penalty clause as per buyer's agreement dated 27.05.2013	Clause16 (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 11.08.2017. 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 27.06.2018. The case came up for hearing on 27.06.2018, 26.07.2018 and 11.09.2018. The reply has been filed on behalf of the respondent on 23.07.2018.



#### FACTS OF THE CASE

5. Briefly stated, the facts of the case the respondent gave advertisement in various leading newspapers about their forthcoming project named "Imperial Garden", Sector 102, Gurugram.

6. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, The complainant has booked an apartment/flat no. IG-05-1101 in 'Imperial Garden' Sector 102, Gurugram for total consideration of Rs. 1,48,81,483/- which includes BSP, car parking, IFMS, club membership, PLC etc and excludes taxes. Out of the total sale consideration amount, the complainant made a payment of Rs 1,42,30,535/- to the respondent vide different cheques on different dates
7. That 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 11.08.2017.
8. That since it was a construction linked payment plan, the complainant continued to make the payment towards the sale consideration as per the demands raised by respondent. Whenever there was delay the respondent charged the interest over the delayed payments. The complainant was made to pay interest @24% per annum on the delayed payment.



9. According to the buyer's agreement the respondent was required to handover the possession of the apartment within 42 months from the date of the start of the construction. Although no date of start of the construction was intimated by the respondent to the complainant, yet in the statement account obtained by the complainant, the date of start of the foundation was 11.11.2013, which could be deemed as the date of start of the construction. As per the terms and conditions of the buyer's agreement, the period of 42 months for the completion of the construction expired on 10.05.2016. even the period of 3 months for applying and obtaining the completion certificate/occupation certificate expired on 10.08.2016, however till date to the knowledge of the complainant, the respondent has failed to get any certificate in this respect.

10. The complainant has been made to pay for the super area of the flat which also covers the area which the builder cannot charge from the allottee. As per the agreement the area of the apartment is approximately 80% of the super area. The ratio of the apartment area and the super area may undergo changes till the completion of the project. It has become difficult for the complainant to decipher as to how much amount has been charged excess by the



respondent for the area for which the respondent cannot otherwise charge from the complainant. The respondent is under statutory obligation to disclose the carpet area and refund the amount taken for the area which is not chargeable under RERA Act, 2016.

### ISSUES RAISED BY THE COMPLAINANT

- I. Whether the promoter was under obligation to hand over the flat, immediately; in terms of the buyer agreement? 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 the super area that is 2000 sq.ft and also interest @24% on the amount of Rs. 1,42,30,535/- w.e.f 10.08.2016?
- 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 RERA Act,2016?
- IV. Whether the complainant is entitled for grant of compensation for inconvenience, mental harassment and damages suffered by the complainant due to deficiency in service on the part of the respondent? If so, then what is the quantum?



- V. Whether the complainant is entitled for grant compensation towards cost of litigation, documentation charges, representation and etc.? if so, then what is the quantum?

### RELIEF SOUGHT

- I. To direct the respondent to hand over the possession of the flat immediately.
- II. Direct the respondent 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.1,42,30,535 w.e.f 10.08.2016 till the time the possession of the flat is handed over to the complainant.
- 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 RERA Act, 21016.
- IV. Grant compensation of Rs.10,00,000 for inconvenience, mental harassment and damages suffered by the complainant due to deficiency in service on the part of the respondent.
- V. Grant compensation of Rs. 2,00,000 towards cost of litigation, documentation charges, representation and numerous visits.



### REPLY

11. 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 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 and Development) Act,2016 is maintainable only before the adjudicating officer.

12. 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 and Development) Act,2016 and/or the Haryana Real Estate (Regulation and Development) Rules,2017.

13. The respondent submitted that the Act clearly states that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors.

14. The respondent submitted that the complainant is an investor, having invested in 3 residential units in two projects of the respondent for earning profit, and never had any





intention to buy the apartment for her own personal use and kept on avoiding the performance of her contractual obligations of making timely payments and has now filed the present complaint on false and frivolous grounds.

15. The respondent submitted that the complainant from the date of booking till the filing of the present complaint i.e for more than 5 years, the complainant never raised any issue and kept on making the payment of instalments though not within the time prescribed, which resulted in delay payment charges.
16. The respondent submitted that the respondent has already applied for occupation certificate of few towers in the project. The respondent continued with the development and construction of the said apartment and also had to incur interest liability towards its bankers.

#### **Determination of issues**

17. 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 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 11.08.2017 and the possession has been delayed by one year one month and six days till the date of decision.

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."*



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 complainant is entitled to claim the interest from the due date of possession 11.08.2017 at the prescribed rate i.e 10.45%. 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.*

With respect to **third issue** the super area of the unit bears to the total super area of all the units in the said building. The allottee understands that the allottee only has the right to use the common areas within the said project which will be harmoniously used along with other occupants in the project without causing any inconvenience or hindrance to them.

With respect to the **fourth and fifth issue** raised by complainant, 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 superfluous.



### Findings of the authority

18. 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-05-1101 to the

complainant by the committed date i.e. 11.08.2017 as per the said agreement and the possession has been delayed by 1 year 1 month till the date of decision i.e. 11.09.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession on the amount deposited. 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.

#### **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) The respondent is duty bound to pay the interest from the due date of possession i.e 11.08.2017 at the prescribed rate i.e. 10.45% on the amount deposited with the respondent.
- (ii) The respondent is directed to give interest at the prescribed rate within 90 days from the due date of



possession till date and later on by 10<sup>th</sup> of every subsequent month till handing over the possession

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

20. The order is pronounced.

21. 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 : 11.09.2018

HARERA  
GURUGRAM



<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Tuesday and 11.09.2018
Complaint No.	269/2018 Case titled as Mrs. Geetika Punchhi V/s M/s Emaar MGF land Ltd
Complainant	Mrs. Geetika Punchhi
Represented through	Shri Pradeep Sharma Advocate for the complainant.
Respondent	M/s Emaar MGF land Ltd
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.**

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, Imperial Gardens, Sector 102, village Kherki Majra, Dhankot, Gurugram. The Builder Buyer agreement was executed on 27.5.2013 and as per clause 14 (a) of the agreement, the possession of the said unit was to be handed over to the complainant within 42 months from the date of start of construction plus grace period of 3 months. The date of

start of construction was 11.11.2013 as such, the possession was to be handed over by 11.2.2018.

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. 11.2.2018 at the prescribed rate of interest till the handing over the possession of the unit. Thus, the respondent is directed to give interest at the prescribed rate i.e. 10.45% within 90 days from due date of possession till today and later on by 10<sup>th</sup> of every subsequent month till 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