

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

**Complaint No. 430 of 2018**  
**First date of hearing 07.08.2018**  
**Date of Decision 22.10.2018**

Mr Karan Sadana  
Mr Shubra Sadana  
R/o 510 P, Sector 14, Gurugram Complainant

**Versus**

M/s Emaar MGF Land Ltd  
Reg Office : 306-308, 3<sup>rd</sup> Floor, Square One  
C-2, District Center, Saket, New Delhi-110017

Branch Office : Emaar Business Park, MG  
Road, Sikandarpur Chowk, Sector 28,  
Gurgaon-122002 Respondent

**CORAM :**

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

**APPEARANCE :**

Complainant in person with Advocate for complainant  
Shri Subhash Grover, Advocate

Shri Ketan Luthra authorized Advocate for respondent  
representative on behalf of  
respondent company with Shri  
Ishaan Dhang, Advocate



**ORDER**

1. A complaint dated 13.06.2018 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 Mr Karan Sadana & Mrs Shubra Sadana, against the promoter (M/s Emaar MGF Land Ltd) on account of violation of clause 14 (a) of the builder-buyer agreement executed on 10.12.2010 for unit no PTS-10-0101 in the project "Palm Terraces Select" for not giving possession on the due date i.e 31.10.2015 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	"Palm Terraces Select" in Sector 66, Gurugram
2.	Unit no.	PTS-10-0101, Tower No 10, 1st Floor
3.	Project area	27,299.865 sq. m
4.	Registered/ Not registered	Registered
5.	RERA registration no	19 of 2018
6.	Date of booking	30.07.2010
7.	Date of builder buyer agreement	10.12.2010
8.	Total consideration	Rs. 1,78,79,670/-
9.	Total amount paid by the complainant	Rs. 1,77,75,547



10.	Payment plan	Subvention Plan
11.	Date of delivery of possession	Clause 14 (a)- (For Units falling within Ground plus thirteen floors tower/building) : 36 months from date of start of construction i.e 31.07.2012 + 3 months grace period i.e. <b>31.10.2015</b>
12.	Delay of number of months/years upto 20.09.2018	3 years 11 months and 22 days
13.	Penalty clause as per builder buyer agreement dated 10.12.2010	Clause 16 (a) - Rs. 7.50/- per sq. ft. per month of the Super Area

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. PTS-10-0101 according to which the possession of the aforesaid unit was to be delivered by 31.10.2015. The promoter has failed to deliver the possession of the said unit to the complainants. 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 for appearance.



Accordingly, the respondent appeared on 07.08.2018. The case came up for hearing on 07.08.2018, 22.10.2018. The reply has been filed on behalf of the respondent on 16.08.2018

### FACTS OF THE CASE

5. The complainants submitted that the respondent launched a project in the name and style of "Palm Terraces Select" in Sector 66, Gurgaon. Thereafter the complainants visited the office of respondent for inquiry of the same project. On the basis of promises made by respondent company, The complainants booked an apartment unit no PMS-10-0101 in tower 10, Floor 1 in the aforesaid project.
6. The complainants submitted that as per Clause 14 (a) of the builder buyer agreement, the respondent committed delivery of possession for ( Units falling within Ground plus four floors tower/building) within a period of 30 months from the date of start of construction i.e 31.07.2012 and for (Units falling within Ground plus thirteen floors tower/building) within a period of 36 months from the date of start of construction i.e 31.07.2012 along with a grace period of 3 months.
7. The respondent has failed to deliver the possession of the allotted unit till date. The respondent has deliberately failed



and neglected to deliver the possession of the residential unit. The complainants admits that the complainants visited site of construction and took photographs with their mobile which evidences that the project construction work is not over and finishing works are still going on for towers ten to twelve.

8. The complainants submitted that the respondent provided false information about the occupation certificate and construction status of the said project to the complainants.
9. The complainants also submitted that they are presently residing in Dubai on rented premises and paying a huge amount of rent of Rs 17,91,914/- per annum and they are interested to reside in the aforesaid project along with their family and waiting for completion of the project since a long time.

#### ISSUES RAISED BY THE COMPLAINANTS

10. The issues raised by the complainants are as follows :
  - I. Whether the respondent has defaulted in handing over the possession within the prescribed time?



- II. Whether the complainants are entitled to possession along with Interest @24% per annum on total amount paid by him from date of filing the petition?
- III. Whether the complainants are entitled to receive compensation of Rs 20 lacs on account of long harassment and mental agony?
- IV. Whether the complainants are entitled to receive rent amount of Rs 17,91,914/- per annum paid by complainants for accommodation in Dubai due to non-delivery of possession by the respondent ?
- V. Whether the respondent violated any provisions of the RERA by not registering the said project within time?

### RELIEF SOUGHT

11. The reliefs sought by the complainants are as follows :

- I. To provide delay interest @ 24% per annum on the total amount of Rs 1,77,75,547/- paid by the complainants from the date of 10.07.2015 to 10.06.2018 for non-delivery of possession within prescribed time
- II. To direct the respondent to handover the physical possession of the booked unit no PTS-10-0101 along with all approvals from competent authorities.



- III. To direct the respondent to provide compensation cost of Rs 20lakhs on account of long harassment and mental agony suffered by complainants.
- IV. To direct the respondent to provide rent amount of Rs 17,91,914/- per annum paid by complainants for accommodation in Dubai due to non-delivery of possession by the respondent
- V. To provide any other relief which this authority deems fit and proper in the favour of the complainants

#### REPLY BY THE RESPONDENT

12. The respondent submitted that the present complaint is not maintainable before this Hon'ble Authority and the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the money paid by the complainants for the booking. Thus it was further submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the said Act read with rule 29 of HARERA Rules 2017 and not by this authority.



13. The respondent submitted that the application for issuance of occupation certificate in respect of the apartment in question was made on 08.01.2018.
14. The respondent submitted that the complainants have no locus standi 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 incorrect understanding of the terms and conditions of the buyers agreement dated 10.12.2010.
15. The respondent submitted that the complainants were irregular as far as payment of instalments was concerned.
16. The respondent also submitted that the complainants are stopped from claiming refund or any other amounts from the respondent in view of the Tripartite Agreement executed on 10.12.2010 between the complainants, respondent and HDFC Limited. The complainants availed housing loan from HDFC Ltd approved via Letter dated 06.09.2010, therefore confirming lien of HDFC Ltd on the apartment.
17. The respondent also submitted that the complainants have consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses.





**Determination of issues:**

18. 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:
- i. **First issue** : As per Clause 14 (a) of the builder buyer agreement, the respondent committed delivery of possession for (Units falling within ground plus four floors tower/building) within a period of 30 months from the date of start of construction i.e 31.07.2012 and for (Units falling within ground plus thirteen floors tower/building) within a period of 36 months from the date of start of construction i.e 31.07.2012 along with a grace period of 3 months. Accordingly, in the present case the respondent has failed to deliver the possession of the allotted unit on the assured date of 31.10.2015.
  - ii. **Second issue** : In view of the present status of the project, as the respondent has committed a default in handing over the possession on due date of 31.10.2015 as per the BBA. therefore the respondent is liable to deliver the possession of the booked apartment along with delayed interest under section 18(1) proviso to the complainants at the prescribed



rate of 10.45%, for every month of delay till the date of handing over of possession.

**iii. Third issue and Fourth issue :** As per section 31 of Act, the power to grant compensation rests with the adjudicating officer. Therefore this authority does not have jurisdiction to entertain the present claim of compensation. However the complainants reserves their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

### **Findings of the Authority**

#### **19. Jurisdiction of the authority-**

##### **i. 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 complainants at a later stage.

##### **ii. 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.

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

20. 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 provision of Section 18 (1) of the Real Estate (Regulation & 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. 31.10.2015 till the actual date of possession.
- ii. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made



before 10<sup>th</sup> of subsequent month till handing over the possession.

21. The complaint stands disposed of.
22. The order is pronounced.
23. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 22.10.2018



**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 22.10.2018
Complaint No.	430/2018 Case Titled Mr. Karan Sadana V/S M/S Emaar MGF Land Ltd. & Ors.
Complainant	Mr. Karan Sadana
Represented through	Ms. Shubra Sadana on behalf of the complainant with Shri Subhash Grover Adv
Respondent	M/S Emaar MGF Land Ltd. & Ors.
Respondent Represented through	Shri Ketan Luthra legal representative on behalf of the respondent with Shri Ishaan Dang Advocate
Last date of hearing	27.9.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

Arguments advanced by the counsel for the parties heard.

The complainant booked a flat No.PTS-10-0101, Tower-10, in the project "Palm Terraces Select" in Sector-66, Gurugram on 30.7.2010 and the BBA was executed inter-se the parties on 10.12.2010. As per clause 14 (a) of the Builder Buyer Agreement dated 10.12.2010, due date of possession comes out to be 31.10.2015, from the date of start of construction i.e. 31.7.2012. The project stands delayed by 3 years 11 approximately. In view of this, the complainant is entitled to prescribed rate of interest @ 10.45% per annum w.e.f. 31.10.2015 as per provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till handing over possession of

the unit. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10<sup>th</sup> of subsequent month till handing over the possession. The complaint stands disposed of. Detailed order shall follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
22.10.2018