

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

Complaint No. : 14 of 2018
Date of first hearing : 11.04.2018
Date of Decision : 16.10.2018

Mr. Sandeep Singh Gill R/o H.No. X-52,
Regency Park II DLF Phase IV, Gurgaon
122009

...Complainant

Versus

M/s Emaar MGF Land Pvt. Ltd.
Regd office: 28 Kasturba Gandhi Marg , New
Delhi-110001

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Dheeraj Kapoor

Advocate for the complainant
Advocate for the respondent

ORDER



1. A complaint dated 26.02.2018 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. Sandeep

Singh against the promoter M/s Emaar MGF Land Pvt. Ltd. on account of violation of clause 16(a)(i) of the office space buyer's agreement executed on 31.01.2011 for unit no. EPO-08-036, 8th floor, in the project "Emerald Plaza" 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	Emerald Hills, Sector 65, Gurgaon
2.	Flat/Apartment/Unit No.	EPO-08-036, 8 th floor
3.	Flat measuring	637.67 sq. ft. super area
4.	RERA Registered/ Not registered.	Not registered
5.	Booking date	05.08.2010
6.	Date of execution of apartment buyer's agreement	31.01. 2011
7.	Payment plan	Construction linked payment plan
8.	Total sale consideration	Rs. 49,98,998/-/-
9.	Total amount paid by the complainant till date	Rs. 45,14,778/-
10.	Percentage of consideration amount	Approx. 97 Percent
11.	Date of delivery of possession as per clause 16(a)(i) of office space buyer's agreement (30 months + 120 days grace period from the date of execution of agreement)	31.11.2013
12.	Delay of number of years / months/ days till 30.01.2018	4 years, 9 months, 16 days
13.	Penalty Clause as per apartment buyer's agreement	Clause 18(a) i.e. interest calculated at 9% p.a. S.I. on the amount paid by the complainant.
14.	Date of receipt of OC	08.01.2018



3. The details provided above have been checked and found on record as per the case file available. An office space buyer agreement is available on record for Unit No. EPO-08-036, 8th floor according to which the possession of the aforesaid unit was to be delivered by 31.11.2013. The promoter has failed to deliver the possession of the said unit to the complainant by the due date as per office space buyer agreement. 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 11.04.2018. The case came up for hearing on 11.04.2018, 09.05.2018, 06.06.2018, 12.07.2018, 25.07.2018, 16.08.2018 and 12.09.2018. The reply has been filed on behalf of the respondent on 06.06.2018.



FACTS OF COMPLAINT

5. The complainant submitted that the Respondent Company is in the business of development of real estate project, with the flagship company Emaar based in Dubai, having its Corporate Office in Delhi and is competent to defend the Complaint.
6. The complainant submitted that the respondent company through their representative had approached the complainant and represented that the office cum retail project named Emerald Hills will be a great investment opportunity offering world class shopping and office space (as per brochure).
7. The complainant submitted that the complainant visited the above-mentioned Gurgaon office of the respondent with complete belief in the respondent company as to adhering to the time schedule as represented by the respondent company officials, agreed to file the application form as a means of showing complainant(s) interest in the above said project.
8. The complainant submitted that the agreement to sell was crafted out on the basis of which the complainant executed the



agreement to sell and agreed to the terms and conditions as set forth under this agreement.

9. The complainant submitted that as per the agreement the respondent agreed to sell/convey/transfer the unit EPO-08-036 in the project for an amount of Rs. 46,35,223,20.00/-
10. That the complainant(s) in pursuant to the agreement to sell made booking amount of Rs. 5,00,000.00/- on 05 Aug 2010 and agreed to pay the balance consideration as per the payment plan annexed to the agreement.
11. That the agreement to sell stipulated that on delay in payments of the instalments, the purchaser/complainant discharged interest @24% per annum compounded at the time of every succeeding instalment from the due date of instalment, till the date of payment.
12. That the complainant has paid almost 99% of the sale consideration towards the cost of EPO-08-036 till 02 Aug 2017.
13. That the respondent company committed under the agreement to sell that it is their commitment to give



possession of the unit to the complainant within thirty-four (34) months in respect of EPO-08-036 from the date of execution of the agreement to sell.

14. That the agreement to sell stipulates that on delay in handing over the possession of the Unit EPO-08-036, to the complainant, the complainant shall be entitled to an interest calculated at 9% per annum, (simple interest) on the amount paid by the complainant(s) for such a period.
15. That the respondent has not constructed 3rd basement which is also confirmed through the occupation certificate. The respondent has breached the office space buyer agreement. Moreover, as per the construction plan, the respondent can raise the 4th demand on completion of 3rd basement roof slab. Whereas, the respondent has raised the demand alleging stage of construction of 3rd basement roof slab on June 31, 2012. The same reflects in the statement of account also. The act of respondent is illegal and amounts to breach of contract.



ISSUES RAISED BY THE COMPLAINANT:

- i. **Whether the respondent delayed in handing over the possession of the unit to the complainant?**
- ii. **Whether the complainant is liable to pay late fee of Rs. 1,22,776 as demanded by the respondent even though respondent is solely responsible for the delay?**
- iii. **Whether the respondent is liable to pay interest amounting to Rs. 16,92,938/- to the complainant on account of failure to deliver the possession by the due date?**
- iv. **Whether the complainant is entitled for refund with interest and compensation?**

RELIEF SOUGHT BY THE RESPONDENT

- i. **Direct the respondent to pay interest at the prescribed rate for every month of delay till the handing over of possession.**



REPLY ON BEHALF OF RESPONDENT

8. The respondent has raised various preliminary objections and submissions challenging the jurisdiction of this hon'ble authority. They are as follows:
9. The project of the respondent is not an ongoing project as per rule 2(1)(o). In the present case, the respondent had applied for an occupation certificate for the said project on 22.05.2017 which is prior to the date of publication of the rules, and hence the project is not an ongoing project.
10. In the present case, the application was made to the competent authority on 22.11.2017 and the same was deemed to be granted after 60 days i.e. 21.06.2017 which is prior the publication of the HRERA rules.
11. The complaint for compensation and interest under section 12,14,18 and 19 of the RERA act is maintainable only before the adjudicating officer.
12. The complaint is not supported by any proper affidavit with a proper verification.



13. Further, the complainant being an investor cannot urge before this authority any relief provided under the act as the objects and preamble of the RERA Act clearly state that RERA has been enacted for effective protection of consumers and to protect their interests. Thus, RERA has not been enacted to protect the interest of investors. The complainant has only bought the said unit for speculative investment and does not intend to stay in the unit. Since, the complainant is not an allottee under the Act but an investor, the authority does not have jurisdiction to decide this complaint.
14. The respondent has stated that the complainant has defaulted in making the payments of the instalments within the time prescribed which resulted in delay payment charges.
15. The respondent has further contended that they have received the occupation certificate on 08.01.2018 and have already issued the letter of possession dated 30.01.2018 for the said commercial unit along with the final payment request letter. However, even after receiving the notice of possession dated 30.01.2018 and various reminders, the complainant has not made all the payments till date.



16. The complainant is not entitled for the compensation as the complainant is a defaulter, having delayed making payments in time. The same was also conveyed to the complainant vide email dated February 24, 2018.

17. The respondent has stated that despite several adversities, they have completed the construction of the said project and has already obtained the occupation certificate for the commercial unit and subsequently offered the possession to the complainant.

DETERMINATION OF THE ISSUES:

18. As per clause 16(a)(i), the respondent company was bound to deliver the possession of the said unit within 30 months with a grace period of 4 months to the complainant which comes to 31.11.2013 but the respondent delivered the possession of the said unit on 30.01.2018 thereby delaying the possession by 4 years and 2 months.

19. The allottee is bound to make timely payments as per the payment plan annexed with the office space buyer agreement.



Hence, the complainant is required to clear all the dues against the said unit to the promoter.

20. The respondent is in breach of the terms of the agreement as the respondent did not deliver the possession of the said unit within the stipulated time and moreover did not pay compensation to the complainant as per clause 18(a) of the agreement to sell.

21. Keeping in view that the project is completed, and the respondent has offered possession of the said unit to the complainant, the authority is of the view that in case refund is allowed in the present complaint, it will have adverse effect on the other allottees. Therefore, the refund cannot be allowed in the present complaint.

22. The authority is of the considered opinion that the respondent has failed to deliver the possession of the said unit to the complainant by the committed date i.e. 31.11.2013 as per the said agreement and the possession has been delayed by 4 years and 2 months till 30.01.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.



DECISION AND DIRECTIONS OF THE AUTHORITY:

23. After taking into consideration all the material facts as adduced and produced by both the parties, the below noted directions are being issued in the interest of justice and fair play. 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.

24. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) 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. 31.11.2013 till the actual date of handing over of the possession i.e. 30.01.2018.



(ii) The respondent is directed to pay interest accrued from to 31.11.2013 to 30.01.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision.

25. The authority has decided to take suo-motu cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

26. Since written arguments have already been placed on record, the matter stands disposed of.

27. The order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Haryana Real Estate Regulatory Authority, Gurugram

Dated : 16.10.2018

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 16.10.2018
Complaint No.	14/2018 case titled as Mr. Sandeep Singh Gill V/s M/s Emaar MGF Land Ltd.
Complainant	Mr. Sandeep Singh Gill
Represented through	Shri Sukhbir Yadav, Advocate for the complainant.
Respondent	M/s Emaar MGF Land Ltd.
Respondent Represented through	Shri Dheeraj Kapoor, Advocate for the respondent.
Last date of hearing	12.09.2018
Proceeding Recorded by	Naresh Kumari
<p style="text-align: center;">Proceedings</p> <p>Since written arguments have already been placed on record, the matter stands disposed of. Detailed order will follow. File be consigned to the Registry.</p> <div style="display: flex; justify-content: space-between;"> <div> <p>Samir Kumar (Member)</p> </div> <div> <p>Subhash Chander Kush (Member)</p> </div> </div>	