

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

**Complaint No. : 267 of 2018**  
**Date of First hearing : 27.06.2018**  
**Date of Decision : 11.09.2018**

Smt. Geetika Punchhi, R/o D-41, DLF Icon,  
Phase-V, Gurugram, Haryana-122002 **...Complainant**

Versus

M/s Emaar MGF Land Limited  
Office at: ECE House, 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 Pradeep Sharma Advocate for the complainant  
Smt. Monika Balhara, legal representative with Shri Dheeraj Kapoor, Advocate Advocate for the respondent

**ORDER**

1. A complaint dated 14.05.2018 was filed under section 31 of the Real Estate (regulation & development) Act, 2016 read with rule 28 of the Haryana Real Estate (regulation and development) Rules, 2017 by the complainant Smt. Geetika Punchhi against the





promoter M/s Emaar MGF Land Limited on account of violation of clause 10(a) of the builder-buyer agreement executed on 05.05.2011 for unit no. PGN-06-0505 in the project "Palm 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     | "Palm Gardens" in sector 83, Village Kherki Daula, Gurugram   |
| 2.  | Unit no.                             | PGN-06-0505   |
| 3.  | Project area                         | 21.90 Acres   |
| 4.  | Registered/ Not Registered           | Registered (330 of 2017)  |
| 5.  | DTCP license                         | 108 dated 18.12.2010  |
| 6.  | Date of booking                      | 05.05.2011  |
| 7.  | Date of builder buyer agreement      | 05.05.2011  |
| 8.  | Total consideration                  | Rs. 93,92,411/- (As per the BBA)<br>Rs. 96,59,567.82/- (Aforesaid amount along with Service tax, as per Schedule of payment-Annexure 3) |
| 9.  | Total amount paid by the complainant | Rs. 93,19,991/-   |
| 10. | Payment plan                         | Construction Linked Plan  |
| 11. | Date of delivery of possession       | Clause 10(a) - 36 months from date of start of construction(09.08.201   |





|     |  |  |
|-----|--|--|
|     |  | 2) + 3 months grace period i.e. 09.11.2015     |
| 12. | Delay of number of months/ years upto 11.09.2018               | 2 years 10 months                              |
| 13. | Penalty clause as per builder buyer agreement dated 05.05.2011 | Clause 12(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. PGN-06-0505 according to which the possession of the aforesaid unit was to be delivered by 09.11.2015. 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 complaint

5. On 05.05.2011, one Mrs. Chand Chadha (first buyer) booked a unit in the project named "Palm Gardens" in Sector 83, Village Kherki Daula, Gurugram by paying an advance amount of Rs 7,50,000/- (Rs. Seven lacs fifty thousand) to the respondent.





Accordingly the first buyer was allotted a unit bearing PGN-06-0505 on the 5<sup>th</sup> floor.

6. On 05.05.2011, a builder buyer agreement was entered into between the parties. Thereafter, the said first buyer sold the alleged apartment in favour of Mrs. Sudha Misra wife of Shri Anoop Misra and in terms of application/affidavit dated 10.10.2011, the said apartment was ordered to be transferred in the name of Mrs. Sudha Misra and an endorsement in this regard was made. As per the demands raised by the respondent, the said Mrs. Chand Chadha(first buyer) and Mrs. Sudha Misra (second buyer) have been making the payments of the sale consideration. Whenever there was a delay of few days, the respondent has charged the interest over the delayed payments. Thereafter, in terms application/affidavit dated 07.02.2013, the said apartment was ordered to be transferred in the name of the complainant — Geetika Punchhi and accordingly, an endorsement in favour of the complainant was made and a nomination letter was issued in the name of the complainant.

7. The complainant submitted that as per clause 10(a) of the agreement, the construction should have been completed within 36 months + 3 months grace period from the date of start of construction. However, till date the possession of the said unit





has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 93,19,991/- (*Rs. ninety three lakhs nineteen thousand nine hundred ninety one only*). Further, whenever there was delay, the respondent charged interest @ 24% per annum over the delayed payments.

8. The complainant submitted that she was made to pay for the super area of the flat which also covers the area which a builder/developer cannot charge from the allottee. As per annexure IV of the agreement dated 05.05.2011 the area of the apartment is 84% of the super area. It has also been mentioned in the same annexure that the ratio of apartment area to the super area may undergo change till the completion of the building/project. In such circumstances it has become difficult for the complainant to decipher as to how much of the excess amount has been charged 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 Real Estate (Regulation and Development) Act, 2016.



9. The complainant submitted that despite repeated calls to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Complainant further submitted that given the inconsistent progress and lack of commitment to complete the project on time, the complainant decided to terminate the agreement.

10. As per clause 10(a) of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 09.11.2015. The clause regarding possession of the said unit is reproduced below:

*" 10. Possession*

*10(a)- "..... the company proposes to handover the possession of the unit within 36 months from date of start of construction, subject to timely compliance of the provisions of the buyer's agreement by the allottee. The allottee(s) agrees and understands that the company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project."*





**Issues raised by the complainant**

- I. Whether the promoter is under the obligation to hand over the flat as per buyer agreement ?
- II. Whether the promoter is liable to pay charges @ 7.50/- per sq. ft. on the super area that is 1850 sq. ft. and also interest @ 24% on the amount of Rs. 93, 19,991/- (*Rs. ninety three lakhs nineteen thousand nine hundred ninety one only*) w.e.f. 09.08.2015 till the time the possession of the flat is handed over to the complainant?
- 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 Real Estate (Regulation and Development) Act, 2016?
- IV. Whether the complainant is entitled to grant of compensation of for inconvenience, mental harassment and damages suffered by complainant due to deficiency in service on the part of the respondent?

Whether the complainant is entitled to grant of compensation of towards cost of litigation, documentation charges, representation and etc. ?

**Relief sought**





- I. To direct the respondent to hand over the possession of the flat bearing Unit No PGN-06-0505 ad-measuring 171.87 Sq. Mtrs. (1850 sq. ft. Approx.) in the project.
- II. To direct the respondent to pay charges @ 7.50/- per sq. ft. of the super area that is 1850 sq. ft. and also interest @ 24% on the amount of Rs. 93,19,991/- (*Rs. ninety three lakhs nineteen thousand nine hundred ninety one only*) w.e.f. 03.08.2015 till the time the possession is handed over to the complainant.

**Respondent's reply**

11. The respondent submitted that the statement of objects and reasons as well as the preamble of the said Act clearly states that the RERA is enacted for effective consumer in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of consumer as provided under the consumer protection Act, 1986 has to be referred to for adjudication of the present complaint. The complainant is an investor and not a consumer and nowhere in the present complaint has the complainant pleaded as to how the complainant is a consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has not come with clean hands and has concealed the material fact that apart from the







apartment unit in question, the complainant has also invested in two more units, i.e. PGN-02-0401 in the same project of the respondent through her father-in-law and mother-in-law and unit no. IG-05-1101 in another project of the respondent and for which separate complaints are pending before this authority and the transaction therefore is relatable to commercial purpose. This has been the consistent view of the Hon'ble National Consumer Disputes Redressal Commission, the complaint is liable to be dismissed on this ground alone. Further, the complainant is already the owner and resident of I-1102, Spring Field Apartment, Sarajpur Field Bangalore-560102(address mentioned in the personal detail form) and also D-41, DLF Icon, Phase-V, Gurugram.

12. The respondent submitted that the complainant is a defaulter, having deliberately failed to make the payment of various instalments within the time prescribed, which resulted in delay payment charges as reflected in the Statement of account dated 11.06.2018.

13. The respondent further submitted that they have continued with the construction of the project and is in the process of completing the construction of the project and should be able to apply for the occupation certificate by 31.12.2018.





However, as the complainant was only a speculative investor and not interested in taking over the possession of the said apartment and because of slump in the real estate market, the complainant failed to make the payments in time.

14. Respondent further submits that the agreement in question was executed much prior to coming into force of said Act or said Rules. The adjudication of the complaint for interest and compensation, if any, has to be executed in terms of the said Act or said rules and no other agreement.

15. Respondent denied that the respondent has not disclosed the carpet area or is not entitled to charge on the basis of super area or that the super area covers any area which the respondent cannot charge from the allottees or that any excess amount has been charged.

### Issues decided

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

16. In regard to the first and second issue raised by the complainant, the promoter undertakes to hand over the possession till 09.11.2015 as per the buyer's agreement. However, as the promoter has failed to fulfil his obligation under





section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, 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.*

17. In regard to third issue raised by the complainant, the respondent has denied that the respondent has not disclosed the carpet area or is not entitled to charge on the basis of super area or that the super area covers any area which the respondent cannot charge from the allottees or that any excess amount has been charged.



18. As per the fourth and fifth issue raised by the complainant, the complainant can seek the relief of compensation by approaching the Adjudicating Officer.
19. The complainant makes 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.”

20. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act 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**

21. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

22. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that as per the respondent, they are in the process of completing the construction of the project and should be able to apply for the occupation certificate by 31.12.2018. Further, the counsel for the complaint submitted that he is restricting the prayer to the extent of seeking interest and possession. However, the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants for every month of delay on the 10<sup>th</sup> of every succeeding month from the due date of possession, i.e. 09.11.2015 till the handing over the possession of the unit. The respondent is also directed to pay the amount of interest at the prescribed rate from 09.11.2015 to 11.09.2018 on the deposited amount within 90 days from the day of this order. The complainants must wait for the respondent to fulfil its commitment and deliver the possession and in case of any default in the handing over of possession,



penal consequences may follow and the complainants can approach this authority for redressal of their grievance. Further, the complainants must also complete the payment due on their part.

23. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

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

24. 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 directed to give the physical possession of the said flat to the complainants on the date committed by the respondent for handing over the possession.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from 09.11.2015 to 11.09.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10th of every succeeding month.



(iii) If the possession is not given on the date committed by the respondent then the complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

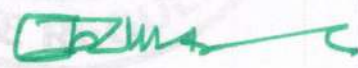
25. The complaint is disposed of accordingly.

26. The order is pronounced.

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

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

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

Haryana Real Estate Regulatory Authority, Gurugram



**PROCEEDINGS OF THE DAY**

|                                |   |
|--------------------------------|---|
| Day and Date                   | Tuesday and 11.09.2018  |
| Complaint No.                  | 267/2018 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, Palm Gardens, Sector 83, village Kherki Daula, Gurugram. The Builder Buyer agreement was executed on 5.5.2011 and as per clause **10 (a)** of the agreement, the possession of the said unit was to be handed over to the complainant within **36** months from the date of start of construction plus grace period of **3** months. The date of start of construction was 9.8.2012 as such, the possession was to be handed by 9.11.2015.



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. 9.11.2015 at the prescribed rate of interest till the handing over possession of the unit. Thus, the respondent is directed to give interest at the prescribed rate i.e. 10.45% from due date of possession i.e. 9.11.2015 within 90 days till today. Thereafter the respondent shall pay interest by 10<sup>th</sup> of every subsequent month till actual 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