

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 11.12.2018
Complaint No.	573/2018 case titled as Mr. Raghav Manocha & anr V/S M/S Emaar MGF Land Ltd.
Complainant	Mr. Raghav Manocha & anr
Represented through	Shri Vibhor Bagga, Advocate for the complainant
Respondent	M/S Emaar MGF Land Ltd.
Respondent Represented through	Shri Ketan Luthra, authorized representative with Shri Ishaan Dang Advocate for the respondent.
Last date of hearing	20.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

As per the record, the **project is not registered**, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for imposing penalty for violation of section 3 (1) of the Act be issued urgently for non-registration of the project.

It has been stated by the respondent that they had already received occupation certificate vide No.543 dated 8.1.2018, copy is available as Annexure R-43 in the complaint. However, a perusal of the occupation certificate depicts that the fire certificate has been received on 20.12.2017. It implies that the occupation certificate received is incomplete, as such, the

earlier contention w.r.t. non-registration of project gets fortified. The builder/respondent had offered possession to the buyer on 23.4.2018 and since the respondent has started charging holding charges which are not tenable since he has not received complete occupation certificate. In these circumstances, the builder is not entitled for charging holding charges. It has been stated by the complainant that he has already made complete payment w.r.t. the flat/unit No.EEA-B-F01-06 in Emerald Estate, Sector-65, Gurugram. In view of the prevailing fact, the builder/respondent and buyer are directed to sit together and sort out their contention as per the final calculation sheet and finalized the matter. Respondent is directed to give actual physical possession of the unit to the complainant within 15 days.

As per clause 11 (a) of Builder Buyer Agreement dated 17.3.2010 for unit No. No.EEA-B-F01-06 in Emerald Estate, Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of commencement of construction i.e. **26.8.2010** which comes out to be 26.2.2014. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **26.2.2014 till 24.3.2018**, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The respondent is directed to give delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum for delayed period to the buyer by adjusting the interest amount already adjusted in the statement of

account. This interest amount be paid to the complainant within a period of 90 days from today.

Complaint stands disposed of accordingly. 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. : 573 of 2018
Date of first hearing: 20.9.2018
Date of Decision : 11.12.2018

Mr. Raghav Manocha and
Mr. Abhinav Manocha
R/o: 134, Ground floor,
Tagore park, New Delhi

... Complainants

Versus

M/s Emaar MGF Land Limited
Office at: Emaar Business Park, MG Road,
Sikanderpur, Sector 28, Gurugram-122001

... Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Vibhor Bagga Advocate for the complainants
Shri Ketan Luthra, legal
representative with Shri
Ishaan Dang Advocate for the respondent

ORDER

1. A complaint dated 23.7.2018 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 complainants Mr. Raghav Manocha and Mr. Abhinav Manocha against the promoter



M/s Emaar MGF land limited in respect of apartment/unit described below in the project 'Emerald Estate', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 17.3.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Emerald Estate" Sector 65, Gurugram
2.	Nature of project	Group housing colony
3.	Unit No.	EEA-B-F01-06
4.	Unit area	1020 sq. ft'
5.	Registered/ Not Registered	Not registered
6.	DTCP license	License no.6 dated 17.1.2008
7.	Date of builder buyer agreement	17.3.2010
8.	Total consideration	Rs. 41,43,880/-
9.	Total amount paid by the complainant	Rs 41,43,880/-
10.	Percentage of amount paid	100%
11.	Payment plan	Construction linked plan



12.	Offer of possession	23.4.2018
13.	Due date of delivery of possession Clause 11(a)- 36 months from the date of commencement of construction + 6 months grace period.	26.2.2014
14.	Delay of number of months/ years upto 23.4.2018	4 years 1 month 28 days
15.	Penalty clause as per builder buyer agreement dated 17.3.2010	Clause 13(a) i.e. Rs.5/- per sq. ft' per month of super area.

4. 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 commercial space no. EEA-B-F01-06 according to which the possession of the aforesaid unit was to be delivered by 26.2.2014. The promoter has failed to deliver the possession of the said unit till the due date of possession to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 20.9.2018. The reply has been filed on behalf of the respondent.



FACTS OF THE CASE

6. On 17.3.2010, Mrs. Murti Chhikara and Mr. Siddharth Chhikara entered into a flat buyer's agreement with the respondent and purchased unit no. EEA-B-F01-06 on first floor in block-B for Rs.41,43,880.
7. The original owners sold the said unit to Sh. Dinesh Singh and via affidavit dated 10.5.2012 it was endorsed in the name of Sh. Dinesh Singh by the respondent.
8. On 5.9.2012 the complainants purchased the said unit from Sh. Dinesh Singh vide agreement to sell and the respondent also transferred the said unit to the complainants after charging transfer fee.
9. On 23.4.2018 the respondent offered possession to the complainant and demanded Rs.9,36,716/- on account of various heads and did not adjust interest for delayed possession.

9. ISSUES RAISED BY THE COMPLAINANT

- I. **Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant and whether the respondent**



is liable to pay interest @ 24% p.a to the complainant?

II. Whether the respondent is liable to compensate the complainant for failure in handing over the possession of the units?

III. Whether the respondent can sell super area in place of carpet area to the allottees?

IV. Whether the respondent is rightful in charging GST from the complainant, which has at present become payable to the government on account of failure on the part of the respondent in handing over the possession on time?

V. Whether the respondent is liable for prosecution under section 59 of RERA for not registering itself with this hon'ble authority?



10. RELIEF SOUGHT

I. To refund the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas.

- II. To provide the interest on the delayed possession @24% p.a. from the date of amount received by the respondent company.
- III. To impose penalty u/s 59 for contravention u/s 3 of the RERA Act, 2016.
- IV. To direct the respondent to waive off the GST as the same wouldn't have accrued if possession was offered by the respondent on time.

REPLY ON BEHALF OF THE RESPONDENTS

11. The respondent stated that the present complaint is not maintainable in law or facts. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. Application for occupation certificate was made on 30.6.2017 which is before the notification of the Haryana Real Estate (Regulation and Development) Rules 2017 and the same was received on 8.1.2018. Thus, the project is not an 'on-going project'. The present complaint is liable to be dismissed on this ground alone.

10. The respondent submitted that the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the apartment booked by the complainant. 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.

11. The offer of possession was made to the complainant on 23.4.2018 and the complainants were called upon to remit the balance payment including the delayed payment charges, but the complainant did not complete the necessary formalities for obtaining possession, which is a lapse on the part of the complainant.

12. Respondent further submits that the complainant had been irregular in making payments due to which many reminders were sent and even demand notices were sent to the complainant to clear their outstanding dues.

13. Respondent submitted that the construction of the project/apartment in question stands completed and the respondent had already applied for the occupation certificate and had been granted the same. The respondent company has already handed over the possession to many allottees and the conveyance deed for the same has been executed.

14. Respondent submits that the demands raised by the promoter is as per the space buyers agreement and there is no lapse or default on the part of respondent. It is the



complainants who have defaulted on not obtaining the possession on time and have initiated a false and frivolous complaint.

DETERMINATION OF ISSUES

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

15. With respect to **first issue** raised by the complainant, the clause 11(a) of the agreement is reproduced hereunder:

“36 months from the date of commencement of construction + 6 months grace period.”

The due date comes out to be 26.2.2014 and the possession was offered on 23.4.2018 which means that there is a delay of 4 years 9 months 28 days till the offer of possession. Regarding payment of interest for delay in delivery of possession the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The



authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate which is SBI MCLR highest lending rate + 2% per annum on the amount deposited by the complainant with the promoter from the due date of possession i.e. 26.2.2014 up to the date of offer of possession i.e. 23.4.2018.

16. With respect to **second issue, Simmi Sikka V/s M/s EMAAR MGF Land Ltd. (7 of 2018), on 21.08.2018** has held that this authority is not the appropriate forum for providing compensation and the same shall be filed with the adjudicating officer.
17. With respect to the **third issue**, the space buyers' agreement is sacrosanct as regards the dealings between parties. Clause 1.1 provides description of the property which mentions about sale of super area and the buyer has signed the agreement.
18. Regarding the **fourth issue**, the respondent has failed to provide the possession of the residential space to the complainant within the stipulated time frame as per the clause 11(a) of the space buyer agreement dated 17.3.2010. Due to this the complainant has to pay GST charges also



which they wouldn't have paid if the respondent had given the possession of the residential space within the prescribed time limit.

19. With respect to the **fifth issue** raised by the complainants, the promoter is liable to get itself registered with this hon'ble authority under RERA Act, 2016 in terms of section 3(1) first proviso of the act which provides that the projects that are ongoing on the date of commencement of this act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act i.e. three months from 1.5.2017. The promoter received the occupation certificate on 8.1.2018 and therefore cannot claim exception under this provision. Even though the application for occupation certificate was submitted on 30.6.2017, it was held in the landmark case of ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd. (7 of 2018)***, on **21.08.2018** delivered by the hon'ble authority that incomplete application is no application in the eye of law. From the perusal of the occupation certificate, it is clear that the no objection from fire service was received on 29.11.2017 and the report from chief engineer was obtain on 16.11.2017. Therefore the



promoter submitted an incomplete application for occupation certificate he cannot be benefited under the deemed provision and is not exempted from registration u/s 3 of the Act.

FINDINGS OF THE AUTHORITY

20. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage.
21. The retail space buyer agreement was executed on 17.3.2010 and the due date of handing over possession as per the said agreement is 26.2.2014. However, the respondent sent letter of offer of possession to the complainant on 23.4.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till the letter of offer of possession and accordingly the possession has been delayed by four years, one month and twenty-eight days. The delay compensation payable by the respondent is



Rs.5/- per sq. ft' per month of super area on the amount(s) paid by the allottee(s) for such period of delay as per clause 13(a) of retail space buyer agreement. Now the matter is before the authority not for compensation but for fulfilment of obligation by the promoter as per section 18(1) due to failure to give possession on the due date as per agreement for sale.

22. As the possession of the apartment was to be delivered by 26.2.2014, 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.
23. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. 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.
24. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.



DECISIONS AND DIRECTIONS OF THE AUTHORITY

25. 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 the record, the **project is not registered**, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for imposing penalty for violation of section 3 (1) of the Act be issued urgently for non-registration of the project.
- (ii) It has been stated by the respondent that they had already received occupation certificate vide No.543 dated 8.1.2018, copy is available as annexure R-43 in the complaint. However, a perusal of the occupation certificate depicts that the fire certificate has been received on 20.12.2017. It implies that the occupation certificate received is incomplete, as such, the earlier contention w.r.t.



non-registration of project gets fortified. The builder/respondent had offered possession to the buyer on 23.4.2018 and since then respondent has started charging holding charges which are not tenable since he has not received complete occupation certificate. In these circumstances, the builder is not entitled for charging holding charges. It has been stated by the complainant that he has already made complete payment w.r.t. the flat/unit No.EEA-B-F01-06 in Emerald Estate, Sector-65, Gurugram. In view of the prevailing fact, the builder/respondent and buyer are directed to sit together and sort out their contention as per the final calculation sheet and finalized the matter. Respondent is directed to give actual physical possession of the unit to the complainant within 15 days.

- (iii) As per clause 11 (a) of builder buyer agreement dated 17.3.2010 for unit no. EEA-B-F01-06 in Emerald Estate, Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of commencement of construction i.e.



26.8.2010 which comes out to be **26.2.2014**. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **26.2.2014 till 24.3.2018**, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

- (iv) The respondent is directed to give delayed possession charges of **Rs.18,53,163.50** at the prescribed rate of interest i.e. 10.75% per annum for delayed period to the buyer by adjusting the interest amount already adjusted in the statement of account. This interest amount be paid to the complainant within a period of 90 days from today.

26. The order is pronounced.

27. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.12.2018