

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 11.12.2018
Complaint No.	566/2018 Case titled as Ms. Rashi Bhasin V/S M/S Emaar MGF Land Ltd.
Complainant	Ms. Rashi Bhasin
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	18.9.2018
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 on 25.1.2018. 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 19.3.2018 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.F0703, Tower-Q, 'the Enclave' at Palm Drive, 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 14 (a) of Builder Buyer Agreement dated 1.7.2010 for unit No.F0703, Tower-Q, 'the Enclave' at Palm Drive, Gurugram, possession was to be handed over to the complainant within a period of 24 months + 6 months grace period from the date of commencement of construction i.e. 21.8.2010 which comes out to be 21.2.2013. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f. **21.2.2013 till 19.3.2018**, 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.

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Complaint stands disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
11.12.2018

Subhash Chander Kush
(Member)
11.12.2018

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

Complaint No. : 566 of 2018
First date of hearing : 18.09.2018
Date of Decision : 11.12.2018

Ms. Rashi Bhasin, D/o Sh. Subash Bhasin,
R/o. W- 19/15 Western Avenue,
Sainik Farms, New Delhi

Complainant

Versus

M/s Emaar MGF Land Ltd.,
(Through its Directors)
Address: Mg road, Sikanderpur,
Sector -28, Gurugram - 122002
Regd. Office: Emaar MGF Business Park,
ECE House, 28 Kasturba Gandhi Marg,
New Delhi- 110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Vibhor Bagga Advocate for the complainant.
Shri Ketan Luthra Authorized representative of the respondent
Shri Ishaan Dang Advocate for the respondent

ORDER

1. A complaint dated 19.07.2018 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, Ms. Rashi Bhasin, against the promoter, Emaar MGF Land Ltd. on account of violation of clause 14(a) of buyer's agreement dated 01.07.2010 for the delay in handing over the possession, which is an obligation under section 11(4)(a) of the Act *ibid*, in respect of apartment/unit no. TEN-Q-F07-03, in tower Q, admeasuring 1920 sq. ft. covered area of the project, namely 'the enclave' at palm drive, Gurugram, Haryana. The respondent has obtained the occupancy certificate from the concerned authority on 25.01.2018 and has offered possession vide letter dated 19.03.2018.

2. Since, the flat buyer's agreement has been executed on 01.07.2010 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 case are as under: -

1.	Name and location of the Project	'the enclave' at palm drive, Gurugram, Haryana
2.	Apartment/Unit No.	TEN-Q-F07-03, tower Q
3.	Nature of real estate project	Residential apartment complex
4.	Admeasuring area of the apartment	1920 sq. ft. super area.
5.	DTCP license no.	DS 2007/24799 dated 27.09.2007
6.	RERA registered/unregistered.	unregistered
7.	Date of execution of apartment buyer's agreement between the original allottee and the respondent	01.07.2010
8.	Date of agreement for sale between the complainant and the original allottee	02.03.2012
9.	Payment plan	Construction linked payment plan
10.	Total consideration as per the agreement for sale dated 02.03.2012	Rs.73,09,416/-
11.	Total amount paid by the complainant till date	Rs.66,63,890/-
12.	Date of commencement of construction as per statement of accounts	21.08.2010
13.	Due date of delivery of possession as per clause 14(a) of the buyer's agreement dated 01.07.2010	21.02.2013 (24 months+ 6 months' grace period from the date of commencement of construction)
14.	Date of offer of possession letter	19.03.2018



15.	Total delay in offer of possession till date	more than 5 years (approx.)
16.	Penalty Clause 16(a) as per apartment buyer's agreement dated 05.03.2008	Compensation at the rate of Rs. 5/- per sq. ft. per month of super area till notice of possession.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 01.07.2010 (reference clause 14(a) of the agreement) of the original allottee and agreement for sale dated 02.03.2012. The respondent has not delivered the possession of the said unit to the complainant within stipulated period.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 11.12.2018. The case came up for hearing on 18.09.2018 and 11.12.2018. The reply has been filed by the respondent on 18.09.2018 which has been perused.



Facts of the Complaint

6. Briefly stated facts relevant for the disposal of the present complaint are that one Mr. Kanwaldeep Mann and Mrs.

Sukhjit Kaur (original allottee) jointly entered into buyer's agreement with the respondent and M/s. Conscient Infrastructure P. Ltd. for the purchase of apartment/unit no. TEN-Q-F07-07, 7th floor in tower Q of the project, namely 'the enclave' located at the palm drive, Gurugram, Haryana.

7. The total consideration of the said unit no. TEN- Q-F07-07 as per buyer's agreement dated 01.07.2010 was fixed at Rs. 60,35,184/- as against which the original allottees have made total payment of Rs. 28,06,574/- under the construction linked payment plan. As per clause 14(a) of the buyer's agreement dated 01.07.2010, possession of the unit was to be delivered within 24 months plus 6 months' grace period from the date of commencement of construction. As per the statement of accounts annexed the construction was commenced on 21.08.2010, so the possession was to be delivered by 21.02.2013.
8. Thereafter, the subject unit was purchased by the complainant from the original allottees vide agreement for sale dated 02.03.2012 and the total consideration of the unit no. TEN-Q-F07-07, 7th floor in tower Q of the project, was fixed at Rs. 73,09,416/-. The complainant has



made total payment of Rs. 62,81,029/- on various dates as per the payment schedule to the respondent.

9. The complainant alleged that the respondent has offered possession of the unit no. TEN-Q-F07-07, 7th floor in tower Q of the project on 19.03.2018 i.e. after a delay of more than 5 years with an additional demand of Rs. 7,36,700/- from the complainant under various heads like administrative charges, electricity charges, GST, delayed payment, etc. without adjusting the interest and compensation on account of delay in handing over the possession.

Issues to be decided: -

- i. Whether the respondent has caused exorbitant delay in handing over the possession of the unit to the complainant and further even on present date is not in a position to hand over the possession of the units to the complainant?
- ii. Whether the respondent is liable to pay interest @ 24% p.a. to the complainant on account of delay in handing over the possession of the units and which interest should be paid on the amount from the date when the respondent received the said amount?



- iii. Whether the act of respondent in selling the super area instead of carpet area is legal?
- iv. Whether the respondent is liable to compensate the complainant for failure in handing over the possession of the units?
- v. 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, as if the possession was given on time the question of GST would never arise?
- vi. Whether the respondent is liable for prosecution under section 59 of the RERA, 2016 for the failure on the part of the respondent to register itself with this hon'ble authority under the Act?

Reliefs Sought: -

10. The complainant is seeking for the following reliefs: -

- i. Direct the respondent to make payment of interest @ 24% p.a. for delay in handing over the possession and which interest should be awarded from the respective date of payments made by the complainant to the respondent.



- ii. Direct the respondent to waive off the GST being demanded as the same would not had ever been accrued to be payable if the respondent would have offered the possession on time.
- iii. Direct the respondent to refund the monies collected by the complainant by way of sale of super area instead of carpet area.
- iv. Orders may be passed against the respondent in terms of section 59 of the RERA for the failure on the part of the respondent to register itself with the hon'ble authority under the act.

Respondent's Reply: -

11. The respondent contended that the present complaint is not maintainable and the hon'ble authority has no jurisdiction to entertain the present complaint. The provisions of the Real Estate (Regulation and Development) act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment in question was made on 01.07.2017 i.e. before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017. The occupation certificate has been thereafter issue on 25.01.2018. Thus, the project in question is not an



'ongoing project' under rule 2(1)(o) of the Rules. The project does not require registration and consequently has not been registered under the provision of the Act.

12. The respondent contended that the complaint pertaining to refunds, compensation and interest for the alleged delay in delivering possession of the apartment in question. The complaints pertaining to compensation and refund are required to be filed before the adjudicating officer under rule 29 read with section 71 of the Act. The present complaint is liable to be dismissed on this ground alone.

13. The complainant has no locus standi or cause of action to file the present complaint. The respondent contended that the complainant is a wilful defaulter who has failed to make payment of the sale consideration as per the payment plan.

14. The apartment/unit no. TEN-Q-F07-07, tower Q was initially allotted to original allottee Mr. Kanwaldeep Singh Mann and Mrs. Sukhjit Kaur and buyer's agreement was executed with the said allottees on 01.07.2010.

15. The respondent submitted that the payment of Rs. 10,21,056/- paid by the original allottees towards booking amount of another flat (J-1101, the meadows) had been



adjusted against the booking amount payable by the original allottees towards the apartment in question and the balance sale consideration remained to be paid by the original allottees as per the payment plan.

16. Respondent further submitted that the apartment/unit no. TEN-Q-F07-07 was purchased by the complainant from the original allottee vide agreement for sale dated 02.03.2012 and the allotment was transferred in the name of the complainant on the joint request of the complainant and original allottee.

17. The respondent submitted that they had completed the construction of the complex and made application for issuance of occupation certificate to the concerned authority on 01.07.2017. Occupation certificate was issued by the competent authority on 25.01.2018.

18. It is submitted by the respondent that they had offered possession of the unit to the complainant vide letter dated 19.03.2018. The complainant was called upon to remit the balance payment and to complete the necessary formalities/ documentation.

19. Since the complainant has failed to make balance payment and take possession of the apartment, therefore



reminder letters was served to the complainant vide letter dated 25.04.2018 and 21.05.2018 respectively.

20. The respondent submitted that the complainant instead of taking possession of the apartment, addressed emails to the respondent claiming that compensation for delay in delivery of possession had been calculated incorrectly.

21. The respondent submitted the compensation has been calculated and credited to the account of the complainant amounted to Rs. 79,464/- whereas the complainant claimed an amount of Rs. 36,47,580/- to be payable to her. Respondent further submitted that the compensation had been calculated in accordance with the terms of buyer's agreement dated 01.07.2010.

22. The respondent submitted that in the present complaint the complainant as well as original allottees were defaulted in making timely payment of instalments on various occasions, so they are not entitled for any other compensation on account of breach of the terms of the buyer's agreement dated 01.07.2010.

23. The complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

Determination of issues: -



24. As regards **issue no. 1 and 2** raised by the complainant, it is evident from clause 14(a) of the buyer's agreement dated 01.07.2010, the respondent was liable to deliver the possession of the apartment within 24 months plus 6 months' grace period from the date of commencement of construction i.e. by 21.02.2013, however, the possession was offered to the complainant by the respondent vide letter dated 19.03.2018. hence, there is a delay of more than 5 years in giving possession to the complainant. Hence, this issue is answered in affirmative and the authority is of the view that the respondent is liable to pay the interest at the prescribed rate to the complainant for the delay in delivery of possession. The detailed direction

25. As regards **issue no. 3** raised by the complainant, it has been found from the perusal of records that the buyer's agreement dated 01.07.2010 for the apartment/unit no. TEN-Q-F07-03 was executed between the original allottee and the respondent. In the said agreement dated 01.07.2010, the admeasuring area of the unit was mentioned as 1920 sq. ft. and the original allottee as well as complainant at the time of execution of agreement for sale dated 02.03.2012 did not raise any protest/objection as regards sale of unit with super area and not in carpet



area. Since, the terms and conditions was accepted by the complainant without any protest, so he cannot raise this point at this belated stage when possession is already offered to him vide letter 19.03.2018. Hence, this issue is answered in negative.

26. As regards **issue no. 4** raised by the complainant, it is proved from the submissions made by the parties that there is a delay of more than 5 years in delivery of possession. Hence, this issue is also answered in affirmative.

27. As regards **issue no. 5** raised by the complainant, it is to be noted that GST charges are statutory dues which the purchaser are liable to pay as per the government norms. However, if the complainant is having any dispute with respect to the payment and levy of GST charges, he may approach to the Assistant GST Commissioner, Gurugram for redressal of his grievance.

28. As regards **issue no. 6** raised by the complainant, the respondent has applied for the occupation certificate on 01.07.2017 in respect of the building but has received the occupation certificate on 25.01.2018 after notification of the Haryana Real Estate (Regulation and Development)



Rules, 2017, so the project is covered under the definition of 'ongoing projects' and by not registering the project under the RERA is in violation of section 3(1) proviso and the authority has decided to take suo moto cognizance under section 59 of the Act for not getting the project registered.

Findings of the authority

29. 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.

30. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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

31. During the course of arguments, learned counsel of the respondent stated that they had already received occupation certificate on 25.01.2018. However, a perusal of occupation certificate depicts that the fire certificate has been received on 20.12.2017. It implies that the occupation certificate in possession of the respondent is incomplete.

The respondent had offered possession to the complainant on 19.03.2018 and since the respondent has started charging holding charges which are not tenable as the occupation certificate received by the respondent is incomplete. In these circumstances, the builder is not entitled for charging holding charges.

32. Learned counsel for the complainant contended that he has already made complete payment with respect to the flat/unit no. F0703, tower Q in the project 'the enclave at Palm Drive', Gurugram. In view of the prevailing fact, the respondent and complainant are directed to sit together and sort out their contention as per the final calculation sheet and finalized the matter.



33. 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 directed to deliver the possession of the apartment/ unit F0703, tower Q to the complainant within 15 days as per the offer of possession letter dated 19.03.2018.
- (ii) The respondent is directed to pay delay possession charges at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 21.02.2013 till 19.03.2018 on the paid amount of the complainant which comes to Rs.36,34,832.49/, within a period of 90 days from the date of order.
- (iii) The interest so accrued and payable to the complainant be set off from the due amounts payable by the complainant and the interest amount already adjusted in the statement of account as per the final statement of account issued by the respondent with the offer of possession letter dated 19.03.2018.



34. Since, the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for imposing penalty on account of violation of section 3(1) of the Act ibid be issued urgently for non-registration of the project.

35. The order is pronounced.

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

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated :

HARERA
GURUGRAM

