

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 05.12.2018
Complaint No.	519/2018 Case Titled As Mr. Atul Jain Vs M/s Emaar Mgf Land Ltd
Complainant	Mr. Atul Jain
Represented through	S/Shri Abhay Jain and Kamal Sharma Advocates for the complainant.
Respondent	M/s Emaar MGF Land Ltd
Respondent Represented through	Shri Ketan Luthra, authorized representative with Shri Ishaan Dang, Advocate.
Last date of hearing	11.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Case of the complainant is that he had booked an apartment/unit No.PH3-66A-0401, Block-66 A, "Palm Hills" Sector-77, Gurugram with the respondent and an agreement to this effect was executed inter-se the parties on 22.12.2010. As per clause 11 (a) of the said agreement, possession of the booked unit was to be delivered within a period of 33 months from the date of commencement of construction that was started on 25.2.2011 + 3 months grace period which comes out to be 25.2.2014 but the respondent has miserably failed to deliver the possession of the unit to the complainant.

In view of this, complainant is entitled to get prescribed rate of interest @ 10.75 % till the actual offer of possession.

However, respondent shall pay cumulative interest liability to the buyer within 90 days of this order and subsequent on 10th of every month. However, if the buyer has defaulted in making payment shall also be liable to pay interest at the rate of 10.75% per annum on delayed payment which shall be adjusted against the interest of amount due from the respondent.

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

Samir Kumar
(Member)
5.12.2018

Subhash Chander Kush
(Member)
5.12.2018

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

Complaint No. : 519 of 2018
First date of hearing: 11.09.2018
Date of Decision : 05.12.2018

Mr. Atul Jain,
R/o. Block- R/37-B, Dilshad Garden, Jhilmil,
East Delhi, New Delhi-110095

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. Office: Emaar MGF Business Park,
Mehrauli, Gurgaon road, Sikandarpur Chowk,
sector-28, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Abhay Jain and Shri Kamal Sharma – Advocates for the complainant

Shri Ketan Luthra , authorised representative along with Shri Ishaan Dang – Advocates for the respondent

ORDER

1. A complaint dated 10.07.2018 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 Mr. Atul Jain, against the promoter M/s Emaar MGF Land Ltd., in respect of



apartment/unit described below in the project 'Palm Hills', on account of violation of the section 3 of the Act ibid.

2. Since, the buyer's agreement has been executed on 22.12.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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	"Palm hills", Sector 77, Gurugram
2.	RERA registered/ unregistered.	Registered
3.	RERA Registration no.	256 of 2017
4.	Apartment/unit no.	PH3-66A-0401, 4 th floor, block 66 A
5.	Nature of real estate project	Group housing colony
6.	Total unit admeasuring	134.71 sq. mtrs. (1450 sq.ft) super area
7.	DTCP License no.	56 dated 31.08.2009
8.	Date of execution of buyer's agreement	22.12.2010
9.	Payment plan	Construction linked payment plan
10.	Total sale price	Rs. 72,29,943/- As per statement of account dated 21.07.2018
11.	Total amount paid by the complainant till date	Rs.69,80,971/- As per statement of account dated



		21.07.2018
12.	Date of delivery of possession as per clause 11(a) of buyer's agreement (33 months from the date of commencement of construction+ 3 months grace period)	25.02.2014 Date of construction- 25.02.2011
13.	Delay in handing over possession till date i.e 05.12.2018	4 years 9 months 10 days
14.	Penalty clause as per apartment buyer's agreement dated 22.11.2010	Clause 13(a) of the agreement i.e. Rs.7.50/- per sq. ft per month of the super area till the date of possession under the provision of clause 12(a), provided the allottee has completed with all the terms and conditions of the agreement.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement dated 22.10.2010 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 25.02.2014. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.7.50/- per sq. ft per month of the as per clause 13(a) of buyer's agreement dated 22.12.2010. 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 appearance. The respondent through his counsel appeared on 11.09.2018. The case came up for hearing on 11.09.2018. The reply was filed by the respondent on 11.09.2018.

Facts of the complaint

6. Briefly stating the facts of the complaint, the respondents published very attractive brochure highlighting the group housing colony to be known as “Palm Hills” at Sector 77, Gurugram, Haryana. The respondent introduced to the allottee that “Emaar MGF is a joint venture between Emaar Properties PJSC, Dubai - one of the world’s leading real estate companies and MGF Developments Ltd., India - one of India’s leading real estate developers. The respondents claimed that the company has been instrumental in bringing the largest FDI in Indian real estate sector in order to lure prospective customer to buy apartments in the said project “Palm Hills”. The respondents acclaimed that the project “Palm Hills is an exclusive planned project spread over approximately 29 acres with a panoramic view of the Aravalli Hills. The Palm Hills project was launched in 2010 with the promises to deliver by 25th November, 2013 and the huge funds has been



collected by the respondents. But till date, no possession of the apartment has been offered to the complainant.

7. That the allottee was approached by the representatives of the respondents. Their sale representatives claimed and boasted of the project 'Palm Hills' as the world class project. The Allottee was invited to the sale office and was lavishly entertained and promises were made to him that the project would be completed by November 2013, including parking, horticulture, club and other common areas. The allottee was told that the possession of the Apartment would be handed over to the buyers within 33 months from the start of construction, which was 25th February, 2011. The Allottee was impressed by their statements and oral representations and ultimately lured to pay Rs.5,00,000/- as booking amount of the said apartment in 23rd September, 2010. Afterwards, the apartment buyer's agreement was executed on 22 December 2010.
8. That the ownership of the Apartment has been transferred to the complainant by the allottee on 6th February, 2013. A letter dated 20th February, 2013 by the respondents has been sent to the complainant, Mr. Atul Jain, confirming the transfer and the allotment of the apartment to him.



9. The complainant has been living in different locations in a rented house, paying more than sixteen thousand rupees (Rs.16000/-) per month as rent. He has bought the apartment with the great expectations that he would shift to his own house shortly by November 2013.
10. That in the apartment buyer's agreement, the respondents in a clandestine manner have fraudulently and illegally charged separately which ought to be inclusive in basic sale price such as; the car Parking charges of Rs.2,00,000/-, preferential location charges of Rs.7,25,000/- and club membership charges of Rs.50,000/-.
11. The complainant further paid all instalments of payments as and when demanded by the respondents and ultimately paid Rs.69,80,971/-, a sum out of the total demand of Rs.68,87,965/-, and including an interest for delay payments of Rs.92,894/-. The gross total demanded by the respondents is inclusive of the tax payments as is visible in the Statement of Account as on 29 April 2018. The respondents have charged an interest at the rate of 24% per annum for the delay payments.
12. The complainant took a loan in 2013 for buying the apartment at interest rate of 10.75% per annum from HDFC



bank and thereafter since then the complainant is paying EMI of Rs. 1,04,000/- per month.

13. The possession of the apartment has not been handed over to the complainant, despite getting more than 98 per cent cost of the apartment. The complainant has approached the respondents many times and pleaded for delivery of possession of his apartment as per the schedule of date of possession as per the agreement.
14. The respondents did not give any justified response to his letters, emails, personal visits, telephone calls, etc seeking information about the status of the project and delivery of possession of his apartment.
15. The respondents have in an unfair manner siphoned of funds meant for project and utilised same for their own benefit for no cost. The respondents being developers, whenever in need of funds from bankers or investors ordinarily have to pay an interest on upwards of 18% per annum. However in the present scenario, the respondents utilised funds collected from the complainant and other buyers for their own good in other projects, being developed by the respondents.
16. The respondents have deliberately and wilfully indulged in undue enrichment, by cheating the complainant besides



being guilty of indulging in unfair trade practices and deficiency in services in not delivering the possession of the apartment and then remaining non-responsive to the requisitions of the complainant.

17. Issues raised by the complainant are as follow:

- i. Whether the respondent delayed in handing over the possession of the unit to the complainant and liable to pay interest on delayed possession?**
- ii. Whether the respondent had raised irregular demands from the complainant without following the payment schedule?**
- iii. Whether the complainant is liable to receive compensation for the legal expenses of Rs. 1,00,000/- and the rent incurred by the complainant?**

18. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondents to complete the construction and handover the possession of the apartment to the complainant immediately.**
- ii. Direct the respondents to pay interest for every month of delay, since November 2013, in offering of**



possession of the apartment to the complainant, on the amount taken from the complainant and additional charges for the aforesaid apartment, at the rate of 24 % per annum till the respondents hand over the possession of the Apartment, as the respondents have already charged from the complainant at the rate of 24% per annum for delay of payment.

- iii. Direct the respondents to refund with interest all such amounts to the complainant, which the respondents have surreptitiously collected from the complainant such as parking space charges, preferential location charges and club membership charges, etc.
- iv. Direct the respondents to pay rent of the house to the complainant, which the complainant has been forced to pay since November 2013, having lived in a rented house since then, due to the indolence on the part of the respondents in delaying the possession of the apartment.
- v. Direct the respondents to pay legal expenses of Rs. 1 lakh incurred by the complainant.



Respondent's reply

19. The respondent submitted that the complaint is not maintainable in law or facts. The complainant has filed the present complaint seeking interest and compensation alleged delay in delivering possession of the apartment booked by the complainant. The complaints pertaining to interest and compensation are to be decided by the adjudicating office under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017
20. The respondent submitted that the complainant has 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 an incorrect understanding of the terms and conditions of the buyer's agreement dated 29.12.2010.
21. The respondent submitted that initially the complaint, was allotted to Mrs. Sharwan Kohli. The apartment in question was purchased by the complainant from the original allottee. Agreement to sell dated 01.01.2013 executed between Mr. Sharwan Kohli and the complainant and a copy of nomination letter dated 20.02.2013 confirming the transfer of the



apartment in question in favour of the complainant is annexed as **Annexure R6**.

22. The respondent submitted that the complainant undertook to be bound by the terms and conditions of the provisional allotment letter dated 20.10.2010 being terms and conditions of the provisional allotment letter dated 20.10.2010 being the nominee of the original allottee.
23. The complainant further accepted and confirmed that the complainant would not be entitled to any compensation for delay in handing over possession or any rebate under a scheme or otherwise or any other discount from respondents which the original allottee might have been entitled.
24. The respondent submitted that the clause 2 of the aforesaid undertaking categorically records that the complainant being the transferee is not entitled to claim any compensation for delay in handing over possession or rebate under a scheme or otherwise or any other discount by whatever name from respondents.
25. The respondent submitted that it would not be out of place to mention that the original allottee had been irregular with regard to payment of instalments as per the schedule of payment incorporated in the buyer's agreement. In the terms



of clause 11(b)(iv) the date handing over of the possession will be extended if the allottee had at any time delayed in making payments as per the schedule of payment. Since, the original allottee had defaulted in timely payment of instalments, the complainant cannot be held to be entitled to any compensation in the facts and circumstances of the case.

26. The respondent further submitted that the complainant has availed a housing loan from HDFC Ltd. Letter dated 06.02.2013 from the complainant requesting respondents to mark a lien in favour of HDFC Ltd in respect of the apartment allotted to the complainant.
27. Thus, the complainant is estopped from claiming refund or any other amounts from the respondents in view of the tripartite agreement executed between the complainant, respondents and HDFC Ltd. the complainant has subrogated all his rights for refund with respect to the apartment in question, in favour of the bank. The tripartite agreement specifically provides that in the event of cancellation of allotment for any reason, the complainant's right to receive any amounts stands unconditionally and irrevocably subrogated to HDFC Limited.



28. The respondent submitted that the clause of 13 of the buyer's agreement further provides that compensation for any delay in delivery of possession will only be given to such allottees who are not in default of the agreement and who have not defaulted in payment as per the payment plan annexed with the agreement.
29. The respondent submitted that the part of the project where unit in question is situated is RERA registered and OC is likely to be applied by October 2018. The possession would be delivered on receipt of the same by December 2018. The validity of the RERA certificate is till October 2022.
30. The respondent submitted that the project got delayed as plans had to be revised and the process of revision was duly followed by inviting objections from the allottees and after receipt of the objections and duly deliberating thereupon the revision plans were implemented in accordance with the due objections so received. The structural work is complete and finishing work is being executed.



Determination of issues:

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

31. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 11(a) of buyer's agreement, the possession of the flat was to be handed over within 33 months from the date of commencement of construction.

Therefore, the due date of handing over possession will be computed from date of start of construction i.e 25.02.2011.

32. Accordingly, the due date of possession was 25.02.2014 and the possession has been delayed by four years 9 months and 10 days till the date of decision. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area till the date of possession under the provision of clause 12(a), provided the allottee has completed with all the terms and conditions of the agreement of the said apartment as per clause 13(a) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust



clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

33. As the possession of the flat was to be delivered by 25.02.2014 as per the clause referred above, 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.
34. The promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
35. With respect to the **second issue**, the complainant has provided no proof but made only assertion with respect to the irregular payments demanded by the respondent.
36. With respect to the **third issue** the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



37. The complainant made 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.

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 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

38. The respondent admitted the fact that the project is situated in Palm Hills in Sector-77, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to adjudicate the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar



Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

39. 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.
40. The authority is of the view that the respondent has miserably failed to deliver the possession. In view of this, the complainant is entitled to get prescribed rate of interest @10.75% till the actual offer of possession.

Decision and directions of the authority

41. 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 pay interest @ 10.75% p.a. on the paid amount to the complainant from the due date of delivery of possession i.e. 25.02.2014 till the actual offer of possession.
- (ii) The arrears of interest so accrued @ 10.75% p.a. from the due date of delivery of possession till the date of order on the paid amount of the complainant which comes to be Rs. 35,85,218.50/- shall be paid to the complainant within 90 days from the date of this order.
- (iii) Thereafter, the monthly payment of interest i.e. Rs. 62537.87/- till handing over of the possession, so accrues shall be paid before 10th of subsequent month.
- (iv) If the possession is not given by the respondent then the complainant 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*.



42. The order is pronounced.

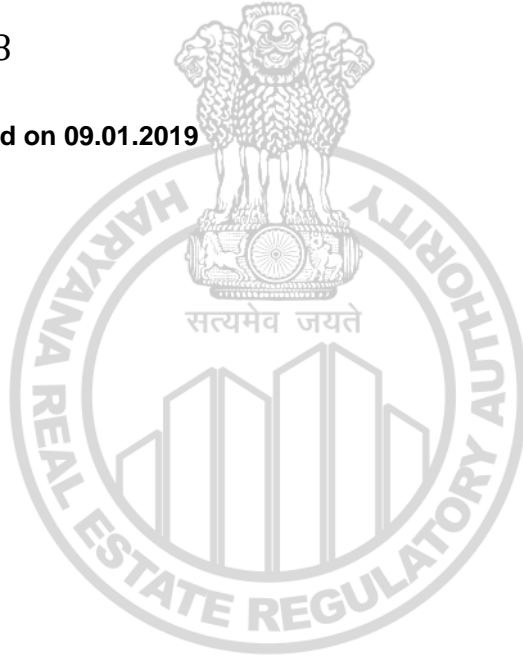
43. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 05.12.2018

Judgement Uploaded on 09.01.2019



HARERA
GURUGRAM

