

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 13.12.2018
Complaint No.	614/2018 Case titled as Mr. Samarth Vikram Singh V/S M/S Emaar Mgf Land Ltd.
Complainant	Mr. Samarth Vikram Singh
Represented through	Shri Sukhbir Yadav Advocate for the complainant.
Respondent	M/S Emaar Mgf Land Ltd.
Respondent Represented through	Shri Ketan Luthra, authorized representative on behalf of the respondent with Shri Ishaan Dang, Advocate.
Last date of hearing	25.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

As per clause 11 (a) of the Builder Buyer Agreement dated 9.2.2011, for unit No.EEA-B-F-10-02, in Emerald Estate, Sector-65, Gurugram possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction i.e. 26.8.2010 + 6 months grace period which comes out to be 26.2.2014. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.45,20,727/- with the respondent.

Respondent has stated that he has already offered the possession to the complainant on 25.4.2018 vide possession letter No.EEA/705856-PR-/20180425171949129 dated 25.4.2018 (copy placed on record)

As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 26.2.2014 to 25.4.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. Compensation if already paid by the respondent may be deducted from the amount of interest awarded to the complainant today. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

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

Samir Kumar
(Member)
13.12.2018

Subhash Chander Kush
(Member)
13.12.2018

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

Complaint no. : 614 of 2018
Date of first hearing: 25.09.2018
Date of decision : 13.12.2018

Mr. Samarth Vikram Singh
Flat no. 1403-A, Beverly Park-2, DLF
Phase2, Gurugram

Complainant

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 Sukhbir Yadav
Shri Ketan Luthra

Advocate for the complainant
Authorized representative on
behalf of respondent

Shri Ishaan Dang

Advocate for the respondent

ORDER

1. A complaint dated 26.7.2018 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. Samarth Vikram Singh against the promoter M/s Emaar MGF land



limited on account of violation of clause 11 (a) of the retail space buyers' agreement executed on 09.02.2011 for unit no. EEA-B-F10-02 with a super area of 990 sq. ft. in the project "Emerald Estate" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 09.02.2011 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 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-F10-02
4.	Unit area	990 sq. ft'
5.	Registered/ Not Registered	Not registered



6.	DTCP license	License no.6 dated 17.1.2008
7.	Date of builder buyer agreement	09.02.2011
8.	Total basic consideration	Rs. 31,67,010/-
9.	Total amount paid by the complainant	Rs 45,20,727/-
10.	Payment plan	Construction linked plan
11.	Offer of possession	25.4.2018
12.	Date of start of construction	26.08.2010
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	4 years 1 month 30 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-F10-02 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 25.9.2018. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE

6. The complainant submitted that as per section 2(zk) of the Real Estate (Regulation And Development) Act, 2016, the respondent falls under the category of “promoter” and is bound by the duties and obligations mentioned in the said Act. and is under the territorial jurisdiction of this hon’ble regulatory authority.
7. The complainant submitted that the complainant along with their family members and a real estate agent visited the project site. The location was excellent and they consulted the local representative of the developer. The local representative of developer allures the complainant with special characteristics of project, finishing of flat and other amenities.



The local representative directed the complainant to contact with the company's marketing office situated at Gurgaon. The office bearers of respondent i.e. directors, principal officers and marketing executives relied on attractive brochures and catalogues and convinced the purchasers to believe that the said project will be developed as a state-of-art project and shall be one of its kinds and assured to complainant(s) that flat will be delivered within 36 months.

8. The complainant submitted that the said flat was booked by M/S Silicion Biltech (P) Ltd. on date 09.08.2009 under construction link payment plan and paid initial payments. An allotment letter was issued on 11.08.2009.
9. The complainant submitted that thereafter complainant continued to pay the remaining instalment as per the payment schedule of the builder buyer agreement and have already paid the more than 87.5% amount till 30.05.2014 along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, he raised his grievance to respondent. Though complainant always ready



and willing to pay the remaining instalments provided that there is progress in the construction of flat. Thereafter also complainant paid all further demands raised by the respondent.

10. The complainant submitted that on 25.04.2018, respondent sent a letter of offer of possession and asked to pay 7,08,419/- (seven lakhs eight thousand four hundred and nineteen).
11. The complainant submitted that the main grievance of the complainant in the present complaint is that in spite of complainant paid more than 100% of the actual amounts of flats as per demand but respondent party fails to give the possession of flat on promised time.
12. The complainant submitted that for the first time cause of action for the present complaint arose in or around February, 2011 when the buyer agreement containing unfair and unreasonable terms was, forced upon the allottee. The cause of action further arose in 2013, when the respondent party failed to handover the possession of the flat as per the buyer agreement. Further the cause of action again arose on various



occasions, including on: a) December, 2013; b) February, 2014; c) June, 2015, d) November, 2016; e) March, 2017, f) December, 2017, g) May 2018 and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

13. The complainant submitted that the complainant is entitled to get possession of agreed flat and also entitled to get compensatory interest @ 24% per annum from August 2013 to date of possession (for delay period). The complainant(s) is also entitled to get Rs. 1,00,000/- (one lakhs) towards the cost of litigation. The complainant are also entitled for any other relief which they are found entitled by this hon'ble authority.



ISSUES RAISED BY THE COMPLAINANT

- i. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant?
- ii. Whether the respondent is liable to pay interest @ 24% p.a. to the complainant?
- iii. Whether there has been deliberate misrepresentation on the party of the developer for delay in giving the possession?

RELIEF SOUGHT

- i. Pass an appropriate award directing the respondent parties to pay compensatory interest @ 24% as per section 18 (b) of Act for delay in possession from August, 2013 to date of possession. (Justification: - Section 18 and Section 38 of RERA Act).
- ii. Respondent party may kindly be directed to pay an amount of Rs.1,00,000/- (five lakhs) as



litigation expenses; (Justification:- Cost of litigation).

- iii. Respondent party may kindly be directed to hand over the possession of agreed flat to the allottee immediately and not later than three months from the date of judgment, complete in all respects and execute all required documents for transferring / conveying the ownership of the respective flats.
- iv. Respondent party may kindly be directed to provide for third party audit to ascertain / measure accurate areas of the flat and facilities, more particularly, as to the “super area” and “built-up area”.
- v. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.



- vi. Any other relief / direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint.
- vii. That in the interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

REPLY ON BEHALF OF THE RESPONDENT

14. 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 08.01.2018. Thus, the project is not an 'on-going project'. The present complaint is liable to be dismissed on this ground alone.

15. 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 complainant 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.
16. The offer of possession was made to the complainant on 26.2.2014 and the complainant 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.



17. 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.
18. Respondent submitted that the construction of the project/apartment in question stands completed and the respondent had already applied for the occupation certificate and has 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.
19. Respondent submits that the demands raised by the promoter is as per the space buyer's agreement and there is no lapse or default on the part of respondent. It is the complainants who have defaulted by 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:

20. With respect to **first, second and third issues** 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 25.4.2018 which means that there is a delay of 4 years 1 month 30 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 on the due date of possession i.e. 26.2.2014 up to the date of offer of possession i.e. 25.4.2018.

FINDINGS OF THE AUTHORITY

21. 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.
22. As per clause 11 (a) of the builder buyer agreement dated 09.02.2011, for unit No.EEA-B-F-10-02, in Emerald Estate, Sector-65, Gurugram possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction i.e. 26.8.2010 + 6 months grace period which comes out to be 26.2.2014. However, the



respondent has not delivered the unit in time. Complainant has already deposited Rs.45,20,727/- with the respondent.

23. Respondent has stated that he has already offered the possession to the complainant on 25.4.2018 vide possession letter No. EEA/ 705856-PR-/ 20180425171949129 dated 25.4.2018 (copy placed on record).

24. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 26.2.2014 to 25.4.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016. Compensation if already paid by the respondent may be deducted from the amount of interest awarded to the complainant today. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

25. 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.



DECISION AND DIRECTIONS OF THE AUTHORITY:

26. 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 delay possession charges @ 10.75% p.a. on the paid amount Rs. Rs **45,20,727/-** to the complainants from the due date of delivery of possession i.e. 26.02.2014 till 25.04.2018 (date of offer of possession) amounting to **Rs.20,24,354.12/**.
- ii. The arrears of interest so accrued @ 10.75% p.a. so far shall be paid to the complainant within 90 days from the date of this order. Thereafter monthly payment of interest of **Rs. 40,498.18/-** till handing over the possession shall be paid before 10th of subsequent month.



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: 13.12.2018

Judgement Uploaded on 08.01.2019



HARERA
GURUGRAM

