

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 18.12.2018
Complaint No.	729/2018 Case Titled As Ved Prakash Ahuja V/S Emaar MGF Land Ltd
Complainant	Ved Prakash Ahuja
Represented through	Shri Sukhbir Yadav Advocate for the complainant.
Respondent	Emaar Mgf Land Ltd
Respondent Represented through	Shri Ketan Luthra, authorized representative with Shri Ishaan Dang Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Arguments heard.

Counsel for the complainant has filed application for amendment of the complaint today.

On 1.8.2018 builder has offered possession of the unit to the complainant. However, there are certain issues to be settled inter-se both the parties i.e. after adjusting delayed possession charges, the buyer is in arrears then the matter may be sorted out between the parties. Complainant is directed to take possession as well as get his conveyance deed done. No holding charges will be charged by the respondent from the complainant.

As per clause 13 (a) of the Builder Buyer Agreement dated 28.12.2009, for retail space/unit No.EHF-350, C-SF, 005 in project "Emerald Plaza" in Emerald Hills, Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 27 months + 3 months grace period which comes out to be 28.6.2012. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.59,23,842/- with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 28.6.2012 till the date of offer of possession i.e. 1.8.2018, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

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

Samir Kumar
(Member)
18.12.2018

Subhash Chander Kush
(Member)
18.12.2018

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

Complaint No. : 729 of 2018
First date of Hearing : 18.12.2018
Date of Decision : 18.12.2018

Mr. Ved Prakash Ahuja
R/o : House no. D-22, Street no. 13, Saket PVR
Cinema , Malviya Nagar, South Delhi, New
Delhi- 110017

Complainant

Versus

Emaar MGF Land Limited.
Address: Emaar Business Park,
MG Road, Sikanderpur, Sector 28,
Gurugram-122001, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sukhbir Yadav Advocate for the complainant
Shri Ketan Luthra, authorized Advocate for the respondent
representative with Shri
Ishaan Dang



ORDER

1. A complaint dated 20.08.2018 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. Ved Prakash Ahuja, against the promoter M/s Emaar MGF Land Limited in respect of apartment/unit described below in the project 'Emerald Plaza', Sector-65, Gurugram on account of violation of the section 3 of the Act *ibid*.

2. Since, the buyer's agreement has been executed on i.e. 28.12.2009 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	"Emerald Plaza" in Emerald Hills, Sector 65, Gurugram, Haryana.
2.	RERA registered/ not registered	Not registered
3.	Retail space/unit no.	EHF-350,C-SF 005
4.	Retail space measuring	1750 sq.ft.
5.	Occupation certificate received on	08.01.2018
6.	DTCP No.	10 dated 21.05.2009
7.	Payment Plan	Construction linked payment plan
8.	Total consideration	Rs. 65,13,773/- Statement of account dated 03.09.2018, page 78
9.	Amount paid by the complainant	Rs. 59,24,562/-



		Statement of account dated 03.09.2018, page
10.	Buyer's agreement executed on	28.12.2009
11.	Date of delivery of possession as per clause 13(a). (27 months + 3 months grace period from the date of execution of this agreement)	28.06.2012
12.	Letter of offer of possession sent to the complainant on	01.08.2018
13.	Delay in handing over possession from due date till offer of possession	6 years 1 months 4 days
14.	Penalty clause as per buyer's agreement	Clause 15a of the agreement i.e. Rs.10/- per sq.ft per month of the super area

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. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply was filed by the respondent on 22.09.2018.

Brief facts of the complaint

5. Briefly stated, the facts of the complaint are that Emaar MGF Land Ltd. is a company incorporated under the Company's Act mainly based in Middle East and UAE entered into the emerging and booming real estate market in India during the first decade of 21st century. All the formalities laid down by the central government were fulfilled before commencing the



business. Company purchased hundreds of acres of land in Gurgaon and other major cities of India.

6. The complainant submitted that company conceived, planned and was in the process of constructing and developing a residential plotted colony "Emerald Hills" (herein after called project) to be developed on a piece of land measuring 102.471 acres in Sector 65, Urban Estate, Gurugram. The Director, Town and Country Planning, Government of Haryana has granted license bearing no. 10 dated 21.05.2009 to develop the project.
7. The complainant submitted that he purchased an independent floor from the secondary market in resale on 12.11.2009.
8. The independent floor was booked by Mr. Gurdeep Singh and Ms. Kiran Singh on date 10.06.2009 under construction linked payment plan. An allotment letter was issued on 27.07.2009.
9. On 28.12.2009 a pre-printed independent floor buyer agreement was executed between the parties with increased area 1750 sq.ft. The complainant observed that there is no progress in the construction of the floor, so the complainant raised his grievance to the respondent.



10. On 22.06.2011 the complainant gave a grievance letter to the respondent about the progress of the project. On 01.08.2018 respondent sent a letter of offer of possession and asked the complainant to pay Rs. 14,48,337/-.
11. On 03.8.2018 upon receiving the intimation of possession the complainant asked the respondent for delayed interest but the respondent refused on the pretext that the complainant had made some delayed payments and therefore is not entitled to interest. The complainant paid more than 95% of the total amount as per the demands raised by the respondent but the respondent failed to give the possession on time.
12. **The issues raised by the complainant are as follow:**
 - i. **Whether the developer has violated the terms and conditions of the agreement and delayed in giving the possession?**
 - ii. **Whether the complainant is entitled for compensatory interest @24% per annum from due date of possession March 2012, till date of possession?**



- iii. Whether the complainant is entitled for compensation for mental agony, harassment and penalty as delayed possession?

13. Relief sought

The complainant is seeking the following reliefs:

- i. Direct the respondent to handover the possession of the floor along with compensatory interest @ 24%.
- ii. Direct the respondent to pay Rs. 1,00,000/- as litigation expenses.

Respondent's reply

14. The respondent submitted that the present complaint is not maintainable in law or on facts. The hon'ble authority does not have 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 occupation certificate has been thereafter issued on 08.01.2018. Thus, the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act
15. The respondent submitted that the registration certificate of project no. 162 of 2017 dated 28.08.2017 is valid from



29.08.2017 to 28.08.2022. The application for grant of occupation certificate was filed on 26.02.2018, 14.03.2018 and 19.04.2018 before the competent authority and the same was granted herein.

16. The respondent submitted that the present complaint is a ploy to exert undue pressure upon the respondent and seek remedies which are incomprehensible under the law of the land.
17. The respondent submitted that the claim of the complainant for interest @24% is barred by law in terms of section 74 of the Indian Contract Act. The complainant is not entitled to any interest on the amounts deposited by the complainant towards the unit. The respondent company is legally entitled to forfeit the money paid by the complainant as per the settled terms and conditions.
18. The respondent further submitted that the complainant is not a consumer in terms of the definition of consumer under Consumer Protection Act, 1986. The Act does not provide any definition for the consumer so the same has to be derived from the Consumer Protection Act, 1986. The complainant is a mere speculative investor having invested with a view to earn quick profit.



19. The respondent submitted that the project in question is a large project and such kind of projects do take reasonable time for completion. The complainant cannot choose clauses that they like and leave the other clauses behind. Many allottees defaulted in making payment which resulted in slowdown pace of the development.
20. The respondent submitted that the respondent as a gesture of goodwill , might have credited an amount of Rs. 5,00,000/- subject to management's approval however this offer was not accepted by the complainant.

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:

21. In regard to the **first issue** raised by the complainant, the promoters have violated the agreement by not giving the possession on the due date i.e 28.06.2012 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.



22. With respect to **second issue** raised by the complainant regarding payment of interest @ 24% that has been charged by the respondent cannot be allowed as 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.
23. With respect to the **third issue** raised by the complainant, reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Therefore, the said issue raised by the complainant regarding compensation is not maintainable before the authority.
24. 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

25. The respondent admitted the fact that the project Emerald Plaza is situated in Sector-65, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try 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.



26. 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.

27. The delay compensation payable by the respondent @ Rs. 10/- per sq.ft. per month for the period of delay as per clause 15a of the 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."



28. However, there are certain issues to be settled inter-se-both the parties i.e. after adjusting delayed possession charges, the buyer is in arrears then the matter may be sorted out between the parties. The complainant is directed to take possession as well as get his conveyance deed done. No holding charges will be charged by the respondent from the complainant. The complainant is entitled for delayed possession charges till the date of offer of possession as per the provisions of section 18(1) of the Act, 2016.

Decision and directions of the authority

29. 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. 28.06.2012 to 01.08.2018 i.e till the date of 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. 38,80,924.50 /- 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. 53,067.75/- till handing over of the possession, so accrued 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.*



30. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

31. The order is pronounced.

32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 18.12.2018

Judgement Uploaded on 11.01.2019



HARERA
GURUGRAM

