

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Thursday and 20.12.2018
Complaint No.	807/2018 Case titled as Ved Prakash Ahuja V/S Emaar MGF Land Limited
Complainant	Ved Prakash Ahuja
Represented through	Shri Sukhbir Yadav Advocate for the complainant.
Respondent	Emaar MGF Land Limited
Respondent Represented through	Shri Ketan Luthra, authorized representative on behalf of respondent-company with Shri Ishaan Dang, Advocate.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

### **Proceedings**

#### **Project is registered with the authority.**

Arguments heard.

Project is registered with the authority. Occupation certificate has been received on 8.1.2018 but fire NOC not received.

As per clause 11 (a) of the Builder Buyer Agreement dated 1.2.2010 for unit No.EPF-16-0202, 2<sup>nd</sup> floor, in project "Emerald Floors Premier" Emerald Estate, Sector-65, Urban Estate Gurugram, possession was to be handed over to the complainant within a period of 36 months + 3 months grace period which comes out to be **1.5.2013**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.80,16,528/- to the respondent. As such,

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह. सिविल लाईंस. गुरुग्राम. हरियाणा

complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **1.5.2013** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over possession failing which the complainant is entitled to refund the amount.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

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

Samir Kumar  
(Member)  
20.12.2018

Subhash Chander Kush  
(Member)  
20.12.2018

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

Complaint no. : 807 of 2018  
First date of hearing : 20.12.2018  
Date of decision : 20.12.2018

1. Sh. Ved Prakash Ahuja
2. Smt. Ved Ahuja

Both R/o. House no. D-22, Street no. 13,  
Saket, New Delhi-110017

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
Regd. Office: 306-308, 3<sup>rd</sup> floor,  
Square One, C-2, District Centre,  
Saket, New Delhi-110017.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Ishan Dang  
Shri Ketan Luthra

Advocate for the complainant  
Advocate for the respondent  
Authorised representative on  
behalf of the respondent  
company

**ORDER**

1. A complaint dated 04.09.2018 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 complainants Sh. Ved



Prakash Ahuja ad Smt. Ved Ahuja, against the promoter M/s Emaar MGF Land Ltd., on account of violation of the clause 11(a) of buyer's agreement executed on 01.02.2010 in respect of unit described as below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

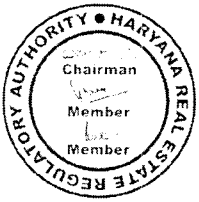
2. Since the buyer's agreement has been executed on 01.02.2010, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application 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 Floors Premier", Emerald Estate, Sector 65, Urban Estate, Gurugram, Haryana.
2.	Project area	25.49 acres
3.	DTCP license no.	06 dated 17.01.2008
4.	Registered/not registered	<b>Registered</b>

5.	RERA registration no.	<b>104 of 2017 dated 24.08.2017</b>
6.	Revise date as per RERA registration certificate	23.08.2022
7.	Registered area as per registration certificate	82768 sq. mtrs. (20.45 acres)
8.	Occupation certificate received on	08.01.2018
9.	Date of booking	23.09.2009
10.	Date of execution of buyer's agreement	01.02.2010
11.	Residential floor space/unit no.	EPF-16-0202, 2 <sup>nd</sup> floor
12.	Unit measuring	1975 sq. ft.
13.	Payment plan	Construction linked payment plan
14.	Basic sale price	Rs.71,08,025/-
15.	Total consideration amount as per statement of account dated 24.08.2018	Rs.84,41,235/-
16.	Total amount paid by the complainant till date as per statement of account dated 24.08.2018	Rs.80,16,528/-
17.	Date of delivery of possession as per clause 11(a) of buyer's agreement i.e. 36 months from the execution of buyer's agreement + grace period of 3 months)	<b>01.05.2013</b>
18.	Delay in handing over possession till 20.12.2018	5 years 7 months 19 days
19.	Penalty clause as per buyer's agreement	Clause 13(a) of the agreement i.e. Rs.5/- per sq. ft. per month of the



		super area till the notice of possession
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4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 01.05.2013. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of till the notice of possession as per clause 13(a) of the buyer's agreement. Therefore, the promoter has not fulfilled his committed liability as on 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 20.12.2018. The reply filed on behalf of the respondent has been perused.



### **Brief facts**

6. Briefly stated, the facts of the complaint are that the



complainants made a booking of a residential apartment measuring 1975 sq. ft. in the project 'Emerald Floors Premier' in Emerald Estate at Sector-65, Urban Estate, Gurugram, being developed by M/s Emaar MGF Land Ltd. by making an advance payment of Rs.5,00,000/- vide cheque dated 23.09.2009.

7. The complainants submitted that on 21.10.2009, the respondent made provisional allotment of flat no. EFP-16-0202 located at the 2<sup>nd</sup> floor.
8. The complainants submitted that a buyer's agreement was executed on 01.02.2010. As per clause 11(a) of the said agreement, the possession was to be handed over within 36 months from the date of execution of the agreement i.e. 01.02.2013.
9. The complainants submitted that since February 2013, complainants are regularly visiting the office of the respondent as well as the construction site and making efforts to get the possession of the allotted independent floors but all in vain. The Complainants had never been able to understand/ know the actual status of construction.



10. The complainants submitted that their main grievance is that in spite of the fact that the complainants have paid more than 95% of the total amount as per the demands raised by the respondent, the respondent has failed to give possession of independent floor within the promised time.
11. The complainants submitted that in June 2011, the respondent raised the demand for instalment no.8 payable after completion of final floor roof slab. After another 8 months in Feb 2012, the respondent raised the next demand for instalment no. 9 payable after completion of plumbing and wall conduiting and the demand for the instalment payable after completion of the external plaster had also already been raised by June 2014. After that it took 3 years for the respondent to do the internal flooring and wall paint since the demand for the instalment no. 11 payable after completion of internal flooring and wall paint was raised thereafter raised in July 2017. Although this was the last step in the construction process, the possession has not been offered even after one year of payment of instalment no. 11. This leads one to believe





that the respondent kept raising payment demands for work that has not yet been completed.

12. The complainants submitted that there is clear unfair trade practice and breach of contract and deficiency in the services of the respondent and intent of fraud with the complainants and others is prima facie is clear on the part of the respondent which makes them liable to answerable this hon'ble authority.

13. **Issues raised by the complainants are as follows:**

- I. Whether the developer has violated the terms and conditions of floor buyer agreement?
- II. Whether there has been deliberate or otherwise, misrepresentation by the developer for delay in giving possession?
- III. Whether the complainants are entitled for refund and compensatory interest @ 24% per annum from due date of possession March 2013 to till date of possession on account of delay in possession?



14. **Relief sought**

The complainants are seeking the following reliefs:

- I. Pass an appropriate award directing the respondent parties handover the possession of floor along with compensatory interest @ 24% as per section 18 (b) of Act for delay in possession from March, 2013 to date of possession.
- II. Respondent party may kindly be directed to hand over the possession of agreed floor to the allottee immediately, complete in all respects and execute all required documents for transferring / conveying the ownership of the respective floors.
- III. Respondent party may kindly be directed to provide for third party audit to ascertain / measure accurate areas of the floor and facilities, more particularly, as to the “super area” and “built-up area”.
- IV. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the floor buyer agreement.



**Respondent's reply:**

15. The preliminary objections and submissions have been raised

by the respondent challenging the jurisdiction of this hon'ble authority. The respondent submitted that the present complaint raises several issues which cannot be decided by way of the present complaint in summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication. Therefore, the dispute raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by a civil court.

16. The respondent submitted that the complainants have no locus standi to file the present complaint. Also, it is submitted that as per applicable Act and Rules, a complaint may be filed by a person only if the respondent has committed any act in violation of the Act/Rules *ibid*. It is submitted that the complainants herein have failed to bring on record any document, evidence etc. which may even allude let alone prove that the respondent has violated the provisions of the Act or the Rules.



17. The respondent submitted that section 19(3) of the said Act provides that an allottee shall be entitled to claim the

possession of the apartment, plot or building, as the case may be as per the declaration given by the promoter under section 4(2)(1)(c). That it is apposite to mention herein that a part of the project i.e. 33 towers of “Emerald Floors Premier” of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 nor is the said project of the Respondent registered with this hon’ble regulatory authority. However, the balance part (24 towers) is already registered with this hon’ble regulatory authority.

18. The respondent submitted that in the present case, the respondent had applied the occupation certificate for the said project on 29.06.2017 which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(1)(o) and the present case is squarely covered under the first exception provided under rule 2(1)(o) and therefore this hon’ble regulatory authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. It is pertinent to mention here that even the actual occupation certificate has also been granted on 08.01.2018. However, as



the Fire NOC was awaited for a few blocks (including the unit in question), therefore the respondent, vide letter dated 08.02.2018, informed the DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited.

19. The respondent submitted that the complainant has filed the complaint and is seeking the relief of "possession of the floor, compensation interest," amongst other reliefs. That it is submitted that as per the Act read with HARERA rules, complaint for possession and compensation interest etc. is maintainable only before the adjudicating officer. It is submitted that as per section 31 read with section 71 of the Act, complaint pertaining to the relief of possession of the floor, compensation, interest under section 12, 14, 18 and section 19 of the Real Estate (Regulation & Development Act, 2016) is required to be filed before the adjudicating Officer.



20. The respondent submitted that the claim of the complainants for interest @24% is barred by law in terms of section 74 of the Indian Contract Act. The complainants are not entitled to any interest on the amounts deposited by them. Rather the

respondent company is entitled to forfeit the money paid by the complainants as per the settled terms and conditions, in case the complainants seek to wriggle out of the binding terms of the buyer's agreement.

21. The respondent submitted that the complainants are not consumers in terms of the definition of consumer under the 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 statement of objects and reasons as well as the preamble of the said Act clearly states that the RERA is enacted for effective consumer protection and to protect the interest of consumer in the real estate sector. It is further submitted that the complainants are mere speculative investors having invested with a view to earn quick profit. But due to slowdown in the market conditions and having failed to resell the said unit, complainants had apparently developed an intention to raise false and frivolous issues to engage the respondent in unnecessary and false litigation.



22. The respondent submitted that the complainant is an investor is further established by the fact that the complainant has also sought and has been provisionally allotted the following units in the various projects developed by the respondents: -

- (i) Unit no. EFP-III-39-0301 in the project, Emerald Floor Premier.
- (ii) Unit no. TDP-F-F01-101 – in the project, Palm Drive.
- (iii) Unit No. TDP-L-F07-706 – in the project, Palm Drive.
- (iv) EHF-350-C-SF-005 in the project namely 'Emerald Hills-Floors' at Sector-65, Gurugram, Haryana.
- (v) Unit No. EFS-B-1-SF-169 – in the project, Emerald Floor Select.

The same clearly shows that the complainants are investors having invested with a view to earn quick profit. But, due to sluggishness in the market conditions, they might have failed to resell the said units, and have now raised false issues to engage the respondent in unnecessary litigation.

23. The respondent submitted that many allottees of the project defaulted/delayed in making payment of the amounts which



resulted in slowdown in pace of the development. It is submitted that the development of the project was dependent upon the availability of funds from the allottees who were under a contractual obligation to make payments as per the schedule of payment opted by the them. Delayed payments such as towards the unit in question, have an adverse impact on the project deliverables. That it is specifically pointed out that delay payment charges were levied on the unit in question.

24. The respondent submitted that it was only after going through the terms and conditions of allotment that the complainant had voluntarily submitted application for provisional allotment of the unit in question. After having gathered and understood the detailed information about the said project and completely satisfying about all aspects and after careful consideration of the terms and conditions, the complainant had applied for the provisional allotment of the unit. In fact, the complainants are already aware of all the clauses of the buyers agreement and have sought provisional allotment of a





number of other units in different projects. Details of such projects have already been given in the preceding paragraph.

### **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:

25. With respect to the **first issue** raised by the complainants, as per clause 11(a) of buyer's agreement, the possession of the unit was to be handed over within 36 months plus grace period of 3 months from the date of execution of the said agreement. The buyer's agreement was executed on 01.02.2010.
26. Accordingly, the due date of possession was 01.05.2013 and the possession has been delayed. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area till the date of notice of possession 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 and unilateral. It has also been observed 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.”*

Thus, the developer has failed in handing over the possession as per the due date of 01.05.2013 and has violated the terms and conditions of the buyer’s agreement.

27. With respect to **second issue** raised by the complainants, the complainants have failed to furnish any concrete document in order to establish misrepresentation on part of the respondent.

28. With respect to the **third issue** raised by the complainants, the occupation certificate of the project in question has been received on 08.01.2018 and the possession has not been offered as fire NOC is awaited by the respondent. Thus, in view of the status of the project and the interest of other allottees, it will not be just and proper to grant refund at this stage.



However, as the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid*, to pay interest at the prescribed rate of 10.75% p.a. to the complainants for every month of delay till the handing over of possession. However, compensatory interest @ 24% p.a. cannot be allowed and the complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

### Findings of the authority

29. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

30. As per clause 11(a) of the buyer's agreement dated 01.02.2010, the due date of handing over possession comes out to be 01.05.2013. The complainant has already paid an amount of Rs.80,16,528/-. The occupation certificate was received on 08.01.2018 but fire NOC has not been received. However, the project is registered vide registration no. 104 of 2017 wherein the revised date of completion undertaken by the respondent is 23.03.2022. thus, keeping in view the status of the project, interest of other allottees and other intervening circumstances, refund cannot be allowed at this stage. However, the complainants are entitled to delayed possession charges at prescribed rate of interest, i.e. 10.75% per annum w.e.f. the due date of possession, i.e. 01.05.2013 as per the



provisions of section 18(1) of the Act ibid till the actual handing over of possession, failing which the complainants are entitled to refund of the amount paid by them.

### **Decision and directions of the authority**

31. 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 respondents:

- (i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant.
- (ii) The respondent is directed to pay interest accrued from 01.05.2013 (due date of possession) to 20.12.2018 (date of this order) on account of delay in handing over of possession to the complainant amounting to Rs.48,61,366/- within 90 days from the date of order.
- (iii) Thereafter, the monthly payment of interest @ 10.75% on the paid-up amount of the complainant, amounting to Rs.71,814.73/- till handing over of the possession so accrued shall be paid before 10<sup>th</sup> of every subsequent month.



(iv) The respondent is directed to handover possession to the complainants by the committed date of 23.08.2022, failing which the complainant is entitled to seek refund of the paid amount along with interest.

32. The order is pronounced.

33. Case file be consigned to the registry.

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 20.12.2018

**Judgement Uploaded on 16.01.2019**

