

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

Complaint No. : 661 of 2018
First date of hearing : 04.10.2018
Date of Decision : 05.11.2018

Ramni Khatri
R/o Flat no 1001, Tower 3, Uniworld
Garden, Sohna Road,
Gurugram, Haryana - 122018

...Complainant

Versus

M/s Emaar MGF Land Limited
R/o Emaar MGF Business Park, Mehrauli-
Gurgaon Road, Sikandarpur chowk, Sector
28, Gurugram-122002

...Respondent

CORAM:

Dr. K.K. Khandelwal

Chairman

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Complainant in person

Advocate for the complainant

with Nav Malhotra

Shri J.K.Dang and Ishaan Dang

Advocate for the respondent

*corrected vide order
dated 16/01/19.*



ORDER

1. A complaint dated 02.04.2018 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 ~~Rohit Kumar~~ *Ramni Khatri*
~~Mangla~~ against the promoter M/s Emaar MGF land limited on account of violation of clause 14 (a) of the builder-buyer agreement executed on 02.04.2010 for unit no EPS-FF-070 in the project "Emerald Plaza in Emerald Hills" for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

| | | |
|-----|--|--|
| 1. | Name and location of the project | Emerald premier floors, sector 65, Urban Estate, Gurugram. |
| 2. | Unit no. | EFP-29-0002 |
| 3. | Area of unit | 1650 sq. ft. |
| 4. | Project area | 25.49 Acres |
| 5. | Registered/ Not Registered | Registered |
| 6. | DTCP License No | No. 06 dated 17.01.2008 |
| 7. | Date of booking | 08.12.2009 |
| 8. | Date of execution of apartment buyers agreement | 13.01.2010 |
| 9. | Total consideration | Rs. 84,29,925 |
| 10. | Total amount paid by the complainant | Rs. 80,63,566 |
| 11. | Payment plan | Construction Linked Plan |
| 12. | Date of delivery of possession. Clause 11 (a): 36 months from the execution of buyers agreement+ grace period of 3months | 12.04.2013 |



Correction made vide order dated 16/01/19.

| | | |
|-----|---|--|
| 13. | Revised date of possession | December 2022 |
| 14. | Delay of number of months/ years till date | 5 years 6months 25 days |
| 15. | Penalty clause as per buyers agreement dated 13.01.2010 | Clause13(a)- Rs. 5/- per sq. ft. per month |

3. As per the details provided above, which have been checked as per record of the case file. A retail space buyer agreement is available on record for Unit No. EFP-29-0002 according to which the possession of the aforesaid unit was to be delivered by 12.01.2013. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 04.10.2018. The reply has been filed on behalf of the respondent on 31.05.2018



FACTS OF THE CASE

5. Mr. Arun Kumar Dogra and Mrs Ritu Dogra made a booking for purchase of a residential apartment, admeasuring 1650 sq. ft. in the project Emerald Floors Premier by making an advance payment of Rs 5,00,000.
6. The agreement to sell was signed on 13.01.2010. As per clause 11 of the said agreement the possession was to be handed over within 36 months from the date of execution of the agreement i.e. 12.01.2013.
7. This property was purchased by Mr. Karun Barach and Taru Dahiya and the same was transferred in their name on 29.11.2011 in the records of the developer.
8. Subsequently they sold this property to the complainants father on 01.09.2014.
9. At the transfer of the property, the developer mad him sign a lot of papers including a document in which he was made to agree that he will not be entitled to any delayed possession charges. He agreed because he was assured that the developer is going to apply for occupancy certificate very soon.
10. The complainants father expired on 06.05.2016 and subsequently this property was transferred in the complainants name on 16.05.2016. Subsequently all the payments were made as and when demanded in time.



11. After making more than 90% payment on 25.06.2017, the complainant was informed that the delayed charges will now be levied at 10% per annum.
12. The possession is delayed by more than 5 years. The complainant does not wish to withdraw from the project and wished to be paid the delayed possession charges/interest.

ISSUES RAISED BY THE COMPLAINANT

13. The following issues has been raised
 - i. Whether or not the promoter is justified in delaying the possession?
 - ii. Whether the respondent is liable to pay the interest due to delay in handing over the possession?
 - iii. Whether or not the respondent is liable to pay compensation to the complainant for the delayed possession?



RELIEF SOUGHT BY THE COMPLAINANT

16. The following reliefs have been sought:
 - i. In view of inordinate delay of more than 5 years in giving possession as per the space buyers agreement, the entire

- interest @24% p.a. from the date of payment of each installment till the date is given immediately.
- ii. Thereafter, delayed possession interest is given pro rata on a monthly basis before the 10th of every month till the possession is handed over
 - iii. Any other order that this court deem fit and proper may kindly be granted to the applicant.

REPLY BY THE RESPONDENT

17. That it is submitted that the present complaint is not maintainable in law or on facts. It is submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application. That the complainant has no locus standi to file the present complaint. It is submitted that as per applicable act and the rules a complaint may be filed by a person only if the respondent has committed any act in violation of the Act. It is submitted that the complainant herein has filed to bring on record any document,



evidence which may even allude let alone prove that the respondent has violated the provisions. Thus, no cause of action can be said to have arisen to the complainant in any event to assert the reliefs claimed. Thus, no relief can be granted to the complainant.

19. That the present complaint pertains to the alleged delay in giving possession of the subject unit. The complainants have filed the complaint and are seeking the relief of interest @24% per annum from the date of payment of each installment till the date is given amongst other reliefs.
20. That without prejudice it is also 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 complainants are not entitled to any interest on the amounts deposited by them, rather the respondent company is legally entitled to forfeit the money paid by the complainants as per the settled terms and conditions, in case the complainants seek to wriggle out the binding terms of the buyers agreement.
21. That it is further wrong and denied that there is any delay in giving possession of the unit to the complainants and that the due date to handover the possession of the unit to the complainants was 12.01.2013. on the point of construction and the time line of



handing over of possession of the unit, it is relevant to mention that it has been categorically conveyed to the complainants that the company would endeavor to complete the project and hand over possession of the unit booked, subject to the terms and conditions contained in the buyers agreement.

22. That many of the allottees of the project defaulted in making payment of the amounts which resulted in slowdown in pace of 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 them.
23. That the said project is registered and despite adversities and non-payment by various allottees, the project is at an advance stage of completion and the respondent shall endeavor to offer possession within the timeline given to the authority.



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:

24. With respect to the **first issue** raised by the complainants, the authority came across that as per clause 11(a) of buyer's agreement, the possession of the said apartment was to be handed over within 36 months plus grace period of 3 months from the date of execution of the apartment buyers agreement. The said agreement was signed on 13.01.2010. Therefore, the due date of possession shall be computed from 13.01.2010. The clause regarding the possession of the said unit is reproduced below:

"11(a) Time of handing over the possession

Subject to terms of this clause and subject to the allottees having complied with all the terms and conditions of this buyers agreement, and not being in default under any of the provisions of this buyers agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the company, the company proposes to hand over the possession of the unit within 36 months from the date of execution of buyers agreement. The allottee agrees and understands that the company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project."



25. Accordingly, the due date of possession was 12.04.2013 and the possession has been delayed by 5 years 6 months 25 days till the date of filing of complaint. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 + 3

months as per clause 11(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."

In regard to the second issue of the complainant, the agreement provides for a stipulated penalty of Rs 5 per sq. ft. per month per month of the super area of the unit for the period of delay beyond 36 + 3 months as per clause 11(a) of buyer's agreement is held to be very nominal and unjust. The promoter is liable to pay the interest accrued from the date of delay in delivery of possession, i.e. 12.04.2013 till the actual date of handing over of possession. The authority is of the considered view that interest shall be granted at prescribed





rate as per the proviso of Section 18, RERA and rule 15 of HARERA rules which have been reproduced below

Section 18: Return of amount and compensation

"Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over the possession, at such rate as may be prescribed"

Rule 15: Interest payable by the promoter and allottee

"...the rate of interest payable by the promoter to the allottee or by the allottee payable by the promoter as the case may be..."

26. In respect to the third issue, the authority is of the considered view that the present claim of compensation is not maintainable before this authority. This authority has no jurisdiction to entertain the compensation claims. According to Section 71 of the Act, the complaints pertaining to compensation and interest under section 12,14,18 and section 19 of Real Estate (Regulation & Development) Act,2016 is maintainable only before the adjudicating officer. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



FINDINGS OF AUTHORITY:

27. 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.
28. The authority is of the view of that the respondent has delayed the possession by approximately 5 years 6 months and thus is liable to hand over possession under section 11(4)(a) of the Act.
29. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter
- 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.
31. 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:

32. 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:

- (i) The respondent was duty bound to hand over the possession of the said unit by 12.04.2013 as committed by the respondent. The revised due date of possession is now December 2022.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 12.04.2013 till 05.11.2018 within 90 days of this order and thereafter on 10th of every month of delay till the handing over of possession.
- (iii) If the possession is not given on the date committed 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

33. The order is pronounced.
34. Case file be consigned to the registry.
35. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Corrected Judgement uploaded on 18.01.2019

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.11.2018



HARERA
GURUGRAM

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APPEARANCE:

Complainant in person

Advocate for the complainant

Shri J.K.Dang and Ishaan Dang

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ORDER

1. A complaint dated 02.04.2018 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 Rohit Kumar Mangla against the promoter M/s Emaar MGF land limited on account of violation of clause 14 (a) of the builder-buyer agreement executed on 02.04.2010 for unit no EPS-FF-070 in the project “Emerald Plaza in Emerald Hills” for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

| | | |
|-----|--|--|
| 1. | Name and location of the project | Emerald premier floors, sector 65, Urban Estate, Gurugram. |
| 2. | Unit no. | EFP-29-0002 |
| 3. | Area of unit | 1650 sq. ft. |
| 4. | Project area | 25.49 Acres |
| 5. | Registered/ Not Registered | Registered |
| 6. | DTCP License No | No. 06 dated 17.01.2008 |
| 7. | Date of booking | 08.12.2009 |
| 8. | Date of execution of apartment buyers agreement | 13.01.2010 |
| 9. | Total consideration | Rs. 84,29,925 |
| 10. | Total amount paid by the complainant | Rs. 80,63,566 |
| 11. | Payment plan | Construction Linked Plan |
| 12. | Date of delivery of possession. Clause 11 (a): 36 months from the execution of buyers agreement+ grace period of 3months | 12.04.2013 |



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| 13. | Revised date of possession | December 2022 |
| 14. | Delay of number of months/ years till date | 5 years 6months 25 days |
| 15. | Penalty clause as per buyers agreement dated 13.01.2010 | Clause13(a)- Rs. 5/- per sq. ft. per month |

3. As per the details provided above, which have been checked as per record of the case file. A retail space buyer agreement is available on record for Unit No. EFP-29-0002 according to which the possession of the aforesaid unit was to be delivered by 12.01.2013. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 04.10.2018. The reply has been filed on behalf of the respondent on 31.05.2018



FACTS OF THE CASE

5. Mr. Arun Kumar Dogra and Mrs Ritu Dogra made a booking for purchase of a residential apartment, admeasuring 1650 sq. ft. in the project Emerald Floors Premier by making an advance payment of Rs 5,00,000.
6. The agreement to sell was signed on 13.01.2010. As per clause 11 of the said agreement the possession was to be handed over within 36 months from the date of execution of the agreement i.e. 12.01.2013.
7. This property was purchased by Mr. Karun Barach and Taru Dahiya and the same was transferred in their name on 29.11.2011 in the records of the developer.
8. Subsequently they sold this property to the complainants father on 01.09.2014.
9. At the transfer of the property, the developer mad him sign a lot of papers including a document in which he was made to agree that he will not be entitled to any delayed possession charges. He agreed because he was assured that the developer is going to apply for occupancy certificate very soon.
10. The complainants father expired on 06.05.2016 and subsequently this property was transferred in the complainants name on 16.05.2016. Subsequently all the payments were made as and when demanded in time.



11. After making more than 90% payment on 25.06.2017, the complainant was informed that the delayed charges will now be levied at 10% per annum.
12. The possession is delayed by more than 5 years. The complainant does not wish to withdraw from the project and wished to be paid the delayed possession charges/interest.

ISSUES RAISED BY THE COMPLAINANT

13. The following issues has been raised
 - i. Whether or not the promoter is justified in delaying the possession?
 - ii. Whether the respondent is liable to pay the interest due to delay in handing over the possession?
 - iii. Whether or not the respondent is liable to pay compensation to the complainant for the delayed possession?



RELIEF SOUGHT BY THE COMPLAINANT

16. The following reliefs have been sought:
 - i. In view of inordinate delay of more than 5 years in giving possession as per the space buyers agreement, the entire

- interest @24% p.a. from the date of payment of each installment till the date is given immediately.
- ii. Thereafter, delayed possession interest is given pro rata on a monthly basis before the 10th of every month till the possession is handed over
- iii. Any other order that this court deem fit and proper may kindly be granted to the applicant.

REPLY BY THE RESPONDENT

17. That it is submitted that the present complaint is not maintainable in law or on facts. It is submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.

That the complainant has no locus standi to file the present complaint. It is submitted that as per applicable act and the rules a complaint may be filed by a person only if the respondent has committed any act in violation of the Act. It is submitted that the complainant herein has filed to bring on record any document,



evidence which may even allude let alone prove that the respondent has violated the provisions. Thus, no cause of action can be said to have arisen to the complainant in any event to assert the reliefs claimed. Thus, no relief can be granted to the complainant.

19. That the present complaint pertains to the alleged delay in giving possession of the subject unit. The complainants have filed the complaint and are seeking the relief of interest @24% per annum from the date of payment of each installment till the date is given amongst other reliefs.

20. That without prejudice it is also 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 complainants are not entitled to any interest on the amounts deposited by them, rather the respondent company is legally entitled to forfeit the money paid by the complainants as per the settled terms and conditions, in case the complainants seek to wriggle out the binding terms of the buyers agreement.

21. That it is further wrong and denied that there is any delay in giving possession of the unit to the complainants and that the due date to handover the possession of the unit to the complainants was 12.01.2013. on the point of construction and the time line of



handing over of possession of the unit, it is relevant to mention that it has been categorically conveyed to the complainants that the company would endeavor to complete the project and hand over possession of the unit booked, subject to the terms and conditions contained in the buyers agreement.

22. That many of the allottees of the project defaulted in making payment of the amounts which resulted in slowdown in pace of 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 them.
23. That the said project is registered and despite adversities and non-payment by various allottees, the project is at an advance stage of completion and the respondent shall endeavor to offer possession within the timeline given to the authority.



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:

24. With respect to the **first issue** raised by the complainants, the authority came across that as per clause 11(a) of buyer's agreement, the possession of the said apartment was to be handed over within 36 months plus grace period of 3 months from the date of execution of the apartment buyers agreement. The said agreement was signed on 13.01.2010. Therefore, the due date of possession shall be computed from 13.01.2010. The clause regarding the possession of the said unit is reproduced below:

"11(a) Time of handing over the possession

Subject to terms of this clause and subject to the allottees having complied with all the terms and conditions of this buyers agreement, and not being in default under any of the provisions of this buyers agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the company, the company proposes to hand over the possession of the unit within 36 months from the date of execution of buyers agreement. The allottee agrees and understands that the company shall be entitled to a grace period of three months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project."



25. Accordingly, the due date of possession was 12.04.2013 and the possession has been delayed by 5 years 6 months 25 days till the date of filing of complaint. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 36 + 3

months as per clause 11(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."

In regard to the second issue of the complainant, the agreement provides for a stipulated penalty of Rs 5 per sq. ft. per month per month of the super area of the unit for the period of delay beyond 36 + 3 months as per clause 11(a) of buyer's agreement is held to be very nominal and unjust. The promoter is liable to pay the interest accrued from the date of delay in delivery of possession, i.e. 12.04.2013 till the actual date of handing over of possession. The authority is of the considered view that interest shall be granted at prescribed



rate as per the proviso of Section 18, RERA and rule 15 of HARERA rules which have been reproduced below

Section 18: Return of amount and compensation

“Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over the possession, at such rate as may be prescribed”

Rule 15: Interest payable by the promoter and allottee

“...the rate of interest payable by the promoter to the allottee or by the allottee payable by the promoter as the case may be....”

26. In respect to the third issue, the authority is of the considered view that the present claim of compensation is not maintainable before this authority. This authority has no jurisdiction to entertain the compensation claims. According to Section 71 of the Act, the complaints pertaining to compensation and interest under section 12,14,18 and section 19 of Real Estate (Regulation & Development) Act,2016 is maintainable only before the adjudicating officer. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



FINDINGS OF AUTHORITY:

27. 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.
28. The authority is of the view of that the respondent has delayed the possession by approximately 5 years 6 months and thus is liable to hand over possession under section 11(4)(a) of the Act.
29. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter
30. 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.
31. 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:

32. 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:

- (i) The respondent was duty bound to hand over the possession of the said unit by 12.04.2013 as committed by the respondent. The revised due date of possession is now December 2022.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 12.04.2013 till 05.11.2018 within 90 days of this order and thereafter on 10th of every month of delay till the handing over of possession.
- (iii) If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the authority for the



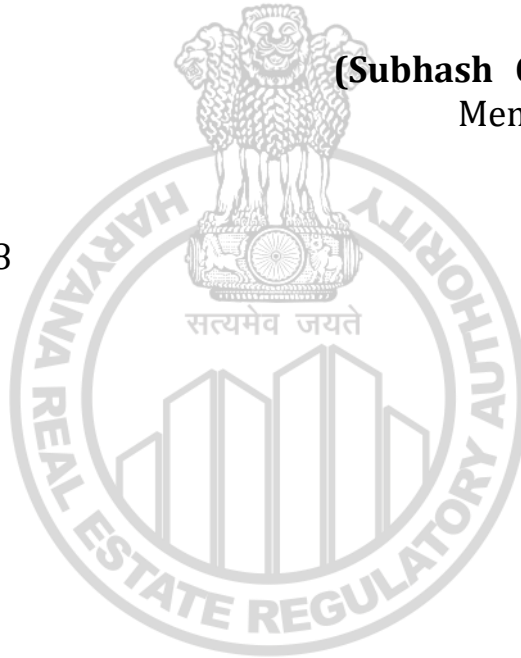
remedy as provided under the provisions, i.e. Section
19(4) of the Act ibid

33. The order is pronounced.
34. Case file be consigned to the registry.
35. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 05.11.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

| | |
|--------------------------------|--|
| Day and Date | Monday and 05.11.2018 |
| Complaint No. | 661/2018 case titled as Ms. Ramni Khatri V/s M/S Emaar MGF Land Ltd. |
| Complainant | Ms. Ramni Khatri |
| Represented through | Complaint in person |
| Respondent | M/S Emaar MGF Land Ltd. |
| Respondent Represented through | S/Shri J.K.Dang and Ishaan Dang Advocate for the respondent. |
| Last date of hearing | 4.10.2017 |
| Proceeding Recorded by | Naresh Kumari and S.L.Chanana |

Proceedings

Arguments heard.

Complainant Ms.Ramni Khatri had stepped into the shoes of her father who has expired on 6.5.2016 after the internal arrangement between her and her brother and the respondent accepted and transfer the flat No. EFP-29-0002 "Emerald Floors Premier, Emerald Estate, Sector 65, Urban Estate, Gurugram in favour of the complainant. As such, she is a lawful complainant of the booked unit. As per clause 11 (a) of the BBA, the respondent was supposed to hand over the possession of the flat within a period of 36 months from the date of execution of BBA + 3 months grace period which comes to 12.4.2013. However, the possession of the flat has not been handed over to the complainant till date. Complainant had already paid a sum of Rs.80,63,566/-. Counsel for the respondent has brought on record

certain facts w.r.t. non-claiming of any compensation for delay in handing over possession, in any manner which is placed at page No.110 in the form of undertaking by the deceased father. The facts and status of the flat remains that no possession has been given to the legal heir/ transferee, as a result of which complainant is entitled to late delivery possession charges as per provisions of section 18 (1) of the Act ibid at the rate of 10.75% per annum prevailing as on date till delivery of possession. The respondent is directed to pay the buyer late delivery charges as stated above within a period of 90 days and the remaining interest by 10th of every month till actual delivery of possession given to the complainant. In case, the respondent fails to deliver the possession, then the buyer is entitled to seek refund alongwith interest.

It is stated that the project is registered and the revised date of delivery of possession is December 2022.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)