

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

Complaint No. : 106 of 2018
First date of hearing: 19.04.2018
Date of Decision : 16.10.2018

Mr. V.P Ahuja and Others,
R/o. H.No. D-22, Saket,
New Delhi-110017

Complainant

Versus

M/s Emaar MGF Land Ltd.,
Regd. Office: Emaar MGF Business Park,
ECE House, 28 Kasturba Gandhi Marg,
New Delhi- 110001

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Complainant in person
Shri Dheeraj Kapoor

Sh. Subhbir Yadav
Advocate for the Complainant
Advocate for the Respondent

*Corrected vide order dated
16/01/19*

ORDER

1. A complaint dated 26.03.2018 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, Mr. V.P Ahuja and Others, against the promoter, Emaar MGF Land Ltd. on account of violation of clause 13(a) of apartment buyer's agreement dated 05/03/2008 for the delay in handing over the possession as per HRERA from the year 2008 till date, which is an obligation under section 11(4)(a) of the Act ibid, in respect of unit number TDP F-F01-101, First floor at Block - F in the project 'Premier Project in Palm Drive'. The Respondent has obtained the occupancy certificate from the authority and is ready to give the possession to the complainant on or before 06.04.2018.

The particulars of the complaint case are as under: -

1.	Name and location of the Project	" Premier Project in Palm Drive", Sector 66, Golf course Ext., Gurugram
2.	Flat/Apartment/Unit No.	TDP-F-F010F101 on First floor
3.	Nature of real estate project	Group housing complex
4.	Flat measuring	2625 Sq. Ft.(earlier) later revised to 2666.14 Sq. Ft. as dated on 09.03.2018.
5.	DTCP license	DS 2007/24799
6.	RERA Registered/ Not registered.	Not Registered
7.	Booking date	14.01.2008
8.	Date of execution of apartment buyer's agreement	05.03.2008



9.	Payment plan	Construction linked payment plan
10.	Basic Sale Price	Rs.1,44,34,275/-
11.	Total amount paid by the complainant till date	Rs.1,57,76,655/-
12.	Percentage of consideration amount	Approx. 99 percent (2008-2012)
13.	Date of delivery of possession as per the Clause 10(a) and 14(a) of Buyer's Agreement	01/03/2011
14.	Delay of number of years / months / days till date	7 years 7 months 15 days.
15.	Penalty Clause 16(a) as per apartment buyer's agreement dated 05.03.2008	Interest Rs 5/- per sq ft per month of super area

2. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An Apartment Buyer's Agreement dated 05/03/2008 is available on record according to which the possession of the same was to be delivered by December, 2008 (reference clause 14(a) of the agreement). The respondent has not delivered the possession of the said unit to the complainant nor they have paid any compensation.

3. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on



19.04.2018. The case came up for hearing on 19.04.2018, 16.05.2018, 05.07.2018, 25.07.2018 and 16.08.2018. The reply filed on behalf of the respondent on 10.05.2018. The respondent has supplied the details and status of the project along with the reply. The respondent has submitted an affidavit dated 10.05.2018 wherein the respondent has denied that complainant has faced any harassment or he has suffered financially or there has been any delay in the possession of the shop and the agreement is arbitrary or one sided. The complainant filed the rejoinder on 15.06.2018.

Facts of the Complaint

4. Briefly stated, the facts of the case as culled out from the case of complainant that this property was first booked by original allottee Mr. Sashi Sagar in the month of January 2008 by payment of booking amount of Rs. 10 lakhs.
5. This property was further sold to first transferee Mr. Harminder Singh Chimni in the year January 2012 in which he further paid Rs. 11,00,000/- and early payment rebate of Rs. 8,59,999/- was credited in his



account/ledger. The property was then bought by the second transferee i.e. the complainant in resale from the first transferee in the month of April 2017 for Rs. 1,88,50,000/- the total money with the respondent as on date 23.03.2018 is Rs. 1,50,83,163/-.

6. That the respondent (builder) had allotted the unit in 2008 and has offered the possession on 09.03.2018 vide their letter dt. 09.03.2018, after 10 years and is asking for Rs. 19,40,201/-
7. The buyer's agreement from the respondents on the said property is just one sided and does not protect the complainants' rights on the money invested with the respondents for the last ten years where they had paid respondent as and when demanded by them almost 95-99 percent approx. consideration money in the period between 2008-2012.
8. The complainant further contends that the respondents escape HRERA they applied for the occupation certificate in May 2017 and they offered the possession in March 2018 which gave the complainant to think what took them so long in giving possession when they had applied for occupancy



certificate in 2017. On 14.08.2012, the first transferee received a status update that Tower- F was in "internal plastering and electrical conduiting in progress".

9. The complainant submitted and the predecessor paid all demands as per stage of construction and demand raised by respondent. There was no demand from the date 29.02.2012 to 28.09.2017 as during this period the construction was abandoned. The respondent on date 09.03.2018 offered possession with the increased area 2666.14 sq. ft. from 2625 sq. ft. to the complainants, respondents requested the complainant to calculate area of flat, but respondents did not provide the calculation to complainants which depicts clear indication that the respondents were doing unfair trade practice and breach of the contract which attracts heavy fine and penalty.

10. That the project of the project comes under the definition of "on going project" as the RERA Act came to force in 01.05.2016 and HRERA rules in 28.07.2017 and till then the construction was not completed and needed to be registered before the Hon'ble Authority but the respondent failed to



register its project under the RERA Act. Therefore, the respondent is liable under the section 3 and 4 of the RERA Act and attract the penalty under Section 59 and 60 of the Act. It is also pertinent to state here that the respondent asked for the payment on 28.09.2017 as per construction linked plan i.e. on completion of flooring and wall paint”, it is clear from the fact that occupancy certificate filed by the respondent for occupancy was not complete, moreover the occupancy certificate cannot be granted if a building is under construction and that the reason occupancy certificate was granted after completion of building i.e. on 09.03.2018. After ten years the respondent is asking further payment of Rs. 19,40,201/-.

Issues raised by the complainants are as follow:

- i. Whether the Buyers agreement is one-sided / arbitrary.
- ii. Whether there is any delay in giving of the possession of the flat to complainant.
- iii. Whether the respondent is liable to pay the compensation to the complainant for the delay of possession.



- iv. Whether there should be a stay given on the demand letter of the respondents as outlined in possession letter if possession not taken by the complainant till 06.04.2018 till the case is decided by HARERA.
- v. Whether the respondents to escape HARERA applied for occupancy certificate in May 2017.

RELIEF SOUGHT:

- i. To direct the respondent to supply the calculation of area of the flat and give liberty to the complainants for third party audit to measure the actual area.
- ii. To provide stay on demand letter and penalties as outlined in possession letter if not taken by the complainant on or before 06.04.2018 till the case is decided by the HARERA

I reserve my right to seek compensation from the promoter for which I shall make a separate application to the adjudicating officer , if required

Final Written Argument on behalf of complainants

1. According to the Final Written Argument by the Complainants the sale consideration amounts to 1,44,34,275/-



2. That after execution of agreement to sale Both parties approached the Respondent to endorse the name of the complainants in his records.
3. That the respondent imposed the illegal condition by unilateral and arbitrary conditions who were forced to sign Indemnity Bond cum Undertaking and Affidavit which contains illegal one sided condition i.e Clause No.2 (page no. 212 and No. 215 of respondent's Reply) *which states that the Nominee/Transferee is not entitled to claim any compensation for delay in handing over possession .*
4. The complainants were under the obligation to pay the balance instalments on demand of the respondent and so abided by the side obligation which was filed under distress.
5. The complainants have all the attached rights with the said flat after paying consideration to the previous owner.

Respondent's Reply

11. The respondent contends that the present complaint is not maintainable and the Hon'ble Authority has no jurisdiction to entertain the present complaint. The respondent further contends that the



project is not an “ongoing project as per the rule 2(1)(o) of Haryana Real Estate (regulation & development) Rules, 2017 nor is the project registered with this Hon’ble Authority. As per the section 2(1) (o) of the said rules, any project for which an application for Occupation Certificate was made to the competent authority on 25.04.2017 which is prior to the date of publication of the Rules i.e. 28.07.2017 and hence the project is not an ongoing project as per Rule 2(1)(o) and there this authority does not hold any jurisdiction whatsoever to entertain the present complaint and it should be liable to be rejected.

12. The respondent submitted even if a project is covered under the definition of “ongoing projects” and registered with this Hon’ble Authority, The complaints pertaining to compensation and interest under section 12,14,18 and 19 of the RERA Act,2016 are required to be filed before the Adjudicating Officer under Rule 29 read with section 31 and section 71 of the Act. Its is submitted that while making the request for transfer of allotment in their name, the complainant also executed an affidavit and



an undertaking-cum-indemnity bond dated 28.03.2017, in favor of the respondent, wherein the complainants undertook not only to make the balance payment of all the charges but also to abide by the terms and conditions of the Apartment Buyer Agreement and indemnify the respondent in case of any legal action. Respondent also states that filing of a complaint cannot be a ground and does not entitle the complainants not to pay the charges and hence the complainants are liable to pay those charges.

13. That it was only on 13.04.2017 that the allotment of the said apartment was transferred in favor of the complainants and immediately thereafter the respondents had applied the occupation certificate vide letter dated 25.07.2017 and it was granted on 25.01.2018, soon after obtaining this the respondent issued the letter of offer of possession dated 09.03.2018 and hence there is no question of the complainants waiting for the possession for the last 10 years. The complainants are caught in a web of their own lies as the proposed estimated time of handing over of the possession of the said apartment was by December 2010 plus 90 days also without



prejudice to the above, the said proposed time is applicable only subject to force majeure and the complainant or the predecessor not being in default of any terms and conditions of the agreement, including but not limited to the payment of instalments. This was also provided in clause 14 of the agreement. However, the complainants and their predecessors have been defaulters, having deliberately failed to make of various installments as mentioned in the statement of accounts. It is also pertinent to mention here that even after receiving the notice of possession dated 09.03.2018 and various reminders the complainants having deliberately failed to make the payment of last installment and current outstanding amount as on 08.05.2018 is Rs. 1,51,147/- towards various installments, delay payments interest etc.



14. Respondents contends that the project such as one of these in question are huge projects and involve putting in place huge infrastructure and is dependent on timely payment by all the allottees. Such huge projects do take some reasonable time for completion and timelines are not absolute. This

position is forfeited from the fact that the parties, having envisaged that there could be some delay after December 2010+90 days, agreed to specific condition that in case the respondent fails to offer possession of the apartment within the time, it shall be liable to pay delay compensation @Rs. 5 per. Sq. ft. per month of the super area of the said apartment. This was also provided in clause 16 of the agreement which complainant had signed and executed. It is most respectfully submitted that the present complaint be rejected and dismissed.

Rejoinder

The complainant filed a rejoinder rebutting the assertions stated by the respondent in his reply. The complainant submitted that -

- a. The complainant contends that application filed but the respondent challenging the jurisdiction of this Hon'ble Authority is not tenable and not maintainable as the respondent has approached this authority with unclean hands and has misled the Hon'ble Authority by misinterpretation of the sections of the Act and the HRERA Rules. Thus, Hon'ble





Authority should take stringent action against the respondent for misleading the Hon'ble Authority.

- b. That the respondents also concealed material facts from this Hon'ble Authority, by concealing that the respondent has failed to give possession of the flat to the complainant as per the time stipulated in the Buyers Agreement by the year 2010 and therefore is liable to pay compensation for the unreasonable delay. That the RERA Act came into force since 01.05.2017 and the project of the respondent was not completed by that time and therefore respondent failed to register its project under RERA Act and therefore, is liable under sections 3 and 4 of the Act and attracts penalty under section 59 and 60 of the Act. The respondent is caught in the web of its own lies that in the present case the respondent had applied the occupation certificate for the project on 25.07.2017 and hence the project is an "ongoing project" under section 2(o) of the Act. It is pertinent to note here that the date of completion of flooring and wall paint was done on 28.07.2017 and the respondent applied for OC even before the completion of construction which is not justifiable in the eyes of the law and moreover the occupancy certificate was not granted before the publication of rules.





- c. The bare reading of the complaint clears the picture that the said complaint was not filed only for compensation, however, multiple reliefs are claimed by the complainant. Hence, the complainant is fit for adjudication and within jurisdiction of this Hon'ble Authority. That if any defaults were made by the predecessors, the complainants are not responsible for that moreover, double jeopardy cannot be applied on complainants for delay in making the payment. The predecessors had paid the interest @15% p.a. therefore it is the right of complainants to get the agreed compensation of Rs.13.125/- per month @Rs. 5/- as per the terms and conditions of clause 16 (a) of Buyer Agreement. The act of the respondent caused financial loss and became a reason of mental agony.
- d. The complainant himself being a real estate broker having been registered on several online portal as real estate agent is falsely representing the fact that the respondent no.2 presented a rosy picture of the project of respondent no. 1. The entire story of the complainant is concocted and the complainant being well versed about all the minor details of real estate got misrepresented by the other agent is hard to believe. The complainant has made false and baseless allegations with a mischievous intention to extort money from the respondent no.2 and is also trying to destroy the career of





the respondent out of the jealousy. The respondent was not the party to the Shop buyers Agreement as there is no privity of contract between the complainant and the respondent and on this ground alone the present complaint ought to be dismissed.

- e. On the last date of hearing the Hon'ble Authority could not conduct the proceeding as the presiding officers were busy, therefore, the case was adjourned to 12.09.2018 for arguments. By the last hearing the project was registered.

DETERMINATION OF ISSUES

1. As to issue No. I raised by the complainant, the Buyers Agreement does not seem to be one sided or arbitrary as the respondent have mentioned about all types of situations in which the penalty shall be imposed on him or in case there is any default on the part of the complainant and penalty to be imposed. Moreover, if the complainant was not satisfied with the clauses of Agreement he did not ask the respondent for any changes to be made in agreement before signing and executing the same.
2. As to the complainant's issue No. II, there is a delay on the part of the respondent in handing over the possession and the delay is not justified. For the delay, the complainant will be getting interest at the prescribed rate as per the RERA Act.



3. As per the issue III of the complainant, compensation cannot be decided by the present Authority as it is beyond the jurisdiction according to the RERA Act, but the complainant can file its application to the Adjudicating Officer so as to claim compensation from the respondent.
4. As for the issue IV of the complainant, the authority can put stay on the demand letter for the payment by the respondent till the case is finally decided by this authority.
5. As to issue V, the respondent did not apply for the occupancy certificate in May, 2017 rather he applied on 28.07.2017.

Findings of the authority

1. 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.
2. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the apartment TDP-F-F010F101 on First floor to



the complainant by the committed date i.e. 1st March 2011 as per the said agreement and the possession has been delayed by 7 years, 7 months and 15 days till the date of decision i.e. 16.10.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

Decision and directions of the authority

3. 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 duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 01.03.2011 till the actual date of handing over of the possession.
- (ii) The respondent is directed to pay interest accrued from 01.03.2011 to 16.10.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of



decision and subsequent interest to be paid by the 10th of every succeeding month.

- (iii) The respondent is further directed to apply for registration of the project within fifteen days from 16.10.2018 otherwise penal consequences will follow.
4. 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.
 5. The order is pronounced.
 6. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Sanjit Kumar)
Member

(Subhash Chander Kush)
Member



Dated : 16.10.2018

Corrected Judgement uploaded on 18.01.2019

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 16.10.2018
Complaint No.	106/2018 Case titled as Mr. Ved Prakash Ahuja & Anr. V/s M/s Emaar MGF Land Ltd.
Complainant	Mr. Ved Prakash Ahuja & Anr.
Represented through	Shri Sukhbir Yadav, Advocate for the complainant
Respondent	M/S Emaar MGF Land Ltd.
Respondent Represented through	Shri Dheeraj Kapoor, Advocate for the respondent.
Last date of hearing	12.09.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Since written arguments have already been placed on record, the matter stands disposed of. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
16.10.2018

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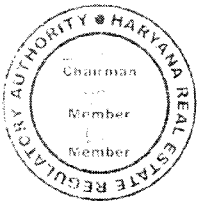
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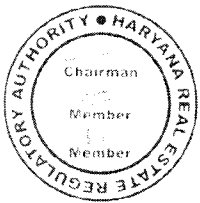
ORDER

1. A complaint dated 26.03.2018 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 complainants, Mr. V.P Ahuja and Others, against the promoter, Emaar MGF Land Ltd. on account of violation of clause 13(a) of apartment buyer's agreement dated 05/03/2008 for the delay in handing over the possession as per HRERA from the year 2008 till date, which is an obligation under section 11(4)(a) of the Act ibid, in respect of unit number TDP F-F01-101, First floor at Block - F in the project 'Premier Project in Palm Drive'. The Respondent has obtained the occupancy certificate from the authority and is ready to give the possession to the complainant on or before 06.04 2018.

The particulars of the complaint case are as under: -

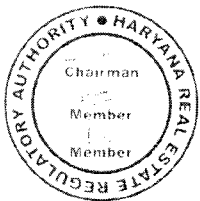
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2.	Flat/Apartment/Unit No.	TDP-F-F01F101 on First floor
3.	Nature of real estate project	Group housing complex
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13.	Date of delivery of possession as per the Clause 10(a) and 14(a) of Buyer's Agreement	01/03/2011
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2. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An Apartment Buyer's Agreement dated 05/03/2008 is available on record according to which the possession of the same was to be delivered by December, 2008 (reference clause 14(a) of the agreement). The respondent has not delivered the possession of the said unit to the complainant nor they have paid any compensation.

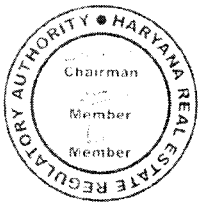
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Facts of the Complaint

4. Briefly stated, the facts of the case as culled out from the case of complainant that this property was first booked by original allottee Mr. Sashi Sagar in the month of January 2008 by payment of booking amount of Rs. 10 lakhs.
5. This property was further sold to first transferee Mr. Harminder Singh Chimni in the year January 2012 in which he further paid Rs. 11,00,000/- and early payment rebate of Rs. 8,59,999/- was credited in his



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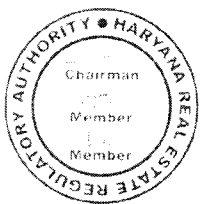
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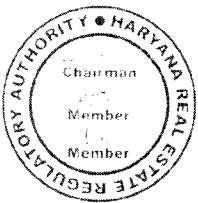
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Issues raised by the complainants are as follow

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- iv. Whether there should be a stay given on the demand letter of the respondents as outlined in possession letter if possession not taken by the complainant till 06.04.2018 till the case is decided by HARERA.
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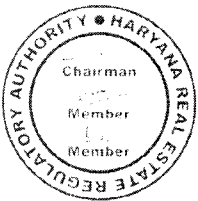
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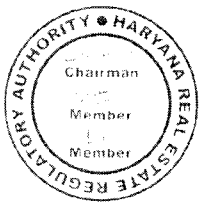
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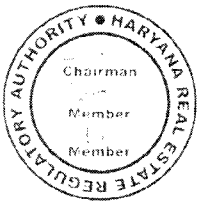


Respondent's Reply

11. The respondent contends that the present complaint is not maintainable and the Hon'ble Authority has no jurisdiction to entertain the present complaint. The respondent further contends that the

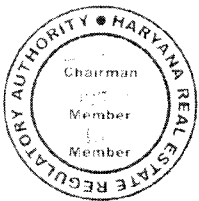
project is not an “ongoing project as per the rule 2(1)(o) of Haryana Real Estate (regulation & development) Rules, 2017 nor is the project registered with this Hon’ble Authority. As per the section 2(1) (o) of the said rules, any project for which an application for Occupation Certificate was made to the competent authority on 25.04.2017 which is prior to the date of publication of the Rules i.e. 28.07.2017 and hence the project is not an ongoing project as per Rule 2(1)(o) and there this authority does not hold any jurisdiction whatsoever to entertain the present complaint and it should be liable to be rejected.

12. The respondent submitted even if a project is covered under the definition of “ongoing projects” and registered with this Hon’ble Authority, The complaints pertaining to compensation and interest under section 12,14,18 and 19 of the RERA Act,2016 are required to be filed before the Adjudicating Officer under Rule 29 read with section 31 and section 71 of the Act. Its is submitted that while making the request for transfer of allotment in their name, the complainant also executed an affidavit and

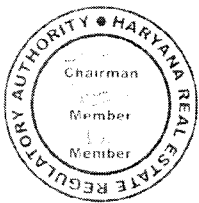


an undertaking-cum-indemnity bond dated 28.03.2017, in favor of the respondent, wherein the complainants undertook not only to make the balance payment of all the charges but also to abide by the terms and conditions of the Apartment Buyer Agreement and indemnify the respondent in case of any legal action. Respondent also states that filing of a complaint cannot be a ground and does not entitle the complainants not to pay the charges and hence the complainants are liable to pay those charges.

13. That it was only on 13.04.2017 that the allotment of the said apartment was transferred in favor of the complainants and immediately thereafter the respondents had applied the occupation certificate vide letter dated 25.07.2017 and it was granted on 25.01.2018, soon after obtaining this the respondent issued the letter of offer of possession dated 09.03.2018 and hence there is no question of the complainants waiting for the possession for the last 10 years. The complainants are caught in a web of their own lies as the proposed estimated time of handing over of the possession of the said apartment was by December 2010 plus 90 days also without



prejudice to the above, the said proposed time is applicable only subject to force majeure and the complainant or the predecessor not being in default of any terms and conditions of the agreement, including but not limited to the payment of instalments. This was also provided in clause 14 of the agreement. However, the complainants and their predecessors have been defaulters, having deliberately failed to make of various installments as mentioned in the statement of accounts. It is also pertinent to mention here that even after receiving the notice of possession dated 09.03.2018 and various reminders the complainants having deliberately failed to make the payment of last installment and current outstanding amount as on 08.05.2018 is Rs. 1,51,147/- towards various installments, delay payments interest etc.



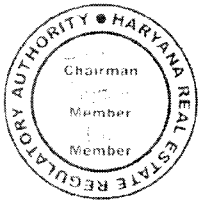
14. Respondents contends that the project such as one of these in question are huge projects and involve putting in place huge infrastructure and is dependent on timely payment by all the allottees. Such huge projects do take some reasonable time for completion and timelines are not absolute. This

position is forfeited from the fact that the parties, having envisaged that there could be some delay after December 2010+90 days, agreed to specific condition that in case the respondent fails to offer possession of the apartment within the time, it shall be liable to pay delay compensation @Rs. 5 per. Sq. ft. per month of the super area of the said apartment. This was also provided in clause 16 of the agreement which complainant had signed and executed. It is most respectfully submitted that the present complaint be rejected and dismissed.

Rejoinder

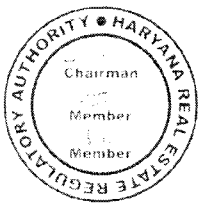
The complainant filed a rejoinder rebutting the assertions stated by the respondent in his reply. The complainant submitted that -

- a. The complainant contends that application filed but the respondent challenging the jurisdiction of this Hon'ble Authority is not tenable and not maintainable as the respondent has approached this authority with unclean hands and has misled the Hon'ble Authority by misinterpretation of the sections of the Act and the HRERA Rules. Thus, Hon'ble



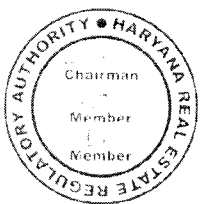
Authority should take stringent action against the respondent for misleading the Hon'ble Authority.

- b. That the respondents also concealed material facts from this Hon'ble Authority, by concealing that the respondent has failed to give possession of the flat to the complainant as per the time stipulated in the Buyers Agreement by the year 2010 and therefore is liable to pay compensation for the unreasonable delay. That the RERA Act came into force since 01.05.2017 and the project of the respondent was not completed by that time and therefore respondent failed to register its project under RERA Act and therefore, is liable under sections 3 and 4 of the Act and attracts penalty under section 59 and 60 of the Act. The respondent is caught in the web of its own lies that in the present case the respondent had applied the occupation certificate for the project on 25.07.2017 and hence the project is an "ongoing project" under section 2(o) of the Act. It is pertinent to note here that the date of completion of flooring and wall paint was done on 28.07.2017 and the respondent applied for OC even before the completion of construction which is not justifiable in the eyes of the law and moreover the occupancy certificate was not granted before the publication of rules.



c. The bare reading of the complaint clears the picture that the said complaint was not filed only for compensation, however, multiple reliefs are claimed by the complainant. Hence, the complainant is fit for adjudication and within jurisdiction of this Hon'ble Authority. That if any defaults were made by the predecessors, the complainants are not responsible for that moreover, double jeopardy cannot be applied on complainants for delay in making the payment. The predecessors had paid the interest @15% p.a. therefore it is the right of complainants to get the agreed compensation of Rs.13.125/- per month @Rs. 5/- as per the terms and conditions of clause 16 (a) of Buyer Agreement. The act of the respondent caused financial loss and became a reason of mental agony.

d. The complainant himself being a real estate broker having been registered on several online portal as real estate agent is falsely representing the fact that the respondent no.2 presented a rosy picture of the project of respondent no. 1. The entire story of the complainant is concocted and the complainant being well versed about all the minor details of real estate got misrepresented by the other agent is hard to believe. The complainant has made false and baseless allegations with a mischievous intention to extort money from the respondent no.2 and is also trying to destroy the career of

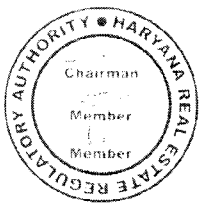


the respondent out of the jealousy. The respondent was not the party to the Shop buyers Agreement as there is no privity of contract between the complainant and the respondent and on this ground alone the present complaint ought to be dismissed.

- e. On the last date of hearing the Hon'ble Authority could not conduct the proceeding as the presiding officers were busy, therefore, the case was adjourned to 12.09.2018 for arguments. By the last hearing the project was registered.

DETERMINATION OF ISSUES

1. As to issue No. I raised by the complainant, the Buyers Agreement does not seem to be one sided or arbitrary as the respondent have mentioned about all types of situations in which the penalty shall be imposed on him or in case there is any default on the part of the complainant and penalty to be imposed. Moreover, if the complainant was not satisfied with the clauses of Agreement he did not ask the respondent for any changes to be made in agreement before signing and executing the same.
2. As to the complainant's issue No. II, there is a delay on the part of the respondent in handing over the possession and the delay is not justified. For the delay, the complainant will be getting interest at the prescribed rate as per the RERA Act.



3. As per the issue III of the complainant, compensation cannot be decided by the present Authority as it is beyond the jurisdiction according to the RERA Act, but the complainant can file its application to the Adjudicating Officer so as to claim compensation from the respondent.
4. As for the issue IV of the complainant, the authority can put stay on the demand letter for the payment by the respondent till the case is finally decided by this authority.
5. As to issue V, the respondent did not apply for the occupancy certificate in May, 2017 rather he applied on 28.07.2017.

Findings of the authority

1. 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.
2. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the apartment TDP-F-F010F101 on First floor to



the complainant by the committed date i.e. 1st March 2011 as per the said agreement and the possession has been delayed by 7 years, 7 months and 15 days till the date of decision i.e. 16.10.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

Decision and directions of the authority

3. 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 duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 01.03.2011 till the actual date of handing over of the possession.
 - (ii) The respondent is directed to pay interest accrued from 01.03.2011 to 16.10.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of



decision and subsequent interest to be paid by the 10th of every succeeding month.

(iii) The respondent is further directed to apply for registration of the project within fifteen days from 16.10.2018 otherwise penal consequences will follow.

4. 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.
5. The order is pronounced.
6. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 16.10.2018