

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.12.2018
Complaint No.	795/2018 Case Titled As Mr. Jagan Nath Mangla & Rajender Prasad Mangla V/S M/S Emaar Mgf Land Limited
Complainant	Mr. Jagan Nath Mangla & Rajender Prasad Mangla
Represented through	S/Shri Abhay Jain and Kamal Sharma, Advocates for the complainant.
Respondent	M/S 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	H.R.Mehta

Proceedings

Project is registered with the authority.

Respondent has applied for occupation certificate on 24.4.2017 and the same has not yet been granted. Respondent is directed to complete all the formalities w.r.t. non-completion of project/occupation certificate and procure the same within 3 months failing which RERA authority shall proceed under section 37 of the Real Estate (Regulation & Development) Act, 2016 on account of non-compliance of the directions of the authority and penal consequences will be initiated against them.

As per clause 11 of the Builder Buyer Agreement dated 26.3.2012, for retail space/unit No.PH4-25-0301, 3rd Floor, Block No.25, in project "Palm Hills", Sector-77, Gurugram, possession was to be handed over to the complainant within a period of 33 months + 3 months grace period from the date of commencement of construction i.e. 25.2.2011 which comes out to be 25.2.2014. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.97,05,411/-with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 25.2.2014 till the date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. Respondent is also entitled to charge interest on account of delayed payments at the equitable rate of interest that is being granted to the complainant @ 10.75% per annum.

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

Samir Kumar
(Member)
19.12.2018

Subhash Chander Kush
(Member)
19.12.2018

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

Complaint No. : 795 of 2018
Date of First Hearing : 19.12.2018
Date of Decision : 19.12.2018

1. Jagan Nath Mangla
2. Rajender Prasad Mangla
R/o H.No. 589/3, Roshanpura,
Gurugram, Haryana

...Complainants

Versus

M/s EMAAR MGF Land Limited,
EMAAR MGF Business Park, Mehrauli-
Gurugram, Road, sikandpur Chowk, sector
28, Gurugram-122002, Haryana

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Abhay Jain
Shri Ketan Luthra
Shri Ishaan Dang

Advocate for the complainants
Authorized representative on
behalf of respondent
Advocate for the respondent

ORDER

1. A complaint dated 05.09.2018 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 Jagan Nath



Mangla and Rajender Prasad Mangla, against the promoter M/s EMAAR MGF Land Limited 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. Since, the buyer's agreement has been executed on 26.03.2012 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation And Development) Act, 2016

The particulars of the complaint are as under: -

1.	Name and location of the project	Palm Hills, Sector-77, Gurgaon
2.	DTCP licence no.	56 dated 31.08.2009
3.	Registered/Unregistered	Registered
4.	Registration no.	256 of 2017 dated 03.10.2017
5.	Registration certificate valid upto	02.10.2022
6.	Applied for OC	24.04.2017
7.	Date of execution of buyer's agreement	26.03.2012
8.	Unit no.	PH4-25-0301, 3 rd floor, block no. 25
9.	Unit measuring	1950 sq. ft.



10.	Total consideration	Rs. 1,01,82,066
11.	Total amount paid by the complainant	Rs. 97,05,411/-
12.	Percentage of consideration amount	95.31% approx..
13.	Payment plan	Instalment payment plan
14.	Date of delivery of possession. Note: Date of construction i.e. 25.02.2011	Clause 11-33months + grace period of 3 months from commencement of construction i.e. 25.02.2014
15.	Delay of number of months	4 years 10 months approx.
16.	Penalty Clause as per builder buyer agreement dated 26.03.2012	Rs. 7.50/- per sq. ft. per month till the date of notice of possession

3. As per the details provided by the parties in the complaint and the reply, the developer/promoter was bound to deliver the possession of unit no. PH4-25-0301, 3rd floor, block no. 25. The promoter has failed to deliver the possession of the said unit to the complainant by the due date as per apartment buyer agreement dated 26.03.2012. 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 19.12.2018. The case came up for hearing on 19.12.2018. The reply has been filed by the respondent dated 26.10.2018.



FACTS OF COMPLAINT

5. The complainants submitted that out of the four respondents, three respondents no. 1 to 3 are companies duly incorporated under the Companies Act, 1956 and are being sued through their respective managing director and the respondent no. 4 in individual capacity being owner of some part of the land where the project is being developed by the respondent no.1.
6. The respondent/sellers/owners published very attractive brochure highlighting the group housing colony to be known as "Palm Hills at Sector 77, Gurugram, Haryana." The respondent no.1 to the complainants that "Emaar MGF is a joint venture between Emaar Properties PJSC, Dubai - one of the world's leading real estate companies and MGF Developments Ltd, India-one of India's leading real estate developers". The respondent no. 1 claimed that the company has been instrumental in bringing the largest FDI in Indian real estate sector in order to lure prospective customers to buy apartments in the said project "Palm Hills". The respondents acclaimed that the project "Palm Hills is an exclusive planned project spread over approximately 29 acres with a panoramic view of the Aravalli Hills. Nested amidst wide-open landscaped green with a Spanish style architecture built in small clusters, Palm Hills is only a 20



minutes' drive from Delhi's international airport. Further, submitted that Palm Hills project was launched in 2010 with the promises to be delivered by November, 2013 and the huge funds have been collected by the respondents. But till date, no possession of the apartment has been offered to the complainants.

7. The complainants submitted that they were approached by the representatives of the respondents no. 1. Their sale representatives claimed and boasted of the project 'Palm Hills' as the world class project. The complainants were invited to the sale office and were lavishly entertained and promises were made to them that the project would be completed by November 2013, including parking, horticulture, club and other common areas. The complainants were told that the possession of the apartment would be handed over to the buyers within 33 months from the start of construction, which was February, 2011. The complainants were impressed by their statements and representations and ultimately lured to pay Rs. 5,00,000/- as booking amount of the said apartment on 31.01.2012. Afterwards, the buyer's agreement was executed on 26.03.2012.

8. The complainants submitted that they further paid all instalments of payments as and when demanded by the



respondents and ultimately paid Rs. 97,05,411/- a sum of the total demand of Rs 97,05,409/- and excluding an interest for delay payments of Rs.3,23,289/-. The gross total demanded by the respondents is inclusive of the tax payments as is visible in the statement of account as of 28.07.2018. The respondents have charged interest at the rate of twenty four per cent 24% per annum for the delay payments.

9. The complainants submitted that the when they requested the respondents to plan a site visit for verification of construction status, the respondents kept on delaying the joint-site visit on one pretext or another. Further, the respondents made a demand of the sum of Rs 17,02,350 on 31.03.2014 claiming completion of the plaster and completion of flooring of the project. The complainants submitted and requested to the respondents that the demand was not justified and valid as the external plaster work and the flooring were not yet completed. Even after repeated requests of the complainants, the respondents denied the joint-site visit and rather through a letter of notice, Ref no. NL/PHA/714626 dated 18 December, 2014 warned the complainants to either make the payments within a period of 30 days or the allotment of the apartment would be cancelled. Having no choice left, and



under such pressure the complainants paid all payments with objections.

10. That the complainants have approached the respondents many times and pleaded for delivery of their possession of their apartment as per the schedule of the date of possession as per the buyer's agreement. The respondents did not give any justified response to their letters, emails, personal visits, telephone calls, etc. seeking information about the status of the project and delivery of possession of their apartment.
11. The complainants submitted that the respondents have in an unfair manner siphoned of funds meant for project and used for their own benefit for no cost. That the respondents being builders and developers, whenever in need of funds from bankers or investors ordinarily have to pay to heavy interest per annum. However in the present scenario, the respondents utilised funds collected from the complainants and other buyers for their own good in other projects, being developed by the respondents. That is why, the project has not yet been completed even with a delay period of more than four years and ten months.



12. Issues to be decided by the complainants :

- i. Whether the promoter is under legal obligation to hand over the flat in question in terms of the buyer agreement dated 26.03.2012 even after paying complete payable amount in respect of the said unit?
- ii. Whether the promoter is obliged to refund the all such amounts along with interest which the respondents have collected from the complainants such as parking space charges, PLC and club membership charges etc. ?
- iii. Whether the complainants are entitled to receive interest @ 24 % p.a. as charged by the developer for period of delay in handing over the possession and subsequently receiving monthly interest till the possession is given?

13. Relief sought:

- i. Direct the respondent to complete the construction and handover the possession of the apartment to the complainants immediately. The complainants have already paid complete payable amount of their apartment as per the buyer's agreement to the respondent.



- ii. Direct the respondent to pay interest for every month of delay , since November 2013, in offering of possession of the apartment to the complainants, on the amount taken from the complainants and additional charges for the aforesaid apartment, at the rate of 24% per annum till the respondent hand over the possession of the apartment, as the respondent has already charged from the complainants at the rate of 24% per annum for delay of payment.
- iii. Direct the respondent to withdraw interest amount of Rs. 3,23,289/- which has been charged illegally by the respondent from the complainants due to the procrastination of the respondent for which the complainants have already made submissions and requisitions to the respondent.
- iv. Direct the respondent to pay legal expenses of Rs. 1 lakh incurred by the complainants.

REPLY

The respondent submitted various preliminary objections and submissions. They are as follow:

14. That the respondent submitted that this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate



application for the rejection of the complaint on the ground of the jurisdiction and this reply is without prejudice to the rights and contention of the respondent contained in the said application. The claims have been made in a manner unknown to the common law of contract and are specifically contrary to the text of the Indian contract act, 1872 itself.

15. 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 complainant has got no locus standi to file the present complaint and submitted that the said project is covered under the definition of "ongoing projects" as per the Act, as the occupation certificate for the tower in which the unit is situated has been applied in June 2017 i.e. prior to the coming into effect of the rules.
17. The respondent submitted that as per section 31 read with section 71 of the Act, the complaint pertaining to



compensation and interest under section 12, 14, 18 and 19 of the Act ibid is maintainable only before the adjudicating office. The complaint for payment of interest is maintainable only before the adjudicating officer. Thus, it is submitted that the complaint, if any, is required to be filed before the adjudicating officer and not before this hon'ble regulatory authority.

18. 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.
19. 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.

20. The respondent submitted that on the request of the complainants, a letter dated 30.01.2015 was issued to ICICI Bank Ltd., New Delhi, relating to permission to mortgage for flat no. PH4-25-0301 in Palm Hills project, Sector-77, village Shikohpur, Gurgaon. As such, ICICI Bank is a 'necessary' and proper' party for the purposes of adjudication of the present case. The said complaint ought to be dismissed for non-joinder and mis-joinder of a 'necessary' party.
21. The respondent submitted that the complainants approached the respondent and sought provisional allotment of a unit in the said project. The complainants were duly explained the terms and conditions of allotment. They submitted an application dated 28.01.2012 for provisional allotment of unit. Subsequently, vide letter dated 08.02.2012, the complainants were informed about the provisional allotment



of unit no. PH4-25-0301. Thereafter, buyer's agreement dated 26.03.2012 was executed between the parties.

22. The respondent denied that there is any delay in giving possession of the unit to the complainants and that the due date to handover possession of the unit to the complainants was November,2013. On the point of construction and the time line of handing over of possession of the unit, it was conveyed to the complainants that the company would endeavour to complete the project and hand over possession of the unit booked, as expeditiously as possible, subject to the reasons beyond the control of the company, as subject to the terms and conditions contained in the buyer's agreement. Being a law-abiding company, possession of a unit can only be handed over once all the statutory permissions/approvals have been obtained. Further, submitted that he has already handed over possession of 25 towers in the project after grant of occupation certificate by the authorities and occupation certificate for another 24 towers including the tower in which the unit in question is located, is awaited from the authorities.



23. The respondent submitted that the project in question is a large project and such kind of projects do take reasonable time for completion. This position is forfeited from the fact

that the parties had envisaged a clause in the buyer's agreement that in case the company was not able to handover the possession within a period of 33 months from the date of execution of the buyer's agreement (with a grace period of 3 months for applying and obtaining the completion/occupation certificate in respect of the unit and/or the project, subject to other terms and conditions of buyers agreement. Such a clause would not have been agreed to by the parties, had the parties not envisaged a situation wherein possession was offered beyond 33+3 months. It is thus apparent that the timeline mentioned in the buyer's agreement was proposed estimated time for handing over of possession.

24. The respondent submitted that many of the 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 opted by them. Delayed payments such as towards the unit in question, have an adverse impact on the project deliverables. It is specifically pointed out that delay payment charges were



levied on the unit in question. statement of account dated 29.09.2018.

25. Determination of issues

- i. Regarding **first issue** raised by the complainants, the promoter was under a legal obligation for handing over the possession as per the BBA. However, they committed a default in doing the same. That as per clause 11(a) of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 25.02.2014. The clause regarding possession of the said unit is reproduced below:

“11(a) TIME OF HANDING OVER THE POSSESSION

... the company proposes to hand over the possession of the Unit within 33 months from the date of start of construction, subject to timely compliance of the provisions of the Buyer’s Agreement by the Allottee. The Allottee(s) agrees and understands that the company shall be entitled to a grace period of three months...”

Accordingly, the due date of possession was 25.02.2014. Therefore, there is delay of 4 years 10 months in handing over the possession

- ii. With respect to the **second issue** raised by the complainants, as far as issue regarding parking is concerned, the matter is to be dealt as per the provisions of the said agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation And Development) Act,



2016. As per clause 1.3 the following provisions have been made regarding parking space:

“1.3 Parking Spaces

(c) The allottee(s) agrees and understands that the reserved car parking spaces or any un-allotted car parking spaces in the Project shall form part of common areas and facilities of the said unit for the purpose of declaration to be filed by the Company under the Haryana Apartment Ownership Act, 1983 (“Act”) as amended from time to time.....”

The cost of parking of Rs.4,00,000/- (Rupees four lakhs only) has already been included in the sale consideration, accordingly, the promoter has no right to charge it separately from the buyer. If it has been separately charged, then the amount be returned by the promoter to the allottee.

With regard to PLC charges, these charges have been lawfully charged by the respondent as per clause 1.2(d) of the agreement. Relevant clause is reproduced as under:

“Clause 1.2(d) Preferential Location Charges

The proportionate amount of the preferential location charges for certain units in the Project which inter alia would be charged for green facing at the total cost of Rs. 3,90,000/- and if the allottee(s) opts for any such unit, the PLC for the same shall be included in the total consideration payable by the allottee(s) as set out in clause 1.2(a)(i) above for the said unit.”

With respect to the club membership charges, these charges have been lawfully charged by the respondent in terms of clause 3(a) of the said agreement. The relevant clause is reproduced as under:

“3(a). “....the allottee agrees to pay all charges including but not limited to club membership



registration charges(CMRC) for Rs. 50,000/- which shall be added to total consideration...”

- iii. With respect to the **third issue** raised by the complainants, 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 to the complainants at prescribed rate i.e. 10.75% per annum for every month of delay till the handing over of possession. However, compensatory interest @ 24% p.a. cannot be allowed.

Findings of authority

26. Keeping in view the facts of the case, there is delay on the part of the respondent in handing over possession. Thus, as per the provisions of section 18(1) of the Real Estate (Regulation And Development) Act, 2016, the authority orders that interest at the prescribed rate of interest i.e. 10.75% for every month of delay be paid to the complainant. The arrears accrued so far shall be paid within 90 days from the issuance of the order and then monthly payment of interest shall be paid before 10th of subsequent months till handing over possession. The authority is of the view that it is the obligation of the promoter/respondent to pursue their application for grant of occupation certificate as grant of OC is linked with application on the prescribed form along with Annexure and pre-requisites are



made within a reasonable time before the competent authority. If there are some serious delays in this regard even after completion of pre-requisites then the respondent may approach before the appropriate forum.

27. Accordingly, the due date of possession was 25.02.2014 as far as grant of statutory approvals is concerned, it is held to be one sided as also held in para 181 of the judgment in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

“.....Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

28. As the possession of the flat was to be delivered by 25.02.2014 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.



29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. It has been requested that

necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act

30. As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to continue with the project, the promoter is obligated to pay interest at the prescribed rate as the promoter has not fulfilled his obligation. The complainants reserve her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required.
31. 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.
32. Respondent has applied for occupation certificate on 24.04.2017 and the same has not yet been granted. Respondent is directed to complete all the formalities w.r.t. non-completion of project/occupation certificate and procure the same within 3 months failing which RERA authority shall proceed under section 37 of the Real Estate (Regulation And Development) Act, 2016 on account of non-compliance of the



directions of the authority and penal consequences will be initiated against them.

33. As per clause 11 of the builder buyer agreement dated 26.03.2012, for retail space/unit No.PH4-25-0301, 3rd Floor, Block No.25, in project "Palm Hills", Sector-77, Gurugram, possession was to be handed over to the complainant within a period of 33 months + 3 months grace period from the date of commencement of construction i.e. 25.02.2011 which comes out to be 25.02.2014. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.97,05,411/-with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 25.02.2014 till the date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation And Development) Act, 2016



Decision and directions of the authority

34. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation And Development) Act, 2016 hereby issues the

following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to handover the possession by 02.10.2022 as committed by the respondent in HRERA registration certificate.
- ii. The respondent is directed to pay interest accrued from the due date possession i.e. 25.02.2014 till the date of decision i.e. Rs. 50,25,142.73/- on account of delay in handing over of possession to the complainants within 90 days from the date of decision and subsequent interest to be paid by 10th of every succeeding month.
- iii. Thereafter, the monthly payment of interest @ 10.75% on the paid up amount of the complainant, amounting to Rs. 80,036.40/- till handing over of the possession so accrued shall be paid before 10th of subsequent month.



Principal amount paid by the complainant	Interest accrued up to date of decision	Monthly interest to be paid till handover of possession
Rs. 97,05,411/-	Rs. 50,25,142.73/-	Rs. 80,036.40/-

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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.12.2018

Judgement Uploaded on 25.01.2019



HARERA
GURUGRAM

