

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 20.12.2018
Complaint No.	969/2018 Case titled as Mr. Rajender Kumar V/S M/S Emaar MGF Land Limited
Complainant	Mr. Rajender Kumar
Represented through	Shri Sanjeev Sharma Advocate 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	Naresh Kumari

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Project is not registered with the authority. Occupation certificate has been received on 8.1.2018 and possession offered to the complainant vide letter dated 30.1.2018.

As per clause 16 (a) of the Builder Buyer Agreement dated 24.12.2010 for commercial unit No.EPO-07-034, in project "Emerald Plaza in

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Emerald Hills" Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 30 months + 120 days grace period which comes out to be **24.10.2013**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.33,38,000/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **24.10.2013 till 30.1.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)
20.12.2018

Subhash Chander Kush
(Member)
20.12.2018

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

Complaint No. : 969 of 2018
First date of Hearing : 20.12.2018
Date of Decision : 20.12.2018

Mr. Rajender Kumar
R/o : Behind OSPS Office, Club Road, Fazilka,
India

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sanjeev Sharma Advocate of complainant

Shri Ketan Luthra, authorized representative on behalf of
respondent company with Shri
Ishaan Dang Advocate for the respondent



ORDER

1. A complaint dated 20.09.2018 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 complainant Mr. Rajender Kumar, against the promoter, M/s Emaar MGF Land Limited in respect of apartment/unit described below in the project 'Emerald Plaza', Sector-65, Gurugram, Haryana on account of violation of the section 3 of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 24.12.2010 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.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Emerald Plaza" in Emerald Hills, Sector 65, Gurugram, Haryana.
2.	RERA registered/ not registered	Not registered
3.	Nature of real estate project	commercial
4.	Occupation granted on	08.012018
5.	Retail space/unit no.	EPO-07-034
6.	Retail space admeasuring	637.67 sq.ft.
7.	DTCP No.	10 dated 21.05.2009
8.	Payment Plan	Construction linked payment plan
9.	Total sales consideration	Rs. 49,69,737/- Statement of account dated 11.10.2018, page 66, Annexure R20



10.	Amount paid by the complainant	Rs. 33,38,000/- Statement of account dated 11.10.2018, page 66
11.	Buyer's agreement executed on	24.12.2010
12.	Date of delivery of possession as per clause 16(a) . (30 months + 120 days grace period from the date of execution of this agreement)	24.10.2013
13.	Letter of offer of possession sent to the complainant on	January 2018
14.	Delay in handing over possession from due date till offer of possession	5 years 3 months 6 days
15.	Penalty clause as per office space buyer's agreement	Clause 18.a of the agreement i.e. interest calculated at 9% p.a. (simple interest) on the amount(s) paid by the allottee for such period of delay.

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A office space buyer's agreement dated 24.12.2010 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 24.10.2013. The promoter has neither fulfilled his committed liability by not giving possession as per the terms of the officer's space buyer agreement.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Appeared on 20.12.2018.

Brief facts of the complaint

6. Briefly stated, the facts of the complaint are that the complainant submitted that company conceived, planned and was in the process of constructing and developing a residential plotted colony "Emerald Hills" (herein after called project) to be developed on a piece of land measuring 102.471 acres in Sector 65, urban estate, Gurugram. The Director, Town and Country Planning, Government of Haryana has granted license bearing no. 10 dated 21.05.2009 to develop the project.
7. The complainant submitted that he purchased a unit in the multi-storeyed commercial complex "Emerald Plaza" measuring 3.963 acres forming part of the land on which license no. 10 dated 21.05.2009 measuring 102.471 obtained. The "Emerald Plaza" was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space.
8. The complainant submitted that he purchased unit no. EPO-07-034 measuring 637.67 sq. ft. situated on the fourth floor



@Rs.6500/per sq. ft. amounting total to Rs. 41,44,855.01/- on the assurance that construction will be completed in time and possession would be handed over in time.

9. The complainant submitted that at the time of booking the unit, it was assured by the promoter M/s Emaar Land Ltd. that project will be delivered to the buyers within (30) thirty months of the execution of agreement plus 120 days as grace period.
10. The complainant submitted that the possession of the unit in question was to be handed by October 2013, however at that time the construction of the project was far from completion.
11. The complainant submitted that after an exorbitant delay of almost 5 years he received a letter for offer of possession in January 2018, with respect to the unit on question, however the respondent offered the possession of the unit in question after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent and aggrieved of which the complainant also visited the office of the respondent with the request to pay interest for the delayed possession but the same were in vain. On receiving the demand letter and letter of possession, the complainant was aghast. There was no mention of delayed possession interest,



compensation for delayed possession etc but there was only demand for more money.

12. The complainant submitted that he visited the office of promoter and tried his level best to meet the senior officials but CRM (Customer Relation Managers) did not allow to meet, so he sent a legal notice to the promoter. The respondent company didn't bother to reply and did not acknowledge the notice hence this complainant to the haryana real estate regulatory authority at Gurugram was filed.

13. **The issues raised by the complainant are as follow:**

- I. Whether "Emaar MGF land ltd." should have got its project "Emerald Plaza" of "Emerald Hills" sector 65 registered under the Authority up to 31st July 2017?
- II. Whether the respondent is liable to provide interest for inordinate delay of over 5 years in offer of possession ?
- III. Whether M/s Emaar MGF Land Limited needs to provide compensation for inordinate delay of over 5 years in offer of possession?
- IV. Whether open parking space and parking in common basements are included in the definition of common area as defined u/s 2(n) of the RERA Acts and whether the



respondent can sale these parking spaces as a separate unit?

- V. Whether the respondent is right in selling super area in place of carpet area to the allottees. ?
- VI. Whether structural changes made by the promoter like constructing two basement parking in place of three basement parking promised as per office buyer's agreement and increase or decrease in the area of units allotted is illegal as per section 14 of the act?
- VII. Whether the respondent is liable to refund the monies so collected by it from the complainant towards goods and service tax came on statute and implemented from 1st of July 2017. Should allottees bear the tax burden caused because of delay in possession?
- VIII. Whether the common area be transferred to association of owners/allottees through conveyance deed required as per the act and whether promoter has right to install movable or immovable goods in the common area for commercial gains or otherwise and interest free maintenance security be, not transferred to the account of association of owners/allottees, once conveyance deed is made in their name, of the common areas?



14. Relief sought

The complainant is seeking the following reliefs:

- i. Direct the order refund of the money charged on account of any area in excess of carpet area.
- ii. Direct the promoter to make payment of interest accrued on account of delayed offer for possession of five years @24% as charged by him.
- iii. Direct the promoter to refund the amount of GST, service tax, etc. collected from the complainant, which accrued for the reason of delayed offer of possession.
- iv. Any common area car parking including basement car park, which is not garage if sold than the money collected on such account shall be refunded along with interest.
- v. Direct the respondent in terms of section 59 of the Real Estate (Regulation and Development) Act, 2016 for the failure on part of the respondent to register itself with the hon'ble authority under the Act ibid, 2016.

Respondent's reply

Preliminary objections raised by the respondent are as follow:

15. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not



applicable to the project in question. The respondent had applied for grant of the occupation certificate for the said project on 26.05.2017. The occupation certificate has been thereafter issued on 08.01.2018. Thus, the project in question is not an 'ongoing project" under rule 2(1)(o) of the rules. The project has not been registered under the provisions of the Act.

16. The respondent submitted that the present complaint seeking possession, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainant. The complaints pertaining to possession, compensation and refund are to be decided by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

17. The respondent submitted that the complainant has no locus standi to file the present complaint. The present complaint is based on erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the office buyer's agreement dated 24.12.2010.



18. The respondent submitted that the complainant was offered possession of the above mentioned unit through the letter of possession dated 30.01.2018. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the office space to the complainant. However, the complainant did not take any steps to complete the necessary formalities or to pay the balance amount payable by him.
19. The respondent submitted that only such allottees, who have complied with all the terms and conditions of the office space buyer's agreement including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. As per the statement of account dated 11.10.2018 the outstanding amount including the delayed payment charges payable by the complainant to the respondent is Rs. 27,21,503/-.
20. The respondent further submitted that the complainant has proceeded to file the present false and frivolous complainant. The clause 18 of the office space buyer's agreement further provides that compensation for any delay in delivery of possession would only be given to such allottees who were not n default of the agreement and who had not defaulted in



payment as per the payment plan annexed with the agreement.

21. The respondent submitted that as soon as the balance payment is remitted by the complainant and the necessary formalities completed, the respondent will handover possession of the unit to the complainant. It is pertinent to mention that respondent has already handed over possession to number of allottees and conveyance deeds have also been executed in their favour.

22. The respondent submitted that the demands raised by the respondent are strictly in accordance with the terms and conditions of the agreement executed between the parties. There is no default or lapse on the part of the respondent. It was the complainant who had consciously refrained from obtaining the physical possession of the unit by raising false and baseless complaint and thus it is evident from the sequences of events that there is no illegality by the respondent.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:



23. **First issues** raised by the complainant after considering the facts submitted by both the counsel of the parties and perusal of record on file, the finding of the authority on the issue is that as per proviso to section 3(1) of the Act *ibid*, ongoing project on the date of commencement of this Act have to be registered with the authority. Proviso to section 3(1) of the Act *ibid* which provides as under:-

“Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”

Rule 2(o) of the Rules *ibid*, defines ongoing project as a project for which development works are going on and for which no completion/ part occupation certificate has been granted on or before publication of these rules. Rule 2(o) is reproduced as hereunder:

“on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976



or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”

24. Keeping in view the above facts and as per the records of the authority, the project is registerable under section 3 of the Act *ibid* and the respondents have not registered the project with the Haryana Real Estate Regulatory Authority as on date. Consequently the above act on their behalf is a punishable offence under section 59(1) of the Act *ibid*. Section 59(1) provides as under:-

“If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.”

25. With respect to **second issue** raised by the complainant regarding payment of interest @ 24% that has been charged by the respondent, it cannot be allowed as the promoter is liable under section 18(1) proviso to pay interest to the complainant at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession



on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter.

26. With respect to the **third issue** raised by the complainant, the complainant during proceeding made a statement that they are not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required. Therefore, the said issue raised by the complainant regarding compensation becomes superfluous.

27. Regarding **fourth issue**, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the office space buyer 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(a)(i) the following provisions have been made regarding parking space:

“1.3(a) (i) The office space allottee(s) shall have the right to park one car in the multilevel basement parking of the building. Free of any usage charges.

(d) The allottee(s) agrees and understands that the parking space in the commercial complex shall not form part of the common areas and facilities of the said office space for the purpose of the declaration to be filed by the company under Haryana Apartment Ownership Act, 1983....”

28. With respect to the **fifth and sixth issues**, the complainant have not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issues become infructuous.
29. With respect to **seventh issue** raised by the complainant, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
30. Regarding **eight issue** raised by the complainant, it has to be dealt with as per the agreement under clause 11, which is reproduced as below:

“11(c) Common area possession

The possession of the common area shall remain with the company who shall through the maintenance agency appointed by it, supervise the maintenance of and upkeep of the same until the same are taken over by the office space owner’s association.”



31. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

32. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority

33. The respondent admitted the fact that the project Emerald Plaza is situated in Sector-65, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide



notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

34. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.
35. The occupation certificate has been received on 08.01.2018 and the possession was offered to the complainant vide letter dated 30.01.2018. However, the respondent has not delivered the unit in time. The complainant is entitled for delayed possession charges at prescribed rate of interest.

Decision and directions of the authority

36. After taking into consideration all the material facts as adduced and produced by both the parties, the authority



exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to pay interest @ 10.75% p.a. on the paid amount to the complainant from the due date of delivery of possession i.e. 24.10.2013 to 30.01.2018 for the delay occurred in delivery of possession.
- (ii) The arrears of interest so accrued @ 10.75% p.a. from the due date of delivery of possession till the order on the paid amount of the complainant which comes to be Rs. 15,30,947.50/- shall be paid to the complainant within 90 days from the date of this order.

37. 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.

38. The order is pronounced.



39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date: 20.12.2018

Judgement Uploaded on 25.01.2019



HARERA
GURUGRAM

