

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	663/2018 Case titled as Mrs. Mohini Vij V/s M/S Emaar MGF Land Ltd
Complainant	Mrs. Mohini Vij
Represented through	Mr Garv Malhotra, Advocate for the complainant
Respondent	M/s Emaar MGF Land Ltd
Respondent Represented through	Mr. Ishaan Dang, Advocate for the respondent alongwith Mr. Ketan Luthra A.R.
Last date of hearing	14.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 11 (a) of the Builder Buyer Agreement dated 21.06.2011 for unit No. EFP-II-56-0401, "Emerald Floors Premiers" Emerald Estate, Sector-65, Gurugram, possession was to be handed over to the complainant within a period of 36 months +3 months grace period which comes out to be 21.9.2014. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.89,22,490/- 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 **21.9.2014** as per the provisions of section 18 (1) of the Real

Estate (Regulation & Development) Act, 2016 till the handing over possession failing which the complainant is entitled to refund the amount.

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

Respondent is directed to allow the complainant to visit the site without any objection at the time mutually accepted to both the parties. It is further directed that respondent may adjust the late delivery charges against the amount due from the complainant.

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

Samir Kumar
(Member)
10.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 663 of 2018
First date of hearing : 14.12.2018
Date of decision : 10.1.2019

Ms. Mohini Vij
R/o: B-37, Ramesh Nagar,
New Delhi-110015

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. Office: Emaar Business Park, MG Road,
Sikandarpur, Sector-28, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Garv Malhotra
Shri Ishaan Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 2.8.2018 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 complainant Ms. Mohini Vij, against M/s Emaar MGF Land Ltd. in respect of apartment/unit described below in the project 'Emerald



Floors Premier’, on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer’s agreement has been executed on 21.6.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Emerald Floors Premier”, Emerald Estate, Sector 65, Urban Estate, Gurugram, Haryana.
2.	Project area	25.49 acres
3.	DTCP license no.	06 dated 17.1.2008
4.	Registered/not registered	Registered
5.	HRERA registration no.	104 of 2017 dated 24.08.2017
6.	HRERA registration valid upto	23.08.2022
7.	Date of execution of buyer’s agreement	21.6.2011
8.	Residential floor space/unit no.	EFP-II-56-0401
9.	Unit measuring	1975 sq. ft.



10.	Payment plan	Construction linked payment plan
11.	Basic sale price	Rs.97,49,613/-
12.	Total amount paid by the complainant till date	Rs.89,22,490/-
13.	Percentage of consideration amount	91.51%
14.	Due date of delivery of possession as per clause 11(a) of buyer's agreement i.e. 36 months from the execution of buyer's agreement + grace period of 3 months)	21.9.2014
15.	Delay in handing over possession till date	4 years 3 months 20 days (approx.)
16.	Penalty clause as per buyer's agreement	Clause 13(a) of the agreement i.e. Rs.5/- per sq. ft. per month of the super area till the notice of possession.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 21.9.2014. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of till the notice of possession as per clause 13(a) of the buyer's agreement. Therefore, the promoter has not fulfilled his committed liability as on date.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 4.10.2018 and 5.11.2018. The reply filed on behalf of the respondent on 17.9.2018 has been perused.

Brief facts

6. Mr. Mahendra Singh Bishnoi made a booking of residential apartment admeasuring 1975 sq. ft' in the project 'Emerald Premier Floors' by making advance payment of Rs.5,00,000/- vide cheque no. 265382 dated 20.5.2010.
7. The buyer's agreement was signed on 21.6.2011 and as per clause 11 of the said agreement, possession was to be delivered within 36 months from the date of execution of the agreement.
8. This property was purchased by Mrs. Mohini Vij from Mr. Mahendra Singh Bishnoi and was transferred in her name on 20.6.2011. subsequently, all payments were made as and when demanded by the developer.
9. On 25.6.2017 the complainant was informed that effective 1.5.2017, in line with RERA the delayed payment charges will be levied @10% p.a. Thereafter, on 10.7.2018 the



complainant was forced to pay delayed payment charges @24% amounting to Rs.99,147/- vide cheque no.022030.

10. Issues raised by the complainant:

- i. Whether the respondent is justified in delaying the possession by more than 4 years?
- ii. 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?

11. Relief sought

The complainants are seeking the following reliefs:

- i. The complainants are seeking interest @ 24% per annum on the amount paid by the complainants till the alleged date of possession or on subsequent instalments paid.
- ii. The complainants are seeking interest @ 24% on monthly basis till the possession is given to the complainants.
- iii. Any other order which this authority may deem fit and proper.



Respondent's reply

12. The preliminary objections and submissions raised by the respondent challenging the jurisdiction of this hon'ble authority. The respondent submitted that the present complaint raises several issues which cannot be decided by way of the present complaint in summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication. Therefore, the dispute raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by a civil court.
13. 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.



14. The respondent submitted that the complainants have no locus standi to file the present complaint. Also, it is submitted that as per applicable Act and Rules, a complaint may be filed by a person only if the respondent has committed any act in violation of the Act/Rules *ibid.* it is submitted that the complainants herein have failed to bring on record any document, evidence etc. which may even allude let alone prove that the respondent has violated the provisions of the Act or the Rules.
15. The complainant booked the unit EFP-II-56-0401 in Emerald Floors Premier and signed buyer's agreement dated 21.6.2011. The said project is registered under the Act vide letter dated 24.8.2017. The buyer has been irregular in paying instalments on time as per the instalment plan and clause 13(c) of the agreement provides that compensation for delay shall only be given to the allottees who have not defaulted in payments.



Determination of issues

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

16. With respect to the **first issue** raised by the complainants, as per clause 11(a) of buyer's agreement, the possession of the unit was to be handed over within 36 months plus grace period of 3 months from the date of execution of the said agreement. The buyer's agreement was executed on 21.6.2011. Therefore, the due date of possession shall be computed from 21.6.2011. The clause regarding the possession of the said unit is reproduced below:

"11(a) Time of handing over the Possession

Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this Buyer's agreement and not being in default under any of the provisions of this Buyer's agreement and compliance with all the provisions, formalities, documentation, etc. as prescribed by the company, the company proposes to hand over the possession of the unit within 36 months from the date of execution of Buyer's Agreement. The allottee(s) agrees and understand that the company shall be entitled to a grace period of 3 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the Project."

17. Accordingly, the due date of possession was 21.9.2014 and the possession has been delayed by four years two months and twenty-two days till now. The delay compensation



payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area till the date of notice of possession as per clause 13(a) of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided and unilateral. It has also been observed in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

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

18. With respect to the **second 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 and the complainants reserve their right to seek compensation from the promoter for which they



shall make separate application to the adjudicating officer, if required.

Findings of the authority

19. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

20. The counsel for the respondent has raised certain pertinent questions while apprising that the project is registered with the authority and the revised date of delivery of possession is



23.8.2022. He emphasized that the provisions of the BBA are still applicable and both the parties are bound by their contractual obligations, as a result of which equitable playground should be provided to both the parties. He has given certain case laws which are placed on record. There are certain judgments of hon'ble Apex Court in this context on contractual obligations. However, Real Estate (Regulation and Development) Act, 2016 came into being on 01.05.2016 which is a Central Act and sovereignty of parliament, the courts can interpret the provisions of law/statue. However, the provisions of the Act will prevail as described in landmark judgement titled as **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)** by the Bombay High Court on the ascent of Hon'ble Supreme Court which enables RERA authority all over India to interpret the provisions of RERA Act, in a lucid manner. The builder is certainly in a dominating position and is entitled as per the provisions of the BBA to extract as much as he can from the buyer who is in a weak and meek position.



21. The possession of the flat was to be delivered by 22.04.2013 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and

Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso of the Act *ibid*, to pay to the complainants interest, at the prescribed rate, for every month of delay till the handing over of possession.

22. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

23. 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) As per clause 11 (a) of the builder buyer agreement dated 21.6.2011 for unit no. EFP-II-56-0401, "Emerald Floors Premiers" Emerald Estate, Sector-65, Gurugram, possession was to be handed over to



the complainant within a period of 36 months +3 months grace period which comes out to be 21.9.2014. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.89,22,490/- 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 21.9.2014 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to refund the amount.

- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.
- (iii) Respondent is directed to allow the complainant to visit the site without any objection at the time mutually accepted to both the parties. It is further directed that respondent may adjust the late



delivery charges against the amount due from the complainant.

24. The order is pronounced.

25. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 10.1.2019

Judgement uploaded on 29.01.2019



HARERA
GURUGRAM

