

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 20.12.2018
Complaint No.	780/2018 Case titled as Lalit Nagpal And Poonam Nagpal V/S Emaar MGF Land Limited
Complainant	Lalit Nagpal And Poonam Nagpal
Represented through	Shri Sanjeev Sharma, Advocate for the complainant.
Respondent	Emaar MGF Land Limited
Respondent Represented through	Shri Ketan Luthra, authorized representative with Shri Ishaan Dang Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Shri Ishaan Dang Advocate has appeared on behalf of the respondent and filed power of attorney today.

Arguments heard.

Project is registered with the authority. Occupation certificate has been received on 8.1.2018 and possession offered to the complainant vide letter dated 24.1.2018.

As per clause 16 (a) of the Builder Buyer Agreement dated 28.10.2010 for unit No.EPO-05-029 and EPO-05-030 in project "Emerald Plaza Offices in 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 **28.8.2013**. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.48,79,677/- 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 **28.8.2013 till 24.1.2018** 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. : 780 of 2018
First date of hearing : 20.12.2018
Date of Decision : 20.12.2018

Mr Lalit Nagpal
Mrs Poonam Nagpal
R/o I-101, Park view city-I, Sector 48, Sohna
Road, Gurugram-122001

Complainants

Versus

M/s Emaar MGF Land Limited
Regd. Office : ECE House,28, Kasturba Marg,
New Delhi-110001
Office : 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 for the complainant

Shri Ishaan Dhang, Advocate Advocate for the respondent



ORDER

1. A complaint dated 31.08.2018 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. Lalit Nagpal and Mrs Poonam Nagpal against the promoter M/s Emaar MGF Land Limited on account of violation of clause 16 (a) of the office space buyer's agreement executed on 28.10.2010 for unit no. EPO-05-029 and EPO-05-030 in the project "Emerald Plaza Offices" 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 office space buyer's agreement was executed on 28.10.2010 and due date of possession was 28.08.2013 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 Plaza Offices in Emerald Hills" in Sector 65, Gurugram
2.	Nature of real estate project	Commercial Complex

3.	Current status of project	Occupation certificate dated 08.01.2018 received and Possession offered vide letter dated 24.01.2018
4.	Project area	3.963 acres
5.	Unit no.	EPO-05-029 and EPO-05-030
6.	DTCP license	10 of 2009
7.	Registered/ not registered	Not registered
8.	RERA Registration No	Not applicable
9.	Date of booking	06.07.2010
10.	Date of office space buyer's agreement	28.10.2010
11.	Total consideration (As per statement of accounts dated 24.07.2018)	Rs. 48,78,428/- & Rs 48,79,677/-
12.	Total amount paid by the complainant (As per statement of accounts dated 24.07.2018)	Rs. 48,78,724/- & Rs 48,79,972/-
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession (As per clause 16 (a) - 30 months + 120 days from the date of execution of agreement)	28.08.2013
15.	Delay of number of months/ years upto	5 years 3 months and 22 days
16.	Penalty clause as per office space buyer's agreement	Clause 18 (a)- 9 % simple interest per annum on amount paid by the allottee for period of delay



4. The details provided above have been checked as per record of the case file provided by both the parties. A office space buyer's agreement is available on record for unit no. EPO-05-029 and EPO-05-030 according to which the possession of the aforesaid unit was to be delivered by 28.08.2013. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 20.12.2018. The case came up for hearing on 20.12.2018. The reply filed on behalf of the respondent has been perused.

FACTS OF THE CASE

6. The complainants submitted that the respondent is a company incorporated under "The Companies Act" and mainly based in Middle East and UAE entered into the emerging and booming real estate market in India during the first decade of 21st century. All the formalities laid down by the central government were fulfilled before commencing the business. Company purchased hundreds of acres of land in Gurugram and other major cities of India.



7. The complainants submitted that respondent 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 admeasuring 102.471 acres in Sector 65, urban estate, Gurugram.
8. The complainants submitted that Director, Town and Country Planning, Government of Haryana has granted license bearing no -10 dated 21.05.2009 to develop the project.
9. The complainants purchased units in the multistoried commercial complex “Emerald Plaza” admeasuring 3.963 acres forming part of the land on which license no-10 dated 21.05.2009.
10. The project was to be built with the state of art office spaces and retail shops with 3 levels of basement parking space.
11. The complainants submitted that as per space buyer agreement, it was assured by the promoter M/s Emaar Land Ltd. that project shall be delivered to the buyers within (30) thirty months of the execution of agreement plus (120) one hundred twenty days as grace period.
12. The complainants made regular payments as demanded by the promoter time and again and paid a total amount of Rs.



48,78,428/- towards unit no EPO-05-030 and Rs 48,79,677/- towards unit no EPO-05-029 to the respondent.

13. The complainants submitted that complainants visited the construction site several time and visited the office of the promoter also to enquire about the slow construction and time of handing over the possession.
14. The complainants also submitted that they received letter of offer of possession on 24.01.2018.
15. On receiving the demand letter and letter for possession, the complainant was aghast. There was no mention of delayed possession interest, compensation for delayed possession etc. but demand and only demand for more money.
16. Complainant 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 complainant send legal notice to the promoter. Respondent, company didn't bother to reply. Leave reply they even did not acknowledge the notice hence this complainant to the authority at Gurugram.



ISSUES RAISED BY THE COMPLAINANT

17. The issues raised by the complainants are as follows :-

- I. Whether the respondent has caused exorbitant delay in delivery of the possession of the booked unit to the complainants?
- II. Whether the respondent should be directed to pay delay interest calculated @`24% per annum on total amount paid by the complainants from the date of deposit of the said amounts?
- III. Whether the promoter is liable for registration with this authority under the RERA Act, 2016?
- IV. Whether the promoter can sell open parking space and parking in common basements to the allottees as separate unit?
- V. Whether the respondent can sell super area in place of carpet area to the allottees, if no whether the respondent is liable to return extra money charged from allottees on account of selling super area?
- VI. Whether the construction of 2 level basement parking instead of 3 level basement parking promised as per



office space buyer's agreement is illegal as per section 14 of the Act?

VII. Whether the respondent is liable to refund the GST amount collected from the complainant as the said tax became payable only due to delay in handing over the possession by the respondent?

VIII. Whether the respondent is liable for failure of not obtaining insurances as prescribed under section 16 of the Act?

IX. Whether the respondent is liable to handover the possession of the common area along with moveable or immovable structures installed in the common area and interest free maintenance security received by the respondent to registered association of allottees through registered conveyance deed?

RELIEF SOUGHT

18. The reliefs sought by the complainants are as follows :-

- I. To fully refund the amount paid by the complainants amounting along with the interest for delay in possession calculated @`24% per annum on compound



rate from the committed date of possession i.e 08.07.2013.

or

- II. To provide immediate delivery of the flat along with the interest calculated @`24% per annum on compound rate from the committed date of possession i.e 08.07.2013.
- III. To refund the excess amount on account of any area in excess of carpet area of the unit to the complainants with interest.
- IV. To refund the amount of GST service tax etc. collected from the complainants, which accrued for the reason of delayed offer of possession.
- V. To refund the money along with interest collected on account of selling any common area, car parking, including Basement car park which is not garage.

RESPONDENT'S REPLY

19. 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 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation



certificate in respect of the commercial unit in question was made on 26.05.2017, i.e well before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the 'Rules'). The occupation certificate has been thereafter issued on 08.01.2018. Thus, the project in question (Emerald Plaza, Sector 65, Gurugram 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. It is also pertinent to mention that the respondent has applied for part completion certificate for the project where services are complete and hence the project does not fall in the definition of "Ongoing project". This authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

20. The respondent submitted that the provisions of the Act are not applicable to the project in question, it is submitted that the present complaint is not maintainable before this authority. The complainants have filed the present complaint seeking possession, interest and refund for alleged delay in delivering possession of the commercial unit booked by the complainants. It is respectfully submitted that 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 authority. The present complaint is liable to be dismissed on this ground alone.

21. The respondent submitted that the complainants have no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the office space buyer's agreement dated 08.09.2010.
22. The respondent submitted that the complainants have booked the office space in question, bearing number EPS-GF-031, situated in the commercial complex developed by the respondent, known as "Emerald Plaza", Sector 65, Gurugram, Haryana. A office space buyer's agreement dated 08.09.2010 was executed between the parties.
23. The respondent submitted that the complainants were offered possession of the above mentioned unit through letter of offer of possession dated 24.01.2018. The complainants were 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 complainants. However, the complainants did not take any steps to complete the necessary formalities or to pay the balance amount liable to be payable by them.

24. The respondent submitted that right from the beginning, the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc, calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by the complainants.
25. The respondent submitted that it is pertinent to mention 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 agreement. In the case of the complainants, they had delayed payment of instalments and consequently they were not eligible to receive any compensation from the respondent.



26. That instead of clearing their outstanding dues and obtaining possession of the unit in question, the complainants have proceeded to file the present false and frivolous complaint.
27. The respondent also submitted that clause 18 of the office space buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of the agreement and further have not defaulted in payment as per the payment plan annexed with the agreement. The complainants, having defaulted in payment of instalments, are thus not entitled to any compensation under the said agreement.
28. The respondent also submitted that the construction of the project/allotted unit in question stands completed and the respondent is in receipt of the occupation certificate in respect of the same. It is submitted that as soon as the balance payment is remitted by the complainants and the necessary formalities completed by them, the respondent shall hand over possession of the unit to the complainants. 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.



29. The respondent submitted that all the demands raised by the respondent are strictly in accordance with the terms and conditions of the office space buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. It is the complainants who have consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses.

Determination of issues

30. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issues wise findings of the authority is as under :

- i. **First issue** : According to clause 16 (a) of office space buyer's agreement, the respondent assured delivery of the booked unit within a period of 30 months from the date of execution of the agreement along with a 4 months grace period i.e due date of possession of 28.08.2013. However, in the present case the respondent has offered the possession of the booked unit vide letter of possession dated 24.01.2018. The respondent has delayed the possession by 5 year 3 months and 22 days.
- ii. **Second issue** : As the respondent has failed to deliver the possession on the assured date of 28.08.2013,



therefore the respondent is liable to pay delay interest calculated at the prescribed interest of 10.75% per annum for every month of delay to the complainants.

iii. **Third issue** : As the respondent had received the occupation certificate on 08.01.2018 after the date of commencement of the Real Estate (Regulation and Development) Act, 2016. Therefore according to sec 3 of the Act, the promoter is liable for registration with this authority. Furthermore according to sec 59 of the Act, in case of contravention of this provision, the promoter shall be liable for a fine of upto 10% of the estimated cost of the project.

iv. **Fourth issue** : The authority is of the opinion that open parking spaces and parking in common basements cannot be sold by the promoter as separate units independent of the office space. According to clause 1.3 (a) (ii) of the office space buyer's agreement, similar restriction is imposed upon allottee as well.

v. **Fifth Issue** : As the Director of Town and Country Planning had issued license bearing no 10 dated 21.05.2009 under the provisions of Haryana Development and Regulation of Urban Areas Act 1975 in the favour of respondent on the date of 21.05.2009. As



the license was issued prior to the date of commencement of Real Estate (Regulation and Development) Act, 2016. Therefore, in the present case the promoter can sell the super area in place of carpet area to the allottees.

- vi. **Sixth Issue** : The authority is of the view that as the claim of complainant regarding construction of 3 level basement parking by the respondent is not supported by any documentary evidence. Therefore the same stands abrogated.
- vii. **Seventh issue** : For determination of this issue, the authority is of the view that the complainants can approach the Assistant Commissioner of GST, Gurugram
- viii. **Eighth & Ninth issue** : Regarding eighth and ninth issue the complainants have not pressed at the time of arguments and no relief has been claimed in the complaint regarding these issues.

Findings of the authority

31. **Jurisdiction of the authority-** The project “Emerald Plaza Offices in Emerald Hills” is located in Sector 65, Gurugram. 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 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.

32. The preliminary objections raised by the respondent regarding subject matter 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 complainants at a later stage

Decision and directions of the authority

33. 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 provide delayed interest at the prescribed rate of 10.75% per annum for every month of delay from the due date of possession i.e 28.08.2013 to the date of offer of possession i.e 24.01.2018 within 90 days from the date of decision.

34. The order is pronounced.

35. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 20.12.2018

Judgement Uploaded on 08.02.2019

HARERA
GURUGRAM

