

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

Complaint no. : 740 of 2018
First date of hearing : 18.12.2018
Date of decision : 18.12.2018

Mr. Vikas Sachdeva
R/o 002, Ground floor, Block-H, Park View City-
1, Sohna Road, Gurugram, Haryana-122018

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. Office: 306-308, 3rd floor,
Square One, C-2, District Centre,
Saket, New Delhi-110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE :

Shri Garv Malhotra Advocate for the complainant
Shri Ketan Luthra authorized Advocate for the respondent
representative on behalf of the
respondent company with Shri
Ishaan Dhang, Advocate



ORDER

1. A complaint dated 21.08.2018 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 complainant Mr Vikas

Sachdeva against the promoter M/s Emaar MGF Land Ltd, on account of violation of the clause 11(a) of buyer's agreement executed on 18.02.2010 in respect of unit described as below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyers agreement was executed on 18.02.2010 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 are as under: -

| | | |
|----|----------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 1. | Name and location of the project | "Emerald Floors Premier", Emerald Estate, Sector 65, urban estate, Gurugram, Haryana. |
| 2. | Nature of real estate project | Group housing colony |
| 3. | Current status of project | Occupation certificate dated 03.01.2018 received but possession not offered as Fire NOC for few blocks including |





| | | booked unit is awaited |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 4. A | Project area | 25.49 acres |
| 5. | DTCP license no. | 06 dated 17.01.2008 |
| 6. | Registered/not registered | Registered |
| 7. | HRERA registration no. | 104 of 2017 dated 24.08.2017 |
| 8. | HRERA registration valid upto | 23.08.2022 |
| 9. | Date of execution of buyer's agreement | 18.02.2010 |
| 10. | Residential floor space/unit no. | EFP-19-0302, 3 rd floor. |
| 11. | Unit measuring | 1975 sq. ft. |
| 12. | Payment plan | Construction linked payment plan |
| 13. | Total consideration amount (as per statement of account dated 21.07.2018) | Rs.85,69,566/- |
| 14. | Total amount paid by the complainant (as per statement of account dated 21.07.2018) | Rs 85,95,785/- |
| 15. | 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) | 18.05.2013 |
| 16. | Delay in handing over possession upto 18.12.2018 | 5 years 7 months |
| 17. | Penalty clause (As per clause 13 (a) buyer's agreement) | 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 complainant 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 ~~18.02.2010~~. Neither the respondent has delivered the possession of the said unit as on date to the complainant 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 respondent through his counsel appeared on 18.12.2018. The case came up for hearing on 18.12.2018. The reply filed on behalf of the respondent has been perused.

Corrected
vide
order
dated
12/03/19.

Facts of the case

6. The complainant submitted that the original buyer namely Mr. Nitin Jain s/o Sh. Sukhmal Jain r/o 523/2, Forest Lane, Neb Sarai Extension, Sanik Farms, New Delhi made a booking for purchase of a residential apartment, admeasuring 1975 sq. ft, in the project Emerald Floors Premier in Emerald Estate at





Sector 65, urban estate, Gurugram, being developed by M/s Emaar MGF Land Ltd by making an advance payment of Rs. 5,00,000/- vide cheque no 299239 on 29.09.2009.

7. The complainant submitted that on 31.10.2009, provisional allotment of apartment no EFP-19-0302 was issued and an additional payment of Rs. 10, 87, 505/- was demanded to be paid by 15.11.2009. This sum was paid on 17.11.2009. It is further submitted that the developer charged an interest @ 24% for the delayed payment of 2 days, which was duly paid by the original buyer at the time of transfer of said property in the name of complainant.
8. The complainant submitted that a further demand of Rs.7,93,753/- was raised on 30.12.2009. Thus the total demand raised was Rs. 23,81,258/-.
9. The complainant submitted that buyer's agreement was finally signed on 18.02.2010 and as per clause 11 (a) of the said agreement, the possession was to be handed over within 36 months plus grace period of 3 months from the date of execution of the agreement i.e. by 18.05.2013.





10. The complainant submitted that he purchased the booked apartment from Mr. Nitin Jain and got the said property transferred in the records of the developer. His name was endorsed by Emaar MGF Land Limited on 13.08.2012. At the time of transfer, the developer gave no indication either verbally or in writing that the complainant shall not be eligible for delayed possession charges due to payments being delayed by the original buyer.
11. The complainant submitted that the possession is delayed by more than 5 years and 5 months. He further submitted that he do not wish to withdraw from the project and should be paid delayed possession charges/ interest as prescribed under the Real Estate (Regulation and Development) Act,2016.

Issues raised by the complainant

12. Issues raised by the complainant are as follow:
- Whether the respondent is justified in delaying the possession by more than 5 years and 5 months?





- ii. Whether the respondent is liable to pay delay interest @ 24% per annum for the delay in possession to the complainant?

Relief sought

13. The complainant is seeking the following relief :

To direct the respondent to pay delay interest @ 24% per annum for the delay in possession to the complainant from the due date of possession till date.

Respondent's reply:

14. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that this authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.

15. The respondent submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in a summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication.





Therefore the disputes raised in the present complaint are beyond the purview of this authority and can only be adjudicated by a civil court. The present complaint therefore deserves to be dismissed on this short ground alone.

16. The respondent submitted that 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.
17. The respondent submitted that the present complaint is even otherwise liable to be dismissed as *Firstly*, the complainant has no *locus standi* to file the present complaint. *Secondly*, it is submitted that as per Real Estate (Regulation and Development) Act and the Real Estate (Regulation and Development) Rules, a complaint may be filed by a person only if the respondent has committed any act in violation of the Act and Rules *ibid*. It is submitted that the complainant herein has 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 Real Estate (Regulation & Development) Act, 2016 or the Haryana Real Estate (Regulation & Development) Rules, 2017. The same goes to the root of the matter and as such the complaint is liable to be dismissed on this ground alone. That it is apposite





to mention herein that a part of the project i.e. 33 towers of "Emerald Floors Premier" at "Emerald Estate", Sector-65, Gurgaon, Haryana (pertaining to the Apartment in question and hereinafter referred to as the "said Project") of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 nor is the said project of the respondent registered with this authority. However, the balance part (24 Towers) is already registered with this authority. As per the definition of "ongoing projects" under rule 2(o) of the said Rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this authority. In the present case, the respondent had applied the occupation certificate for the said project on 29.06.2017 which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(o)(i) and the present case is squarely covered under the first exception provided under rule 2(o) and therefore this authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. It is pertinent to mention here that even the actual





occupation certificate has also been granted on 08.01.2018. However, as the Fire NOC was awaited for a few blocks (including the unit in question), therefore the respondent, vide letter dated 08.02.2018, informed the DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited. Thus, no cause of action can be said to have arisen to the complainant in any event to assert the reliefs claimed. Thus, no relief, as sought, can be granted to the complainant.

18. 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. It is submitted that this Hon'ble Regulatory Authority has no jurisdiction to entertain such complaints and as such, this complaint is liable to be rejected.
19. The respondent submitted that the present complaint is a ploy to exert undue pressure upon the respondent and seek remedies which are incomprehensible under the law of the land. The reliefs sought by the complainant is outright baseless and this complaint ought to be dismissed.
20. The respondent also submitted that till date the Buyers agreement stands valid and forms a final and concluded





contract, the terms of which are fully binding on parties. Any challenge to the buyer's agreement for rescission lies only before a 'civil court' in terms of the Specific Relief Act, 1963 and that too only on the ground that 'the contract is either voidable or terminable by the plaintiff or that the contract is unlawful, which is not the case of the complainants herein or in terms of section 31 of Specific Relief Act, 1963, which provides for cancellation of an instrument. Thus it is humbly submitted that the present complaint needs to be dismissed on this ground alone.

21. The respondent also submitted that the claim of the complainant for interest @24% is barred by law in terms of section 74 of the Indian Contract Act. The complainant is not entitled to any interest on the amounts deposited by him. Rather the respondent company is legally 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.

22. That in any case the complainant is not a consumer in terms of the definition of consumer under 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 to the Act, clearly state that the Act is enacted for effective consumer protection. It is further submitted that apparently the complainant is a mere speculative investor 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, complainant had apparently developed an intention to raise false and frivolous issues to engage the respondent in unnecessary and false litigation.

23. It is further submitted that provisional allotment of subject unit in the project, namely, the Emerald Floors Premier at Emerald Estate, Sector 65, Gurgaon (now Gurugram), Haryana was initially made in the name of original allottee i.e Mr. Nitin Jain. Subsequently the unit has exchanged hands and provisional allotment was transferred to the complainant on 12.09.2012. When the original applicants had approached the company, they were duly explained the terms and conditions of allotment. Subsequently, vide provisional allotment letter dated 31.10.2009, allotment of Unit No. EFP-19-0302 was made in favour of the original applicant. Thereafter, buyers agreement dated 18.02.2010 was executed between the parties. Since the complainant herein had sought transfer of allotment in his favour, as such he



stepped into the shoes of the transferor and is bound by those terms and conditions.

24. The respondent further submitted that it is wrong and denied that there is any delay in giving possession of the unit to the complainant and that the due date to handover possession of the unit to the complainant was 17.02.2013. Moreover it had been categorically 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 also subject to the terms and conditions contained in the buyer's agreement.
25. The respondent further submitted that the project in question is a large project and such kind of projects do take reasonable time for completion. This position is fortified from the fact that the parties had envisaged a clause in the buyers agreement, in case the company was not able to handover the possession within a period of 36 months from the date of execution of the buyers 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 36 months. It is thus apparent that the timeline mentioned in the buyers agreement was a proposed estimated time for handing over of possession.

26. The respondent further 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. As the development of the project was dependent upon the availability of funds from the allottees who were under a contractual obligation to make payments as per the schedule of payment opted by the 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.

27. It is submitted that as per the buyers agreement, in case there is a delay in handing over of possession, the agreement envisages payment of compensation of Rs. 5/- per sq. ft. per month of the super area of the unit till the date of possession (clause 13), subject to other terms and conditions as contained in the buyers agreement. That it is submitted that this authority cannot in any event travel beyond the express terms and conditions agreed between the parties.



Determination of issues

28. 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:
29. With respect to the **first issue** raised by the complainant, 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 18.02.2010. Therefore, the due date of possession shall be computed from 18.02.2010. 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.”

30. With respect to the **second issue**, the respondent has failed to deliver the possession on the due date of possession i.e 18.05.2013 and has delayed the possession by five years seven months till the date of decision. 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.”

31. 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.
32. The complainant reserve his right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

33. 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.

34. Project is not registered with the authority. As per assertions made by the respondent, occupation certificate dated 8.1.2018 received but possession not offered as fire NOC for few blocks including booked unit is awaited. Hence, it cannot be treated as, in any way, occupation certificate in the eyes of law. As per clause 11 (a) of the builder buyer agreement dated 18.2.2010, for unit no. EFP-10-0302, 3rd floor, Emerald Floor Premier" in Emerald Estate, Sector-65 urban estate, 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 18.5.2013. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.85,95,785/- with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 18.5.2013 till the date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.



Directions of the authority

35. 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 the delay interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 18.05.2013 till the actual date of handing over of the possession.
- ii. The respondent is directed to pay interest accrued from the due date possession i.e. 18.05.2013 till the date of issuance of this order i.e. 18.12.2018 amounting to Rs 51,59,262/- on account of delay in handing over of possession to the complainants within 90 days from the date of decision and subsequent monthly interest i.e Rs 77,003.91/- to be paid by 10th of every succeeding month till the delivery of possession of the booked unit.



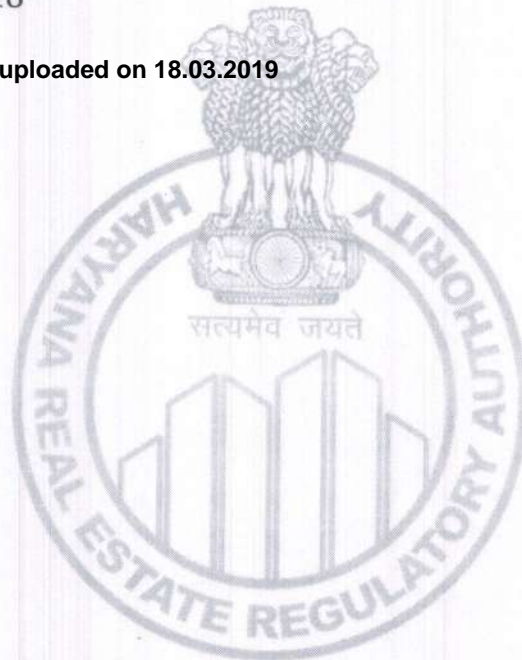
36. The order is pronounced.
37. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated : 18.12.2018

Corrected judgement uploaded on 18.03.2019



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

| | |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Day and Date | Tuesday and 18.12.2018 |
| Complaint No. | 740/2018 Case Titled As Vikas Sachdeva V/S Emaar MGF Land Ltd |
| Complainant | Vikas Sachdeva |
| Represented through | Complainant in person with Shri Garv Malhotra, Advocate. |
| Respondent | Emaar Mgf Land Ltd |
| Respondent Represented through | Shri Ketan Luthra, authorized representative on behalf of the 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. As per assertions made by the respondent, occupation certificate dated 8.1.2018 received but possession not offered as fire NOC for few blocks including booked unit is

awaited. Hence, it cannot be treated as, in any way, occupation certificate in the eyes of law.

As per clause 11 (a) of the Builder Buyer Agreement dated 18.2.2010, for unit No. EFP-10-0302, 3rd floor, Emerald Floor Premier” in Emerald Estate, Sector-65 Urban Estate, 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 18.5.2013. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.85,95,785/- with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 18.5.2013 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 failing which the complainant is entitled to seek refund the paid amount with interest.

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.

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

Samir Kumar
(Member)
18.12.2018

Subhash Chander Kush
(Member)
18.12.2018

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

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Advocate for the complainant

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Ishaan Dhang, Advocate

Advocate for the respondent



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4. 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. 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 18.02.2010. Neither the respondent has delivered the possession of the said unit as on date to the complainant 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.
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7. The complainant submitted that on 31.10.2009, provisional allotment of apartment no EFP-19-0302 was issued and an additional payment of Rs. 10, 87, 505/- was demanded to be paid by 15.11.2009. This sum was paid on 17.11.2009. It is further submitted that the developer charged an interest @ 24% for the delayed payment of 2 days, which was duly paid by the original buyer at the time of transfer of said property in the name of complainant.
8. The complainant submitted that a further demand of Rs.7,93,753/- was raised on 30.12.2009. Thus the total demand raised was Rs. 23,81,258/-.
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Therefore the disputes raised in the present complaint are beyond the purview of this authority and can only be adjudicated by a civil court. The present complaint therefore deserves to be dismissed on this short ground alone.

16. The respondent submitted that 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.
17. The respondent submitted that the present complaint is even otherwise liable to be dismissed as *Firstly*, the complainant has no *locus standi* to file the present complaint. *Secondly*, it is submitted that as per Real Estate (Regulation and Development) Act and the Real Estate (Regulation and Development) Rules, a complaint may be filed by a person only if the respondent has committed any act in violation of the Act and Rules *ibid*. It is submitted that the complainant herein has 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 Real Estate (Regulation & Development) Act, 2016 or the Haryana Real Estate (Regulation & Development) Rules, 2017. The same goes to the root of the matter and as such the complaint is liable to be dismissed on this ground alone. That it is apposite



to mention herein that a part of the project i.e. 33 towers of “Emerald Floors Premier” at “Emerald Estate”, Sector-65, Gurgaon, Haryana (pertaining to the Apartment in question and hereinafter referred to as the “said Project”) of the respondent is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 nor is the said project of the respondent registered with this authority. However, the balance part (24 Towers) is already registered with this authority. As per the definition of “ongoing projects” under rule 2(o) of the said Rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this authority. In the present case, the respondent had applied the occupation certificate for the said project on 29.06.2017 which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(o)(i) and the present case is squarely covered under the first exception provided under rule 2(o) and therefore this authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected. It is pertinent to mention here that even the actual



occupation certificate has also been granted on 08.01.2018. However, as the Fire NOC was awaited for a few blocks (including the unit in question), therefore the respondent, vide letter dated 08.02.2018, informed the DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited. Thus, no cause of action can be said to have arisen to the complainant in any event to assert the reliefs claimed. Thus, no relief, as sought, can be granted to the complainant.

18. 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. It is submitted that this Hon'ble Regulatory Authority has no jurisdiction to entertain such complaints and as such, this complaint is liable to be rejected.
19. The respondent submitted that the present complaint is a ploy to exert undue pressure upon the respondent and seek remedies which are incomprehensible under the law of the land. The reliefs sought by the complainant is outright baseless and this complaint ought to be dismissed.
20. The respondent also submitted that till date the Buyers agreement stands valid and forms a final and concluded



contract, the terms of which are fully binding on parties. Any challenge to the buyer's agreement for rescission lies only before a 'civil court' in terms of the Specific Relief Act, 1963 and that too only on the ground that 'the contract is either voidable or terminable by the plaintiff or that the contract is unlawful, which is not the case of the complainants herein or in terms of section 31 of Specific Relief Act, 1963, which provides for cancellation of an instrument. Thus it is humbly submitted that the present complaint needs to be dismissed on this ground alone.

21. The respondent also submitted that the claim of the complainant for interest @24% is barred by law in terms of section 74 of the Indian Contract Act. The complainant is not entitled to any interest on the amounts deposited by him. Rather the respondent company is legally 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.

22. That in any case the complainant is not a consumer in terms of the definition of consumer under 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 to the Act, clearly state that the Act is enacted for effective consumer protection. It is further submitted that apparently the complainant is a mere speculative investor 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, complainant had apparently developed an intention to raise false and frivolous issues to engage the respondent in unnecessary and false litigation.

23. It is further submitted that provisional allotment of subject unit in the project, namely, the Emerald Floors Premier at Emerald Estate, Sector 65, Gurgaon (now Gurugram), Haryana was initially made in the name of original allottee i.e Mr. Nitin Jain. Subsequently the unit has exchanged hands and provisional allotment was transferred to the complainant on 12.09.2012. When the original applicants had approached the company, they were duly explained the terms and conditions of allotment. Subsequently, vide provisional allotment letter dated 31.10.2009, allotment of Unit No. EFP-19-0302 was made in favour of the original applicant. Thereafter, buyers agreement dated 18.02.2010 was executed between the parties. Since the complainant herein had sought transfer of allotment in his favour, as such he



stepped into the shoes of the transferor and is bound by those terms and conditions.

24. The respondent further submitted that it is wrong and denied that there is any delay in giving possession of the unit to the complainant and that the due date to handover possession of the unit to the complainant was 17.02.2013. Moreover it had been categorically 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 also subject to the terms and conditions contained in the buyer's agreement.
25. The respondent further submitted that the project in question is a large project and such kind of projects do take reasonable time for completion. This position is fortified from the fact that the parties had envisaged a clause in the buyers agreement, in case the company was not able to handover the possession within a period of 36 months from the date of execution of the buyers 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 36 months. It is thus apparent that the timeline mentioned in the buyers agreement was a proposed estimated time for handing over of possession.

26. The respondent further 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. As the development of the project was dependent upon the availability of funds from the allottees who were under a contractual obligation to make payments as per the schedule of payment opted by the 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.

27. It is submitted that as per the buyers agreement, in case there is a delay in handing over of possession, the agreement envisages payment of compensation of Rs. 5/- per sq. ft. per month of the super area of the unit till the date of possession (clause 13), subject to other terms and conditions as contained in the buyers agreement. That it is submitted that this authority cannot in any event travel beyond the express terms and conditions agreed between the parties.



Determination of issues

28. 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:

29. With respect to the **first issue** raised by the complainant, 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 18.02.2010. Therefore, the due date of possession shall be computed from 18.02.2010. 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.”

30. With respect to the **second issue**, the respondent has failed to deliver the possession on the due date of possession i.e 18.05.2013 and has delayed the possession by five years seven months till the date of decision. 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.”

31. 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.

32. The complainant reserve his right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Findings of the authority

33. 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.

34. Project is not registered with the authority. As per assertions made by the respondent, occupation certificate dated 8.1.2018 received but possession not offered as fire NOC for few blocks including booked unit is awaited. Hence, it cannot be treated as, in any way, occupation certificate in the eyes of law. As per clause 11 (a) of the builder buyer agreement dated 18.2.2010, for unit no. EFP-10-0302, 3rd floor, Emerald Floor Premier” in Emerald Estate, Sector-65 urban estate, 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 18.5.2013. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.85,95,785/- with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 18.5.2013 till the date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.



Directions of the authority

35. 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 the delay interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 18.05.2013 till the actual date of handing over of the possession.
- ii. The respondent is directed to pay interest accrued from the due date possession i.e. 18.05.2013 till the date of issuance of this order i.e 18.12.2018 amounting to Rs 51,59,262/- on account of delay in handing over of possession to the complainants within 90 days from the date of decision and subsequent monthly interest i.e Rs 77,003.91/- to be paid by 10th of every succeeding month till the delivery of possession of the booked unit.



36. The order is pronounced.

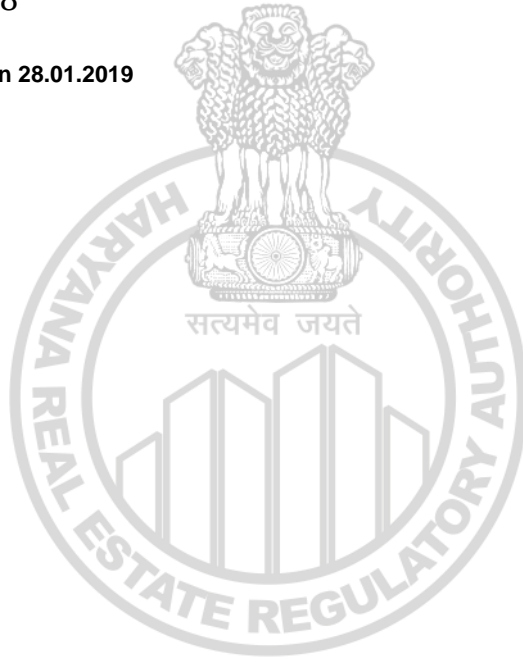
37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 18.12.2018

Judgement Uploaded on 28.01.2019



HARERA
GURUGRAM

