

**Before Sh. J. S. Khushdil, Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, First Floor, Plot No.3,
Block-B, Madhya Marg, Sector 18A, Chandigarh-160018.**

Complaint No. AO/13/2017
Date of Institution: 27.10.2017
Date of Order: 31.10.2018

M/s APS International Private Ltd. Through Mr. Ravi Kant Sawhney,
Deputy General Manager of M/s APS International Pvt. Ltd, B-XXX-
891, Near Mothu Ram Pump Sherpur, Ludhiana.

Complainant

Versus

M/s Emaar MGF Land Limited, ECE House, 28, Kasturba Gandhi Marg,
New Delhi-110001, 2nd address: EMAAR MGF Land Private Limited,
40, Ground Floor, Central Plaza, Sector 105, Mohali-160062.

Respondent

Sh. Khushdil
Complaint under Section 31 read with Section 71 of the
Real Estate (Regulation and Development) Act 2016 in
form N.
31/10/2018
Present:

Sh. Gaurav Chopra alongwith Ms. Kashika Kaur
representatives for complainant.

Shri Subrat Pradhan DGM(L) representative for
respondent.

ORDER

1. M/s APS International Pvt. Ltd (here-in-after called as the complainant) has filed this complaint against M/s Emaar MGF Land Limited, (here-in-after called as the respondent) alongwith

documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund alongwith interest and compensation as per the provisions of the Act on account of delay in handing over possession of the flat bearing No.K3-FPH-PH-01, The Views at Mohali, Hills, Sector 105, SAS Nagar. It is the case of the complainant that the total price of the apartment was Rs.1,10,52,008/- and the complainant has paid the entire amount of costs, however, the possession of the flat has not yet been handed over to the complainant, though as per terms and conditions of the allotment letter dated 15.01.2008 and agreement to sell dated 29.02.2008, the possession was to be delivered up to 15.04.2011. It is further pleaded by the complainant that the project in question has been registered with this Authority.

JS Shasid
31/10/2018

2. Upon notice of this complaint, respondent appeared and filed detailed reply opposing the claim of the complainant on various grounds.
3. Considering the pleadings and documents annexed therewith, earlier vide order dated 05.04.2018, the instant complaint was dismissed as the project in question qua tower K had not been registered with this Authority, which the respondent has got

registered and the case was remanded back from appeal by the Hon'ble Appellate Tribunal. After remand the case was fixed for consideration on the point of violation/contravention of the Act if any.

4. While exercising powers as Adjudicating Officer, I have decided several cases including *Suman Mann Vs. JLPL bearing complaint No.AO.09 of 2017 decided on 14.05.2018* and *Nikhil Kwatra Vs. JLPL bearing complaint No.AO.20/2017 decided on 14.05.2018* and other cases, wherein, several points have been elaborated including one regarding role of the Authority and the Adjudicating Officer. Now, the Punjab State Real Estate Authority, in its 7th meeting held on 09.10.2018 at Agenda Item No. 7.4 has taken a decision in regard to the role of the Adjudicating Officer in the context of complaint in form-N and subsequently a circular bearing No.RERA/Pb./ENF/14 dated 29.10.2018 has also been issued in that regard. The said item No.7.4 is reproduced as under for ready reference:-

“7.4 Role of the Adjudicating Officer in the context of complaint in form ‘M’ and ‘N’.

The matter was discussed at length and it was decided that the role of the Adjudicating Officer was limited only to the

purpose of adjudication of compensation under Sections 12, 14, 18 and 19 of the Act. Refund of money deposited by a complainant, alongwith interest thereon, would not be treated as compensation; and hence, complaints in which the above relief was claimed were to be filed in form-M and be dealt with by the Authority or its Benches. The complainant would also be free to file a separate claim in Form-N before the Adjudicating Officer for compensation in Form-M for refund of amount deposited and interest thereon.


It was also seen that in a number of cases, the relief of compensation for harassment etc. was claimed in the complaint, but, was not pressed at the time of arguments. Therefore, if the relief of compensation was claimed in addition to the refund of the amount and interest thereon, the complaint would still be filed in Form-M; and if the point of compensation was actually pressed, the complainant would be advised to file a separate complaint before the Adjudicating Officer for this purpose.

The Legal Branch should scrutinize the complaints received in accordance with the above decision."

5. In view of the above decision of the Authority, the Adjudicating Officer now cannot deal with the cases of the refund and interest and for that purpose the complaint has to be filed in Form-M

before the Authority. For compensation only, the party may file complaint in Form-N. Thus, in view of these circumstances, the Adjudicating Officer lacks the jurisdiction to grant relief of refund or interest thereon. Therefore, in the larger interest of justice, the complaint is ordered to be returned to the complainant, who is at liberty to file a fresh complaint before the Authority as per the decision of learned Authority. Copy of the order be supplied to both the parties as per rules.

Dated:31.10.2018


(J.S. Khushdil)
Adjudicating Officer, 31/10/2018
Real Estate Regulatory Authority, Punjab.

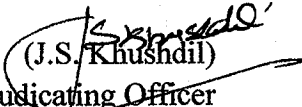
M/s APS International Vs. EMAAR MGF

Dated : 31.10.2018

Present: Sh. Gaurav Chopra alongwith Ms. Kashika Kaur
representatives for complainant.
Shri Subrat Pradhan DGM(L) representative for
respondent.

Heard. Vide my separate detailed order passed today, the complaint is
ordered to be returned to the complainant with liberty to file a fresh complaint before
the learned Authority. Remaining papers including the proceedings of this Bench be
retained and consigned to record room.

Dated: 31.10.2018


(J.S. Khushdil)
Adjudicating Officer
RERA
31/10/2018