

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

**Complaint No. : 1502 of 2018**  
**First date of hearing : 26.03.2019**  
**Date of decision : 26.03.2019**

1. Mr. Nasreen Zafar Ehtesham  
2. Mrs. Seyed Ehtesham Hasnain  
Both R/o: V.C. Lodge, Jamia Hamdard,  
Hamdard Nagar, Tuglakabad, New Delhi - 110062 **Complainants**

Versus

M/s Eminence Township (India) Pvt. Ltd.  
(through its Managing Director and other  
Directors)  
Regd. Office: H - 3, 157, second floor, Vikaspuri, New Delhi - 110018 **Respondent**

**CORAM:**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Medhya Ahluwalia Advocate for the complainants  
Shri Sumit Mehta Advocate for the respondent

**ORDER**

1. A complaint dated 26.10.2018 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. Nasreen Zafar Ehtesham and Mrs. Seyed Ehtesham Hasnain, against

the promoter M/s Eminence Township (India) Pvt. Ltd. (through its Managing Directors and other Directors), in respect of the apartment/unit no. C-1408, of the project “Eminence Kimberly Suites” located at sector 112, Gurugram for not delivering the possession by due date as per clause 27 of the buyer’s agreement dated 17.10.2013 by the respondent which is in violation of section 11(4)(a) of the Act *ibid*.

2. Since the buyer’s agreement dated 17.10.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of the statutory obligation on part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Eminence Kimberly Suites”, Sector 112, Gurugram
2.	Nature of real estate project	Commercial colony
3.	Total area of the project	2.875 acres
4.	DTCP license no.	35 of 2012 dated 22.04.2012
5.	Allotted apartment/unit no.	C-1408, 14 <sup>th</sup> floor, tower-C
6.	Measuring area of the allotted unit	601 sq. ft.

7.	RERA registered / not registered	<b>Registered vide no. 74 of 2017</b>
8.	Revised date of completion of project as per RERA registration certificate	<b>30.12.2018</b>
9.	Date of execution of buyer's agreement	17.10.2013
10.	Building plan approval	09.10.2012
11.	Payment plan	Construction linked plan
12.	Total consideration as per the payment schedule	Rs. 47,51,022/-
13.	Total amount paid by the complainants till date as per customer ledger	Rs. 46,77,673.28/- (Annexure - 3, pg. no. 61 of the complaint)
14.	Date of commencement of still floor	<b>01.02.2014</b> ( as per Annexure - 4, pg. no. 68)
15.	Due date of delivery of possession as per clause 27 of the buyer's agreement. (36 months plus 6 months' grace period from the date of start of the ground floor roof slab of particular tower)	<b>01.08.2017</b> <u>Note - The demand letter for still floor has been annexed so the due date of delivery of possession has been calculated from the date of start of still floor</u>
16.	Delay in offer of possession till the date of decision i.e. 26.03.2019	1 year 7 months 25 days

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 dated 17.10.2013 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 01.08.2017. However, the respondent has failed to fulfil its contractual obligation by not

delivering the possession till date. The respondent has violated the provision of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance. The respondent appeared on 26.03.2019. The case came up for hearing on 26.03.2019. The reply filed by the respondent has been perused by the authority.

**Brief facts of the complaint: -**

6. Briefly stated, facts of the complaint are that the complainants booked an apartment in the project of the respondent namely “Eminence Kimberly Suites” at Sector 112, Village Bajghera, Gurgaon, Haryana
7. The complainants were induced to book the above flat by showing brochures and advertisements material depicting that the project will be developed as a state-of-art project and shall be one of its kind. It was stated that Eminence Kimberly Suites are exclusive studio apartment being raised on picturesque landscape along-side a tailor-made commercial hub. The respondent induced the complainants by stating that the project shall have unmatched facilities from world class swimming pool to a power yoga centre. It was also represented that all necessary sanctions and approvals had

been obtained to complete the same within the promised time frame.

8. The complainants signed buyer's agreement on 17.10.2013 and were allotted apartment bearing no. C-1408 on 14<sup>th</sup> floor in tower no. C, admeasuring super area of 601 sq. ft. The complainants have paid a total sum of Rs. 46,77,674/- from April 2013 as and when demanded by the respondent. It is pertinent to mention that the respondent collected 95% of the sale consideration amount as per the payment schedule annexed with the buyer's agreement, however the respondent has failed to handover the possession of the booked unit, thereby violating the very fundamental term of the buyer's agreement.
9. The respondent accepted the booking from the complainants and other innocent purchasers in year 2012, however the respondent deliberately and with mala-fide intentions delayed the execution of the buyer's agreement. Furthermore the respondent very slyly has stated in clause 32 of the buyer's agreement that the period of handing over possession shall begin from the date when the demand for laying of ground floor roof slab shall be raised by the respondent, however neither any such demand was ever raised nor any such demand is mentioned in the payment schedule annexed with

the buyer's agreement and rather demand for construction of stilt floor was raised by the respondent on 02.01.2014.

10. The respondent had promised to complete the project within a period of 36 months from the date of laying ground floor slab with a further grace period of six months. The buyer's agreement was executed on 17.10.2013 and till date the construction is not complete.

11. It was further submitted that the respondent has delayed the execution of the buyer's agreement in order to safeguard itself from the compensation clause as enshrined under the buyer's agreement and hence the delay in execution of the agreement is solely attributable upon the respondent and thus the period of 36 months should begin from the date of first payment.

12. The complainants have made visits at the site and observed that there are serious quality issues with respect to the construction carried out by respondent till now. The apartments were sold by representing that the same will be luxurious apartment however, all such representations seem to have been made in order to lure complainants to purchase the apartments at extremely high prices. The respondent has compromised with levels of quality and are guilty of mis-selling. There are various deviations from the initial



representations. The respondent marketed luxury high end apartments, but, they have compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality.

13. The complainant submitted that the respondent in the year 2017 invited objections from all the allottees in order to comply with the directions of DTCP in regard to change in sanctioned plan. The complainants submitted their objections to the DTCP giving their no-objection with regard to the change in the sanctioned plan, however till date the complainants have neither heard a single word from the respondent nor has the respondent informed the complainants about the change in plan and its consequences on the complainants. The respondent has not provided the complainants with status of the project. The complainants are entitled for interest @ 18% p.a. for every month of delay till the possession of the apartment is handed over to the complainants, complete in all respects. The original date of possession ought to be counted on expiry of three years from date of first payment.

**Issues to be determined -**

1. Whether the respondent has unjustifiably delayed the construction and development of the project in question?
2. Whether the respondent is liable to pay the delay interest at the prescribed rate till the time possession is handed over to the complainants?

**Reliefs sought: -**

1. Direct the respondent to award delay interest @ 18% p.a. for every month of delay, till the handing over of possession of the apartment complete in all respect to the complainants;
2. Direct the respondent to provide the schedule of construction and also to inform the complainants about the consequences of change in sanction plan;
3. Direct the respondents to pay litigation cost to the complainants.

**Respondent's reply: -**

14. The respondent submitted that the complaint filed before the present authority is false, vexatious and based on distorted facts and thus needs to be dismissed at the threshold. The complainants has not come with clean hands and has suppressed the material fact that they themselves have defaulted on timely payments of instalment.



15. It is submitted that the respondent has diligently invested all the money collected from the investors in the project itself and has never diverted any funds on any account and the construction has got jeopardized, if any, is purely on account of non-timely payments by all the investors.
16. The respondent submitted that the request of the complainants is untenable as the entire money from all the investors have already been spent towards construction activity of the said project. It is stated that the project is on the verge of completion and even the work related to external plaster, internal roads, internal sewerage system, overhead tanks, power backups and other ancillary work has been completed and project is already due for handover of the possession to the complainants and is awaiting final approvals.
17. The respondent submitted that the delay, if any has been caused in delivering the possession of the property as stated by the complainants was purely due to the strict orders of NGT on banning the construction activity on various occasion. The green body ordered the civic bodies to set up teams to ensure there is no burning of waste in Delhi-NCR and asked them to inspect places where construction material was lying in the open uncovered and take appropriate action including

levy of environment compensation. It is submitted that the halt due to ban on the construction activities, following the order of National Green Tribunal and Pollution Control Board, the entire machinery of the respondent used to suffer adversely and it took long periods for the respondent to remobilize the entire construction activity and increased cost of construction.

18. Furthermore, the demonetization of currency notes vide executive order dated 08.11.2016 also affected the pace and the development of the project. Due to this policy change by the central government, the pace of construction of the project was adversely affected since the withdrawal of the money was restricted by Reserve Bank of India as the availability of the new currency was limited and unavailable with the banks. It is well known that the real estate sectors deploy maximum number of construction workers who are paid in cash and hence the said sector requires cash in hand to offer such employment of the work force to carry out the works. All the workers, labourers at the construction site are paid their wages in cash keeping in view their nature of employment as the daily wages labourers.

19. The respondent submitted that on 19.03.2018, the respondent applied for renewal of license for the said project

and it was only after a period of 6 months i.e., on 03.08.2018, the DTCP reverted back to the respondent company with erroneous demand. After efforts of the respondent company, the said demand was rectified and was notified back to the respondent on 01.02.2019, only the said demand has already been paid alongwith future due demands by the respondent company acting under its bonafide. It is stated that the occupancy certificate which is to be obtained before offer of possession could not be obtained due to the delays on the part of the government. Thus, the force majeure existed from 19.03.2018 till 01.02.2019.

20. Even otherwise the period of possession of the said unit, as per the buyer's agreement is to be counted from the date of laying of the ground floor slab i.e. 01.06.2014. The due date for possession was 31.10.2017, subject to force majeure and in the light of the above stated force majeure, the possession of the said unit is to be offered on or before May 2019. And the respondent is confident that it shall deliver the possession of the said unit before time, in terms of buyer's agreement.
21. The complaint filed by the complainants is not maintainable as the same is devoid of true facts and thus is liable to be

dismissed at the very threshold, as the due date for possession is 31.05.2019 and the complaint is pre- mature.

### **Determination of Issues-**

22. As regards to **first and second issue** raised by the complainants, the authority came across that as per clause 27 of the buyer's agreement dated 17.10.2013, possession of the apartment in question was to be delivered within a period of 36 months plus 6 months' grace period from the date of start of the ground floor roof slab of the particular tower in which booking was made. The demand on account of 'on start of still floor' became due on 01.02.2014. Therefore, the due date shall be computed from 01.02.2014. Grace period of 180 days has been allowed to the respondent for the delay caused due to exigencies beyond the control of respondent. The clause regarding the possession of the said unit is reproduced below:

*"27.... subject to all exceptions shall endeavour to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made...."*

23. Accordingly, the due date of delivery of possession comes out to be 01.08.2017 and the possession has been delayed by 1 year 7 months and 25 days till the date of decision. The terms of the agreement have been drafted mischievously by the

respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (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.”*

The complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 01.08.2017 till the offer of possession by the respondent as per the proviso to section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

#### **Findings of the authority-**

24. 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 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory

Authority, Gurugram shall be entire Gurugram District. 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.

25. Argument heard. It has been stated at bar by the counsel for the respondent that they shall be getting occupation certificate for which they have already applied. Project is almost complete. However, outer paints are yet to be completed.

26. As per clause 27 of the buyer's agreement dated 17.10.2013 for unit no. C-1408, in project "Eminence Kimberly Suites", Sector-112, Gurugram, possession was to be handed over to the complainants by 01.02.2017 + 6 months grace period as per their understanding agreement (date of completion of construction) which comes out to be 01.08.2017. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.46,77,674/- to the respondent against a total sale consideration of Rs.47,51,022/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 01.08.2017 as per the provisions of

section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

**Decision and directions of the authority -**

27. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions: -

- i. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 10.75% from the date of delivery of possession i.e. 01.08.2017 till actual offer of possession within 90 days from the date of order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of each subsequent month.

28. Complaint stands disposed of.

29. File be consigned to the registry

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: -26.03.2019

Judgement Uploaded on 29.05.2019