

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

Complaint No. : 577 of 2018
Date of First
Hearing : 20.09.2018
Date of Decision : 11.04.2019

1. Sh. Rakesh Khanna
2. Smt. Rajni Khanna
R/o W-9/22, DLF City Phase-3, Gurugram-
122010, Haryana

...Complainants

Versus

M/s Emaar MGF Land Limited (Now Emaar
India Ltd.)
Office at: 28, Kasturba Gandhi Marg, New
Delhi-110001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Vijay Khanna-brother of the complainant no.1 in person
Shri Ankit Mehta

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 23.07.2018 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 Sh. Rakesh

Khanna and Smt. Rajni Khanna, against the promoter M/s Emaar MGF land limited, on account of violation of clause 14(a) of the buyer's agreement executed on 08.05.2013 for unit no. IG-09-1003 in the project "Imperial Gardens" 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. The particulars of the complaint are as under: -

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| 1. | Name and location of the project | "Imperial Gardens" in sector 102, Gurugram |
| 2. | Unit no. | IG-09-1003 |
| 3. | Project area | 12 acres |
| 4. | Nature of real estate project | Group housing colony |
| 5. | Registered/ not registered | Registered (208 of 2017) |
| 6. | Revised date of delivery of possession as per RERA registration certificate | 31.12.2018 |
| 7. | DTCP license | 107 of 2012 |
| 8. | Date of booking | 17.11.2012 (as per annexure P7) |
| 9. | Date of buyer's agreement | 08.05.2013 |
| 10. | Date of offer of possession | 24.10.2018 |
| 11. | Total consideration | Rs.1,53,74,633/- (as per the statement of account dated 18.07.2018) |
| 12. | Total amount paid by the complainant | Rs.1,45,50,780/- |
| 13. | Payment plan | Construction linked plan |
| 14. | Occupation certificate received on | 17.10.2018 |

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|-----|--|---|
| 15. | Date of delivery of possession | 11.08.2017 Clause 14(a) – 42 months from date of start of construction (11.11.2013) + 3 months grace period i.e. 11.08.2017 |
| 16. | Delay of number of months/ years upto 26.10.2018 | 1 year 2 months |
| 17. | Penalty clause as per buyer's agreement dated 08.05.2013 | Clause 16(a)- Rs.7.50/- per sq. ft. per month of the super area |

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. A buyer's agreement dated 08.05.2013 is available on record for unit no. IG-09-1003 according to which the possession of the aforesaid unit was to be delivered by 11.08.2017. 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.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 20.09.2018. The case came up for hearing on 20.09.2018, 28.09.2018, 26.10.2018, 29.11.2018, 08.01.2019, 18.01.2019 AND 15.02.2019. The reply has been filed on behalf of the respondent on 17.09.2018.

Facts of the complaint

5. On 17.11.2012, the complainants booked a unit in the project named "Imperial Gardens" in sector-102, Gurugram by paying an advance amount of Rs.10,00,000/- dated 17.11.2012 to the respondent. Accordingly, the complainants were allotted a unit bearing IG-09-1003 on the 10th floor.
6. On 08.05.2013, a buyer's agreement was entered into between the parties wherein as per clause 14(a), the construction should have been completed within 42 months + 3 months grace period from the date of start of construction, i.e. 11.08.2017. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite payments as per the demands raised by the respondent. The complainants made payments of all instalments demanded by the respondent amounting to a total of Rs.1,45,50,780/-.
7. The complainants submitted that as per clause 16(a) of the agreement, in case the respondent is not able to hand over the possession then the allottee will be entitled to compensation @ Rs.7.50 per sq. ft. per month of the super area of the unit for the period of delay. Further, as per clause 17(b), the respondent has stated to charge delay payment @ 24% p.a. Therefore, the complainants are entitled to get interest @ 24% p.a. on

deposited amount on prorata basis as per the provisions of RERA.

8. The complainants submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainants decided to terminate the agreement.
9. As per clause 14(a) of the buyer's agreement, the company proposed to hand over the possession of the said unit by 11.08.2017. The clause regarding possession of the said unit is reproduced below:

"14. Possession

14(a)- "..... the company proposes to handover the possession of the said unit within 42 months from date of start of construction, subject to timely compliance of the provisions of the agreement by the allottee. The allottees agrees and understands that the company shall be entitled to a grace period of 3 months after the expiry of said period of 42 months, for

applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project.”

10. Issues raised by the complainants

- I. Whether the respondent has violated the terms of buyer’s agreement dated 08.05.2013 and as such, the complainants are entitled to get their entire amount refunded with interest @ 24% p.a.?

11. Relief sought

- I. To fully refund the amount paid by the complainants amounting to Rs.1,45,50,780/-.
- II. To provide the interest @ 24% p.a. of the agreement on amount of Rs.1,45,50,780/- from date of receipt till the date of final settlement.
- III. To direct the respondent to pay penalty to the complainants @ Rs.7.50 per sq. ft. on super area from May 2017.
- IV. To direct the respondent to pay litigation cost to the complainants.

Respondent’s reply

12. The respondent stated that the present complaint is not maintainable in law or facts. The complaints pertaining to

compensation and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Act, 2017 read with section 31 and section 71 of the said act and not before this hon'ble authority under rule 28.

13. The respondent submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in a summary proceeding 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.

14. It is further 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. The claim of the complainants for refund with interest is barred by law in terms of Section 74 of the Indian Contract Act. The complainants are not entitled to any interest on the

amounts deposited by them. 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.

15. The respondent submitted that the statement of objects and reasons as well as the preamble statement of objects and reasons as well as the preamble of the said Act clearly state that RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of consumer as provided under the consumer protection Act, 1986 has to be referred for adjudication of the present complaint. The complainants are investor and not a consumer as complainant no.1 has already booked another unit bearing no. DG A-06-024 in the "Digital Greens" project with the respondent company and the said unit has been provisionally allotted to him. Further, the complainant no.1 has booked the flat under the heading NRI/ foreign national of Indian origin. At the time of submitting his application for registration of the unit, he submitted a copy of the passport indicating place of issue at Cairo.

16. Respondent further submitted that the complainants have concealed material facts and have not come to this authority with clean hands. It is specifically pointed out that the complainants are repeat defaulters, having deliberately failed to make the payment of instalments within the time prescribed, which resulted in delay payment charges, as reflected in statement of account dated 18.07.2018 filed by the complainants themselves.

17. Respondent submitted that despite several adversities and non-payment by various allottees, the respondent has already applied for occupation certificate of few towers in the project including the tower wherein the unit in question is located and in the balance towers also, the structure works are complete and finishing works are on and the respondent shall endeavour to offer possession within the timelines given to the Authority.

Rejoinder

18. A rejoinder has been filed by the complainants on 26.10.2018 wherein the complainants have re-asserted the facts stated in the complaint and have denied all the averments and submissions made in the reply. Further, the complainants submitted that an offer of possession was made by the respondent on 24.10.2018 in regard to the unit in question

wherein the respondent stated that they have already obtained the occupation certificate and the unit is ready for possession. However, it is submitted that the occupation certificate is applied for only part of the project and the construction work is still going on and the project is not in a state of habitation. It is submitted that the complainants have made entire payment on time and the for delay on few occasions, they paid interest @ 24% p.a. further, the facilities promised are not in order and are not operational, thereby make it impossible for them to take possession of incomplete project.

Determination of issues

19. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:
20. With respect to the **sole issue** raised by the complainant, As per clause 14 (a) of the Builder Buyer Agreement dated 8.5.2013 for unit No.IG-09-1003, in project “Imperial Gardens”, Sector-102, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of start of construction i.e. 11.11.2013 + 3 months grace period which comes out to be 11.8.2017. However, the respondent has not delivered the unit in time. Complainant has already paid

Rs.1,45,50,780/- to the respondent against a total sale consideration of Rs.1,53,74,633/-.

21. It has been averred by the respondent that they have already received occupation certificate, copy of which is placed on record. The respondent has offered possession to the complainant. Since the offer has already been made vide letter dated 24.10.2018, as such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 11.08.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer 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.
23. 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.
24. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

25. **Jurisdiction of the authority-** The authority has complete subject matter 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & 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.

Decision and directions of the authority

26. 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:

- I. The respondent is directed to pay the interest at the prescribed rate i.e. 10.70% per annum for every month of delay on the amount paid by the complainant from due

date of possession till the offer of possession i.e. from 11.08.2017 to 24.10.2018.

- II. It is directed that respondent cannot go beyond the terms and conditions of the agreement as such both the parties are directed to abide by the provisions of terms and conditions of the agreement.
- III. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The promoter shall not charge anything from the complainant which is not part of the BBA.
- V. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- VI. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

27. The complaint is disposed of accordingly.

28. The order is pronounced.

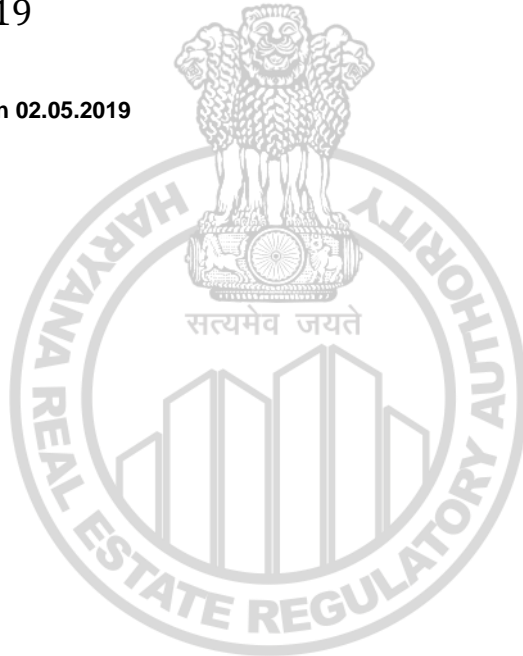
29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 11.04.2019

Judgement uploaded on 02.05.2019



HARERA
GURUGRAM