

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

Complaint no. : 1175 of 2018
First date of hearing: 30.01.2019
Date of Decision : 29.05.2019

Mr. Himanshu Chahar
R/o A-7 Neeti bagh, Ground floor,
New Delhi-

Complainant

Versus

M/s Emaar MGF Land Ltd.
Corporate Office at Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sector-28, Sikander
Pur, Gurugram-122001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Rishabh Sehgal and Smt. Sanam Siddiqui
Shri Ketan Luthra
Shri Ishaan Dang

Advocate for the complainant
Authorised representative on
behalf of respondent company
Advocate for the respondent

ORDER

1. A complaint dated 17.10.2018 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 complainants Mr. Himanshu Chahar, against the promoter M/s Emaar MGF Land Ltd., on

account of violation of clause 10 of the buyer's agreement executed on 22.07.2011 for unit no. PGN-10-1102 on 11th floor having 1900 sq. ft. approx. in the project "Emaar MGF Palm Gardens", Sector-83, Gurugram for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the buyer's agreement was executed on 22.07.2011 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	"Palm Gardens"
2.	DTCP licence no.	108 of 2010 dated 18.12.2010
3.	Flat/apartment/unit no.	PGN-10-1102 on 11 th floor, building no. 10
4.	Flat measuring	1900 sq. ft.
5.	RERA Registered / not registered	Registered vide no. 330 of 2017
6.	Registration certificate valid upto	31.12.2018 (already expired)

7.	Date of execution of buyer's agreement	22.07.2011 page 34 of reply
8.	Total Consideration	Rs. 98,45,937/- (as per statement of account - Annx C-3) including tax and other charges
9.	Payment plan	Construction linked plan
10.	Total amount paid by the complainant till date	Rs. 95,32,827/- (Annx C-3)
11.	Start of construction	09.08.2012 (as per Annx C-3)
12.	Due date of possession computed from the start of construction i.e. 09.08.2012	09.11.2015 Note - As per clause 10 (a) of the agreement- 36 months from the start of construction + 3 months grace period
13.	Offer of possession	09.05.2019
14.	Occupation certificate	02.05.2019
15.	Delay in handing over of possession	3 years, 6 months
16.	Penalty clause (clause 12a of buyer's agreement)	Rs. 7.50 per sq. ft. per month of the super area

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 dated 22.07.2011 for the allotted unit in question is available on record, as per which the respondent was under contractual obligation to deliver the possession of the unit by 09.11.2015, however the respondent has failed to fulfil its commitment till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 30.01.2019 and 29.05.2019. The reply has been filed on behalf of the respondent on 28.11.2018 which has been perused.

Facts of the complaint

4. The complainant submitted that in the year 2011, the respondent had launched a project by the name of "Emaar MGF Palm Gardens" at Sector-83, village Kherki Daula, Tehsil and District Gurgaon (now Gurugram), Haryana. The project was widely publicized by the respondent through print media as well as by adopting other means of publicity to attract the buyers with promises and assurances of meeting and the same was mentioned by the opposite party in its brochure. It was promised by the respondent that the project will be equipped with housing facilities, club facilities and other facilities required for quality public living. Further, submitted that upon the promises and assurances of the respondent, the complainant got interested in the project and approached the respondent when he was informed that one of the allottees namely Mr. Rachit Kumar wanted to opt out of the project and accordingly, the complainant was advised by the respondent that to take over

his unit/flat alongwith all his rights and entitlements, which was readily agreed by the complainant.

5. The complainant submitted that he entered into an agreement to sell dated 08.09.2012 with the original Allottee i.e. Mr. Rachit Kumar, thereby taking over all his rights and interests with respect to apartment no.PGN-10-1102 located on 11th floor in tower 10 admeasuring approximately 1900 Sq. Ft. with retrospective effect i.e. w.e.f. 01.07.2011 and the said Transfer of the unit/flat, in the name of the complainant, was duly acknowledged by the respondent vide its nomination letter dated 05.10.2012.
6. The complainant submitted that the total consideration of the unit in terms of the agreement to sell dated 08.09.2012 was Rs.96,74,110/- (inclusive of basic sale price, external development charges, infrastructural development charges, one covered car parking, club membership charges, plc, interest free maintenance security deposit), out of which original allottee namely Mr. Rachit Kumar had already paid an amount of Rs.33,44,123/- to the respondent and rest of the payment towards the total sale consideration was agreed to be paid by the complainant as and when raised/demanded by the respondent.

7. The complainant submitted that it was promised by the respondent that the possession of the flat would be handed over within 36 months from the start of construction with a grace period of 3 months. Accordingly, the flat should be delivered latest by the end of 2014.
8. The complainant submitted that he made the payment in terms of the demand raised by the respondent and has paid an amount of Rs.95,32,294/- to the respondent till the date of filing of this complaint which is evident from the account statement shared by the respondent. Also, submitted that the amounts paid by the complainant far exceeds the amount to be paid under the apartment-buyers agreement and as on 07.04.2018 the respondent has received an excess amount of Rs.2,52,478/-against the amount originally due from the complainant.
9. The complainant submitted that the respondent failed to deliver the possession of the flat within the stipulated time and unexplained delay of more than four years. Further even after receiving all the payment towards the purchase of the flat, there is no progress at the construction site and the work at the site had been slowed down to snail pace. Further, submitted that there is no provision of

water, electricity and sewerage at the project. Moreover, no progress is there on finishing, electrical, water, woodwork and landscaping because of which possession in terms of the brochure cannot be handed over in coming two years even.

10. The complainant submitted that the respondent has deliberately remained silent on the status of the project and kept the complainant and many others at bay with respect to the developments. Whereas it was the bounden duty of the developer to keep the buyers informed about the developments of the project, from time to time, but since the beginning it seems, the respondent always had the intentions to cheat and to commit fraud upon the complainant alongwith the other home buyers.
11. The complainant submitted that respondent has been fooling the buyers by showing an OC and further raising demand on the basis of the same. However, the said OC was not issued for tower 10 wherein the complainant has his unit which shows that even after causing 4 years of delay the respondent has not been able to obtain an OC for its project.
12. The complainant submitted that believing the promises and assurances of timely delivery of the unit at the hands of the

respondent, the complainant availed the credit facility/loan of Rs.40,00,000/- from State Bank of India to ensure timely payments to the opposite party as and when so demanded, upon raising their demands, and in furtherance of the same, complainant entered into a tripartite agreement dated 26.02.2013 with the bank wherein the respondent was also the party.

13. The complainant submitted that he sent a legal notice to the respondent on date 09.04.2018, thereby calling upon the respondent to compensate for causing delay in completion of the unit and in handing over the possession of the unit within the stipulated time period, as promised to the complainant, alongwith interest @24%. Further, submitted that believing the representations made by the respondent to be true and honest, the complainant made all the payments in good faith but the respondent fraudulently, utilized the same for their own use/or in some other projects instead of utilizing the same for completion of the aforesaid project in question, as promised by the respondent.
14. The complainant submitted that he has been paying EMIs to the state bank of India every month. It is also pertinent to state herein that the complainant raised the loan and till date paid an amount of

Rs.9,71,754/- towards the interest. It is submitted that the complainant raised the loan based upon the promises and assurances of the respondent for timely delivery.

15. The complainant submitted that he has been staying in a rental accommodation and paying rent every month since 2012, as the complainant was hopeful that he would get the possession of the unit in June, 2014 and he would not have to pay any rent thereafter, however, due to gross failure on the part of respondent in handing over the possession, the complainant continue to pay the rent till date despite making almost the entire payment towards their dream unit and after June, 2014 the complainant has spent an amount of Rs.18, 00,000/- on rent, which has been calculated till June, 2018. Further, submitted that the respondent claimed an amount of Rs.2,42,460/- towards GST, which the complainants would not have to bear, had the respondent delivered the possession on time.

Issues to be decided:-

1. Whether the respondent has delayed in handing over the project?

2. Whether complainant is entitled for the possession of the apartment alongwith the interest a per the provisions of Haryana RERA rules on account of failure on the part of respondent to hand over the possession of the apartment within the stipulated time?

Relief sought:-

1. Direct the respondents to hand over the possession of the apartment alongwith interest under section 18 (1)(a) of The Real Estate (Regulation and Development) Act, 2016 which is calculated as per rule 15 of The Haryana Real Estate (Regulation and Development) Rules, 2017.
2. Cost of litigation be awarded in favour of the complainants and against the respondents.

Respondent reply

The respondent submitted various preliminary objections and submissions. They are as follow:

- 16.The complaint is not maintainable before this hon'ble authority. The complainant has filed the present complaint seeking possession, compensation and interest for alleged delay in delivery of possession of the apartment booked by the complainant. It is respectfully submitted that complaints

pertaining to compensation and refund are to be decide by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with under rule -29 of the said rules.

17. The complainant has got no locus standi or cause of action to file the present complaint. The present 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 buyer's agreement dated 22.07.2011.
18. The respondent submitted that apartment no PGN-10-1102, located on the 11th floor, in tower no. 10, having tentative super area of 1900 sq ft, situated in the residential colony developed by the respondent known as "Palm Gardens" situated at Sector 83, Village Kherki Dhaula, Tehsil and District Gurugram, being developed by the respondent, was previously allotted to Mr. Rachit Kumar (hereinafter referred to as the original allottee). Application form submitted by the original allottee, provisional allotment letter dated 11.07.2011. Buyer's agreement dated 22.07.2011 was executed between the original allottee and the respondent.

19. The respondent submitted that the original allottee entered into an agreement to sell the apartment in question in favour of the complainant. The parties executed documents for transfer of the allotment in favour of the complainant. The allotment was transferred in favour of the complainant on 5.10.2012 and the complainant agreed and undertook to be bound by the buyer's agreement dated 22.7.2011.
20. The respondent submitted that demand letters and reminders issued to the complainant. Further, from a perusal of the demand letters it is evident that construction of the project commenced on 09.08.2012 and has been progressing at a rapid pace. In fact, the respondent is already in receipt of occupation certificate in respect of some of the towers in the project and also expects to shortly complete construction of the tower in which the apartment of the complainant is situated.
21. The respondent submitted he has registered the project under the provisions of the Act. The project is expected to be completed by December 2018 and subject to force majeure conditions and reasons beyond the control of the respondent, possession is intended to be offered after applying and obtaining the occupation certificate from the

competent authority and after entire payment is realized from the complainant.

22. The respondent submitted that there has been no delay on the part of the respondent. It is evident that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought. Consequent to the coming into force of the Act, the date of completion of the flat stands extended to 31.12. 2018 as the date which has been mentioned as the date of completion in the application for registration by the respondent. It is only after Dec. 2018, if the respondent is still unable to hand over possession of the apartment to the complainant, subject to force majeure conditions or any extension of registration under the Act, can the complainant make any complaint seeking refund, compensation etc. At this point in time, the complaint is highly premature.

23. The respondent submitted that the respondent has already reversed the payment of Rs. 1,79,305/- towards EDC/IDC to the complainant and adjusted it with outstanding payment if any and the same is also reflected in the statement of account. However, without prejudice to the above mentioned submissions, it is pertinent to mention that all payments

made by the complainant shall be adjusted when the respondent offers possession to the complainant once it receives occupation certificate for the same.

Determination of issues:-

24. With respect to the **first and second issues** raised by the complainant, as per clause 10 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 start of construction. As per statement of accounts the construction was commenced on 09.08.2012. Therefore, the due date of delivery of possession on computation from 09.08.2012 comes out to be 09.11.2015 and the possession has been delayed by three and six months approx. 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. 10.65% per annum for every month from the due date of possession i.e. 09.11.2015 till offer of possession i.e. 09.05.2019.

Findings of the authority: -

25. 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 complainant at a later stage.

26.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 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.

27.As per clause 10 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 start of construction. As per statement of accounts the construction was commenced on 09.08.2012. Therefore, the due date of delivery of possession on computation from 09.08.2012 comes out to be 09.11.2015 and the possession has been delayed by than three and a half years. 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. 10.65% per annum for every month from the due date of possession i.e. 09.11.2015 till offer of possession i.e. 09.05.2019.

Decision and directions of the authority:-


28. 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 interest at the prescribed rate i.e. 10.65% for every month of delay from the due date of possession i.e. 09.11.2015 till the actual offer of possession i.e. 02.05.2019.
- (ii) Complainant is directed to pay outstanding dues, if any after adjustment of interest for delayed period.
- (iii) The promoter shall not charge anything from the complainant which is not part of BBA.

29. The interest so accrued shall be paid at the prescribed rate of 10.65% p.a. within 90 days of the order
30. The order is pronounced.
31. Case file be consigned to the registry.



(Samir Kumar)
Member



(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram