

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

**Complaint no. : 538 of 2019**  
**First date of hearing : 17.12.2019**  
**Date of decision : 17.12.2019**

1. Mr. Jagan Nath Sharma
2. Mrs. Sangeeta K. Sharma  
Both RR/o H.No. 25, Block G, Pocket 8,  
Rohini, New Delhi-110085.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Regd. office: 306-308, Square One,  
C-2, District Center, Saket,  
New Delhi-110017.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Shashi Kant  
Shri J.K Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 13.02.2019 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Imperial Gardens", Sector 102, Gurugram.
2.	Project area	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	107 of 2012 dated 15.10.2012 valid till 09.10.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and Emaar MGF Land Ltd.
6.	Registered/ not registered	<b>Registered in two phases</b> i. 208 of 2017 dated 15.09.2017 ii. 14 of 2019 dated 28.03.2019(Phase II)
7.	Allotment letter	28.02.2013 [Page 40 of reply]
8.	Unit no.	IG-01-0504, 5 <sup>th</sup> floor, tower 1 [Page 37 of complaint]
9.	Unit measuring	2025 sq. ft.
10.	Date of execution of buyer's agreement	09.05.2013 [Page 34 of complaint]
11.	Payment plan	Construction linked payment plan [Page 68 of complaint]
12.	Total consideration as per statement of account dated	Rs.1,74,95,895/-



	30.10.2018 (Annexure C2 at page 87 of complaint) and dated 18.02.2019 (Annexure R42 at page 169 of reply)	
13.	Total amount paid by the complainants as per statement of account dated 18.02.2019 (Annexure R42 at page 169 of reply)	Rs.1,63,35,846/-
14.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 42 months from the date of start of construction (11.11.2013) plus grace period of 3 months. [Page 52 of complaint]	11.08.2017 <b>Note:</b> The date of start of construction is taken from statement of account dated 18.02.2019 at page 170 of reply, as demand on account of 'On start of foundation' was raised on 11.11.2013.
15.	<b>Offer of possession to the complainants</b>	<b>30.10.2018</b> (Page 90 of complaint and at page 177 of reply)
16.	Delay in handing over possession till date of offer of possession i.e. 30.10.2018	1 year 2 months 19 days
17.	Status of the project	OC granted on 17.10.2018 Page 175 of reply
18.	Specific relief sought	i. Direct the respondent to pay delayed interest @ 10.75% per annum on the amount already paid by the complainants from the due date of possession till offer of possession. ii. To direct the respondent that after payment of above amount of delayed interest, the possession should be handed over to the complainants within the stipulated time period.

		iii. To direct the respondent to waive off the interest/penalties.
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3. As per clause 14(a) of the agreement, the possession was to be handed over within a period of 42 months from the start of the construction (11.11.2013) plus grace period of 3 months which comes out to be 11.08.2017. Clause 14 of the buyer agreement is reproduced below:

**"14. POSSESSION**

**(a) Time of handing over the possession**

*Subject to terms of this clause and barring force majeure conditions and subject to the allottee having complied with all the terms and conditions of this agreement, and not being in default under any of the provisions of this agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the company, the company proposes to hand over the possession of the unit within 42 months from the date of start of construction; subject to timely compliance of the provisions of the agreement by the allottee. The allottee agrees and understands that the company shall be entitled to a grace period of 3 months after the expiry of the said 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and the project..."*

4. The possession was offered to the complainants vide letter dated 30.10.2018 asking them to pay all the dues and for taking the possession of the flat. On going through the letter of possession, the complainants were shocked to know that the respondent is compensating only Rs.7.50 per sq. ft. per month. According to the complainant the respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the

buyer's agreement and failed to offer the possession in terms of section 18 of the Act read with Rules. Hence, this complaint inter alia for the aforesaid reliefs.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. The respondent contests the complaint on the following grounds:
  - i. The respondent submitted that right from the very beginning, complainants have been extremely irregular with regard to payment. Consequently, the respondent had to issue notices and reminder calling upon the complainants to pay the demanded amounts. As per the terms and conditions of the buyer's agreement dated 09.05.2013, the complainants were under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement on or before the due dates of payment failing which the respondent was entitled to levy delayed payment charges in accordance with clause 1.2(c) read with clause 12 and 13 of the buyer's agreement dated 09.05.2013. The respondent also issued a notice dated 05.08.2015 informing the complainants that as on that date a sum of Rs.11,97,394.23 was outstanding from the complainants and if the said amount was not paid within 30 days, the respondent would be



constrained to cancel the buyer's agreement dated 09.05.20013.

- ii. The complainants requested not to cancel the buyer's agreement and promised to be regular with the payments hereinafter. The complainants executed an undertaking on 13.10.2015 whereby the complainants admitted that they had defaulted in making payments as per the buyer's agreement. The complainants further agreed and undertook to make full payments as per the payment schedule and in view of such undertaking given by the complainants, the respondent, as a one time gesture of goodwill, proceeded to waive off delayed payment charges amounting to Rs.4,50,632/-.
  - iii. It is further submitted that on account of delay and defaults by the complainants, the due date for delivery of possession stands extended in accordance with clause 14(b)(vi) of buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, the respondent has completed construction by March 2018 and has applied for occupation certificate on 21.03.2018. The occupation certificate was issued by the competent authority on 17.10.2018.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute.



Hence, the complaint can be decided on the basis of these undisputed documents.

8. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
9. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 09.05.2013, possession of the booked unit was to be delivered within a period of 42 months plus 3 months' grace period from the date of start of construction.



The construction was started on 11.11.2013. The grace period of 3 months is allowed to the respondent due to contingencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 11.08.2017. The respondent has offered possession of the subject unit to the complainants on 30.10.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 09.05.2013 to hand over the possession within the stipulated period. At the same time the complainant-allottees have failed to make the entire payment and take possession of the flat which is violation of section 19(6), (7) and (10) of the Act. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession interest at the prescribed rate of 10.20% p.a. w.e.f. 11.08.2017 to 30.10.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. At the same time, the complainants are also liable to pay the interest at the prescribed rate on the delayed payments.

11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:






- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 11.08.2017 till the offer of possession i.e. 30.10.2018. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
  - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
  - iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
  - v. Both the parties are directed to settle the matter w.r.t. statement of accounts, if any, amicably.
12. Complaint stands disposed of.
13. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2019

  
**(Subhash Chander Kush)**

Member