

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

Complaint no. : 2002 of 2018
First date of hearing : 12.03.2019
Date of decision : 17.12.2019

1. Mr. Ashwini Bagga
2. Supriya Bagga
Both R/o H.No. 30, Road No.51, West Punjabi
Bagh, New Delhi-110026.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Regd. office: Emaar MGF Business Park,
M.G. Road, Sikandarpur Chowk,
Sector 28, Gurugram-122002.
Also at: ECE House, 28- Kasturba
Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Pankaj Chandola
Shri J.K Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 18.12.2018 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	Registered in two phases i. 208 of 2017 dated 15.09.2017 ii. 14 of 2019 dated 28.03.2019(Phase II)
7.	Allotment letter	26.02.2013 [Page 33 of reply]
8.	Unit no.	IG-08-0801, 8 th floor, tower 8 [Page 40 of complaint]
9.	Unit measuring	2025 sq. ft.
10.	Date of execution of buyer's agreement	10.05.2013 [Page 37 of complaint]



11.	Payment plan	Construction linked payment plan [Page 71 of complaint]
12.	Total consideration as per statement of account dated 12.12.2018 (Annexure C3 at page 93 of complaint) and dated 21.12.2018 (Annexure R22 at page 67 of reply)	Rs.1,56,96,347/-
13.	Total amount paid by the complainants as per statement of account dated 12.12.2018 (Annexure C3 at page 93 of complaint) and dated 21.12.2018 (Annexure R22 at page 67 of reply)	Rs.1,48,56,907/-
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 55 of complaint]	11.08.2017 Note: The date of start of construction is taken from statement of account dated 12.12.2018 at page 93 of complaint, as demand on account of 'On start of foundation' was raised on 11.11.2013.
15.	Offer of possession to the complainants	30.10.2018 (Page 96 of complaint and at page 100 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
18.	Specific relief sought	i. To direct the respondent to pay the prescribed interest on the entire amount paid by the complainants from the date of respective



		<p>deposits till the date of possession.</p> <p>ii. Direct the respondent to provide fresh statement of account post the adjustment of prescribed interest as sought in relief (i) above and to pay the balance, if any.</p> <p>iii. To refer the matter to the Adjudicating officer of the authority for ascertaining compensation.</p>
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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 on 30.10.2018. As per statement of account provided by the respondent, an amount of Rs.1,48,56,907/- includes Rs.2,20,198/- credited by the respondent to the complainants' account on account of delay in possession. The project is an ongoing project in terms of the Act. 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 beginning, complainants were irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notice, reminder etc., calling upon the complainants to make payment of outstanding amounts payable by them under the payment plan opted by them. The complainants consciously and maliciously chose to ignore the payment request letter and reminders issued by the respondent and defaulted in making timely payment of the instalment which was an essential, crucial



and an indispensable requirement under the buyer's agreement.

- ii. It is further submitted that it has been categorically provided in clause 14(b)(vi) that in case of any default/delay by the allottee in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent.
- iii. It is stated that the amount of Rs.2,20,198/- was credited to the account of the complainants not on account of alleged delay but was credited as a gesture of goodwill. It is further stated as hereunder:

"It is submitted that the input credit in favour of the respondent has not been granted to the respondent but the respondent has not been granted to the complainants and this fact is evident from perusal of statement of account dated 21.12.2018 appended hereto as Annexure R24. This fact had been explained and conveyed to the complainants by the respondent."

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 10.05.2013, 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 10.05.2013 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 @ 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. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- iii. 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.
- iv. The allottees may approach the Adjudicating Officer for seeking compensation for which they may make separate application in Form CAO to the Adjudication Officer as the facts for adjudging the quantum of compensation are different i.e. as per provisions of section 72 of the Act.

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

Judgement uploaded on 10.01.2020