

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

Complaint no. : 2433 of 2018
First date of hearing : 17.12.2019
Date of decision : 17.12.2019

Ms. Manju
R/o A-Wing, 2101, Bhumi Paradise,
Plot no.2 & 3, Sector 11, Sanpada Mumbai **Complainant**

Versus

M/s Emaar MGF Land Ltd.
Regd. office: 306-308, Square One,
C2, District Centre, Saket,
New Delhi-110017 **Respondent**

CORAM:

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

APPEARANCE:

Shri Shashi Kant Advocate for the complainant
Shri J.K Dang Advocate for the respondent

ORDER

1. The present complaint dated 15.01.2019 has been filed by the complainant/allottee 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 complainant, 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 licensees	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.	Unit no.	IG-01-0904, 9 th floor, tower 1 [Page 32 of complaint]
8.	Unit measuring	2025 sq. ft.
9.	Date of execution of buyer's agreement	20.06.2013 [Page 29 of complaint]
10.	Payment plan	Construction linked payment plan [Page 63 of complaint]
11.	Total consideration as per statement of account dated 30.10.2018 (Annexure C2 at page 64 of complaint) and	Rs.1,71,95,788/-

	dated 24.01.2019 (Annexure R28 at page 66 of reply)	
12.	Total amount paid by the complainant as per statement of account dated 24.01.2019 (Annexure R28 at page 66 of reply)	Rs.1,60,50,597/-
13.	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 47 of complaint]	11.08.2017 Note: The date of start of construction is taken from statement of account dated 24.01.2019 at page 66 of reply, as demand on account of 'On start of foundation' was raised on 11.11.2013.
14.	Date of offer of possession to the complainant	30.10.2018 (Page 67 of complaint and at page 128 of reply)
15.	Delay in handing over possession till date of offer of possession i.e. 30.10.2018	1 year 2 months 19 days
16.	Status of the project	OC granted on 17.10.2018
17.	Specific relief sought	<ul style="list-style-type: none"> i. Direct the respondent to pay interest @10.75% p.a. on the amount already paid by the complainant from the due date of possession till offer of possession. ii. To direct the respondent that after payment of the above amount of interest, the possession should be handed over to the complainant within the stipulated time period. iii. To direct the respondent to refund the interest

		charged and the future interest should be waived off.
--	--	---

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 complainant vide letter dated 30.10.2018 asking him to pay all the dues and take the possession of the flat. Hence, this complaint 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 the complainant was irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan opted by her. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments.

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.

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 complainant 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 complainant 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 20.06.2013, 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 complainant on 30.10.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 20.06.2013 to hand over the possession within the stipulated period. At the same time the complainant-allottee has 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 complainant is 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 complainant 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 complainant within 90 days from the date of this order.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant 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.

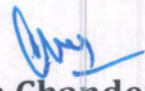
13. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2019


(Subhash Chander Kush)

Member