

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

Complaint no. : 3027 of 2019
First date of hearing : 17.12.2019
Date of decision : 17.12.2019

Ashish Gupta
R/o C-2/297, Janakpuri,
New Delhi.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. office: 306-308. Square One, C-2,
District Center, Saket, New Delhi-110017.
Also at: ECE House, 28 Kasturba Gandhi
Marg, New Delhi- 110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Shashi Kant
Shri Kanika Gamber

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 02.08.2019 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 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	27.02.2013 [Page 75 of reply]
8.	Unit no.	IG-08-0102, 1 st floor, tower 8 [Page 35 of complaint]
9.	Unit measuring	2025 sq. ft.
10.	Date of execution of buyer's agreement	30.04.2013 [Page 32 of complaint]



11.	Payment plan	Construction linked payment plan [Page 66 of complaint]
12.	Total consideration as per statement of account dated 09.08.2019 (Annexure J at page 163 of reply)	Rs.1,59,22,542/-
13.	Total amount paid by the complainant as per statement of account dated 09.08.2019 (Annexure J at page 165 of reply)	Rs.1,50,04,794/-
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 50 of complaint]	11.08.2017 Note: The date of start of construction is taken from statement of account dated 09.08.2019 at page 163 of reply, as demand on account of 'On start of foundation' was raised on 11.11.2013.
15.	Offer of possession to the complainant	29.10.2018 [Page 71 of complaint and 37 of reply]
16.	Delay in handing over possession till date of offer of possession i.e. 29.10.2018	1 year 2 months 18 days
17.	Status of the project	OC granted on 17.10.2018 [Page 35 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 complainant from the due date of possession till offer of possession. ii. To direct the respondent that after payment of the above amount of delayed interest, the possession



		<p>should be handed over to the complainant within the stipulated time period.</p> <p>iii. To direct the respondent to waive off the interest/penalties.</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 complainant vide letter dated 29.10.2018 to pay all the dues and for taking the possession of the flat. No compensation/ delayed interest amount has been shown to be adjusted in the possession letter. 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 inter alia on the following grounds:
 - i. The respondent submitted that on receipt of occupation certificate dated 17.10.2018, respondent offered possession to the complainant on 29.10.2018 subject to payment of the outstanding amount and submission of necessary documents. Various reminder notices by email and reminder letters were also sent to the complainant requesting to take possession. However, till date the complainant has failed to clear the outstanding amount and take possession of the apartment. The complainant has already been given compensation of Rs.2,20,198/- towards the delayed possession.
 - ii. The complainant had defaulted in payment of instalment as per the agreed payment plan and consequently, the respondent had issued various notices and reminders to pay the outstanding dues.
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 30.04.2013, 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. Occupation Certificate has been received by the respondent on 17.10.2018 and the possession of the subject unit was offered to the complainant on 29.10.2018, copies of the same have been placed on record. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 30.04.2013 to hand over the possession within the stipulated period. At the same time, the complainant-allottee has also failed to make the entire payment and take the possession of the flat which is in 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 29.10.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. At the same time, the complainant is also liable to pay interest at the prescribed rate on the delayed payment.

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. 29.10.2018. 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. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iii. 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.
 - iv. 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