

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

Complaint no. : 2290 of 2019
First date of hearing : 16.09.2019
Date of decision : 17.12.2019

Kamini Kaushal
R/o K-3/94, DLF Phase II,
Gurugram-122002.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. office: Emaar Business Park,
M.G. Road, Sikanderpur Chowk,
Sector 28, Gurugram-122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Mayank Raghava
Shri J.K Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 29.05.2019 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.	HRERA registered/ not registered	Registered in two phases i. 208 of 2017 dated 15.09.2017 valid up to 31.12.2018 ii. 14 of 2019 dated 28.03.2019(Phase II) valid up to 17.10.2018
7.	Date of provisional allotment letter	27.02.2013 (dispatched on 28.02.2013) [Page 30 of reply to the complaint]



8.	Unit no.	IG-05-0703, 7 th floor, tower 5 [Page 45 of reply to the complaint]
9.	Unit measuring	2025 sq. ft.
10.	Date of execution of buyer's agreement	04.06.2013 [Page 42 of reply]
11.	Payment plan	Construction linked payment plan [Page 76 of reply]
12.	Total consideration as per statement of account dated 12.06.2019 (Annexure R10 at page 103 of reply)	Rs.1,54,93,896/- (including taxes) [Rs.1,51,85,104/- according to the complainant. The same amount is shown by the respondent in schedule of payment- instalment of plan dated 27.02.2013 (Annexure R3 at page 38)]
13.	Total amount paid by the complainant as per statement of account dated 12.06.2019 (Annexure R10 at page 104 of reply)	Rs.1,44,84,082/-
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 for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 60 of reply]	11.08.2017 Note: The date of start of construction is taken from statement of account dated 12.06.2019 at page 103 of reply, as demand on account of 'On start of foundation' was raised on 11.11.2013.
15.	Date of offer of possession to the complainant	20.11.2019 [Placed on record during hearing]



16.	Delay in handing over possession till date of offer of possession i.e. 20.11.2019	2 years 3 months 9 days
17.	Status of the project	OC granted on 17.10.2019 [Placed on record during hearing]
18.	Specific relief sought	i. Direct the respondent to deliver the possession and to pay amount of delayed possession.

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 for applying and obtaining the CC/OC in respect of the unit and/or the project 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 20.11.2019. Hence, this complaint for the aforementioned 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.

The respondent contests the complaint on the following grounds:

- i. According to the respondent, it was the complainant who had been making continuous default in regular payment of instalments and sometime applying for waiver of delay payment interest. It is stated that the complainant is yet to pay Rs.8,51,730/- to the respondent towards the sale price of the apartment.
- ii. It is stated as follows:

"20. That, on account of delay and defaults by the complainant, the due date for delivery of possession stands extended in accordance with clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, the respondent had submitted an application for issuance of occupation certificate on 28.01.2019 (Annexure R28). It is respectfully submitted that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation



certificate as well as time taken by the government/statutory authorities in according approvals, permissions etc. have to be excluded while computing the time period for delivery of possession."

- iii. It is prayed that the complaint be dismissed.
6. 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.
7. 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.
8. Arguments are heard.
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 04.06.2013, 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. Therefore, the due date of handing over possession comes out to be 11.08.2017. Occupation Certificate has been received by the respondent on 17.10.2019 and the possession of the subject unit was offered to the complainant on 20.11.2019. Copies of the same have been placed on record. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable in equally to the builder as well as allottee. There is no document to show that respondent had in fact applied for occupation certificate on 28.01.2019 *with all relevant papers*. It is not the case of the respondent that he had intimated the allottees including the complainant about applying the occupation certificate. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 04.06.2013 to hand over the possession within the stipulated period. 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 at rate of the prescribed interest @ 10.20% p.a. w.e.f. 11.08.2017 to 20.11.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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. 20.11.2019. 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.

12. Complaint stands disposed of.
13. File be consigned to registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2019

Judgement uploaded on 28.01.2020


(Subhash Chander Kush)
Member