

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

Complaint no. : 2547 of 2019
First date of hearing: 20.11.2019
Date of decision : 21.01.2020

Yashvir Bansal (HUF),
Through its Karta Mr. Yashvir Bansal
R/o 42/3, Motilal Nehru Nagar (East),
Bhilai-490020, Chhattisgarh.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar MGF Business Park,
M.G Road, Sikandpur Chowk, Sector 28,
Gurugram-122002, Haryana.
Also at: 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 Pradeep Sharma Advocate for the complainant
Shri Ishaan Dang Advocate for the respondent
Shri Ketan Luthra AR of the respondent company

ORDER

1. The present complaint dated 14.06.2019 has been filed by the complainant/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 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	Palm Gardens, Sector 83, Gurugram.
2.	Project area	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	108 of 2010 dated 18.12.2010 Valid/renewed up to 17.12.2018
5.	Name of licensee	Logical Developer Pvt. Ltd. and others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 330 of 2017 dated 24.10.2017 for towers 1,2,6,8 to 12 and other facilities and amenities.
7.	HRERA registration valid up to	31.12.2018
8.	Date of provisional allotment letter	14.12.2011 [Page 30 of reply]
9.	Unit no.	PGN-01-0502, 5 th floor, block 01 [Page 24 of complaint]
10.	Unit measuring	1900 sq. ft.

11.	Date of execution of buyer's agreement	25.01.2012 [Page 22 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 43 of complaint]
13.	Total consideration as per statement of account dated 14.06.2019 (page 44 of reply)	Rs.1,11,19,598/-
14.	Total amount paid by the complainant as per statement of account dated 14.06.2019 (page 45 of reply)	Rs.1,04,83,941/-
15.	The date of start of construction as per statement of account dated 14.06.2019 (page 44 of reply)	09.08.2012
16.	Due date of delivery of possession as per clause 10(a) of the said agreement i.e. 36 months from the date of start of construction (i.e. 09.08.2012) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 31 of complaint]	09.11.2015
17.	Date of offer of possession to the complainant	Not offered
18.	Delay in handing over possession till date of decision i.e. 21.01.2020	4 years 2 months 12 days

3. As per clause 10(a) of the buyer's agreement, the possession was to be handed over within a period of 36 months from the date of start of construction i.e. 09.08.2012 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 09.11.2015.

Clause 10 of the buyer's agreement is reproduced below:

"10. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this buyer's 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 36 months from the date of start of construction, subject to timely compliance of the provisions of the buyer's agreement by the allottee. The allottee(s) agrees and understands that the company shall be entitled to a grace period of 3 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project."

4. The complainant submitted that the respondent has failed to handover possession of the subject unit till date. Had the possession been handed over to the complainant within the stipulated period, the complainant would have been using the flat in question for their personal requirements which is why the complainant continued to make, rather force, to make payments as per the demands made by the respondent despite the fact that the respondent was not adhering to the schedule of construction and was more interested in fleecing the complainant. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the flat bearing no. PGN-01-0502 admeasuring 1900 sq. ft. in

- the said project in terms of the buyer's agreement dated 25.01.2012.
- ii. Direct the respondent to pay interest on the amount paid by the complainant w.e.f. 09.11.2015 till the time the possession of the flat is handed over to the complainant.
 - iii. Grant any other relief to which the complainant found entitled under the facts and circumstances of the case in favour of the complainant and against the respondent.
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 complaints pertaining to compensation, interest and refund are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Rules and not by this hon'ble authority.
 - ii. The respondent submitted the buyer's agreement dated 25.01.2012 was executed between the original allottees and the respondent. Thereafter the complainant approached the original allottees for purchasing their rights and title in the unit in question. The original

allottees acceded to the request of the complainant and agreed to transfer and convey their rights, entitlement and title in the unit in question to the complainant for a value sale consideration of Rs.1,22,49,301/-. The agreement to sell was executed between the original allottees and the complainant on 03.02.2014.

- iii. The respondent submitted that right from the beginning, the original allottees were extremely irregular in payment of instalments. The respondent was constrained to issue payment request letters, reminders etc. to the original allottees requesting them to make payment of outstanding amounts payable by them under the payment/instalment plan opted by them.
- iv. The respondent submitted that the complainant consciously and maliciously chose to ignore the payment request letters and reminders issued by the respondent and flouted in making payments of the instalments which was essential, crucial and an indispensable requirement under the buyer's agreement. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the

facts and circumstances of the case. Therefore, there is no equity in favour of the complainant.

- v. That as per clause 10(b)(iv), in the event of default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. Therefore, the time for delivery of possession of the unit in question is not liable to be determined in the manner suggested by the complainant.
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. Arguments heard.
10. The Act is to protect the rights of the stakeholders 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.

11. On consideration of the circumstances, the documents and other record and submissions made by the parties 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 10(a) of the buyer's agreement executed between the parties on 25.01.2012, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of start of construction (i.e. 09.08.2012). The grace period of 3 month is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 09.11.2015. The complainant has already paid Rs.1,04,83,941/- against the total sale consideration of Rs.1,11,19,598/- as per statement of account dated 14.06.2019 at page 44 and 45 of reply. In this case, respondent has not offered possession of the unit to the complainant. 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. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities



as per the buyer's agreement dated 25.010.2012 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. 09.11.2015 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

12. 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. 09.11.2015 till the offer of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
- 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.
13. Complaint stands disposed of.
14. File be consigned to registry.

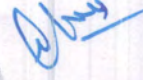

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2020

Judgement uploaded on 03.02.2020


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram