

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

**Complaint no. : 2548 of 2019**  
**First date of hearing : 20.11.2019**  
**Date of decision : 21.01.2020**

Mr. Meera Bansal  
R/o 42/3, Motilal Nehru Nagar (East),  
Bhilai-490020, Chhattisgarh.

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: 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	<b>Registered vide no. 330 of 2017 dated 24.10.2017</b> for towers 1,2,6,8 to 12 and other facilities and amenities.
7.	HRERA registration valid up to	<b>31.12.2018</b>
8.	Date of provisional allotment letter	12.01.2011 [Page 31 of reply]
9.	Unit no.	PGN-05-1205, 12 <sup>th</sup> floor, tower 05 [Page 26 of complaint]
10.	Unit measuring	1900 sq. ft.
11.	Date of execution of buyer's agreement	19.05.2011 [Page 24 of complaint]



12.	Payment plan	Construction Linked Payment Plan [Page 45 of complaint]
13.	Total consideration as per statement of account dated 24.08.2019 (page 86 of reply)	Rs.1,01,60,770/-
14.	Total amount paid by the complainant as per statement of account dated 24.08.2019 (page 88 of reply)	Rs.1,01,42,896/-
15.	The date of start of construction as per statement of account dated 24.08.2019 (page 86 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 33 of complaint]	09.11.2015
17.	<b>Date of offer of possession to the complainant</b>	21.03.2018 [Page 69 of complaint]
18.	Delay in handing over possession till date of offer of possession dated 21.03.2018	2 years 4 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 vide letter dated 21.03.2018, the respondent offered possession of the flat subject to completion of the formalities mentioned therein and also clearance of dues amounting of Rs.11,37,167/-. All the requirements including payment of the amount as demanded were fulfilled by the complainants. The complainant took the vacant physical possession of the flat through Special Power of Attorney Holder through Unit Handover Letter dated 16.11.2018. 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 fleeing the complaint. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay interest on the amount deposited by the complainant w.e.f. 09.11.2015 till the possession of the flat is handed over to the complainant.
  - ii. 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 provisions of the Act are not applicable to the project in question. The application for issuance of OC in respect of the tower in question was made on 30.06.2017 i.e. before the notification of the Rules. The OC has been thereafter issued on 10.01.2018. Thus, part of the project in question is not an ongoing project under rule 2(1)(o) of the Rules. This hon'ble Authority does not have jurisdiction to entertain and decide the present complaint.

- ii. 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.
- iii. The respondent submitted the buyer's agreement dated 19.05.2011 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 covey their rights, entitlement and title in the unit in question to the complainant for a value sale consideration of Rs.1,14,75,549/-. The agreement to sell was executed between the original allottees and the complainant on 24.01.2014.
- 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 19.05.2011, 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.1,01,42,896/- against the total sale consideration of Rs.1,01,60,770/- as per statement of account dated 24.08.2019 at page 86 and 88 of reply. In this case, possession has already been offered to the complainant on 21.03.2018 after receipt of OC dated 10.01.2018. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable 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 19.05.2011 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 i.e. 21.03.2018 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 i.e. 21.03.2018. 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.

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