

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

Complaint no. : 2419 of 2019
First date of hearing : 09.07.2019
Date of decision : 21.01.2020

1. Paramdeep Kaur
2. Tejpratap Singh
Both RR/o 734/39, Inder Nagar,
Ambala City, Haryana-134003.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: 1st Floor, ECE House, 28
Kasturba Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Harsh Vardhan
Shri Ishaan Dang
Shri Ketan Luthra

Advocate for the complainants
Advocate for the respondent
AR of the respondent company

ORDER

1. The present complaint dated 10.06.2019 has been filed by the complainants/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 complainants, 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 2 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	19.01.2011 [Page 30 of complaint]
9.	Unit no.	PGN-06-1002, 10 th floor, tower 06 [Page 40 of complaint]



10.	Unit measuring	1900 sq. ft.
11.	Date of execution of buyer's agreement	03.05.2011 [Page 38 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 59 of complaint]
13.	Total consideration as per statement of account dated 08.05.2019 (page 92 of complaint) and 07.06.2019 (Annexure R22 at page 66 of reply)	Rs.96,87,465/-
14.	Total amount paid by the complainants as per statement of account dated 08.05.2019 (page 93 of complaint) and 07.06.2019 (Annexure R22 at page 67 of reply)	Rs.92,22,120/-
15.	The date of start of construction as per statement of account dated 08.05.2019 (page 92 of complaint)	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 47 of complaint]	09.11.2015
17.	Date of offer of possession to the complainants	08.05.2019 [Page 94 of complaint]
18.	Delay in handing over possession till date of offer of possession dated 08.05.2019	3 years 5 months 29 days



3. As per clause 10(a) of the 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 not being in default under any of the provisions 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 complainants submitted that the respondent has delayed the possession of the said unit by more than 4 years and is in clear contravention of the buyer's agreement but has failed to acknowledge any such liability. On contrary, the respondent is charging an illegally interest at rate of 24% per annum on the delayed payments from the bank which cannot be attributed to the complainants. Hence, this complaint inter-alia for the following reliefs:



- i. Restrain the respondent from cancellation/ alienating/ transferring the subject unit in the project developed by the respondent.
 - ii. Direct the respondent to compensate the complainants for the illegal delayed payment charges levied despite the assurance to waive the same off.
 - iii. Direct the respondent to pay interest to the complainants for the inordinate delay in handing over the possession of the unit from the due date of possession as per the flat buyer's agreement till the grant of physical possession in terms of the Act.
 - iv. Quashing of the clauses in the buyer's agreement pertaining to penal interest chargeable unilaterally by the respondent particularly clause 1.2(b) of the agreement.
 - v. Quashing of the demand letter dated 08.05.2019 and other related/prior letter as they levy illegal and arbitrary charges including but not limited to holding charges on the complainants.
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 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 that the complainants were extremely irregular in payment of instalments. The respondent was constrained to issue payment request letters, reminders etc. to the complainants requesting them to make payment of outstanding amounts payable by them under payment plan opted by them.
 - iii. That as per clause 10(b), time period for delivery of possession shall stand extended on the occurrence of delay for the reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event of default in payment of amount demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended.
 - iv. The respondent submitted that the respondent has submitted an application dated 30.03.2018 and 21.12.2018 for the grant of OC before the concerned



statutory authority and the OC was thereafter granted on 02.05.2019. The respondent submitted that once an application for grant of OC is submitted to the concerned authority, the respondent ceases to have control over the same. Therefore, the time period utilised by the concerned authority for granting OC is liable to be excluded from the time period utilised for implementation of the project.

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 complainants, 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 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.

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 03.05.2011, 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 complainants have already paid Rs.92,22,120/- against the total sale consideration of Rs.96,87,465/- as per statement of account dated 08.05.2019 at page 92 and 93 of complaint. In this case, possession has already been offered to the complainant on 08.05.2019 after receipt of OC dated 02.05.2019. 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 03.05.2011 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 complainants are 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. 08.05.2019 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 complainants from due date of possession i.e. 09.11.2015 till the offer of possession i.e. 08.05.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.



iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants 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