

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

Complaint no. : 2353 of 2019
First date of hearing : 18.09.2019
Date of decision : 21.01.2020

Mr. Amrit Singh
R/o H.No.96, Ridgewood Estate,
DLF City, Phase IV, Gurugram-122002,
Haryana.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One,
C-2, District Centre, Saket,
New Delhi-110017.
Also at: 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 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 10.06.2019 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	08.02.2012 [Page 27 of complaint and page 40 of reply]
9.	Unit no.	PGN-08-1604, 16 th floor, tower 08 [Page 33 of complaint]



10.	Unit measuring	1720 sq. ft.
11.	Date of execution of buyer's agreement	15.04.2011 [Page 31 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 52 of complaint]
13.	Total consideration as per statement of account dated 07.06.2019 (page 59 of reply)	Rs.90,02,137/-
14.	Total amount paid by the complainant as per statement of account dated 10.05.2019 (page 89 of complaint) and 07.06.2019 (page 61 of reply)	Rs.89,06,508/-
15.	The date of start of construction as per statement of account dated 07.06.2019 (page 59 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 40 of complaint]	09.11.2015
17.	Date of offer of possession to the complainant	08.05.2019 [Page 90 of complaint and 93 of reply]
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 complainant submitted that the complainant never made any default in making the payments towards the instalments. The same was duly paid and deposited with the respondent as and when demanded by the respondent. However, the respondent has charged Rs.308/- towards delayed payment charges on one occasion of delay. The respondent has malafidely and by abusing its dominant position has charged exorbitant rate of interest @24% p.a. on the delayed payments and only then accepted the same under the garb of the buyer's agreement. A period of 8 years has already been passed if calculated from date of execution of the buyer's agreement but neither the possession of the apartment nor the complete



amount towards the compensation for delayed possession has been paid to the complainant till date. The respondent has miserably failed to adhere to the terms and conditions clauses set out by the respondent company and the RERA provisions.

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 pay interest to the complainant 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.
 - iii. 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.
 - iv. 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 complainant.
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 right from the beginning, the complainant was extremely irregular in payment of instalments. The respondent was constrained to issue a payment request letters, reminder etc. to the complainant requesting her to make payment of outstanding amounts payable by her under the payment plan/instalment plan.
- iii. That as per clause 10(b) provides that the time period for delivery of possession shall extended on the occurrence of delay for reasons beyond the control of the respondent. In the terms of clause 10(b)(iv), in the event of default in payment of amounts 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 an application dated 21.12.2018 for grant of OC before the concerned authority. The OC dated 02.05.019 was thereafter granted by the concerned authority. That once an application for grant of OC is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned authority for granting the 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 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, 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 15.04.2011, 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. In this case, possession has already been offered to the complainant on 08.05.2019 after receipt of OC dated 02.05.2019. The complainant has already paid Rs. 89,06,508/- against the total sale consideration of Rs. 90,02,137/- as per statement of account dated 07.06.2019 at page 59 and 61 of reply. 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 15.04.2011 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. 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 complainant 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 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


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Judgement uploaded on 03.02.2020