

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

Complaint no. : 1794 of 2019
First date of hearing : 20.11.2019
Date of decision : 21.01.2020

1. Neeraj Kumar Sharma
2. Mallika Dixit
Both RR/o K-203, Palm Drive, Sector 66,
Golf Course Extension Road, Gurugram.

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 Neeraj Kumar Sharma Complainant in person
Shri Kuldeep Kohli Advocate for the complainants
Shri Ishaan Dang Advocate for the respondent
Shri Ketan Luthra AR of the respondent company

ORDER

1. The present complaint dated 26.04.2019 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 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	26.11.2011 [Page 46 of complaint]
9.	Unit no.	PGN-12-0203, 2 nd floor, tower 12 [Page 104 of complaint]

10.	Unit measuring	1900 sq. ft.
11.	Date of execution of buyer's agreement	12.12.2011 [Page 102 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 123 of complaint]
13.	Total consideration as per statement of account dated 19.01.2019 (page 96 of complaint)	Rs.1,02,52,228/-
14.	Total amount paid by the complainants as per statement of account dated 19.01.2019 (page 98 of complaint)	Rs.96,64,467/-
15.	The date of start of construction as per statement of account dated 19.01.2019 (page 96 of complaint)	30.11.2012
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. 30.11.2012) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 111 of complaint]	01.03.2016
17.	Date of offer of possession to the complainants	Not offered
18.	Delay in handing over possession till date of decision i.e. 21.01.2020	3 years 10 months 20 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. 30.11.2012 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 01.03.2016.

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 even after payment of over 95% of the total sale consideration and a long wait of almost 7 years from the time of agreement of sale, the unit is nowhere near to completion. The complainants being diligent buyers and consumers, made continuous follow ups asking the respondent on status and update on the project. The complainants received no satisfactory response from the respondent. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the said apartment with the best amenities and specifications as promised in all completeness without any further delay

along with delay interest from 12.03.2015 till the date of handing over the possession.

- ii. Award pendent lite interest @18% per annum from the date of payment of amounts till realisation.
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. Reply has not been filed by the respondent despite giving opportunity, though AR for the respondent company and the counsel for the respondent has been attending the proceedings.
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 complainants, is of considered view that there is no need of further hearing in the complaint.
8. Arguments 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 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 12.12.2011, 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. 30.11.2012). 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 01.03.2016. The complainants have already paid Rs.96,64,467/- against the total sale consideration of Rs.1,02,52,228/- as per statement of account dated 19.01.2019 at page 96 and 98 of complaint. In this case, the respondent has not offered the possession of the unit to the complainants. 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 12.12.2011 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. 01.03.2016 till the offer of possession 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 complainants 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 complainants 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 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.
12. Complaint stands disposed of.
13. 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

HARERA
GURUGRAM