

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

**Complaint no. : 1754 of 2019**  
**First date of hearing : 17.12.2019**  
**Date of decision : 14.02.2020**

1. Mrs. Kavita Gambhir  
2. Mr. Somesh Gambhir  
Both RR/o H.No.394/25, Basai Road,  
Shakti Nagar, Gurugram- 122001, Haryana.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Regd. office: Emaar Business Park, M.G.  
Road, Sector 28, Gurugram.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Sharma  
Shri Ishaan Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 09.05.2019 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	"Imperial Gardens", Sector 102, Gurugram.
2.	Project area	12 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	107 of 2012 dated 15.10.2012 valid till 09.10.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	<b>Registered in two phases</b> <b>i. 208 of 2017 dated 15.09.2017</b> [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2018 which is extended up to 31.12.2019] <b>ii. 14 of 2019 dated 28.03.2019(Phase II)</b> [Valid up to 17.10.2018 for 4.57 acres]
7.	Date of provisional allotment letter	28.02.2013 [Page 25 of reply to the complaint]
8.	Unit no.	IG-07-1203, 12 <sup>th</sup> floor, tower/building no. 7 [Page 25 of complaint]
9.	Unit measuring	2025 sq. ft.



10.	Date of execution of buyer's agreement	28.05.2013 [Page 22 of complaint]
11.	Payment plan	Instalment payment plan [Page 56 of complaint]
12.	Total consideration as per statement of account dated 11.02.2020	Rs.1,57,46,351/- [Page 72 of reply to the complaint]
13.	Total amount paid by the complainants as per statement of account dated 11.02.2020	Rs.1,31,69,260/- [Page 73 of reply to the complaint]
14.	Date of start of construction as per statement of account dated 11.02.2020	11.11.2013
15.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 42 months from the date of start of construction (11.11.2013) 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]	11.08.2017
16.	<b>Date of offer of possession to the complainants</b>	20.11.2019 [Page 135 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 20.11.2019	2 years 3 months 9 days
18.	Status of the project	OC granted on 17.10.2019 [Page 132 of reply]
19.	Specific relief sought	i. Direct the respondent to handover the possession of the unit in question to the complainants alongwith interest @ 24% p.a. on the amount paid toward interest for delayed possession from the date as and when the amount

		<p>was received by the respondent from the complainants.</p> <p>ii. Direct the respondent to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainants.</p>
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3. As per clause 14(a) of the buyer's agreement dated 28.05.2013, the possession was to be handed over within a period of 42 months from the date of start of the construction (11.11.2013) 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 11.08.2017. Clause 14 of the buyer agreement is reproduced below:

**"14. POSSESSION**

**(a) Time of handing over the possession**

*Subject to terms of this clause and barring force majeure conditions and subject to the allottee having complied with all the terms and conditions of this agreement, and not being in default under any of the provisions of this 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 42 months from the date of start of construction; subject to timely compliance of the provisions of the agreement by the allottee. The allottee agrees and understands that the company shall be entitled to a grace period of 3 months after the expiry of the said 42 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and the project."*



4. The complainants submitted that aggrieved of not receiving the possession of the unit in question in time, they visited the office of the respondent on which the respondent assured that the possession shall be given within a short span of time, however no commitment was given. The respondent has not handed over the vacant and peaceful possession of the unit in question till the filing of the complaint. Hence, this complaint for the aforementioned reliefs.
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. That the complaints pertaining to refund, interest and compensation 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. That the complainants were irregular regarding the remittance of instalments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by them under the payment plan opted by them.
  - iii. That as per clause 14(b) of the agreement, in case of any default/delay by the allottees in payment as per schedule

of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondents discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case by the complainants.

iv. That the construction of the project/allotted unit in question stands completed and the respondent had applied for grant of OC to the concerned statutory authority. Accordingly, the OC was granted by the concerned authority on 17.10.2019. It is submitted that once an application for grant of OC is submitted before the concerned statutory authority, the respondent ceases to have any control over the same. Therefore, the time utilised by the concerned statutory authority for granting the OC needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in the terms of the buyer's agreement.

v. It is prayed that the complaint be dismissed.

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 other submissions made and the documents filed by the complainants and the respondent, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent 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 14(a) of the buyer's agreement executed between the parties on 28.05.2013, possession of the booked unit was to be delivered within a period of 42 months plus 3 months grace period from the date of start of construction. The construction was started on 11.11.2013. The grace period of 3 months 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 11.08.2017. Occupation Certificate has been received by the respondent on 17.10.2019 and the



possession of the subject unit was offered to the complainants on 20.11.2019. Copies of the same have been placed on record. 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.

11. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the respondent has applied for grant of occupation certificate on 11.02.2019 as mentioned in DTCP memo no. ZP-845/AD(RA)/2019/25815 dated 17.10.2019 whereby occupation certificate has been granted by the competent authority under the prevailing law. However, it is evident from the occupation certificate dated 17.10.2019 that an incomplete application for grant of OC was applied on 11.02.2019 as fire NOC from the competent authority was granted on 30.05.2019 which is subsequent to the filing application of occupation certificate. Also, the Chief Engineer-I has submitted his report with respect to the laying/completion of services in the project area on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 06.09.2019 and 07.09.2019 respectively. As





such, the application submitted on 11.02.2019 was incomplete in the eyes of law. As per sub code 4.10.4 of the Haryana Building Code, 2017, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 07.09.2019 and consequently the concerned authority has granted OC on 17.10.2019, therefore no delay in granting occupation certificate can be attributed to the concerned statutory authority.

12. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 28.05.2013 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. 11.08.2017 to 20.11.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.



13. With respect to the relief of selling super area in excess of selling carpet area as sought by the complainants, the Director of Town and Country Planning had issued license bearing no 107 of 2012 dated 15.10.2012 under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 in the favour of respondent on 15.10.2012. The license was issued prior to the date of commencement of Real Estate (Regulation and Development) Act, 2016. Moreover, the promoter has executed buyer's agreement with the allottees on 28.05.2013 i.e. prior to the applicability of the Real Estate (Regulation and Development) Act, 2016. As per the buyer's agreement, the unit/flat has been sold on super area basis therefore, in the present case the promoter can sell super area in place of carpet area to the allottees. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
14. Issues with regard to charging of VAT/GST, the complainants are directed to approach the appropriate authority(s) to get the matter settled.
15. 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. 11.08.2017 till the offer of possession i.e. 20.11.2019. 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 take possession of the allotted unit within a period of 1 month by paying remaining payments, if any, along with prescribed rate of interest i.e. 10.20% per annum to the respondent failing which respondent shall be entitled to charge maintenance charges.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.

16. Complaint stands disposed of.

17. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2020

  
**(Subhash Chander Kush)**

Member