

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

Complaint no. : 196 of 2020
First date of hearing: 14.02.2020
Date of decision : 14.02.2020

1. Mr. Akhil Mahajan
2. Ms. Divya Mahajan
Both RR/o H.No. 3405, 1st floor, Sector 23,
Gurugram, Haryana-122022.

Also at: L-49D, 1st floor, L-Block,
Saket, New Delhi-110017.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office Address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Also at: Emaar Business Park, M.G.
Road, Sector 28, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Shivali
Shri Ishaan Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 31.01.2020 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	<p>Registered in two phases</p> <p>i. 208 of 2017 dated 15.09.2017 [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]</p> <p>ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]</p>



7.	Date of provisional allotment letter	15.11.2018 [Page 21 of complaint and page 26 of reply to the complaint]
8.	Unit no.	IG-03-0203, 2 nd floor, tower/building no. 3 [Page 37 of complaint]
9.	Unit measuring	2025 sq. ft. (super area) 1255.728 sq. ft. (carpet area)
10.	Date of execution of buyer agreement	28.11.2018 [Page 29 of complaint]
11.	Payment plan	Possession linked payment plan [Page 68 of complaint]
12.	Total consideration as per statement of account dated 06.01.2020	Rs.1,31,67,636/- [Page 73 of complaint]
13.	Total amount paid by the complainants as per statement of account dated 06.01.2020	Rs.1,17,36,629/- [Page 73 of complaint]
14.	Due date of delivery of possession as per clause 7(a) of the said agreement i.e. the company shall offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. [Page 45 of complaint]	31.12.2018
15.	Date of letter of offer of possession to the complainants	05.11.2019 [Page 78 of complaint and page 97 of reply to the complaint]
16.	Delay in handing over possession till date of offer of possession i.e. 05.11.2019	10 months 05 days



17.	Status of the project	OC granted on 17.10.2019 [Page 94 of reply]
18.	Specific relief sought	Direct the respondent to pay interest at prescribed rate for the delayed period of handing over possession calculated from the date of delivery of possession as mentioned in the agreement to the actual date of handing over the possession on the amount paid by the complainants towards the said unit.

3. As per clause 7(a) of the buyer agreement dated 15.11.2018, the respondent was under obligation to offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. Clause 7 of the buyer agreement is reproduced below:

"7. POSSESSION AND SALE DEED

- (a) *Within 60 (sixty) days from the date of issuance of occupation certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee, Subject to Force Majeure and fulfilment by the Allottee of all the terms and conditions of this Agreement including but limited to timely payment by the Allottee of The Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31.12.2018 or such time as may be extended by the competent Authority."*

4. The complainants submitted that despite the payments, the respondent company failed to deliver the possession in agreed time frame (i.e. December 2018) for reasons best known to them and the respondent never bothered to intimate reasons and reasoning for the delay to the complainants. Therefore, the respondent has breached the sanctity of the agreement to sell i.e. ABA. The offer of possession was made to the complainants by the respondent company on 05.11.2019 and the actual physical possession of the impugned unit was handed over on 10.12.2019. There is 11 months of unexplained delay in handing over the possession. 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 interest, compensation, etc. 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 clause 13 of the buyer agreement provides that no compensation for any delay in delivery of possession caused on account of delay or non-receipt of occupation certificate, completion certificate or any other

permission/sanction from the competent authority shall be provided to the allottees. The respondent had submitted an application dated 11.02.2019 for grant of OC to the concerned statutory authority. The OC thereafter was granted on 17.10.2019. That once an application for issuance of OC is submitted before the concerned statutory authority, the respondent ceases to have control over the same. Therefore, the time period utilised by the statutory authority for granting OC needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer agreement.

iii. The complainants were offered possession of the unit in question through letter of offer of possession dated 05.11.2019. A handover letter dated 10.12.2019 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer agreement stands satisfied.

iv. 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 7(a) of the buyer agreement executed between the parties on 28.11.2018, the respondent was under obligation to offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. Therefore, the due date of handing over possession is 31.12.2018. 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 05.11.2019. 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 28.11.2018 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. 31.12.2018 to 05.11.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

13. 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. 31.12.2018 till the offer of possession i.e. 05.11.2019. 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.

14. Complaint stands disposed of.

15. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 14.02.2020

Judgement uploaded on 02.03.2020