

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

Complaint no. : 2708 of 2019
First date of hearing : 17.12.2019
Date of decision : 14.02.2020

Mr. Deepak Singh Sawhney
R/o NH-8, Nathupur, H.No. I-602,
Ambience Island, Gurugram-122002, Haryana. **Complainant**

Versus

M/s Emaar MGF Land Ltd.
Regd. office: ECE House, 28 Kasturba Gandhi
Marg, New Delhi-110001. **Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Kuldeep Kumar Kohli **Advocate for the complainant**
Shri Ishaan Dang **Advocate for the respondent**

ORDER

1. The present complaint dated 04.07.2019 has been filed by the complainant/allottee 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	"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	Registered in two phases i. 208 of 2017 dated 15.09.2017 [valid up to 31.12.2018] Extension granted vide no. 3 of 2019 valid up to 31.12.2019 ii. 14 of 2019 dated 28.03.2019(Phase II) [valid up to 17.10.2018]
7.	Date of provisional allotment letter	27.02.2013 [Page 31 of reply]
8.	Unit no.	IG-08-0201, 2 nd floor, tower 8 [Page 24 of complaint]
9.	Unit measuring	2025 sq. ft.



10.	Date of execution of buyer's agreement	07.05.2013 [Page 22 of complaint]
11.	Payment plan	Instalment payment plan [Page 39 of complaint]
12.	Total consideration as per statement of account dated 29.10.2018 (Annexure C2 at page 42 of complaint) and dated 13.06.2019 (Annexure R6 at page 129 of reply)	Rs.1,59,84,106/-
13.	Total amount paid by the complainant as per statement of account dated 13.06.2019 (Annexure R6 at page 129 of reply)	Rs. 1,51,97,016/-
14.	Date of start of construction as per statement of account 13.06.2019 (Annexure R6 at page 130 of reply)	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 31 of complaint]	11.08.2017
16.	Date of offer of possession to the complainant	29.10.2018 [Page 178 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 29.10.2018	1 year 2 months 18 days
18.	Status of the project	OC granted on 17.10.2018 (Page 176 of reply)
19.	Specific relief sought	Direct the respondent to handover the possession of the unit to the complainant along with delayed interest



		on the amount paid by the complainant for the delayed period.
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3. As per clause 14(a) of the buyer's agreement dated 07.05.2013, the possession was to be handed over within a period of 42 months from the 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 complainant submitted that the complainant had fairly booked the said unit in the year 2013 and was expecting it to be delivered by the month of 2017 but due to the respondent's unprofessionalism, the possession got delayed for over a year. The possession was offered to the complainant vide letter



dated 29.10.2018. The respondent has not paid the amount for the delayed period but is demanding payment to take 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 right from the beginning, the complainant had been extremely irregular with regard to payment. Consequently, the respondent had to issue notices and reminders calling upon the original allottees to pay the demanded amounts.
 - iii. That the period of 42 months plus 3 months' grace period expired on 11.08.2017. However, on account of delay and defaults by the complainant, the due date for delivery of possession stood extended in accordance with clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, the respondent had completed



construction of the apartment/tower by March 2018 and had applied for issuance of OC on 21.03.2018. That after submission of the application for issuance of OC, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the OC. Thus, the said period taken by the competent authority in issuing the OC as well as time taken by the statutory authorities in according approvals, permissions etc. necessarily have to be excluded while computing the time period for delivery of possession.

- 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 complainant 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 complainant 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 07.05.2013, 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 17.10.2018 and the possession of the subject unit was offered to the complainant on 29.10.2018. 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 21.03.2018 as mentioned in DTCP memo no. ZP-845/SD(BS)/2018/29753 dated 17.10.2018 whereby occupation certificate has been granted by the



competent authority under the prevailing law. However, it is evident from the occupation certificate dated 17.10.2018 that an incomplete application for grant of OC was applied on 21.03.2018 as fire NOC from the competent authority was granted on 18.09.2018 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 12.09.2018. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 24.09.2018 and 27.09.2018 respectively. As such, the application submitted on 21.03.2018 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 27.09.2018 and consequently the concerned authority has granted OC on 17.10.2018, 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 07.05.2013 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 complainant is entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 11.08.2017 to 29.10.2018 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 complainant from due date of possession i.e. 11.08.2017 till the offer of possession i.e. 29.10.2018. 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 take over the possession of the possession of the allotted unit within a period of 1 month by paying remaining dues, if any, alongwith

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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

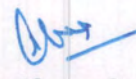
14. Complaint stands disposed of.

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