

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

Complaint no. : 873 of 2019
First date of hearing : 17.12.2019
Date of decision : 14.02.2020

1. Saroj Gautam
2. M.P. Gautam
R/o H.No.326, Ground Floor,
Sector 9A, Gurugram.

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 Anand Dahiya
Shri Ishaan Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 08.05.2019 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	<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	28.02.2013 [Page 25 of complaint]
8.	Unit no.	IG-08-1403, 14 th floor, tower/building no. 8 [Page 42 of complaint]
9.	Unit measuring	2000 sq. ft.



10.	Date of execution of buyer's agreement	15.04.2013 [Page 39 of complaint]
11.	Payment plan	Instalment payment plan [Page 73 of complaint]
12.	Total consideration as per statement of account dated 18.02.2019	Rs.1,55,07,724/- [Page 72 of reply]
13.	Total amount paid by the complainants as per statement of account dated 18.02.2019	Rs.1,44,72,588/- [Page 73 of reply]
14.	Date of start of construction as per statement of account dated 18.02.2019	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 57 of complaint]	11.08.2017
16.	Date of offer of possession to the complainants	31.10.2018 [Page 136 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 31.10.2018	1 year 2 months 20 days
18.	Status of the project	OC granted on 17.10.2018 [Page 134 of reply]
19.	Specific relief sought	i. Direct the respondent to deliver possession after completing the project in a holistic manner including the common areas as per the terms of the agreement at the earliest possible by providing a specific date of completion.

		<ul style="list-style-type: none">ii. Direct the respondent to pay interest to the complainants on the amount paid by the complainants as per provisions of the Act.iii. Direct the respondent not to charge maintenance in advance for two years with advance GST thereon as the same is not in accordance to the provisions of the agreement.iv. Direct the respondent not to charge Rs.4,24,081/- towards HVAT as the complainants have already paid all the taxes as and when demanded.v. Direct the respondent not to charge an amount of Rs.1,00,000/- on account of IFMS as the respondent is also claiming advance maintenance.vi. The respondent shall not charge Rs.1,26,000/- on account of other charges as there is no justification for the same and no service is being provided by the respondent in lieu of this amount.
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3. As per clause 14(a) of the buyer's agreement dated 15.04.2013, 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 vide letter dated 04.12.2018, the respondent offered the possession and has claimed Rs.24,51,551/- under different heads. On receiving the above-mentioned letter, the complainants visited the office of the respondents and enquired about the above mentioned additional and illegal demands but to avail as the representative refused to hear anything and were adamant on payment of the demanded amounts. The respondent has miserably failed in meeting the obligations cast upon them by the agreement between the parties and offer of possession is



nothing but ploy to ward off obligations created by the provisions of the Act. 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 right from the beginning, the complainants were irregular as far as payment of instalments was concerned. The respondent was compelled to issue 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)(vi) 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. The respondent had submitted an application dated 21.03.2018 for grant of OC to the concerned statutory authority. The OC thereafter was granted on 17.10.2018. It is submitted that once an application for issuance 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 15.04.2013, 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 complainants on 31.10.2018. 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 15.04.2013 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 31.10.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
13. The relevant clause as per the advance maintenance charges are as follows:

"21. MAINTENANCE

(a) ...

(b) *The allottee further agrees and undertakes to pay Maintenance Charges as may be levied by the Maintenance Agency for the upkeep and maintenance of the project, its common areas, utilities, equipment installed in the building and such other facilities forming part of the project. Further, the allottee agrees and undertakes to pay in advance, along with the last instalment specified under*



Payment Plan, advance maintenance charges (AMC) equivalent to Maintenance Charges for a period of one year or as may be decided by the company/Maintenance Agency at its discretion..."

Thus, the authority is of the view that the respondent shall collect the advance maintenance charges for 1 year only which is as per the buyer's agreement executed between the parties and shall not extend this time period arbitrarily.

14. With respect to the HVAT relief sought by the complainants, the authority is of the view that the complainants may approach the appropriate forum for levy of taxes.
15. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
16. 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. 31.10.2018. 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 respondent is directed to collect the advance maintenance charges (AMC) for 1 year in advance only.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.

17. Complaint stands disposed of.


18. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.02.2020


(Subhash Chander Kush)

Member

Judgement uploaded on 02.03.2020