

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

Complaint No. : 118 of 2018
First Date of : 01.05.2018
Hearing :
Date of Decision : 09.08.2018

1. Ms. Poonam Devnani
2. Mr. Ram M Devnani,
R/o. B-2/18, Lawrance Road,
Delhi.

Complainants

Versus

M/s Emaar MGF Land Pvt. Ltd.
Regd. office: 306-308 square one,
C-2 District centre, Saket,
New Delhi- 110005

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Srishti Girdhar
Shri Ishaan Dang
Shri Ketan Luthra

Advocate for the complainant
Advocate for the respondent
Authorised representative on
behalf of the respondent.



ORDER

1. A complaint dated 30.03.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read

with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Ms. Poonam Devnani & Mr. Ram M Devnani, against the promoter M/s Emaar MGF Land Pvt. Ltd., on account of violation of clause 14 of buyers agreement executed on 24.11.2010 in respect of Unit No. PTS -02- 0302, 3rd Floor, Sector 66, Gurgaon described as below for not handing over possession on the due date i.e. by 31.10.2015 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	“The Palm Terraces Select”, sector- 66, Gurgaon
2.	Unit no.	PTS-02-0302, 3 rd floor, 2 nd tower
3.	Unit measuring	2410 sq. ft.
4.	Registered / Not registered	Registered
5.	Date of Buyer agreement	24.11.2010
6.	Total consideration	Rs. 1,77,53,248/-
7.	Total amount paid by the complainant	Rs. 1,68,86,708/-
8.	Occupation granted on	25.01.2018
9.	Offer of possession	9.03.2018
10.	Date of delivery of possession. From the start of excavation i.e. 31.07.2012	As per clause 14(a) of BBA, 36 months+ 3 months grace period from commencement of construction i.e.31.10.2015
11.	Delay in handing over possession from due date of possession till offer of possession	2 years 9 months



12.	Payment Plan	Construction linked plan
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3. As per the details provided by the parties in the complaint and the reply, the developer/promoter was bound to deliver the possession of unit no. PTS-02-0302, 3rd floor, in tower 2 to the complainants by the due date i.e. 31.10.2015 as per apartment buyer agreement dated 24.11.2010. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 01.05.2018. The case came up for hearing on 01.05.2018, 05.06.2018, 12.07.2018, 25.07.2018 and 09.08.02018. The reply has been filed on behalf of the respondent on 15.05.2018.

Facts of the Complainants

5. The complainants, booked an apartment/flat admeasuring super area 223.9 Sq.mtr (2410 sq. ft.) in aforesaid project of the respondent for total sale consideration of Rs 1,70,36,170 which includes BSP, car parking, IFMS, club membership, PLC etc and Rs. 1,77,53,248 including taxes, and the flat buyer's



agreement was executed on 24.11.2010. Out of the total sale consideration amount, the complainants made payment of Rs.1,68,86,708 /- to the respondent vide different cheques on different dates., the details of which are as annexed with the complaint.

6. That as per flat buyer's agreement the respondent had allotted a unit/flat bearing number PTS-02-0302 on 3rd floor in tower no. 2 having super area of 2410 sq. ft. to the complainants. The complainants are contending that as per clause 14(a) of the flat buyer's agreement, the respondents had agreed to deliver the possession of the flat within 36 months from the date of signing of the flat buyer's agreement with an extended period of three months and according to that the flat was to be deliver by 24.02.2014. That some of the clauses in the buyer agreement for which the complainants were made to sign by the respondent are one sided. The complainants had signed already prepared documents with some of the clauses contained therein were totally unreasonable and are in favour of the respondent only. That the complainants regularly visited project site but were surprised to see that the pace of construction was very slow. The respondents have only constructed the basic structure



which was linked to the payment plan and majority of payments were made by the complainants on demand.

7. The complainants submitted that despite receiving of 90-95 % payment as per the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits by the complainants, the respondent have failed to deliver the possession of the allotted flat to the complainants within stipulated period and finally sent offer of possession on 09.03.2018 almost after a delay of 45 months. As per Clause 16 (a) of the flat buyers agreement dated 24.11.2010, it was agreed by the respondent that in case of any delay, they shall pay to the complainants compensation @ Rs. 7.50/- per sq. ft. per month of the super area of the unit for the period of the delay.
8. It is, however, pertinent to mention herein that a clause of compensation at such a nominal rate of Rs. 7.50/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of flat on time. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that respondents have incorporated the clause which is one sided in the buyer's agreement and offered to pay a sum of Rs.7.50/- per sq. ft. for



every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 1.5 % per annum rate of interest and whereas as per the buyer's agreement and demand letters, the respondent had charged 24% p.a. interest on delayed payment.

Issues Raised by The Complainants

- I. Whether flat has not been handed over to the complainants till today and there is no reasonable justification for the delay?
- II. Direct the respondent to pay interest calculated @24% per annum on compound rate from the committed date of possession i.e. 24.11.2013?
- III. Whether the interest being demanded by the respondent @ 24% is unjustified?
- IV. The maintenance charges w.e.f are very excessive.

Relief Sought:

Direct the respondent to handover the possession of the respective flat along with interest @24% per annum on compound rate from the committed date of possession i.e. 24.11.2013 on the entire sum paid by the complainants to the respondent.



Reply:

9. The respondent submitted that the present complaint is not maintainable in law or the facts. The application for the issuance of the occupation certificate in respect of the apartment in question was made on 25.07.2107, i.e. well before the notification of the Haryana Real Estate (Regulation and Development) Rules, 2017 and the project in question is not an ongoing project under rule 2(1)(o) of the rules, thus the project has not been registered under the provision of the Act. This Hon'ble authority does not have jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground.
10. The complainants have filled the present complaint seeking the possession, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complainants pertaining to possession, compensation and the refund are to be decided by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016 and not by this Hon'ble authority. The present complaint is liable to be dismissed on this ground alone. That the complainant has no locus standi or cause of action to file the present complaint.



11. The respondent has submitted that clause 14 of the buyer agreement provides that the subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the apartment would be handed over within 36 months plus grace period on 3 months, from the date of start of construction. Time period for the delivery of the possession shall extended on the occurrence of the delay in payment of amounts demanded by the respondent under the buyer agreement, the time for delivery of possession shall also stand extended. In the present complaint, the complainants have been extremely irregular in the payment of the instalments.
12. The respondent has submitted that the construction of the apartment in question stands completed and the respondent is in receipt of the occupation certificate in respect of the same. That vide letter dated 09.03.2018 offer of possession of the apartment was sent to the complainants.
13. The respondent submitted that all the demands raised by the respondent are strictly in accordance with the terms and conditions of the buyer agreement duly executed and agreed between the parties. There is no default or lapse on the part of the respondent. It is the complainants who are refraining



from taking the possession of the apartment by raising false and frivolous excuses.

14. The respondent has submitted that as per the buyer's agreement between the parties the complainant made the payment of Rs 1,77,98,130/-. The complainant is required to complete the formalities and documentation as set out in the letter offering possession including provision of fixed deposit of Rs. 2,62,961/- and the payment of HVAT and stamp duty and registration charges.

15. The respondent submits that as per the clause 14 (a) of the buyer agreement respondent had agreed to deliver possession of the apartment within a period of 36 months from the date of execution of agreement. Whereby the possession should have been handed over by 24.02.2014. The interpretation of clause 14(a) of the said agreement by the complainants are erroneous and misconceived. Selective clauses of the agreement cannot be interpreted in isolation. The entire contract has to be read as a whole.

16. The respondent has submitted that the construction was completed and an application for issuance of OC was submitted with competent authority on 25.07.2017, which was eventually granted on 25.01.2018. The respondent



cannot be held liable for time taken by the competent authorities in issuing occupation certificate.

17. The respondent denied the fact that the respondent has constructed the basic structure, which was linked to the payment or that majority of the payment were made too early. It is also denied that subsequent to that, there has been very little progress in the construction of the project.
18. The respondent has submitted that in the process of construction, it is only logical that the basic structure shall be erected first, and the finishing work shall follow subsequently. Any other sequence of completion of work is not only illogical but also impractical. Thus, it is illogical and ridiculous for the complainants to attribute any malafides and dishonest motives of the respondent on this account.
19. Further, the respondent has submitted that the buyer's agreement is not one sided, unreasonable etc. It submits that the given nature of the rights and obligations that flow from the buyer's agreement, the developer and the buyer cannot be treated on the same footing.
20. The respondent submits that it is wrong and denied that the complainants are entitled to demand possession of the apartment without making complete payment for the same as



set out in the buyer's agreement executed by the parties. It is wrong and denied that there was any occasion for the complainants to have made any repeated requests or reminders, telephonic calls or personal visits for possession of the apartment when it has been clearly and categorically explained to the complainants that the possession of the apartment would be handed over to the complainant once all the outstanding payment is received and after completion of all necessary formalities indicated on the letter offering possession.

Proposed Issues by Respondent

- i. Whether the provisions of the Act *ibid* are applicable to the project in the question?
- ii. Whether the present complaint is maintainable qua the respondent?
- iii. Whether the complainants have defaulted in performance of their obligations under the buyer agreement dated 24.11.2010?
- iv. Whether the complainants can demand possession of the apartment without completing the formalities and documentation and without making complete payment for the same as per the buyer agreement dated 24.11.2010?



- v. Whether the complainants are entitled to any relief.

Determination of issues

21. In regard to first issue the respondent has obtained the occupation certificate on 25.01.2018 for the said unit and also offered the possession of the unit to the complainant on 09.03.2018. However, the date of handing over the possession as per clause 14(a) of the agreement was 31.10.2015. As, there is the delay of 2 year 9 months in handing over the possession of the unit, so the respondent is liable to pay the interest at the prescribed rate for the delayed period from 31.10.2015 to 09.03.2018.
22. In regard to the second issue raised by the complainants, as the promoter has offered the possession on 9.03.2018, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case



may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

23. Accordingly, the due date of possession was 31.10.2015. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area of the said flat as per clause 16(a) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."



24. In regard to the fourth issue the complainant is liable to pay the maintenance charges after the possession as per the clause 19 of the buyer's agreement. As, the authority had no jurisdiction to decide this issue.

25. As the possession of the flat was to be delivered by 31.10.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”



26. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

27. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the



adjudicating officer if pursued by the complainants at a later stage.

Decision and directions of the authority

29. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 here by issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is bound to give interest at prescribe rate of 10.45% on the amount deposited by the complainant for every month of delay for the due date of possession i.e. 31.10.2015 till 9.03.2018 on account of delay in handing over of possession which shall be paid to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.
- ii. In case the promoter fails to comply with the direction of the authority the complainant is at liberty to further approach the authority for the remedy as provided under the provision of RERA act.

30. Case file be consigned to the registry.

31. The order is pronounced.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated : 09.08.2018



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 09.08.2018
Complaint No.	118/2018 case titled as Ms. Poonam Devani versus M/s Emaar MGF Land Ltd.
Complainant	Ms. Poonam Devani
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/s Emaar MGF Land Ltd
Respondent Represented through	Shri Ketan Luthra, authorized representative on behalf of the respondent-company with Shri Ishaan Dang, Advocate
Last date of hearing	25.7.2018

PROCEEDINGS

The project is registered.

Arguments heard.

The authorized representative appearing on behalf of the respondent made a statement that the delay in handing over the possession to the complainant by them as they have not received requisite approvals from the various authorities which are beyond their control. He has further stated that he has received occupation certificate from the DTCP on 25.1.2018 and offered the possession on 9.3.2018. The complainant has stated that the possession was to be handed over on 31.10.2015 as per clause 14 of the Buyer Agreement dated 24.11.2010 (i.e. within 36 months + 3 months grace period =39 months) from the date of start of construction but

the respondent has failed to give the possession on the due date. It means that the construction of the project is almost complete and they have offered the possession of the unit to the complainant on 9.3.2018 so the amount cannot be refunded to the complainant. The respondent is bound to give interest at the prescribed rate i.e. 10.15% on the amount deposited by the complainant for every month of delay from the due date of possession 31.10.2015 till 9.3.2018. In case the promoter fails to comply with the directions of the authority then the complainant is at liberty to further approach the Authority for the remedy as provided under the provisions of the RERA Act. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
9.8.2018