

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

Complaint No. : 209 of 2018
First date of hearing: 30.05.2018
Date of Decision : 22.10.2018

M/s Priority Agencies Pvt. Ltd.,
Through its directors Mr. Vishal Agarwal,
Regd Office:L-16/2A, Phase-2, Gurugram,
Haryana

Complainant

Versus

M/s EMAAR MGF Land Ltd.
Through its Managing Director/Promoter
Regd. Office: EMAAR MGF Business Park,
MG Road, Sikandarpur Chowk,
Sector 28, Gurugram-122022

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Mayank Aggarwal and Shri Pradeep Kumar Advocates for the complainant
Ms. Monika Balhara and Shri Ketan Luthra Authorised representatives on behalf of the respondent
Shri J.K. Dang Advocate for the respondent

ORDER

1. A complaint dated 30.04.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 by the complainant M/s Priority Agencies Pvt. Ltd, against the promoter M/s EMAAR MGF Land Ltd., on account of violation of the clause 14(a) of the buyer agreement executed on 01.05.2013 in respect of unit number IG-07-0102 , 1st floor, tower 07 in the project 'Imperial Gardens' with a super area of 2000 sq.ft. for not handing over possession on the due date i.e. 01.02.2017 which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"Imperial Gardens", Sector 102, Village Kherka Majra Dhankot, Gurugram
2.	Apartment/unit No.	IG-07-0102 on 1 th floor, tower- 07
3.	Nature of the real estate project	Group housing colony
4.	Flat measuring	185.81 sq. mtr. of carpet area
5.	RERA registered/ not registered.	registered
6.	DTCP No.	107 of 2012
7.	Booking date	31.12.2012
8.	RERA Registration No.	208 of 2017 dated 15.09.2017
9.	Date of execution of buyer agreement	01 st May 2013
10.	Payment plan	Instalment payment plan
11.	Total sale consideration	Rs.1,46,50,843/-
12.	Total amount paid by the complainant till date	Rs. 1,12,29,504 /-
13.	Date of delivery of possession as per clause 14(a) of buyer agreement (42 Months + 3 months grace	011.08.2017 Date of construction: 11.11.2013 (as per



	period from the date of start of construction)	statement of A/c, page-138)
14.	Delay in handing over possession till 22.10.2018	1 year 2 months 12 days
15.	Penalty clause as per buyer agreement dated 1.05.2013	Clause 16(a) of the agreement i.e. Rs.7.50/- per sq. ft per month of the super area of the unit for the period of delay

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement dated 01.05.2013 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 11.08.2017. Neither the respondent has delivered the possession of the said unit till date to the purchaser nor they have paid any compensation @ Rs. 7.50/- per sq. ft per month of the super area of the unit for the period of delay of the said flat for the period of such delay as per clause 16(a) of builder buyer's agreement dated 01.05.2013. 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 appearance. The respondent appeared on 30.05.2018. The case came up for hearing on 30.05.2018, 17.07.2018, 23.08.2018, 27.09.2018



and 22.10.2018 . The reply was filed by the respondent on 14.06.2018. The complainant has filed a rejoinder dated 23.08.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the complaint

5. Briefly stating, the facts as alleged by the complainant submitted that the representatives of the respondent had first approached the complainant in the month in the month of December 2012 and credentials of the project Imperial Garden, sector 102, gurugram, Haryana. It was informed by the respondent that this was going to be residential housing complex which was being developed by the respondent.
6. The representatives belonging to the respondent gave an unequivocal undertaking and impression to complainant that the respondent was an experienced and seasoned builder having great reputation in the market to develop and deliver projects in time. It was assured to the complainant that the project will be completed by June 2016 and that the construction of the project had already started.
7. The respondent did not fulfill its part of the bargain/obligation and there was considerable delay in executing the buyer's agreement in favour of the complainant



by the respondent till June 2013 due to malafide intentions of the respondent. The said delay in itself amounts to gross misuse of dominant position and exercise of undue influence over the complainant by the respondent.

8. The respondent's website now states that the project is expected to be delivered by June 2018, i.e two years after the actual date of handing over the possession without explaining any reason as to why there has been delay in execution of the project.
9. The buyer's agreement dated 01.05.2013 is a one sided document favouring the respondent much to the detriment of complainant. The complainant was coerced to sign the buyer's agreement since payment of large amounts of money had already been made by the complainant to respondent prior to the execution of the buyer's agreement.
10. The respondent had misled the complainant into believing that construction had already commenced at the time of making of the first payment on 31.12.2012, whereas satellite images obtained from google maps clearly shows that minimal construction activity had commenced as on said date.



11. The respondent has vide company application no. 77/2016 before the Hon'ble Delhi High court, sought approval of the scheme of arrangement between respondent and MGF developments limited, which petition has concealed the fact the respondent has defaulted in performance of its obligations under the buyer's agreement and that respondent has various disputes with the buyers. The respondent has deliberately misled the hon'ble Delhi High Court by representing that no disputes are pending between respondent and its customers and by concealing that investigation by enforcement directorate is ongoing against respondent. The officials of the respondent have therefore committed the criminal offence of perjury and are directed to immediately take steps to amend the averments before Hon'ble Delhi Court as to not mislead the Hon'ble Court.

12. The unit booked by complainant was a luxury apartment and a hefty premium was paid for it due to the brand value and goodwill of respondent.

13. The respondent has obtained license no. 107/2012 dt. 15.10.2012 from the director, town and country planning, government of Haryana under the provisions of the Haryana development and regulation of Urban Areas Act, 1975. Pursuant to the terms of the 1975 Act, a license is issued for a



period of two years within which the respondent is required to complete construction of the project. The license has been renewed annually in favour of the respondent and several such renewals have been provided however the respondent has till date failed to complete the construction of the project and is unlikely to complete in the near future.

14. The respondent has utilized the funds from the complainant and other persons and used the same funds for construction of other projects, which is patently violation of section 5 of the 1975 Act.
15. It has come to the knowledge of the complainant that the respondent builder has mortgaged the project/assets of the project for securing loan without the approval of the complainant, in violation of Real Estate Regulatory Authority, 2016. The malafide of the respondent is revealed from the fact that the instalments for repayment of the loan have been scheduled till March 2019. The respondent has no intention of delivery possession till at least 2019 since before repayment of the loan, it cannot deliver possession of the mortgaged apartments/project to the respective buyers.
16. The promoters of the respondent have indulged in unfair practices in relation to the present project and hence the



registration of the respondent is liable to be revoked in term of the mandate of section 7 of the Act.

17. The respondent issued illegal demand notice to the complainant when no money was due. The complainant duly issued legal notice in reply to the same dated 10.08.2016. Another legal notice dated 06.09.2016 was issued and duly served by the complainant to the respondent. An evasive reply dated 26.10.2016 was sent by the respondent for the second notice not specifying the issues raised by the complainant.

18. **Issues raised by the complainants are as follow:**

- i. Whether complainant is entitled to refund of the entire payment made by the complainant to the respondent from time to time including but not limited to advance, earnest money, registration fees, consideration amount, instalments, etc amounting to Rs. 1,12,29,504/- along with interest at the rate of 10.1% per annum from the date of making of each payment till the date of actual payment in terms of section 12 and section 18 of RERA,2016?



- ii. Whether registration of the respondent should be revoked in terms of section 7 of RERA, 2016 in the present case?
- iii. Whether complainant is entitled to compensation at Rs. 15,000/- per month from the date of promised possession till the date of actual payment/delivery calculated at the rate of Rs. 7.50/sq.ft per month of the super area as per clause 16 of the agreement against the respondent?
- iv. Whether complainant is entitled to grant of compensation amounting to Rs. 10,00,000/- in terms of section 12 and section 18 of RERA, 2016 against the respondent?

19. Relief sought:

The complainant is seeking the following relief:

- i. That complainant be given refund of the entire payment made by the complainant to the respondent from time to time including but not limited to advance, earnest money, registration fees, consideration amount, instalments, etc amounting to Rs. 1,12,29,504 along with interest at the rate of 10.1% per annum from the date of



making of each payment till the date of actual payment in terms of section 12 and section 18 of RERA,2016.

- ii. That complainant is entitled to compensation at Rs. 15,000/- per month from the date of promised possession till the date of actual payment/delivery calculated at the rate of Rs. 7.50/sq.ft per month of the super area as per clause 16 of the agreement be granted to the complainant against the respondent.
- iii. That compensation amounting to Rs. 10,00,000/- in terms of section 12 and section 18 of RERA, 2016 be granted to the complainant against the respondent.

Respondent's reply

20. The respondent stated that the present complaint is not maintainable in law or facts. The respondent submitted that the present complaint is not maintainable before this Hon'ble Authority. The Hon'ble Authority has no jurisdiction to entertain the present complaint. The Respondent had filed a separate application for rejection of the complaint on the ground of jurisdiction. The respondent submitted that according to section 71 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of the the Real Estate (Regulation and



Development) Act, 2016 is maintainable only before the adjudicating officer.

21. The respondent submitted that the complainant pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint under rule-28 of the said rules and is seeking the relief on interest and compensation u/s 18 of the Act. The respondent is covered under the definition of 'ongoing project' under rules 2(1)(o) of HARERA rules, 2017 and is registered with the authority, the complaint is still required to be filed before the adjudicating officer under rule-29 and not before the authority under rule-28 as this authority has no jurisdiction to entertain the complaint.

22. The respondent submitted that the complainant is not a consumer in terms of the definition of "consumer" under the consumer protection act,1986. The RERA does not provide any definition for consumer so the same has to be derived from the Consumer Protection Act. The complainant has invested in two units in two different projects of the respondent itself, and has filed complaints before the authority pertaining to both the units, the present complaint and complaint for the other unit in the project Palm Gardens bearing no. HRR/GGM/CRN/210.



23. The respondent admitted that the complaint pertaining to compensation and refund are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by the hon'ble authority.

24. The respondent further submits that the complainant has been extremely irregular in payment of instalments. From time to time, the respondent was constrained to issue reminders to the complainant to make the payment of demanded amounts as per the payment schedule enumerated in the agreement. There is no default or lapse on the part of the respondent. It is the complainant who has refrained from making payments by putting forth false and frivolous excuses.

Determination of the Issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

25. In respect to the **first issue** raised by the complainant the authority decides that as per clause 14(a) of buyer's agreement dated 01.05.2013 , the possession of the said unit



was to be handed over within 42 months from the date of commencement of construction (with a grace period of 3 months). **Status of the project cannot be ascertained, it will be ascertained during the proceedings.** Therefore, the due date of handing over possession will be computed from 11.11.2013 i.e the date of start of construction. The clause regarding the possession of the said unit is reproduced below:

“14(a) time of handing of possession

...the Company proposes to hand over the possession of the said unit within 42 months from the date of start of construction.: subject to timely complianace 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 period after the expiry of 42 month....”

As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate i.e 10.45%, 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.

26. The **second issue** raised by the complainant is only asserted by the complainant and no sufficient evidence is given by the complainant in regard to this issue.

27. With regard to the **third issue**, the due date of possession was 11.08.2017. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area of the unit for the period of delay 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.”

28. As the possession of the unit was to be delivered by 11.08.2017 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.”

29. 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.

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.

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

30. In regard to the **fourth issue** raised by the complaint, the complainants can seek compensation from the adjudicating officer under the RERA u/s 71.

Findings by the authority

31. The respondent admitted the fact that the project Imperial Gardens is situated in Sector-102, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complaint. As the project in question is



situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.

32. **Jurisdiction of the Authority:** 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 complainant at a later stage.

33. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the unit number IG-07—102 on first floor tower-7462 in the project 'Imperial Gardens', to the complainant by the committed date i.e. 11.08.2017 as per the said agreement and the possession has been delayed by 1 year 2 months 12 days till the date of decision i.e. 22.10.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the



possession. The respondent has submitted during the oral arguments that the project is delayed but the respondent will deliver the said possession on 31.12.2018. Further, the respondent presented that the project is registered and the RERA registration number is 208 of 2017. In case, if the builder fails to hand over the possession of the booked unit to the complainant on the revised committed date i.e. 31.12.2018, the buyer can seek refund.

Decision and directions of the authority

34. 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 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is duty bound to hand over the possession of the said unit by 31.12.2018 as committed by the respondent.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 11.08.2017 till 22.10.2018 within 90 days of this



order and thereafter on 10th of every month of delay till the handing over of possession.

(iii) The complainant has not made up to date payments so the buyer will be charged the same rate of interest which will be adjusted while making full and final payment at the time of delivery of possession of the unit.

(iv) If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

35. The order is pronounced.

36. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram



Date: 22.10.2018

PROCEEDINGS OF THE DAY

Day and Date	Monday and 22.10.2018
Complaint No.	209/2018 Case titled as M/S Priority Agencies Pvt. Ltd. V/S M/S Emaar MGF Land Ltd.
Complainant	M/S Priority Agencies Pvt. Ltd.
Represented through	S/Shri Mayank Aggarwal and Pradeep Aggarwal Advocates for the complainant
Respondent	M/S Emaar MGF Land Ltd
Respondent Represented through	Shri Ishaan Dang, Advocate for the respondent
Last date of hearing	27.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

Counsel for the complainant has raised the contention that he has booked unit No. IG-07—102 on first floor Tower-7, “Imperial Garden” Sector 102 village Kherka Majra, Dhankot, District Gurugram. As per clause 14 (a) of the agreement, possession was to be delivered within 42 months plus 3 months as grace period which comes out to be 1.2.2017. The project stands delayed. As such, complainant is entitled for prescribed rate of interest @ 10.45% per annum on account of delayed delivery of possession as per the provision of section 18 (1) of Real Estate (Regulation & Development) Act, 2016.

Counsel for the respondent submits that their project is registered and the RERA registration number is 208 and as per registration number, the unit shall be delivered on 31.12.2018. In view of the facts and circumstances of the matter, the builder shall be liable to make payment of prescribed rate of interest @ 10.45% per annum on account of delayed delivery of possession. It has also been alleged that the buyer too has not made upto date payments, the same rate of interest shall be applicable which shall be adjusted while making full and final payment at the time of delivery of possession of the unit. The complaint stands disposed off. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
22.10.2018