

PROCEEDINGS OF THE DAY

Day and Date	Monday and 22.10.2018
Complaint No.	210/2018 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 issue w.e.t huge delay in delivery of possession as per the provision of the agreement dated 25.6.2011. As per clause 10 (a) of the agreement, the possession was to be offered within a period of 36 months plus 3 months grace period from the date of start of construction. Both the parties agreed that the date of start of construction is 9.8.2012. As a matter of fact, the possession was to be delivered by 9.11.2015. Certainly there is a delay in delivery of possession. As per provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, the complainant is entitled for prescribed rate of interest @ 10.45% per annum till the date of actual date of

possession. Counsel for the respondent has stated at bar that the builder shall apply for occupation certificate in respect of Tower No.10, where the flat of the complainant is situated, at the end of December 2018. The period of delayed possession will commence from the committed date of delivery of possession i.e. 9.11.2015. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession. The complaint stands disposed of. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint No. : 210 of 2018
First date of hearing : 30.05.2018
Date of Decision : 22.10.2018

M/s Priority Agencies Pvt Ltd
Through Director Mr Vishal Agarwal
R/o L-16/2A, Phase-2, Gurugram,
Haryana

Complainant

Versus

M/s Emaar MGF Land Limited
Regd. Office : ECE House,28, Kasturba Marg,
New Delhi-110001
Office : Emaar Business Park, MG Road,
Sikanderpur, Sector 28, Gurugram-122001,
Haryana

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Mayank Aggarwal and Advocate for the complainant
Pradeep Aggarwal

Shri Ketan Luthra, legal
representative on behalf of the
respondent with Shri Ishaan
Dhang. Advocate

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 limited, on account of violation of clause 10 (a) of the buyer's agreement executed on 25.06.2011 for unit no. PGN-10-204 in the project "Palm Gardens" for not giving possession on the due date which is an obligation of the promoter 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	"Palm Gardens" in sector 83, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	PGN-10-204
4.	Project area	99,079.65 sq. m
5.	DTCP license	108 of 2010
6.	Registered/ not registered	Registered
7.	RERA registration no	330 of 2017
8.	Completion date as per RERA registration certificate	31.12.2018
9.	Date of booking	03.05.2011
10.	Date of buyer's agreement	25.06.2011
11.	Total consideration	Rs. 92,59,471/-
12.	Total amount paid by the	Rs 88,31,806/-



	complainant	
13.	Payment plan	Construction linked plan
14.	Date of delivery of possession.	Clause 10 (a) - 36 months from the date of start of construction i.e 09.08.2012 + 3 months grace period i.e. 09.11.2015
15.	Delay of number of months/ years upto 22.10.2018	2 year 11 months and 13 days
16.	Penalty clause as per builder buyer agreement dated 25.06.2011	Clause 12 (a)- Rs 7.50 per sq. ft per month of super area

3. The details provided above have been checked on the basis of record available in the case file which has been provided by both the parties. A buyer's agreement dated 25.06.2011 is available on record for unit no. PGN-10-204 according to which the possession of the aforesaid unit was to be delivered by 09.11.2015. The promoter has failed to deliver the possession of the said unit to the complainants. 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 30.05.2018. The case came up for hearing on 30.05.2018, 17.07.2018,



23.08.2018, 22.10.2018. The reply has been filed on behalf of the respondent on 14.06.2018.

FACTS OF THE CASE

5. The complainant submitted that the representatives of the respondent approached the complainant in the year 2011 and explained the credentials of the project "Palm Gardens" situated at sector 83, Gurugram to the complainant.
6. The respondent assured timely delivery of the project by June 2014 and that the construction of the said has already started and going in full swing. सत्यमेव जयते
7. Relying on the promise and undertakings given by the respondent, The complainant has booked an apartment/flat no. PGN-10-204 ad measuring 1720 sq ft in 'Palm Gardens' sector 83, Gurugram for total consideration of Rs. 92,59,471/- which includes BSP, car parking, IFMS, Club Membership, PLC etc and excludes taxes. Out of the total sale consideration amount, the complainants made a payment of Rs 88,31,806/- to the respondent vide different cheques as per the schedule of payments as and when demanded by the respondent.
8. That as per Clause 10 (a) of the buyer's agreement, the respondent had agreed to deliver the possession of the flat



within 36 months from the date of start of construction with an extended period of 3 months and accordingly the flat had to be delivered till 09.11.2015. The Respondent failed to deliver the possession of booked unit by the same date. However the respondent's own website now declares the expected date of delivery of said project as 30.04.2018.

9. That the terms of buyer's agreement were totally unreasonable and one sided and the complainant was made to sign the same.
10. The complainant also submitted that the respondent had vide application no 77/2016 before hon'ble Delhi High Court sought approval of the scheme of arrangement between respondent and MGF Developments Limited, the application had concealed the fact that the respondent has defaulted in performance of its obligations under builder buyer agreement and that the respondent has various disputes pending with the buyers. As the respondent had deliberately misled the Delhi High Court, therefore investigation by the enforcement directorate is ongoing against respondent.
11. The complainant also submitted that the respondent has utilized the funds collected for the said project from the



complainant and other buyers for construction for other projects of the respondent.

12. The complainant submitted that the hon'ble National Consumer Disputes Redressal Commission in case titled as **Swarn Thakur v Unitech Ltd**¹ dated 14.08.2015 upheld by the hon'ble Supreme Court vide order dated 11.12.2015 passed in civil appeal no 35562/2015 has expressly laid down the principle of liability of developer to compensate its customers for delay in delivery of possession of the apartments and allowed refund of amount paid by the buyer along with interest.

13. The complainant also submitted that the respondent has indulged in unfair practices in relation to the present project.

ISSUES RAISED BY THE COMPLAINANT

14. The issues raised by the complainant are as follows :-

I. Whether the respondent should be directed to deliver the possession of the booked unit along with the interest calculated @10.2% per annum from the date of deposit of the said amounts upto the date of delivery of possession?



¹ (consumer case no 347/2014)

- II. Whether the respondent should be directed to pay compensation amount of Rs 10,00,00/- to the complainant in the facts and circumstances of present case?
- III. Whether registration of the respondent shall be revoked in terms of section 7 of Act in the present case?
- IV. Whether the respondent can be directed to pay penalty and interest amount for willful non-compliance of the terms and conditions of the builder buyer agreement, providing false information, and misrepresentation made to the complainant as per section 38 of the Act?

RELIEF SOUGHT

15. The reliefs sought by the complainant are as follows :-
 - I. To provide immediate possession of the flat along with the interest calculated @`10.2% per annum till the date of delivery of possession
 - II. To revoke the registration of the respondent in terms of section 7 of Act.
 - III. To provide compensation cost of Rs 10,00,000/- (Rs Ten Lacs Only) to the complainant in the circumstances of the case as per section 12 and section 18 of the Act.



- IV. To impose penalty and levy interest on the respondent for willful non-compliance of the terms and conditions of the buyer's agreement, providing false information, and misrepresentation made to the complainant as per section 38 of the Act.

Respondent's Reply

16. 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 submitted that according to section 17 of the Act, the complaint pertaining to compensation and interest under section 12,14,18 and section 19 of "The Real Estate (Regulation & Development) Act,2016" is maintainable only before the adjudicating officer.

17. The respondent also submitted that the complainant has no locus standi to file the present complaint as complaint can be filled before the hon'ble Authority only when the respondent has committed any act in violation of provisions of The Real Estate (Regulation & Development) Act,2016 and/or the Haryana Real Estate (Regulation & Development) Rules,2017.



18. The respondent submitted that the clause 10 (a) of builder buyer agreement provides that the time period for delivery of possession shall be extended on the occurrence of delay for the reasons beyond the control of the respondent and as per clause 10 (a) (iv) in the event of default in payment of amounts demanded by the respondent as payment schedule under buyer's agreement.
19. The respondent also submitted that the complainant has been extremely irregular in payment of installments.
20. The respondent denied that the representatives of the respondent approached the complainant rather the complainant had proceeded to purchase the apartment from the original allottee.
21. The respondent denied that the respondent had deliberately misled the Delhi High Court and no investigation by the enforcement directorate is ongoing against respondent. The respondent submitted that the complainant is raising frivolous issues which is not the subject matter of the present complaint.
22. The respondent finally submitted that the complaint preferred by the complainant deserves to be dismissed.



Determination of issues:

23. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

- i. **First Issue** : In view of the present status of the project, the respondent has committed a default in handing over the possession on due date of 09.11.2015 as per the BBA. therefore the respondent is liable to deliver the possession of the booked unit along with delayed interest under section 18 (1) proviso to the complainant at the prescribed rate of 10.45%, for every month of delay till the date of handing over of possession.
- ii. **Second Issue** : As per section 31 of Act, the power to grant compensation rests with the adjudicating officer. Therefore this authority does not have jurisdiction to entertain the present claim of compensation. However the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
- iii. **Third Issue** : With respect to third issue, the authority is of the view that the complainant has failed to satisfy none of the conditions mentioned under section 7 of Act



ibid. Therefore the registration of the respondent cannot be revoked as of now.

- iv. **Fourth Issue** : Under first issue, the authority has already decided liability of the respondent to pay delay interest at the prescribed interest of 10.45% per annum for the willful noncompliance of the term and condition of timely delivery of possession as per builder buyer agreement.

Findings of the Authority

Jurisdiction of the authority-

24. Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding 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.

25. Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory



Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

Decision and directions of the authority

26. 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. As per provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, the respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 19.11.2015 till the actual date of offer of possession.
- ii. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall



be made before 10th of subsequent month till handing over the possession.

27. The order is pronounced.

28. Case file be consigned to the registry.

.(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 22.10.2018



HARERA
GURUGRAM

