

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

Complaint no. : 2380 of 2019
First date of hearing : 10.12.2019
Date of decision : 17.12.2020

1. Nilima Bakaya
2. Tej Bahadur Bakaya
Both RR/o: Water Resources Consultants
Plot no. 20630, Extension 34, Samedupe Road,
Broadhurst Industrial, Gaborone, Botswana.

Complainants

Versus

1. M/s Emaar MGF Land Ltd.
2. M/s Brijbasi Projects Pvt. Ltd.
Both Regd. office: 306-308, Square One,
District Centre, C2, Saket, New Delhi-110017.

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Ms. Priyanka Agarwal
Shri Ishaan Dang

Advocate for the complainants
Advocate for the respondent no.1

ORDER

1. The present complaint dated 04.06.2019 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	The Palm Terraces Select, Sector 66, Gurugram.
2.	Total licensed project area	45.4 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	<p>a) 93 of 2008 dated 12.05.2008 [For 6.19 acres] Valid/renewed up to 11.05.2020 Licensee- Arjun Dev and another C/o Emaar MGF Land Ltd.</p> <p>b) 228 of 2007 dated 27.09.2007 [For 31.62 acres] Valid/renewed up to 26.09.2019 Licensee- Active Promoters Pvt. Ltd. and another C/o Emaar MGF Land Ltd</p> <p>c) 50 of 2010 dated 24.06.2010 [For 7.67 acres] Valid/renewed up to 23.06.2020 Licensee- Brijbasi Projects Pvt. Ltd. C/o Emaar MGF Land Ltd.</p>
5.	RERA registered/not registered	Registered vide no. 19 of 2018 dated 01.02.2018 for 27299.865 sq. mtrs.
	RERA registration valid up to	30.04.2018



	HRERA extension of registration	RC/REP/HARERA/GGM/2018/19- EXT-3 dated 08.10.2018
	Extension valid up to	30.04.2019
6.	Occupation certificate granted on	08.08.2019 [Page 130 of reply]
7.	Provisional allotment letter dated	30.07.2010 [Page 49 of complaint]
8.	Unit no.	PTS-10-1202, 12 th floor, tower 10 [Page 55 of complaint]
9.	Unit measuring	3670 sq. ft. [Page 55 of complaint]
10.	Date of execution of buyer's agreement	15.11.2010 [Page 53 of complaint]
11.	Payment plan	Construction link plan [Page 45 of complaint]
12.	Total consideration as per statement of account dated 23.08.2019 (Page 62 of reply)	Rs. 2,95,87,902/-
13.	Total amount paid by the complainants as per statement of account dated 23.08.2019 (Page 64 of reply)	Rs. 2,86,27,554/-
14.	The date of start of construction as per statement of account dated 23.08.2019 page 62 of reply	31.07.2012
15.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of commencement of construction (31.07.2012) plus grace period of 3 months. [Page 71 of complaint]	31.10.2015

16.	Date of offer of possession to the complainants	23.08.2019 [Page 122 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 23.08.2019	3 year 9 months 23 days
18.	Specific relief sought	<p>i. Direct the respondents to get the occupancy certificate and handover the possession of the unit in habitable condition.</p> <p>ii. Direct the respondent to pay interest on paid amount along with pendent lite and further interest till actual physical possession as per provisions of the Act.</p>

3. As per clause 14(a) of the agreement, the possession was to be handed over within a period of 36 months from the date of commencement of construction (31.07.2012) plus grace period of 3 months which comes out to be 31.10.2015. Clause 14(a) of the buyer's agreement is reproduced below:

"14. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and the allottee(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this buyer's agreement and upon complying with all provisions, formalities, documentation etc. as prescribed by the developer, the developer shall make all efforts to hand over the possession of the unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six (36) months from the date of commencement of construction, subject to certain

limitations as may be provided in this agreement and timely compliance of the provisions of this agreement by the allottee(s). The allottee(s) agrees and understands that the developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the unit and/or the project."

4. The complainants submitted that they paid an amount of Rs. 10,00,000/- on 07.07.2010 towards booking of the unit. A provisional allotment letter was issued by respondent no. 1 on 30.07.2010 confirming the provisional allotment of unit. The respondents to dupe the complainants in their nefarious net even executed a one-sided buyer's agreement on 15.11.2010. The buyer's agreement dated 15.11.2010 proposed that the possession of the unit will be delivered within 36 months from the date of commencement of construction and as per instalment demands, by the builder, the respondent started the construction from 31.07.2012. As per this date of commencement of construction, the possession of the unit should have been delivered by 31.10.2015, including 3 months grace period. The complainant ensured payments of all the demands on timely basis. However, the respondent did not deliver the unit even though complainant has already deposit more than 95% of the total consideration. That the cause of action accrued in favour of the of the complainants and against the respondents on the date when the respondents advertised

the said project, it again arose on diverse dates when the complainants entered into their respective agreements, it also arose when the respondents inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse, delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the complainants have not been delivered the apartments till date and the cause of action is still continuing and subsisting on day to day basis. Hence, this complaint for the aforesaid reliefs.

5. On the date of hearing, the Authority explained to the respondents/promoters 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 contested the complaint on the following grounds:
 - i. The complainants have filed the present complaint seeking delayed possession charges, interest etc. on account of alleged delay in delivering possession of the apartment booked by the complainants. That the complaints pertaining to refund, 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 in pursuance of application form dated 30.06.2010, the complainants were allotted unit bearing no. PTS-10-



1202 vide provisional allotment letter dated 31.08.2010. The complainants wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent no. 1 that they shall remit every instalment on time as per payment schedule.

- iii. That the complainants have defaulted in remittance of instalments pertaining to the unit in question on time. The respondent was constrained to issue several payment request letters, reminder, etc. to the complainants requesting them to make payment of outstanding amounts payable by them under the payment plan/instalment plan opted by them.
- iv. That the respondent submitted that the buyer's agreement dated 15.11.2010 was executed between the complainants and the respondent. Clause 16 of the buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. Also, as per clause 14(b)(vi) of the buyer's agreement, in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. The complainants, having defaulted in

payment of instalments, were thus not entitled to any compensation or any amount towards interest as an indemnification for delay, if any, under the buyer's agreement.

- v. That the respondent submitted an application dated 11.01.2018 for issuance of occupation certificate in respect of the project before the concerned statutory authority. once an application is submitted before the statutory authority, respondent ceases to have control over the same. Therefore, the time taken by the concerned statutory authority to issue an occupation certificate in respect of the project has to be excluded from the computation of the time for implementation and development of the project. The OC dated 08.08.2019 was thereafter granted by the concerned statutory authority. The complainants were offered possession of the unit in question through letter of offer of possession dated 23.08.2019. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants.
- vi. The respondent submitted that the project has got delayed on account of following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e.

building having height of 15 mtrs. and above), irrespective of area of each floor, are now required to have two staircases. Therefore, the respondent took the decision to go ahead and construct the second staircase. *Secondly*, the project has got delayed as the contractor has intentionally delayed the progress of construction for which the respondent cannot be held liable.

- vii. Hence, the present complaint deserves to be dismissed at the very threshold.
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 explanation and other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
9. On consideration of the documents available on record and submissions made by the parties and based on the findings of the Authority regarding contravention of the provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of section 11(4)(a) of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 15.11.2010, possession of the booked



unit was to be delivered within a period of 36 months plus 3 months grace period from the date of commencement of construction. The construction commenced on 31.07.2012 as per statement of account dated 15.06.2018, page 45 of complaint. The grace period of 3 months is allowed to the respondent due to contingencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 31.10.2015. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 15.11.2010 to hand over the possession within the stipulated period.

10. 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 respondents are established. As such the complainants are entitled to delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 31.10.2015 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
11. 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. 9.30% per annum for every month of



delay on the amount paid by the complainants from due date of possession i.e. 31.10.2015 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.

- ii. The respondents shall not charge any amount from the complainants which is not part of the buyer's agreement.
 - iii. Interest on the due payments from the complainants shall be charged at the prescribed rate i.e. 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
12. Complaint stands disposed of.
 13. File be consigned to registry.


(Dr. K.K. Khandelwal)
Chairman


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2020

Judgement uploaded on 30.01.2021.