

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

Complaint no. : 5166 of 2019
First date of hearing : 21.01.2020
Date of decision : 14.12.2020

Ms. Lalita Sharma
R/o Opp. PNB, Moti Cinema Road,
Mahendergarh, Haryana-123029

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One,
C2, District Centre, New Delhi-110017.
Also at: Emaar Business Park, M.G. Road,
Sikanderpur Chowk, Sector 28,
Gurugram-122002, Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

None

Shri J.K. Dang along with Shri
Ishaan Dang

On behalf of the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 14.11.2019 has been filed by the complainant/allottee 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 complainant, 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	Palm Gardens, Sector 83, Gurugram.
2.	Total licensed project area	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	108 of 2010 dated 18.12.2010 Valid/renewed up to 17.12.2020
5.	HRERA registered/ not registered	Registered vide no. 330 of 2017 dated 24.10.2017 for towers 1,2,6,8 to 12 and other facilities and amenities
	HRERA registration valid up to	31.12.2018
	Extension of HRERA registration certificate vide no.	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Occupation certificate granted on	17.10.2019 [Page 79 of reply]
7.	Date of provisional allotment letter	14.12.2011 [Page 34 of complaint]
8.	Unit no.	PGN-11-0901, 9 th floor, building no. 11

		[Page 41 of complaint]
9.	Unit measuring (Super area)	1720 sq. ft.
10.	Date of execution of buyer's agreement	30.12.2011 [Page 39 of complaint]
11.	Payment plan	Construction linked payment plan [Page 60 of complaint]
12.	Total consideration as per statement of account dated 19.10.2019 (Page 78 of complaint) and 27.11.2019 (Page 74 of reply)	Rs.91,35,767/-
13.	Total amount paid by the complainant as per statement of account dated 19.10.2019 (Page 80 of complaint) and 27.11.2019 (Page 76 of reply)	Rs.90,56,727/-
14.	Date of start of construction as per statement of account dated 19.10.2019	30.11.2012 [Page 78 of complaint]
15.	Due date of delivery of possession as per clause 10(a) of the said agreement i.e. 36 months from the date of start of construction i.e. 30.11.2012 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 48 of complaint]	01.03.2016
16.	Date of offer of possession to the complainant	19.10.2019 [Page 81 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 19.10.2019	5 years 7 months 18 days

3. As per clause 10(a) of the buyer's agreement, the possession was to be handed over within a period of 36 months from the



start of the construction (30.11.2012) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. Therefore, the due date of handing over possession of the subject unit comes out to be 01.03.2016.

Clause 10 of the buyer's agreement is reproduced below:

"10. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's 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 36 (Thirty Six) months from the date of start of construction, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 3 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."

4. The complainant submitted that vide letter dated 14.12.2011, the said unit was allotted to the complainant. The buyer's agreement was executed between the complainant and the respondent on 20.12.2011. As per clause 10 of the agreement, the unit was to be delivered within 36 months plus grace period of 3 months from the date of start of construction. The construction of the project admittedly started on 30.11.2012, therefore, the due date of delivery of possession was 29.02.2016. As per letter dated 19.10.2019, the respondent offered the possession of the unit admittedly with a delay of



1328 days and demand a sum of Rs.7,70,519/- after adjusting a sum of Rs.5,63,111.51/- as delayed compensation amount @ Rs.7.5/- per sq. ft. per month and not as per the Act. The respondent vide said letter dated 19.10.2019, demanded charges which were not part of the original buyer's agreement e.g. Electricity Connection Charges (Rs.99,072/-) and registration charges (Rs.40,000/-) etc. The respondent, by not delivering the unit as per the buyer's agreement time schedule, has violated the mandate as per section 11(4)(a) of the Act. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to handover the possession of the unit in question to the complainant along with interest for delay in handing over possession under section 18 of the Act read with rule 15 of the Rules from 29.02.2016 to 19.10.2019.
 - ii. Direct the respondent to not to charge any amount from the complainant which is arbitrary or not as per buyer's agreement including but not limited to Electricity Connection Charges (Rs.99,072/-) and registration charges (Rs.40,000/-).
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 contested the complaint on the following grounds:

- i. The respondent submitted that the complainant has filed the present complaint seeking refund of several amounts and interest on the payment made to the respondent on account of alleged delay in delivery of apartment allotted to the complainant. That complaints pertaining to compensation, interest and refund 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. The respondent submitted that clause 10(b)(iv) provides that in event of any default in payment of amounts demanded by the respondent as per the schedule of payment incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended.
- iii. The respondent submitted that the complainant has consciously defaulted in timely remittance of instalments to the respondent. Statement of account dated 27.11.2019 correctly maintained by the respondent in due course of its business reflects the delay in remittance of the said instalment on the part of the complainant.

Therefore, the time period for delivery of possession of the said unit is not liable to be determined in the manner suggested by the complainant.

- iv. The respondent submitted that the project has got delayed on account that the contractor hired by the respondent i.e. ILFS (M/s Infrastructure Leasing and Financial Services), a reputed contractor in real estate, started raising certain false and frivolous issues with the respondent due to which they had slowed down the progress of work at site. ILFS has intentionally delayed the progress of construction for which the respondent cannot be held liable either in equity or in accordance with the provisions of the buyer's agreement.
- v. The respondent submitted that the complainant was offered possession of the said unit vide letter of offer of possession dated 19.10.2019. The complainant was called upon to remit the balance payment and to complete the necessary formalities/documentation necessary for handover of the said unit to her. However, the complainant approached the respondent with the request for payment of compensation for alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent explained to the complainant



that she was not entitled to any compensation on account of defaults in payment. However, the respondent, in order to avoid any unwarranted controversy, proceed to settle the wantonly instigated frivolous dispute with the complainant by remitting an amount of Rs.5,63,112/- and also credit an amount of Rs.5,101/- to the account of the complainant as EPR- early payment rebate. The complainant has till date has not paid the outstanding amount of Rs.88,025/- to the respondent.

- vi. 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, explanation, 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. Arguments heard.
10. On consideration of the documents available on record and submissions made by both the parties, 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 10(a) of the buyer's agreement executed between the parties on 30.12.2011, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of start of construction. The construction started on 30.11.2012. The grace period of 3 months is allowed to the respondent due to contingencies beyond its control. Therefore, the due date of handing over possession comes out to be 01.03.2016. The possession of the subject unit has been offered to the complainant on 19.10.2019 after receipt of occupation certificate dated 17.10.2019.

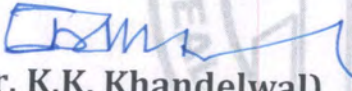
11. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 30.12.2011 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of interest i.e. 9.30 % p.a. w.e.f. due date of handing over possession i.e. 01.03.2016 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

12. It has been brought to the notice of the authority by the counsel for the respondent that as per statement of account dated 27.11.2019 (Annexure R7 of reply filed by the respondent), the respondent has already given compensation amounting to Rs.5,63,112/- to the complainant on account of delay in handing over possession as per clause 12 of the buyer's agreement. Therefore, the amount so paid by the respondent towards compensation for delay shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act
13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- 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 complainant from due date of possession i.e. 01.03.2016 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
 - However, the respondent has already paid a sum of Rs.5,63,112/- towards delay in handing over possession at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid




by the respondent/promoter as delay possession charges under proviso to section 18(1) read with rule 15 of the Rules.

- iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
14. Complaint stands disposed of.
 15. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2020

Judgement uploaded on 30.01.2021.