

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

Complaint no. : 2122 of 2018
First date of hearing : 12.03.2019
Date of decision : 27.01.2021

Mr. Prashant Bajaj
R/o: 63/41, West Punjabi Bagh,
New Delhi-110026.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. office: Emaar MGF Business Park,
Sector 28, M.G Road, Gurugram-122002.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

None
Shri Ishaan Dang

On behalf of the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 26.12.2018 has been filed by the complainant/allottee in the 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	"Digital Greens", Village Ghata, Sector 61, Gurugram.
2.	Project area	6.79 acres
3.	Nature of the project	I.T. Park Colony
4.	DTCP license no. and validity status	66 of 2008 dated 20.03.2008 valid till 19.03.2018
5.	Name of licensee	Active Promoters Pvt. Ltd. and Sidhivinayak Buildcon Pvt. Ltd. C/o Emaar MGF Land Ltd.
6.	Registered/ not registered	Not registered
7.	Occupation certificate granted on	20.03.2017 [Page 31 of reply]
8.	Unit no.	DG-B-02-008, 2 nd floor [Page 65 of complaint]
9.	Unit measuring	1520.67 sq. ft.
10.	Area of unit revised vide letter of offer of possession dated 07.06.2017, page 126 of reply	Increased to 1533.25 sq. ft.
11.	Date of execution of buyer's agreement	31.12.2009 [Page 62 of complaint] Note: A supplementary agreement dated 31.12.2009 was executed between the parties (page



		119 of complaint), wherein certain terms were modified.
12.	Payment plan	Construction linked payment plan [Page 125 of complaint]
13.	Total consideration as per statement of account dated 03.01.2019, page 124 of reply	Rs.1,17,86,841/-
14.	Total amount paid by the complainant as per statement of account dated 03.01.2019, page 125 of reply	Rs.1,01,32,276/-
15.	Due date of delivery of possession as per clause 3 of the supplementary agreement dated 31.12.2009 i.e. 21 months from the date of execution of the agreement (31.12.2009) plus grace period of 120 days. [Page 121 of complaint]	31.01.2012
16.	Offer of possession to the complainant	07.06.2017 [Page 126 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 07.06.2017	5 years 4 months 7 days
18.	Specific relief sought	i. Peaceful possession of the said commercial unit being no. 02-008 on 2 nd floor of Digital Greens situated at Village Ghatta Tehsil and District Gurugram, Haryana forthwith. ii. Direct the respondent to offer a discount of Rs.11,07,780/- at time of making final payment as per clause 4 of the supplementary agreement.



		<p>iii. Interest of Rs.67,82,292/- be awarded towards interest @ 10.50% on the amount already paid by the complainant w.e.f. 28.02.2012.</p> <p>iv. In addition to the aforesaid interest, the complainant is entitled for damages to the tune of Rs.30,41,340/- towards the damages on account of false representation made by the respondent thereby representing aforesaid project to be a full-fledged commercial project despite being well aware that there is a substantial difference in price per sq. ft. (difference of Rs. 2,000/- approximately of similar project in similar vicinity).</p>
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3. The complainant submitted that he applied to the respondent for allotment of three commercial units admeasuring area 141.646 sq. feet each in the proposed project, namely, Digital Greens. Consequently, the complainant was allotted three units bearing no. 12A007, 12A008, 12A009, on 12th floor upon the advance payment of a sum of Rs. 76,50,000/-. The said amount was paid on 19.03.2007 and the same was duly acknowledged by the respondent by issuing the acknowledgment receipt. At the time of booking of the said



three commercial units, it was promised and assured by the respondent that the said project would be completed, and the possession of the said units will be handed over to the complainant within three years from the date of allotment i.e. on or before 19.03.2010. At this juncture, no buyer's agreement was executed by the respondent in favour of the complainant in spite of various requests made by him from time to time.

4. The complainant submitted that no construction activities were carried out in the said project and complainant also came to know that the aforesaid project was not a full-fledged commercial project but an information technology complex being developed exclusively for IT/ITES services. Therefore, after getting the knowledge about the same, complainant immediately sent a legal notice dated 14.04.2009 pointing out the act of misrepresentation and thereby sought refund of the entire amount paid by the complainant till that time. On receiving the aforesaid legal notice, respondent agreed to enter into a buyer's agreement and drew complainant's attention to clause 19(d) of the buyer's agreement and promised the complainant that the respondent shall pay the additional license fee for converting the said IT project to full-fledged commercial project and also offered the complainant

to surrender all the three units and in place thereof offered to allot a fresh commercial unit bearing no. 02-008 on 2nd floor in the said project.

5. The complainant submitted that as per the aforesaid offer, the space at 2nd floor was offered to be allotted and the sum of Rs.76,50,000/- which was paid earlier by the complainant was also offered to be adjusted. The respondent also offered to reduce the price rate of new commercial unit from Rs.1,39,44,608/- to Rs.1,20,05,753/-. Therefore, finding the new offer lucrative and on specific assurance with regard to conversion of said unit into a full-fledged commercial unit complainant agreed to take the said unit being no.02-008 on 2nd floor of the said project. Moreover, the complainant has already paid the substantial sum to the respondent and therefore was left with no other option but to sign buyer's agreement on 31.12.2009. Since the schedule of payment in terms of buyer's agreement was based on construction link plan for the total sum of Rs.1,39,44,608/- but the respondent agreed to sell the said commercial unit for the discounted price of Rs.1,20,05,753/-. The respondent executed supplementary agreement on the same day i.e. 31.12.2009. As on date, the complainant has paid a total sum of Rs.1,01,32,276/- and only an amount of Rs.24,58,338/- excluding maintenance and



escalation charges for delayed payments is outstanding which the complainant is liable to pay.

6. The complainant submitted that as per clause 4 of the supplementary agreement it was further agreed by the respondent that they will provide an additional 10% discount on the revised sale price of Rs.7,225/- per sq. ft. to the complainant in case the complainant made timely payment of the sale consideration as reserved in the revised schedule of payment which was to be deducted in equal proportions on the last three payment instalments i.e. penultimate instalment and three preceding instalments at the time of handing over of possession. It is stated that the complainant never made delay in paying any of the instalments except for just two occasions and for which respondent has already charged interest @15% compound interest from the due date thereby waiving such delay as categorically mentioned in clause 1.2(c) and the same has been paid by the complainant. It is further stated that inadvertently an amount of Rs.11,000/- towards delayed charge on one of the instalments was missed while making the payments which has now become Rs.1,87,000/- approximately after charging 15% compound interest. The complainant is and was always willing to pay charges for any delay on his part and same was an honest mistake. However,



the complainant is also entitled for interest as per clause 17(a) of the buyer's agreement on account of delay in handing over the possession from the due date.

7. In terms of the supplementary agreement dated 31.12.2009 vide clause 3, the possession was to be handed over within a period of 21 months plus grace period of 120 days which comes out to be 31.01.2012. The relevant clause of the agreement is read as under:

"3. Parties further agree and confirm that clause 15(a) dealing with 'Time of handing over the possession' of the buyer's agreement shall be substituted with the following clause:

Clause 15(a): Time of handing over possession

- (i) *That the possession of the unit in the complex shall be delivered and handed over to the allottee(s) within 21 months of the execution hereof...*
- (ii) *The allottee(s) agrees and understands that the company shall be entitled to a grace period of 120 days over and above the period more particularly specified here-in-above"*

8. The scheduled delivery of possession was on or before 31.01.2012. It was only in July 2017 that the respondent offered possession after a delay of 5 years, but the respondent has not paid any interest for the period of delay in handing over the possession despite receipt of various emails from the complainant. Hence, this complaint for the relief as stated above.

9. 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.
10. The respondent contests the complaint on the following grounds:
 - i. The respondent submitted that the provisions of the Act are not applicable to the project in question. The application for issuance of occupation certificate was made on 09.09.2014 i.e. well before the notification of the Rules. The occupation certificate has been thereafter issued on 20.03.2017. Thus, the project in question is not an 'on-going project' under rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This hon'ble authority does not have jurisdiction to entertain and decide the present complaint.
 - ii. The respondent submitted that complainant has filed the present complaint seeking compensation for alleged delay in delivering possession of the unit in question. The complaints pertaining to refund, compensation and interest are to be decided by adjudicating officer under



section 71 of the Act read with rule 29 of the Rules and not by this hon'ble authority.

- iii. That the complainant approached the respondent sometime in the year 2007 for purchase of independent units in the upcoming project "Digital Greens", Sector 61, Gurugram. The complainants, after extensive enquiry, took an independent and informed decision to purchase three units, uninfluenced in any manner. Thereafter vide letter dated 31.12.2009, complainant approached the respondent with the request of surrendering all the three units booked by him and requested for allotment of a single unit in place thereof. The complainant further requested the respondent to adjust the amounts paid by the complainant to the respondent against the sale consideration of the unit proposed to be bought by the complainant in place of the three units booked initially by the complainant. The respondent, even though under no obligation to accede to the aforesaid request of the complainant, proceeded to allot a unit in favour of the complainant as a gesture of goodwill. The complainant, in pursuance of the aforementioned request, was allotted a unit bearing no. DG-B-02-008 in the project in question. Thereafter, a buyer's agreement dated 31.12.2009 and a



supplementary agreement dated 31.12.2009 amending certain terms of the buyer's agreement were executed between the complainant and the respondent.

- iv. The respondent submitted that the complainant was extremely irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the complainant to make payment of demanded amounts. As per statement of account dated 03.01.2019, the complainant has an amount of Rs.18,90,602/- outstanding on his account towards principal amount dues and delayed payment charges. When the proposed allottees default in their payment as per schedule agreed upon, the failure has a cascading effect on the preparations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainant chose to ignore all these aspects and wilfully defaulted in making timely payments.
- v. The respondent submitted that as per clause 15(b)(vii), 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. It is submitted that



the complainant has defaulted in timely remittance of instalments and hence, the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainant.

- vi. The respondent submitted that as per clause 17 of the buyer's agreement, 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 under the agreement. The complainant by way of present complaint is demanding compensation and interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.
- vii. The respondent submitted that the complainant was offered possession of the unit in question through letter of offer of possession dated 07.06.2017. The complainant was 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 complainant. However, the



complainant did not take did not take any step to complete the necessary formalities or to pay the balance amount liable to be paid by them. It is stated that an offer of possession marks termination of the delay, if any. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer of possession. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- viii. The respondent has already provided a one-time benefit of Rs.10,74,871/- to the complainant in terms of the supplementary agreement dated 31.12.2009. the said benefit was provided by the respondent as a gesture of goodwill on account of the money paid by the complainant prior to the allotment of the unit in question in his favour. The complainant having received the benefit referred to above is estopped from institution and prosecution of the instant complaint.
- ix. Hence, the present complaint deserves to be dismissed at the very threshold.



11. 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.
12. 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.
13. 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.
14. On consideration of the documents placed on record and submissions made by both the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3 of the supplementary buyer's agreement executed between the parties on 31.12.2009, possession of the booked unit was to be delivered within a period of 21 months from the date of execution of the agreement plus 120 days grace period. The



grace period of 120 days 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 31.01.2012. The respondent offered possession of the subject unit to the complainant on 07.06.2017 after receipt of occupancy certificate dated 20.03.2017. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 31.12.2009 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. 31.01.2012 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

15. The complainant is also seeking benefit of discount as per clause 4 of the supplementary agreement. The said clause is reproduced below:

"It has further been agreed by the Company that incase the Allottee(s) makes timely payment of the Sale Consideration as reserved in the 'Revised Schedule of Payment', uptill the penultimate installment, the allottee(s) will become eligible for additional 10% discount on the Revised Basic Sale Price of Rs.7225/- per sq. ft. which can be availed by the Allottee(s) in equal proportion on the last three payment installments i.e.

penultimate installment and three preceding installments, at the time of handing over of the Possession. Provided however, the Allottee(s) will not be eligible to avail the aforesaid discount, in the event if there would be any delay in making the timely payment till the penultimate installment, as demanded by the Company under the Revised Schedule of Payment."


16. The above said benefit was granted to the complainant subject to the timely payment by the complainant as per the schedule of payment. However, the complainant has failed to make various payments for which the respondent has issued various demand letters/reminders and the same is evident from the statement of account dated 03.01.2019. Therefore, the complainant is not entitled to the relief so claimed by the complainant as per clause 4 of the supplementary agreement.
17. Further, it is suffice to say that the award of payment of compensation is outside the jurisdiction of the Authority and the complainant is at liberty to file a separate application before the Adjudicating Officer under section 71 of the said Act along with the enabling section, if complainant so desire.
18. 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 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. 31.01.2012 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.

- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iii) The respondent shall not charge any amount 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.

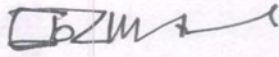
19. The complaint stands disposed of accordingly.
20. The case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2021


(Dr. K.K. Khandelwal)

Chairman

Judgement uploaded on 17.03.2021