

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

**Complaint no.** : 54 of 2020  
**First date of hearing** : 04.03.2020  
**Date of decision** : 27.01.2021

M/s Vintage Shades

**Regd. Office:** G-12, Handloom Emporium,  
South Extension Part-I, New Delhi-110049.

**Complainant**

Versus

M/s Emaar MGF Land Ltd.

Office address: 306-308, 3<sup>rd</sup> floor, C-2,  
Square One, District Centre, Saket,  
New Delhi-110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman**  
**Member**

**APPEARANCE:**

Shri Saurabh Gaubha  
Shri Ishaan Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 08.01.2020 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	Capital Tower 1, Sector-26, Gurugram.
2.	Total licensed area	6.27 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	i. 19 of 2012 dated 03.03.2012 (for 3.83 acres) Valid till 02.03.2020 ii. 18 of 2012 dated 03.03.2012 (for 2.44 acres) Valid till 02.03.2025
	HRERA registered/ not registered	<b>Registered vide no. 331 of 2017 dated 24.10.2017 (for 6.27 acres)</b>
	HRERA registration valid up to	31.07.2019
	Extension of registration certificate	06 of 2019 dated 16.10.2019 Valid up to <b>31.07.2020</b>
5.	<b>Occupation certificate</b> received on	<b>11.09.2019</b> [Page 127 of reply]
6.	Unit no.	CT1-GF-009A, Ground Floor [Page 41 of reply] However, unit no. was renumbered/revised to CT-



		<b>GF-019</b> , as per letter of offer of possession dated 15.11.2019.
7.	Unit measuring (super area)	1189 sq. ft.
8.	<b>Change in area of the unit as per letter of offer of possession dated 15.11.2019</b>	<b>Increased to 1221.44 sq. ft.</b>
9.	Date of execution of buyer's agreement	16.01.2014 [Page 38 of reply]
10.	Payment plan	Construction linked payment plan [Page 26 of complaint]
11.	Total consideration	Rs.2,31,09,351/- [as per statement of account dated 30.01.2020, page 111 of reply]
12.	Total amount paid by the complainant	Rs.2,21,08,099/- [as per statement of account dated 30.01.2020, page 112 of reply]
13.	Date of start of foundation work as per statement of account dated 30.01.2020, page 111 of reply	28.02.2014
14.	Due date of delivery of possession as per clause 17(a) of the said agreement i.e. 36 months from the date of start of construction i.e. 28.02.2014 plus grace period of 120 days. [Page 51 of reply]	<b>28.06.2017</b>
15.	<b>Offer of possession to the complainant</b>	<b>15.11.2019</b> [Page 129 of reply]
16.	Delay in handing over possession till date of offer of possession i.e. 15.11.2019	2 year 4 months 18 days



3. As per clause 17(a) of the agreement, the possession of the subject unit was to be handed over within a period of 36 months from the date of start of construction (28.02.2014) plus grace period of 120 days which comes out to be 28.06.2017. Clause 17 of the buyer's agreement is reproduced below:

**"17. POSSESSION**

**(a) Time of handing over the possession**

- i. *The company shall endeavor to handover possession of the unit to the allottee within 36 months from the date of start of construction, subject, however, to the force majeure conditions as stated in clause 34 of this agreement...*
- ii. *The allottee 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 in clause 17(a)(i), for applying and obtaining necessary approvals in respect of the complex."*

4. The complainant submitted that on believing the bona fide of the respondent and the representations made by it with regards to the project, the complainant decided to book a unit in the project. The respondent subsequently allotted to the complainant a unit in the project bearing no. CT1-GF-009A, Capital Tower-1, Sector 26, Gurugram vide allotment letter dated 29.11.2013. Subsequently, the complainant paid to the respondent an amount of Rs.25,00,000/- as the booking amount for the unit on 24.10.2013. the remaining amount of the total sale consideration of the unit was to be paid by the complainant at multiple stages linked to the construction



linked plan. On 16.01.2014, the complainant and the respondent entered into a buyer's agreement and as per the said agreement the respondent was to provide possession of the unit to the complainant within 36 months. The complainant continued to make all payments as demanded and prescribed by the respondent, honouring the promises made by them, hoping that the respondent will hold good on its promises as well, especially with regard to timely possession of the unit. The respondent has abjectly failed to deliver possession within 36 months. The respondent issued an intimation for possession to the complainant on 15.11.2019. By this time, the complainant had deposited with the respondent payments to the tune of Rs.2,10,12,232/-. The complainant is greatly aggrieved by these 33 months delay caused by the respondent in delivering the unit and seek the same quantum of interest from the respondent for delay in delivering possession of the unit as the respondent seeks from them for delay in making payments, i.e. 24% p.a. The complainant submit that the respondent is liable to pay delayed interest of possession to the complainant. It is further submitted that the respondent is asking additional Rs.37,00,000/- as final payment after which the respondent will hand over the possession. Hence, this complaint inter alia for the following reliefs:

- (a) Direct the respondent to pay to the complainant sum of Rs.1,56,69,021/- towards the interest accrued from the



'originally amount paid till date of possession' till the 'actual delivered date of possession' calculated at 24% p.a. on the payments made by the complainant to the respondent. (after adjusting the amount payable by the complainant)

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 present complaint is based on erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 16.01.2014. The unit in question was provisionally allotted in favour of the complainant vide provisional allotment letter dated 29.11.2012. Thereafter, buyer's agreement was executed between the complainant and the respondent.
  - ii. The respondent submitted that the project is registered under the provisions of the Act and the certificate of registration was issued by this Authority vide memo no. HRERA-535/2017/1713 dated 24.10.2017. furthermore, the respondent had applied for extension of the period registration of the project. Extension of the registration period was granted by the Authority on 16.10.2019 vide



extension no. 6 of 2019. The registration period was extended till 31.07.2020. In the meanwhile, the respondent had applied for occupation certificate of the unit in question on 01.04.2019 and occupation certificate was granted by the Authority on 11.09.2019. Accordingly, possession of the unit in question had been offered on 31.12.2019. Therefore, there has been no delay in handing over of possession of the unit as has been alleged by the complainant.

- iii. The respondent submitted that the complainant had consciously opted for an instalment payment plan in terms of which the first instalment was time bound and the remaining instalments were payable upon achievement of construction milestone indicated in the payment plan. The complainant had agreed and undertaken to make payment as per the payment plan, upon demand raised by the respondent. However, the complainant was extremely irregular in making payment and delayed the payment on several occasions. The respondent was constrained to issue payment request letters, reminders and notices for payment. As the complainant has defaulted in making timely payment as per payment plan, the time period of handing over possession stands extended under clause 17(b)(v) of the agreement.



- iv. The respondent submitted that as per clause 19 of the buyer's agreement, compensation for 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. Since, the complainant has intentionally defaulted in remittance of instalments, the complainant is not entitled to any compensation or interest in the facts and circumstances of the case.
- v. The respondent submitted that application for occupation certificate was made on 29.03.2019 and the same was granted by Directorate of Town and Country Planning, Haryana on 11.09.2019. It is submitted that once an application is submitted before the statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. Therefore, the time taken by the concerned statutory authority to issue occupation certificate in respect of the project has to be excluded from the computation of the time taken for implementation and development of the project. Furthermore, no compensation or any interest shall be payable to the allottees in case of delay caused due to non-





receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities in conformity to the buyer's agreement.

- vi. The respondent submitted that an amount of Rs.10,23,893/- in addition to the amounts liable to be paid by the complainant at the time of obtaining possession in accordance with the buyer's agreement, is due and payable by the complainant to the respondent. That once the outstanding dues are remitted by the complainant, the respondent would proceed to handover physical possession of the unit in question.
- vii. Hence, the complaint is liable to be dismissed.
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 both the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 17(a) of the buyer's



agreement executed between the parties on 21.01.2014, possession of the booked unit was to be delivered within a period of 36 months plus 120 days grace period from the date of start of construction. The construction started on 28.02.2014. The grace period of 120 days is allowed to the respondent due to contingencies beyond its control. Therefore, the due date of handing over possession comes out to be 28.06.2017. The promoter offered the possession of the subject unit to the complainant on 15.11.2019.

10. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the respondent has applied for grant of occupation certificate on 05.04.2019 as mentioned in DTCP memo no. ZP-847/JD(NC)/2019/22246 dated 11.09.2019 whereby occupation certificate has been granted by the competent statutory authority under the prevailing law. However, it is evident from the occupation certificate dated 11.09.2019 that an incomplete application for grant of OC was applied on 05.04.2019 as fire NOC from the competent authority was granted on 28.06.2019 which is subsequent to the filing application for occupation certificate. Also, the Chief Engineer-I has submitted his report with respect to the



laying/completion of services in the project area on 25.07.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 16.07.2019 and 18.07.2019 respectively. As such, the application submitted on 05.04.2019 was incomplete in the eyes of law. As per sub code 4.10.4 of the Haryana Building Code, 2017, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 25.07.2019 and consequently the concerned authority has granted OC on 11.09.2019, therefore no delay in granting occupation certificate can be attributed to the concerned statutory authority.

11. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.01.2014 to hand over the possession within the stipulated period.
12. 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. 28.06.2017 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules. At the same time, the complainant-allottee has also failed to make the entire payment which is in violation of section 19(6) and (7) of the Act. Therefore, the complainant is also liable to pay interest at the prescribed rate on the delayed payments.

13. 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 complainant from due date of possession i.e. 28.06.2017 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 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.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2021

  
(Dr. K.K. Khandelwal)

Chairman

Judgement uploaded on 17.03.2021