

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

Complaint no. : 406 of 2020
First date of hearing : 06.03.2020
Date of decision : 15.03.2021

Naveen Tokas
R/o: 338/18, Civil Lines,
Near Rajiv Chowk,
Gurugram-122001

Complainant

Versus

M/s Emaar MGF Land Ltd.
Regd. Address: 306-308, 3rd floor, Square One,
C2, District Centre, New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Gaurav Bhardwaj
Shri J.K. Dang along with Shri
Ishaan Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 27.01.2020 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.

A. Project and unit related details

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.	108 of 2010 dated 18.12.2010
	License valid 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	02.05.2019 [Page 122 of reply]
7.	Provisional allotment letter	26.02.2011 [Page 36 of reply]
8.	Unit no.	PGN-08-0201, 2 nd floor, building no. 08

		[Page 31 of complaint]
9.	Unit measuring (super area)	1720 sq. ft.
10.	Date of execution of buyer's agreement	25.05.2011 [Page 29 of complaint]
11.	Payment plan	Instalment Payment Plan [Page 50 of complaint]
12.	Total consideration as per schedule of payment (Page 50 of complaint)	Rs. 88,16,027/-
13.	Total amount paid by the complainant as per cancellation letter of unit dated 28.12.2013 [Page no. 75 of complaint]	Rs. 35,50,206/-
14.	Unit cancellation letter dated	28.12.2013 [Page no. 75 of complaint]
15.	Date of offer of possession to the complainant	Not Offered

B. Facts of the complaint

3. The complainant submitted that on 25.05.2011, the buyer's agreement was executed between the complainant and the respondent for the unit. That as per clause 10(a) of the said buyer's agreement, the respondent proposed to handover the possession of the unit in question within a period of 36 months from the date of start of construction along with grace period of 3 months. However, the date of start of construction cannot be ascertain. Thus, if calculated from the date of execution of agreement, the due date of handing over possession comes out to be 25.08.2014. however, the respondent failed in handing



over possession in accordance with the said agreement. That the complainant paid a total sum of Rs. 35,50,206/- towards the aforesaid unit from January 2011 till 2013 as and when demanded by the respondent as against a total sale consideration of Rs. 88,16,027.83/-. That thereafter, somewhere around mid-2014, the complainant visited the project site and was stunned to see the snail-paced work there. The complainant again approached the respondent and sought a clarification upon the snail-paced construction work at the project site, to which the respondent assured that the possession shall be handed over soon. On 30.12.2019, the respondent representative, handed over a back dated cancellation letter dated 28.12.2013 to complainant. This left the complainant aghast and stunned. Upon further inquiry, the representatives of the respondent simply handed over Final notice dated 21.06.2013 and 12.12.2012. However, it is pertinent to mention here that the said cancellation letter and final notice had never been handed over or sent to the complainant.

C. Reliefs sought by the complainant

4. The complainant has filed present complaint for the following reliefs:

- i. Direct the respondent to withdraw the arbitrary and unfair cancellation letter dated 28.12.2013, which was actually never sent to the complainant.
 - ii. Direct the respondent to pay delay interest at the prescribed rate for every month of delay, from the due date of possession, i.e. 09.11.2015 till actual handing over of possession.
 - iii. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.
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.

D. Reply filed by the respondent

6. The respondent has contested the complaint on the following grounds:
- i. The respondent submitted that the complainant has filed the present complaint seeking possession, compensation and interest for alleged delay in delivering possession of the apartment booked by the complainant. That such complaints 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. Furthermore, it is

submitted that the registration of the project under the Act was up till 31.12.2019. Since, the occupation certificate has been issued in respect of the entire project, the registration of the project has not been extended. Thus, the provisions of the Act are not applicable to the project any longer and consequently this hon'ble authority does not have the jurisdiction to hear or decide the present complaint.

- ii. The respondent submitted that present complaint raises several such issues which cannot be decided in summary proceedings. After the allotment in favour of the complainant was cancelled, the unit was allotted to another buyer and thereafter possession of the unit has been handed over and conveyance deed has also been registered in favour of the new allottee. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by the adjudicating officer/civil court.
- iii. The respondent submitted that the said unit was provisionally allotted to the complainant vide provisional allotment letter dated 26.02.2011 and thereafter the buyer's agreement was executed on 25.05.2011 between the complainant and the respondent. The complainant



had opted for an instalment payment plan and had agreed and undertaken to make payment as per the payment plan, upon demands raised by the respondent. The respondent issued demand notices and reminders for payment to the complainant according to the payment plan. Several payment request letters were issued to the complainant, but the complainant ignored the same and failed to make payment of sale consideration. Accordingly final notice dated 12.11.2012 was issued to the complainant whereby the complainant was called upon to make payment of outstanding amount of Rs.3,86,982/- within a period of 30 days from the receipt of the said notice failing which the provisional allotment in favour of the complainant was liable to be cancelled. Thereafter, reminder dated 20.05.2013 and final notice dated 21.06.2013 was also sent to the complainant. However, the complainant ignored the demands for payment. Consequently, the respondent was left with no option but to cancel the allotment of the complainant on 28.12.2013. The complainant was informed that after deduction of earnest money and interest on delayed payment, balance amount shall be refunded to the complainant upon resale of the apartment. The cancellation letter was duly received by the complainant and yet the complainant did not even bother to approach the respondent or seek any remedy against cancellation of his allotment.

- iv. The respondent submitted that the false and fabricated story put forward by the complainant is riddled with inconsistencies and contradictions and the same is devoid of any logic whatsoever. The complainant admittedly stopped payment after 2013. It is beyond belief that the complainant did not bother to communicate with the respondent and took no action for a span of more than 6 years when no further demands for payment were sent to him by the respondent. The complainant has failed to place on record even a single communication addressed by the complainant to the respondent during this period. Instead the complainant is seeking to place reliance upon certain emails, which were inadvertently sent to the complainant, amongst other allottees in the project whereby the status of the project was communicated by the respondent. The emails addressed to the complainant are clearly on account of a bonafide, inadvertent clerical mistake and the same cannot by any stretch of imagination be interpreted to presume that the allotment in favour of the complainant was still subsisting.
- v. Hence, the present complaint deserves to be dismissed at the very threshold.

E. Written arguments filed by the respondent

7. The respondent has filed **written arguments** on 28.09.2020. The respondent submitted that the complainant and the

respondent are bound by terms and conditions of the buyer's agreement and the respondent put reliance in this regard upon various citations: **2000(1) Apex Court Journal 388, AIR 1996 SC 2508, AIR 1990 SC 699**. The respondent submitted that this hon'ble authority does not have jurisdiction and authority to legally direct levying of interest and in this regard, the respondent has put reliance on order dated **02.05.2019 passed by Justice Darshan Singh (Retd.) Chairman, Haryana Real estate Appellate Tribunal, Chandigarh.**

8. The respondent further submitted that the liability to pay interest imposed on the developer is in the nature of compensation. It has further been held that any determination of dispute pertaining to payment of interest under sections 12, 14, 18 and 19 is to be adjudicated by the adjudicating officer as per section 71 of the Act. While supporting this contention, the respondent has place reliance on **Neelkamal Realtors Suburban Pvt. Ltd. and anr. Versus Union of India and ors. [2018(1) RCR (Civil) 298]**.
9. The respondent submitted that the period utilised by the competent authority for grant of occupation certificate and the period utilised by the complainant to obtain possession of the unit in question deserves to be exempted for all intents and purposes. It is submitted that once an application for issuance

of occupation certificate is submitted before the concerned competent authority the respondent ceases to have any control over the same. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer's agreement.

F. Written arguments filed by the complainant

10. The complainant submitted the **written arguments** on 05.10.2020 wherein it is stated that if the construction would have been on time, the construction would have been completed and possession would have been handed over by 2015 as per agreement. But even occupation certificate was not applied till 2019 which clearly shows that the respondent's assertion that it was the complainant who has been a defaulter is completely baseless and the issuance of said cancellation letter is an afterthought.
11. The complainant further submitted that had the unit in question allotted in favor of the complainant been cancelled on 28.12.2013, then why would the respondent send emails to the complainant until mid-2014 in order to update him about the construction status. Further, if the payment made by the

complainant of Rs. 1,50,000/- on 01.04.2013, Rs. 3,50,000/- on 04.05.2013 and Rs. 3,00,000/- on 24.07.2013 are taken into consideration, it is very much evident that the complainant had been regularly making payment and the final notice dated 12.12.2012 and 21.06.2013 handed over to the complainant vide ticket generated on 30.12.2019 are completely baseless and merely an afterthought. The respondent is caught in a web of his own lies.

12. As per the cancellation letter dated 28.12.2013, the respondent forfeited an amount of Rs. 22,08,270/- (Rs. 12,89,140.55/- as earnest money and Rs. 9,19,130/- as delayed payment charges) arbitrarily. It is submitted that firstly, upon cancellation of unit, no delayed payment charges can be levied and secondly, the receipts issued by the respondent himself clearly shows that the complainant had been regularly making payment in 2013. Rather, the delay on part of respondent company in completing the project clearly proves the deficient service in completing the project on their part. The complainant wishes to continue in the project and accordingly, is entitled to delayed possession charges by the respondent from the due date of possession till actual handing over.

13. 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.

G. Jurisdiction of the authority

14. The preliminary objection raised by the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

G.I Territorial jurisdiction

15. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

G.II Subject-matter jurisdiction

16. 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. (complaint no. 7 of 2018)** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as **Emaar MGF Land Ltd. V. Simmi Sikka and anr.**

H. Findings of the authority

17. On consideration of the documents available on record and submissions made by both the parties, the authority observed that the complainant applied for the allotment of unit in the said project on 21.01.2011 and the said unit was subsequently allotted to him vide allotment letter dated 26.02.2011. Thereafter, the buyer's agreement was executed on 25.05.2011 between the complainant and the respondent. The respondent started raising demands as per the schedule of payment, but the complainant started defaulting in making payments. The respondent was compelled to issue various payment request letters, demand notices etc. to pay the demanded amount. However, the complainant failed to make payments and in view of the continuing defaults by the complainant, the respondent terminated the provisional

allotment made in favour of the complainant vide cancellation letter dated 28.12.2013 **(Copy Annexure R-8)**.

18. As per record before the cancellation letter dated 28.12.2013, the respondent has sent various reminders dated 12.11.2012, 20.05.2013 and thereafter, 'Final Notice' dated 21.06.2013 demanding the outstanding amount of Rs.17,37,593/- due and payable by the complainant. The complainant has thereafter paid a sum of Rs.3,00,000/- (acknowledged by respondent vide receipt dated 24.07.2013 copy filed by the complainant at page 66) and Rs.1,50,000/- (acknowledged by the respondent vide receipt dated 31.10.2013 copy filed by the complainant at page 67). Thereafter, the complainant has not paid a single penny nor approached the respondent regarding non-payment of part payment of the demand raised by the respondent i.e. Rs.17,37,593/-. Thenceforth, the respondent issued the cancellation letter dated 28.12.2013 after giving reasonable time to the complainant for making payment.
19. As per cancellation letter dated 28.12.2013, out of the total payment of Rs.35,50,206/- paid by the complainant, an amount of Rs.22,08,270/- was forfeited by the respondent as per the terms and conditions of the buyer's agreement executed by the complainant. Also, Rs.13,41,935 was refundable under the cancellation letter dated 28.12.2013 but

till date no such refund has been credited in the account of the complainant.

20. The complainant is claiming that he visited the office of respondent on 30.12.2019 and there the respondent has handed over backdated cancellation letter dated 28.12.2013 along with several backdated demand notices. Except the visit on 30.12.2019, there is nothing on record to show that the complainant has ever approached the respondent in last 6 years either to make the outstanding due payment as per the payment plan or to enquire about the project.
21. The case of the complainant in his complaint itself is that he did not make any further payment towards instalments to the respondent till 2019. The question here arises is that why the complainant stopped making payment and not enquired regarding the status of the project. Moreover, the complainant not bothered to visit the office of the respondent for a single occasion during the period of these six years. He has not explained any reason why he did not make any further payment to the respondent for about long period of six years. There may be delay on the part of the respondent in completing the construction. However, it did not give any legal right to the complainant to stop further payments of instalments as per the payment schedule without any

plausible reason. He who seeks justice from a court or tribunal, or quasi-judicial authority must come with clean hands.

22. It can be concluded that by virtue of cancellation letter dated 28.12.2013, the cancellation of the allotted unit was made by the respondent. After aforesaid cancellation, the complainant neither approached the respondent for withdrawal of cancellation letter nor sought refund of the balance amount after forfeiture of the earnest money and other non-refundable amounts. There is no evidence on record which shows that after cancellation letter dated 28.12.2013, any communications were made by the complainant till the filing of present complaint on 27.01.2020 with respect to withdrawal of cancellation letter or refund of the balance amount in lieu of cancellation. If there had been any communication, the complainant should have brought the same on record. If there was any arbitrary, whimsical or unjustified action on part of the respondent regarding cancellation or withholding the balance amount after cancellation, the complainant has also failed to prove that he has taken the recourse under any law and has failed to approach any forum for the said grievance.

23. The cancellation letter was issued on 28.12.2013 and the present complaint was filed on 27.01.2020 after coming into

force of the Act on 01.05.2017. The complainant remained dormant on his rights for more than 6 years since the cause of action arose i.e. from the issuance of cancellation letter dated 28.12.2013 and till the filing of this compliant on 27.01.2020, as he didn't approach any forum to avail his right for almost 6 years.

24. It is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
25. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of his/her right. In order to

claim one's right, he/she must be watchful of his/her rights. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of law.

26. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint for quashing the cancellation letter and handing over possession along with delay possession charges is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. Moreover, the respondent submitted that after cancellation they have created third party right and conveyance deed has also been registered in favour of new allottee. The procedures of law cannot be allowed to be misused by the courts and it is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. However, the respondent should also not be allowed to get unfair advantage as he himself should have refunded the amount after cancelling the unit in question but he failed to do so. Allowing the respondent for such practices may set a wrong precedence in the real estate industry. As per record, the balance amount of Rs.13,41,935/- was refundable under the cancellation letter dated 28.12.2013

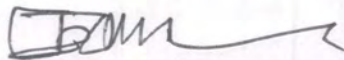
but till date no such refund has been credited in the account of the complainant. Therefore, the respondent is directed to return the balance amount of Rs.13,41,935/- to the complainant along with interest at the prescribed rate i.e. 9.30% per annum from the date of cancellation of the unit till date.

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to return the balance amount of Rs.13,41,935/- to the complainant along with interest at the prescribed rate i.e. 9.30% per annum from the date of cancellation of the unit till date within 90 days from the date of this order.

28. Complaint stands disposed of.


29. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2021


(Samir Kumar)

Member

Judgement uploaded on 08.06.2021.