

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

Complaint No. : 859 of 2018
First date of Hearing : 20.12.2018
Date of Decision : 20.12.2018

Mr. Naveen Gaur and Mrs. Rashi Gaur
R/o : Flat no. 9730, Sector-C9, Vasant Kunj,
South West Delhi, New Delhi-110070

Complainants

Versus

Emaar MGF Land Limited.
Address: Emaar Business Park,
MG Road, Sikanderpur, Sector 28,
Gurugram-122001, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Naveen Gaur and Mrs. Rashi Gaur Complainants in person

Shri Ketan Luthra, authorized Advocate for the
representative with Shri Ishaan Dang respondent



ORDER

1. A complaint dated 10.09.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainants Mr. Naveen Gaur and Mrs. Rashi Gaur against the promoter, M/s Emaar MGF Land Limited. in respect of apartment/unit described below in the project 'Palm Terraces Select', Sector-66, Gurugram on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 29.10.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Palm Terraces Select", Sector 66, Gurugram, Haryana.
2.	RERA registered/ not registered	Registered
3.	RERA Registration no.	19 of 2018
4.	Revised Completion date	30.04.2018
5.	Total area admeasuring	223.9 sq. mtrs
6.	Nature of real estate project	Group housing scheme
7.	Unit no.	PTS-11-0701, 7 th floor
8.	DTCP No.	93/2008 dated 12.05.2008 and 50 of 2010 dated 24.06.2010





9.	Payment Plan	Subvention plan
10.	Total sales consideration	Rs. 1,89,15,190/- Statement of account dated 24.04.2018, page 144
11.	Amount paid by the complainant	Rs. 1,83,38,722/- Statement of account dated 24.04.2018, page 145
12.	Buyer's agreement executed on	29.10.2010
13.	Date of delivery of possession as per clause 14(a). (36 months + 3 months grace period from the date of commencement of construction)	31.10.2015 Date of commencement of construction: 31.07.2012
14.	Delay in handing over possession till date	3 years 1 month 20 days
15.	Penalty clause as per retail space buyer's agreement	Clause 16.a of the agreement i.e. Rs. 7.50 per sq.ft per month of the super area till the notice of possession under the provision of clause 15(a) delay.

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer's agreement dated 29.10.2010 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 31.10.2015. The promoter has not fulfilled his committed liability by not giving possession as per the terms of the buyer's agreement.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply was filed by the respondent on 30.10.2018.

Brief facts of the complaint

6. Briefly stated, the facts of the complaint are that the flat bearing PTS-11-0701 on 7th floor measuring 2410sq.ft. situated at the project known as Palm Terraces Select belonging to the respondent situated at Sector-66, Golf Extension road, Gurugram was purchased by Mr. Rajat Gupta and Mrs. Anshu M. Gupta for a sum of Rs. 1,82,97,820/- from the respondents through buyer agreement dated 29.10.2010.
7. The complainants thereafter entered into an agreement to sell dated 18.01.2013 with Mr. Rajat Gupta and Mrs. Anshu M. Gupta for the total sales consideration settled between both the parties for an amount of Rs. 1,87,79,820/-. It is not out of place to mention that the said payment of aforesaid mentioned amount was duly acknowledged by the respondent vide statements of accounts letter dated 24.04.2018.
8. The respondent company was through nomination letter dated 30.01.2013 expressly confirmed that since today the aforesaid property stands jointly registered in the name of



complainants and the respondent had further confirmed that it had received Rs. 1,09,13,452/- towards the consideration for the captioned property from the complainants.

9. The respondents were fully aware that the complainants had undertaken a loan from the India Bulls, ICICI and HDFC Bank for purchasing the said property and had also mortgaged the papers of the same as security against the said loan for purchasing the foresaid property and in response of that the respondent had sent a confirmation letter dated 02.12.2013 to the ICICI Bank stating that the property is now registered in the name of the complainants and is free of all sorts of encumbrances, charges or liabilities of any kind.
10. Despite knowing that the complainants had paid a hefty rate of interest India Bulls, ICICI and HDFC Bank in order to repay the said loan amount that they had undertaken to purchase the flat in question and the cruciality of the timely possession of the said property to the complainants has intentionally and deliberately withheld by the respondent which has cost wrongful gain to the respondent and substantial wrongful losses to the complainants.
11. As per the buyer's agreement respondent were to deliver the physical possession of the flat latest by 31.07.2015 as the



project was started on 31.07.2012. The instalments in respect of the unit were duly paid well in time, however the respondent has failed to deliver the possession after lapse of 6 years.

12. The complainants undertook all possible measures, made several calls and reminders to the officers of the respondent but it all fell into the deaf ears and because of the aforesaid acts of omission and commission of the respondent they are liable for various offences punishable under sections 420,467,468,465,471,406 read with section 120-B IPC and the complainants reserve their right to take appropriate action against the respondent before the appropriate Court of Law besides resorting to other remedies.

13. **The issue raised by the complainants is as follow:**

i. **Whether the respondent have caused unjustified delay and violated the buyer's agreement in spite of the fact that the complainant had already paid excess amount over and above the total price?**

14. **Relief sought**

The complainants are seeking the following reliefs:

i. **Direct the respondent to immediately deliver the peaceful vacant physical possession of the flat.**



OR

- ii. Direct the respondent to refund the amount of Rs. 26,46,94/- on account of interest paid by the complainants to the financial institutions on account of interest component including such payments made by the complainants in future and during pendent lite and further direct the respondent to pay/refund an amount of Rs. 6,94,726/- on account of pre EMI interest paid including such payments made by the complainants, in future and during pendent lite.**

Respondent's reply

15. The respondent submitted that the present complaint is not maintainable in law or on facts. It is submitted that the authority has no jurisdiction to entertain the present complaint. The respondent has filed a separate application for rejection of the complaint on the ground of jurisdiction.
16. The respondent submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in a summary proceedings and requires extensive evidence to be led by both the parties, examination and cross-examination of witnesses for proper adjudication.



The disputed raised in the present complaint are beyond the purview of this hon'ble authority and can only be adjudicated by a civil court.

17. The respondent submitted that the claims have been made in a manner unknown to the common law of contract and are specifically, contrary to the text of the Indian Contract Act, 1872 itself
18. The respondent submitted that the complainants have no locus standi to file the present complaint. As per applicable Act and the Rules, a complaint may be filed by a person only if the respondent has committed any act in violation of the Real Estate (Regulation and Development) Act, 2016. The present case is a ploy to exert undue pressure upon the respondent and seek remedies which are incomprehensible under the law of the land.
19. The respondent submitted that the project in question is covered under the definition of an 'ongoing project" under rule 2(1)(o) of the Rules. The registration granted vide no. 2017/379 also stands revised till 30.04.2019.
20. The respondent submitted that the complainant have filed the complaint and are seeking the relief of interest 24% per annum amongst other reliefs. As per section 31 read with



section 71 of the Act, complaint pertaining to compensation and interest under section 12,14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 is required to be filed before the adjudicating officer.

21. The respondent further submitted that the ICICI Bank Ltd. vide their letter dated 15.07.2017 informed the company that the complainants are mortgaging the above said property with the ICICI Bank Ltd. Separately, the complainants vide letter dated 17.07.2017 addressed the said matter about mortgage to the respondent. The respondent vide letter dated 17.07.2017 addressed to the ICICI Bank Ltd. conveyed its no objections to the complainants mortgaging the said unit to the bank. As such ICICI Bank is a necessary and proper party for the purposes of disposal of the present case.
22. The respondent submitted that the claim of the complainants for interest @24% is barred by law in terms of section 74 of the Indian Contract Act. The complainant are not entitles to any interest on the amounts deposited by them. Thus, the respondent company is legally entitled to forfeit the money paid the complainant as per the settled terms and conditions, in case the complainant seek to wriggle out of the binding terms of the buyer's agreement



23. The respondent submitted that the complainants are consumers in terms of the definition of consumer under Consumer Protection Act, 1986. The complainants are speculative investors having invested with a view to earn quick profit. But due to slowdown in the market conditions and having failed to resell the said unit, the complainants had apparently developed an intention to raise false and frivolous issues to engage the respondent in unnecessary and false litigation.
24. The respondent submitted that the provisional allotment of subject unit in the project was initially made in the name of original allottee i.e Mr. Rajat Gupta and Mrs. Anshu M. Gupta, subsequently the unit exchanged hands and provisional allotment was transferred in favour of Mr. Naveen Gaur and Mrs. Rashi Gaur vide nomination letter dated 30.01.2013.
25. The respondent submitted that, it had been conveyed to the complainants that the company would endeavor to complete the project and hand over the possession of the unit booked as expeditiously as possible subject to the reasons beyond the control of the company. Furthermore, the project in question is a large project and such kind of projects do take reasonable time for completion.



26. The respondent submitted that the complainants defaulted and delayed in making payment of the amounts which resulted in slowdown in pace of the development which was dependent upon the availability of funds from the allottees, who were under a contractual obligation to make payments as per the payments opted by them.
27. The respondent submitted that it was only after going through the terms and conditions of allotment that the complainants sought transfer of allotment. The complaint filed is entirely premature.

Determination of issues:

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

28. As regards to the **sole issue** raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date i.e 31.10.2015 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.



29. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso of the Act *ibid* to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1).
30. The complainants made a submission before the authority under section 34 (f) of the Act *ibid* to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

31. The complainants requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.



Findings of the authority

32. The respondent admitted the fact that the project Palm Terraces Select is situated in sector-66, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

33. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.





34. The delay compensation payable by the respondent @ Rs.7.50/- per sq.ft. per month for the period of delay as per clause 16(a) of the buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

35. The complainants by an application for amendment of complaint reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



36. The occupation certificate has been applied by the respondent. The project was registered with the authority which has expired on 30.04.2018. The counsel for the respondent stated that they have applied for extension of registration which is pending with the authority.

Decision and directions of the authority

37. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to deliver the possession by 30.04.2019.
- (ii) The respondent is directed to pay interest @ 10.75% p.a. on the paid amount to the complainants from the due date of delivery of possession i.e. 31.10.2015 till the date of order i.e 20.12.2018.
- (iii) The arrears of interest so accrued @ 10.75% p.a. from the due date of delivery of possession till the order on the paid amount of the complainants which comes to be Rs. 61,86,544.50/- shall be paid to the complainants within 90 days from the date of this order.



- (iv) Thereafter, the monthly payment of interest i.e. Rs. 1,64,284.39/- till handing over of the possession, so accrues shall be paid before 10th of subsequent month.
- (v) If the possession is not given by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. section 19(4) of the Act ibid

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date:20.12.2018

Judgement Uploaded on 25.03.2019

