

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

Complaint no. : 543 of 2018
Date of first hearing : 13.9.2018
Date of decision : 22.1.2019

Brig. Atul Kumar Singh
R/o: House no. 784, Sector 17A,
Gurugram, Haryana-122001

...Complainant

Versus

M/s Emaar MGF Land Limited
Office at: 306-308, 3rd floor,
Square One, C-2, Saket District Centre,
New Delhi-110017

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sanchit Kumar Advocate for the complainant
Shri Ketan Luthra, Shri Ishaan Advocate for the respondent
Dang

ORDER

1. A complaint dated 18.7.2018 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 complainant Brig. Atul Kumar Singh against the promoter M/s Emaar MGF Land





Limited on account of violation of clause 14(a) of the buyer's agreement executed on 10.5.2013 for unit no. GGN-09-0502 on ^{5th} ~~9th~~ floor, tower/building no. ⁰⁹ ~~27~~, admeasuring super area of 1650 sq. ft. in the project "Gurgaon Greens" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 10.5.2013 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 are as under: -

1.	Name and location of the project	"Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	GGN-09-0502, 5 th floor, building no.9
4.	Unit area	1650 sq. ft'
5.	Project area	13.531 acres
6.	Registered/ not registered	36 of 2017 dated 03.09.2017

Corrected vide order dated 18/07/19





7.	DTCP license	75 of 2012 dated 31.7.2012
8.	Date of booking	3.9.2013 (as per complaint) 03.09.2012
9.	Date of buyer's agreement	10.5.2013
10.	Total consideration	Rs. 1,13,96,750/- (as per statement of account)
11.	Total amount paid by the complainant	Rs. 1,14,27,043/- (as per statement of account)
12.	Payment plan	Construction linked plan
13.	Due date of delivery of possession Clause 14(a)- 36 months from date of start of construction + 5 months grace period	14.11.2016 Date of start of construction is 14.6.2013 (on start of PCC for foundation, as per statement of account in annexure C3, pg 59 of the complaint)
14.	Revised date of completion as per RERA registration certificate	31.12.2018
15.	Delay of number of months/ years till date	2 years 2 months and 8 days (approx.)
16.	Penalty clause as per builder buyer agreement dated 10.5.2013	Clause 16(a)- Rs. 7.50/- per sq. ft. per month of the super area



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 complainant and the respondent. A buyer's agreement dated 10.5.2013 is available on record for unit no. GGN-09-0502 on 5th floor, tower/building no. 9, admeasuring super area of 153.29 ~~sq. ft~~

sq. mtr.

Corrected vide order dated 18/07/19.



aforesaid unit was to be delivered by 14.11.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed on behalf of the respondent and has been perused. The case came up for hearing on 13.9.2018, 12.12.2018 and 22.1.2019.

Facts of the complaint

6. The complainant was allotted an apartment no. GGN-09-0502 in the project "Gurgaon Greens" having super area of 1650 sq. ft' vide allotment letter dated 28.1.2013.
7. The complainant entered into buyer's agreement with the respondent on 10.5.2013 for the above-mentioned unit for Rs.1,13,96,750/-. The complainant made timely payments as per the payment plan and has made 100% payment already.
8. As per clause 14(a) of the buyer's agreement the possession of the said unit was to be delivered by 14.11.2016 and the complainant is entitled for a compensation @Rs.7.50/- per sq. ft' as per clause 16(a) of the agreement.





9. The delivery of the apartment was to be made before the coming in force of the GST Act, 2016 so the complainant is not liable to incur the burden of GST. Also, as per section 19(6) of Real Estate Regulatory Act, the complainant has fulfilled his obligations and is not liable for breach of its terms.

10. Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether the respondent has breached the mandate of RERA Act as well as agreement by not completing the construction of the said unit as per payment plan?
- II. Whether the respondent has breached the mandate of RERA Act as well as agreement by not delivering the possession of the said unit as per payment plan?
- III. Whether there has been unreasonable delay in delivery of possession to the complainant?
- IV. Whether the complainant is entitled to refund along with interest on entire amount paid to the respondent?





- V. Whether the respondent is liable to pay compensation to the complainant for delay in delivery of the apartment?
- VI. Whether the respondent is liable for additional burden of GST imposed on the complainant due to inordinate delay in handing over the possession?

11. Relief sought

- I. The complainant wishes to withdraw from the project and demands refund of the entire amount paid till date.
- II. To direct the respondent to pay interest @24% for delay.
- III. To direct the respondent to pay Rs.1,00,000/- for legal fee and mental agony suffered by the complainant.
- IV. To direct the respondent to provide compensation for loss of opportunity cost.
- V. To pass any such order as the authority deems fit and proper.





Respondent's reply

12. The respondent submitted that the complainant is a wilful and persistent defaulter who has failed to make payment of the sale consideration as per the payment plan opted by the complainant.
13. The respondent submitted that prior to making the booking, the complainant conducted extensive an independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the apartment in question.
14. The project of the respondent is registered with Haryana RERA and as per the registration certificate, the project is expected to be completed by December, 2018.
15. It is also evident that the construction has been progressing at a rapid pace and that the apartment is nearing completion. At present the project is more than 90 % complete and the respondent has invested its own funds for constructing the same as there are a number of allottees who are defaulters including the complainant herein due to which also there has been some delay in the project.





16. The respondent further submitted that the complainant has sought to justify his failure to pay demanded instalments on the false and specious plea of his "sensing" delay in the project. It is respectfully submitted that it is evident from the demand letters sent to the complainant that the construction was progressing as per schedule. The buyer's agreement itself does not stipulate offer of possession prior to 36 months plus grace period of 5 months, from the date of start of construction. Construction commenced on 25.6.2013. Hence, there was no cogent or plausible reason for the complainant to have formed a premature and baseless conclusion that the project would be delayed. There is absolutely no justifiable reason for the complainant to have defaulted in payment of instalments.
17. The respondent further submitted that consequent to the coming into force of the Act, after the project in question has been registered under the same, the date of completion of the apartment stands extended to December 2018. It is only after December 2018, that if the construction of the apartment has not been completed, subject to force majeure conditions or any extension of registration under the Act, can the complainant make any complaint seeking refund,



compensation etc. At this point in time, the complaint is highly premature.

Determination of issues

18. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

19. In respect of the **first, second and third issue**, the authority came across that as per clause 14(a) of buyer's agreement which is reproduced below:

"14(a) Possession

The company has to hand over possession of the said apartment to the allottee within a period of 36 months from the date of start of construction with 5 months grace period."

Accordingly, the due date of possession was 14.11.2016 so there has been delay of 2 years 2 months 8 days (approx.).

20. With respect to the **fourth issue**, refund cannot be allowed as OC has been applied for and the revised completion date is 31.12.2018. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 16(a) of 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."

The promoter is liable under section 18(1)(a) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1)(a) is hereby allowed.

21. With respect to the **fifth issue**, as held in **Simmi Sikka v/s Emaar MGF**, this authority does not have jurisdiction to entertain the claims regarding compensation however, the complainant reserves his right to seek compensation from





the promoter for which he shall make separate application to the adjudicating officer, if required.

22. With respect to the **sixth issue**, this authority is not the correct forum to adjudicate upon this dispute and the complainant is at liberty to approach the appropriate forum.

Findings of the authority

23. **Jurisdiction of the authority-** The project "Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram. 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 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~~ ^{residential} in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.
24. 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



Corrected vide order
dated 18/07/19.



adjudicating officer if pursued by the complainant at a later stage.

Decision and directions of the authority

25. 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) Counsel for the respondent has stated at bar that they have applied for grant of occupation certificate, copy of application is placed on record.
- (ii) The case of the complainant is that he had booked a unit no. GGN-09/0502, 5th floor, building no.9, "Gurgaon Greens" in Sector 102, Gurugram and buyer's agreement to this effect was executed inter-se the parties on 10.5.2013. By virtue of clause 14(a) of the buyer's agreement, the possession of the booked unit was to be handed over the complainant within a period of 36 months from the date of start of construction i.e. 14.6.2013 + 5 months grace period which comes out to be






14.11.2016. However, the respondent has given the revised date of possession as 31.12.2018 as per RERA registration.

- (iii) Since the respondent has miserably failed to hand over the possession of the booked unit to the complainant in time, complainant, by virtue of section 18(1) of Real Estate (Regulation and Development) Act, 2016 is entitled for delayed possession charges at the prescribed rate of interest i.e. @ 10.75% per annum.
- (iv) Accordingly, the respondent is directed to pay delayed possession charges @ 10.75% per annum to the complainant till the actual offer of possession.
- (v) The interest accrued so far shall be paid to the complainant within a period of 90 days from the date of this order and thereafter on or before the 10th of subsequent month.



26. Complaint stands disposed of in above terms.
27. File be consigned to registry.
28. Detailed order follows.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.1.2019

Corrected judgement uploaded on 18.07.2019



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 22.01.2019
Complaint No.	543/2018 Case titled as Brig. A.K. Singh Vs Emaar MGF Land Ltd.
Complainant	Brig. A.K. Singh
Represented through	Mr Sanchit Kumar, counsel for the complainant
Respondent	Emaar MGF Land Ltd.
Respondent Represented through	Mr Ketan Luthra, alongwith Mr. Ishaan Dang, counsel for the respondent
Last date of hearing	12.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Counsel for the respondent has stated at Bar that they have applied for grant of occupation certificate, copy of application is placed on record.

The case of the complainant is that he had booked a unit No.GGN-09/0502, 5th Floor, Building No.9, "Gurgaon Green in Sector 102, Gurugram and BBA to this effect was executed inter-se the parties on 10.05.2013. By virtue of clause 14(a) of the BBA, the possession of the booked unit was to be handed over the complainant within a period of 36 months from the date of start of construction i.e. 14.06.2013 + 5 months grace period which comes

out to be 14.11.2016. However, the respondent has given the revised date of possession as 31.12.2018 as per RERA registration.

Since the respondent has miserably failed to hand over the possession of the booked unit to the complainant in time, complainant, by virtue of Section 18(1) of Real Estate(Regulation and Development) Act, 2016 is entitled for delayed possession charges at the prescribed rate of interest i.e. @ 10.75% per annum.

Accordingly, the respondent is directed to pay delayed possession charges @ 10.75% per annum to the complainant till the actual offer of possession.

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Samir Kumar
(Member)
22.01.2019

Subhash Chander Kush
(Member)

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Limited on account of violation of clause 14(a) of the buyer's agreement executed on 10.5.2013 for unit no. GGN-09-0502 on 9th floor, tower/building no. 27, admeasuring super area of 1650 sq. ft. in the project "Gurgaon Greens" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 10.5.2013 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.

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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 complainant and the respondent. A buyer's agreement dated 10.5.2013 is available on record for unit no. GGN-09-0502 on 5th floor, tower/building no. 9, admeasuring super area of 153.29 sq. ft' according to which the possession of the

aforesaid unit was to be delivered by 14.11.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed on behalf of the respondent and has been perused. The case came up for hearing on 13.9.2018, 12.12.2018 and 22.1.2019.

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7. The complainant entered into buyer's agreement with the respondent on 10.5.2013 for the above-mentioned unit for Rs.1,13,96,750/-. The complainant made timely payments as per the payment plan and has made 100% payment already.
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9. The delivery of the apartment was to be made before the coming in force of the GST Act, 2016 so the complainant is not liable to incur the burden of GST. Also, as per section 19(6) of Real Estate Regulatory Act, the complainant has fulfilled his obligations and is not liable for breach of its terms.

10. Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether the respondent has breached the mandate of RERA Act as well as agreement by not completing the construction of the said unit as per payment plan?
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Respondent's reply

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The promoter is liable under section 18(1)(a) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1)(a) is hereby allowed.

21. With respect to the **fifth issue**, as held in **Simmi Sikka v/s Emaar MGF**, this authority does not have jurisdiction to entertain the claims regarding compensation however, the complainant reserves his right to seek compensation from



the promoter for which he shall make separate application to the adjudicating officer, if required.

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Findings of the authority

23. **Jurisdiction of the authority**- The project "Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram. 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 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.

24. 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 complainant at a later stage.

Decision and directions of the authority

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14.11.2016. However, the respondent has given the revised date of possession as 31.12.2018 as per RERA registration.

- (iii) Since the respondent has miserably failed to hand over the possession of the booked unit to the complainant in time, complainant, by virtue of section 18(1) of Real Estate (Regulation and Development) Act, 2016 is entitled for delayed possession charges at the prescribed rate of interest i.e. @ 10.75% per annum.
- (iv) Accordingly, the respondent is directed to pay delayed possession charges @ 10.75% per annum to the complainant till the actual offer of possession.
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26. Complaint stands disposed of in above terms.
27. File be consigned to registry.
28. Detailed order follows.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 22.1.2019

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