

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

Complaint No. : 527 of 2018
Date of first hearing : 11.09.2018
Date of Decision : 17.01.2019

Sh. Sanjay Jain
R/o T-2/802, Vipul Belmonte, Sector 54,
Golf course road, Gurugram **...Complainant**

Versus

M/s Emaar MGF Land Limited
At: ECE House, 28 Kasturba Gandhi Marg,
New Delhi-110001
Also at: Emaar MGF Business Park,
Mehrauli-Gurugram Road,
Sikanderpur Chowk, Sector 28,
Gurugram-122002 **...Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Sh. Sanjay Jain **Complainant in person**
Sh. Sandeep Choudhary **Advocate for the complainant**
Sh. Ketan Luthra **Authorised representative on behalf of respondent company**
Shri Ishaan Dang **Advocate for the respondent**



ORDER

1. A complaint dated 11.07.2018 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 Sh. Sanjay Jain, against the promoter M/s Emaar MGF Land Limited on account of violation of clause 14(a) of the buyer's agreement executed on 01.04.2013 for unit no. GGN-27-0902 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. 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-27-0902, 9 th floor, tower no. 27
4.	Project area	13.531 acres
5.	Unit area	1650 sq. ft.
6.	Registered/ not registered	36(a) of 2017 dated 03.09.2017
7.	DTCP license	75 of 2012 dated 31.07.2012
8.	Date of booking	09.02.2013 (as per complaint)
9.	Date of buyer's agreement	01.04.2013
10.	Total consideration	Rs. 1,41,25,843/- (as per statement of account dated 16.05.2018 in annexure C2, pg 66 of the



		complaint)
11.	Total amount paid by the complainant	Rs. 43,34,916/- (as per statement of account in annexure C2, pg 66 of the complaint)
12.	Payment plan	Construction linked plan
13.	Date of delivery of possession	25.11.2016 Clause 14(a)- 36 months from date of start of construction, i.e. 25.06.2013 (on start of PCC for foundation, as per statement of account dated 16.05.2018 in annexure C2, pg 66 of the complaint) + 5 months grace period i.e. 25.11.2016
14.	Revised date of completion as per RERA registration certificate	31.12.2018
15.	Delay of number of months/ years upto 17.01.2019	2 years 1 month (approx.)
16.	Penalty clause	Clause 16(a)- Rs. 7.50/- per sq. ft. per month of the super area



3. 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 01.04.2013 is available on record for unit no. GGN-27-0902 on 9th floor, tower/building no. 27, admeasuring super area of 1650 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 25.11.2016. 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.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 11.09.2018, 11.12.2018 and 17.01.2019. The reply has been filed on behalf of the respondent and has been perused.

Facts of the complaint

5. On 09.02.2013, the complainant booked a unit in the project named "Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram by paying an advance amount of Rs. 7,50,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing no. GGN-27-0902 on 9th floor, tower/building no. 27.



6. On 01.04.2013, buyer's agreement was entered into between the parties wherein as per clause 14(a), the possession should have been offered within 36 months from date of start of construction, i.e. 25.06.2013 (on start of PCC for foundation) + 5 months grace period i.e. by 25.11.2016. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite

payments. The complainant made payments amounting to a total of Rs. 43,34,916/-.

7. The complainant submitted that he booked the unit in question believing in the representations of the respondent company. However, the respondent did not start the construction up till 25.06.2013 when he raised a demand on start of construction. But when the complainant visited the site they did not find any construction activity and thereafter, he started enquiring about the project and the respondent company and it was revealed that the respondent company has certain internal disputes among its Indian and foreign partners and the project is going on a slow place and it is highly uncertain as to which of the entities shall proceed with the project. It is submitted that the complainant panicked with this news and kept following the construction activity. Further, despite being ready and willing to pay the due amounts did not pay the same as the construction was neither as per the agreement nor as per the assurances given by the respondent company's representatives.



8. The complainant submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project

and no appropriate action was taken to address the concerns and grievances of the complainant. In such circumstances, the complainant no option against the economic might and superior position of the respondent company could only stop the future payments but the respondent despite their failures are levying charges against the complainant @ 24% p.a. in the most unjustified manner on having failed to honour their part of obligations of construction.

9. The complainant submitted that the delayed as well as non performed obligations of construction by the respondent are even evident from the manner in which the respondent has raised demands of amounts due as per the recent statement of account as on 01.05.2018. It is quite evident that from the start of PCC for foundation on 25.06.2013, the respondent has raised the subsequent demand of casting of ground floor slab only on 14.10.2014, i.e. more than 14 months after and thereafter demand against casting of 3rd floor was raised on 29.06.2015, which on the face of it is highly doubtful. And thereafter there have been no demands from 01.07.2015 till 20.02.2017 which shows that the respondent abandoned the construction of the project for more than 2 years and hence the respondent miserably failed to perform its agreed obligations.



10. The complainant submitted that despite his readiness and willingness to perform his obligations and having paid a substantial amount already, as on date also, the construction is at a very slow pace and it shall take at least 2-3 years time in completion of the project.
11. The complainant submitted that the cause of action lastly arose on 16.05.2018 when the complainant confronted the respondent company's representatives that since the respondent company abusing its dominant position have failed to honour their obligations and that the money of the complainant be returned along with interest and compensation but the representatives flatly denied to refund the amounts and instead issued the statement of account showing huge outstanding interest and gave various proposals for payment plans.

12. Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether the respondent constructed the project in accordance with the agreed terms?
- II. Whether the complainant is entitled to refund of the amount paid to the respondent company along with interest?



13. Relief sought

1. Direct the respondent to refund a sum of Rs. 43,34,916/- along with interest @ 24% per annum from the date when payments were made to refund.

Respondent's reply

14. 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.
15. 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.
16. The respondent submitted that demand letter dated 29.5.2015, notices dated 3.6.2015, 3.7.2015, 3.8.2015, 3.9.2015, 21.10.2015, 01.12.2015, 11.01.2016, 11.02.2016, 15.03.2016, notice dated 1.3.2017, demand letter dated 6.3.2017, reminder dated 9.5.2017, notice dated 2.4.2017, letter dated 17.4.2017 demanding VAT charges, demand



letter dated 10.7.2017, 9.10.2017, 10.12.2017, 5.1.2018, notice dated 006.2.2018 were made by the respondent company and the same have been annexed in the file along with reply.

17. The respondent submitted that after 06.07.2013, no further payment had been made by the complainant although the respondent has been repeatedly addressing demand notices, reminders etc, calling upon him to make payment in accordance with the payment plan. 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.



18. 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. The said construction commenced on 25.06.2013. 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.

19. 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.



20. The respondent submitted that the complainant is only an investor and not a consumer and the complaint is liable to be dismissed in this ground alone. This is evident from the fact that the complainant's wife had booked another apartment

bearing no. GGN-27-0901 in the same project and in respect of which complaint no. 528/2018 is pending before this authority. Thus, the complainant is not an allottee under the Act but an investor and thus the present complaint is not maintainable at his behest.

Determination of issues

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:

21. In respect of the **first issue** raised by the complainant, as per clause 14(a) of the buyer's agreement dated 01.04.2013, the due date of handing over of possession is 25.11.2016. There is a delay of approximately 2 years and 1 month. However, as per the statement of account dated 19.07.2018 annexed with the respondent's reply, after the completion of external plaster, demand on laying internal flooring was issued on 27.01.2018, much later than the due date of handing over possession. This shows that the respondent company failed in constructing the project as per agreed terms.
22. In respect of **second issue** raised by the complainant, as per the RERA registration certificate of the respondent company,



the respondent company has undertaken to complete the project by 31.12.2018. However, the counsel for the respondent has submitted that 90% of the construction work is complete and they shall apply for occupation certificate in the month of April 2019. They have also applied for an extension of the revised date for completion of the project. Keeping in view the status of the project and the interest of other allottees, it will not be just to allow refund at this stage as the project is nearing completion and the development of the project is at advanced stage. However, if the builder/respondent fails to offer possession by 31.07.2019 to the complainant, in that case, the complainant shall be entitled to withdraw from the project and shall be entitled to get back his deposited amount alongwith prescribed rate of interest i.e.10.75% per annum.



23. The complainant made a submission before the authority under section 34 (f) of the Act to ensure compliance/obligations cast upon the promoter as mentioned above.
24. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

25. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

26. **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.

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.



27. As per clause 14 (a) of the agreement, the possession of unit was to be handed over within a period of 36 months from the date of start of construction i.e. 25.6.2013 (on start of PCC for foundation) + 5 months grace period, which comes out to be 25.11.2016. The complainant has already paid a sum of Rs.43,34,916/- against a total sale consideration of Rs.1,41,25,843/- to the respondent. Till today the possession has not been offered to the complainant by the respondent, as such complainant is entitled to seek refund of the deposited amount along with interest at the rate of 10.75% per annum. However, the counsel for the respondent has submitted that 90% of the construction work is complete and they shall apply for occupation certificate in the month of April 2019. They have also applied for an extension of the revised date for completion of the project. Keeping in view the facts and circumstances of case and the contentions raised by the complainant, if the builder/respondent fails to offer possession by 31.07.2019 to the complainant, in that case, the complainant shall be entitled to withdraw from the project and shall be entitled to get back his deposited amount alongwith prescribed rate of interest i.e.10.75% per annum.



Decision and directions of the authority

28. 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:

- (i) If the builder/respondent fails to offer possession by 31.07.2019 to the complainant, in that case, the complainant shall be entitled to withdraw from the project and shall be entitled to get back his deposited amount alongwith prescribed rate of interest i.e.10.75% per annum.
- (ii) Since the respondent has failed to deliver the possession, as such the respondent will not charge any interest from the buyer/complainant on delayed payment, if any.

29. The complaint is disposed of accordingly.

30. The order is pronounced.

31. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 17.01.2019