

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

Complaint no.	:	2513 of 2022
Date of filing complaint:		01.06.2022
First date of hearing	:	08.09.2022
Date of decision	:	05.09.2023

Sh. Sandeep Fogaat R/O: T18-0601, Emaar Gurgaon Greens, Sector 102	Complainant
Versus	
Emaar Mgf Land Ltd. R/O: Emaar Mgf Land Ltd. Ece House, 28 Kasturba Gandhi Marg, New Delhi I 10001	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Complainant in person	Complainant
Sh. Ashwariya Hooda (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 under the

provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102 Gurugram
2.	DTCP License no. & validity status	75 of 2012 dated 31.07.2012 upto 30.07.2020
3.	Name of licensee	Kamdhenu Projects Pvt. Ltd. And 1 other
4.	RERA registered / not registered	Registered bearing no. 36(a) of 2017 dated 05.12.2017 upto 31.12.2018
5.	Unit no.	18-1061 tower 18 (Page no. 12 of the complaint)
6.	Unit admeasuring	1650 sq. ft. (Page no. 12 of the complaint)
7.	Allotment Letter	23.11.2018 (Page 36 of reply)
8.	Date of execution of flat buyer agreement	30.01.2019 (Page 40 of reply)
9.	Possession Cluse	7(a)

		<p>Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the Unit to the Allottee. Subject to Force Majeure and fulfilment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan, Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority.</p> <p>(Emphasis supplied).</p>
10.	Due date of delivery of possession	31.12.2018
11.	Total sale consideration	Rs 1,11,46,761 /- (As alleged by the complaint)
12.	Total amount paid by the complainant	Rs 1,11,46,761 /- (As alleged by the complaint)
13.	Occupation certificate	05.12.2018 (Page 106 of reply)
14.	Offer of possession	24.05.2019 (Page 109 of the reply)

B. Facts of the complaint

3. That the project in question is known as Gurgaon Greens situated at Sector 102, Gurgaon, Haryana. The complainant booked a 3BHK flat bearing unit

no. GGN-18-0601 super area admeasuring 1650 Sq. Ft. and the carpet area admeasuring 1022.58 Sq. Ft. With 1 car parking space under Subvention Scheme and the sale consideration of the said flat is Rs. 1,11,46,761/- respondent named as Emaar India Limited on dated 26.10.2018 in its project named as Gurgaon Greens situated at Sector-102, Gurugram and in lieu of the same the complainant has paid a sum of ₹Rs. 1,00,000/- to the respondent as a booking amount. As per the BBA the possession date of the said apartment was 31.12.2018. Unit was supposed to be delivered by 31.12.2018 but the respondent gave the interim possession of the said unit to the complainant on dated 03.07.2019 which is 6 months and 3 days delay in possession. The respondent misguided the complainant at every single step. The respondent handed over the interim possession of the said unit to the complainant with a delay of 6 months and 3 days.

4. That at the time of interim possession, the complainant was living outside India and interim possession was taken by SPA holder. As per the interim possession offer letter the complainant has paid 2 years advance CAM charges amounting Rs. 1,70,557/-. The respondent denied allocating a car parking initially and told to allocate at the time of final possession in March 2021. After several email the respondent allocated the parking B1-16-MLCP. After taking the interim possession, the complainant came to know that allocated car parking is far away from their unit and near to sewage treatment plant. The complainant requested to change the parking allocation as many nearby parking slots were available in podium. But the respondent denied the multiple requests. The complainant asked to provide

the policy for allocating parking many times, but the respondent denied providing any such information. Later the complainant came to know that many other apartments parking were allocated nearby their flats. The owner of unit no. 18-602 on the same floor of the complainant is allocated stilt parking in the same tower no. 18. The complainant received an email on 10 May 2022 to pay additional cost of Rs. 4,50,000/- plus 18% GST to change the parking slot. The respondent earned huge money in parking allocation while the complainant and most of the buyers purchased the flat inclusive of 1 car parking space. The respondent allocated parking slots as per their monopoly and earned huge money in allocation of parking.

5. That at the time of interim possession, the complainant asked the respondent about the execution of conveyance deed of the apartment. The respondent said that conveyance deed will be executed after final payment in March 2021. The respondent told that as the complainant has filed case in HARERA (case no.4457 of 2020), they will not execute the conveyance deed. In 2019 the stamp duty was 4% while in 2021 it was increased to 5% for joint owners (Male & Female) and put an extra financial burden on the complainant
6. That, the case in HARERA was decided on 22.07.2021 and uploaded on 26.10.2021 on website. The complainant and respondent made and executed settlement agreement on 16.11.2021 and the respondent paid Rs. 2,84,000/- to the complainant for delay possession compensation. The complainant has requested many times to change the car parking and to execute the conveyance deed, but the respondent didn't entertain. The

complainant Mr. Sandeep Fogaat was elected President of the Gurgaon Greens Condominium Association on 09 .01.2022 and filed case against the respondent in HARERA for issues of condominium association and the HARERA court has issued an interim order to provide handover to the elected governing body. After that the respondent started harassing the complainant sending legal notices. A legal notice was sent on 07.04.2022 for defamatory suit of ₹10 Crores to the complainant. The respondent again sent another legal notice on 19.05.2022 for eviction of the flat to the complainant.

7. The complainant has already paid full amount in April 2021 and took possession in July 2019 and are living in the apartment from July 2019 and are also paying maintenance bills from July 2019. The complainant has not made any alteration in the balconies. The complainant has just installed a temporary mosquito net as the nearby area is mostly open and house of mosquitoes. The complainant has already paid full amount in April 2021 and took possession in July 2019. The respondent is harassing the complainant intentionally and misusing his power. The complainant and their family are in tremendous mental stress and are concerned for their safety.
8. That the complainant has filed the present complaint as the respondents are fully liable to pay/reimburse the payment claimed by the complainant in the form of interest along-with the delay possession charges for the losses incurred by the complainant due to the wrongful and fraudulent acts of the respondents.

A C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct to the respondent to allocate a suitable parking without any extra cost and also direct the respondent to provide the parking allocation policy of the project.
 - ii. Direct the respondent to execute conveyance deed in favour of the complainant.
10. 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 by the respondent

The respondent has contested the complaint on the following grounds.

11. That the present complaint is based on an 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 30.01.2019, settlement cum amendment agreement dated 16.11.2021 as well as the indemnity cum undertaking executed by the complainant at the time of taking interim possession.
12. That the present complaint raises several such issues which cannot be decided in summary proceedings. 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 civil court. The present complaint deserves to be dismissed on this ground alone.

13. That the complainant had approached the respondent and expressed their interest in booking an apartment in the residential group housing project being developed by the respondent known as "Gurgaon Greens" situated in Sector 102, Village Dhankot, Tehsil & District Gurgaon. The complainant was provisionally allotted apartment no GGN-18-0601, admeasuring 153.29 sq mtrs or 1650 sq ft approx. super area through the provisional allotment letter dated 23.11.018. The complainant had opted for a subvention payment plan. The buyer's agreement was executed between the complainant and the respondent on 30.01.2019.
14. That the complainant has opted for a subvention payment plan in which payment was required to be made in four instalments. The first instalment was payable upon booking, the second instalment within 30 days from the issuance of the allotment letter and buyer's agreement, third instalment was payable by 01.03.2019 or on intimation of possession, whichever was earlier and the final instalment by 01.03.2021.
15. That the respondent completed construction of the tower in which the apartment in question is situated and applied for the occupation Certificate in respect thereon on 13.04.2018. The occupation certificate was issued by the competent authority on 05.12.2018. Upon receipt of the occupation certificate, the respondent offered possession of the apartment in question to the complainant vide letter dated 24.05.2019. The complainant was given the option to either pay the entire balance sale consideration as per the buyer's agreement including the stamp duty, registration charges and other amounts payable as per the buyer's agreement and complete the

A

documentation and formalities to enable the respondent to hand over possession of the unit to the complainant. Alternatively, the complainant was offered interim possession of the apartment for fit outs. The complainant opted to take interim possession of the unit. The undertaking dated 06.06.2019 executed by the attorney of the complainant is placed on the file.

16. That the complainant agreed and undertook that the interim possession was limited possession for the purpose of undertaking fit outs and that the same shall not be deemed to be final possession or transfer of title in favour of the complainant in any manner. The complainant recognized and admitted the respondent to be the lawful owner of the unit until registration of the conveyance deed in their favour. In view thereof, the complainant undertook to vacate the unit immediately in the event of default under the buyer's agreement or when called upon to do so by the respondent.
17. That clause 11(f) of the buyer's agreement enumerating the rights and obligations of the allottee, provides, inter alia, that the complainant cannot undertake any construction in the unit which has the effect of causing structural damage or encroachment to the structure of the building. The complainant cannot change the colour and structure of the external façade of the unit/building/project/group housing colony. alterations in the unit without the permission of the respondent. The complainant is also required to obtain the prior approval and consent of the respondent before undertaking any such construction/alteration.



18. That in violation of the Indemnity cum undertaking executed by the complainant at the time of taking possession and in violation of the terms and conditions of the buyer's agreement, the complainant illegally and unauthorizedly carried out structural alterations in the balcony of the unit, without seeking the prior consent of the respondent. Moreover, the alterations are of such a nature that have altered the façade of the building and also endangered the structural safety of the building and the units of other allottees in the building. Despite repeated requests, the complainant failed to rectify their default and restore the unit to its original form.
19. That thus the respondent was constrained to issue a legal notice dated 19.05.2022 terminating the allotment and calling upon the complainant to hand over vacant possession of the unit to the respondent as well as to pay a sum of Rs 10 lacs towards cost of rectification of the unauthorized construction carried out by the complainant. The issues involved in the dispute between the complainant and the respondent pertain to cancellation of permissive possession for the limited purposes of fit outs and violation of the undertaking given by the complainant and the same are beyond the purview of RERA and this Hon'ble Authority does not have the jurisdiction to adjudicate the same.
20. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

A

The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E. II Subject matter jurisdiction

22. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

23. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

A

decided by the adjudicating officer if pursued by stage.

F. Findings on the relief sought by the complain:

Relief sought by the complainant:

F.1 Direct the respondent to allocate a suit:

extra cost and also direct the respondent to provide the parking allocation policy of the project.

24. In the present complaint, the complainant was allotted the unit vide allotment letter dated 23.11.2018. The buyer's agreement was executed between the parties on 30.01.2019. According to the possession clause 7(a) the respondent was directed to offer the unit to the complainant on or before 31.12.2018. The total sale consideration of the unit was Rs. 1,11,46,761/- and the complainant has paid an amount of Rs. 1,11,46,761/-
25. The occupation certificate for the project was obtained on 05.12.2018 and therefore the possession was offered to the complainant on 24.05.2019. The complainant was allotted car parking and the same was far away from their unit and near to sewage treatment plan. The respondent stated that the complainant has made alterations in the unit allotted to them while the same was denied by the complainant. The complainant has just installed a temporary mosquito net as the nearby area is mostly open and house of mosquitoes.
26. The complainant has filed the present complaint asking the respondent to allocate a suitable car parking charges without any extra cost. From the facts mentioned above the complainant has already been allotted the car parking and if now the complainant is not satisfied with the location, he may

A

approach the Adjudicating officer for compensation of the same as per section 14 of the Act which is reproduced as below:

Section 14: Adherence to sanctioned plans and project specifications by the promoter

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

27. The complainant seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors., has held that an allottees is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The

adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F.II Direct the respondent to execute conveyance deed in favour of the complainant.

28. The complainant(s) are seeking relief of the execution of conveyance deed. Clause 8.2 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

7(e) Execution of Sale/ Conveyance Deed

Subject to the Allottee fulfilling all its responsibilities stipulated herein and taking the possession of the Unit in accordance with the Possession Notice, the Company shall prepare and execute a Conveyance Deed to transfer the title of the said Unit in favour of the Allottee. The Company shall notify the date(s) for execution and registration of the Conveyance Deed to the Allottee. The Allottee agrees and undertakes to make itself available and present before the Sub-Registrar for this purpose on the date(s) communicated to it for this purpose by the Company. At the time of execution of the Conveyance Deed, the Company shall handover lawful, vacant, peaceful, physical possession of the Unit and an undivided proportionate interest in the Common Areas to the Allottee

29. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of the buyers' agreement and the complainant(s) not being in default under any provisions of the agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter.

30. Section 17 (1) and proviso of the Real Estate Regulation and Development Act, 2016 is reproduced below:

Section 17: - Transfer of Title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws. Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

31. The authority is of view that promoter is under an obligation to get conveyance deed executed in favour of the complainant(s) as per the section 17(1) of the Act, 2016. Since the possession of the allotted unit has already been offered to the allottee(s) on 24.05.2019 after obtaining occupation certificate on 05.12.2018, and full consideration money has already been paid so the respondent is directed to get the conveyance deed of the allotted unit executed within a period of 60 days from the date of this order as per section 17(1) of the Act of 2016.
32. The complainant shall submit the requisite stamp papers within 30 days. Further regarding alleged internal un-authorized changes / variations made in the flat by the complainant, if any, matter may be taken up with concerned DTP Enforcement for taking action under section 12 of the Act no. 41 of 1963.

H. Directions of the authority

33. 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 execute the conveyance deed within a period of 60 days from the date of this order as per section 17(1) of the Act of 2016.

34. Complaint stands disposed of.

35. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2023

HARERA
GURUGRAM