

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

Complaint no.: 4685 of 2023
Date of 02.08.2024
pronouncement
of order :

1. Priyanka Khanna
2. Sarabdeep Khanna

Both RR/o: - Flat no. 002, Tower - 7, Unitech the
palms, South City - 1, Gurugram, Haryana - 122002

Complainants

Versus

M/s Emaar MGF Land Ltd.

Office address: 306-308, 3rd floor, square one, C-2 ,
District Centre, Saket, New Delhi - 110017

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Jagdeep Kumar
Shri Dhruv Rohatgi

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Gurgaon Greens, Sector 102, Gurugram, Haryana
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	75 of 2012 dated 31.07.2012
	Valid till	30.07.2020
	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
5.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
	HRERA registration valid up to	31.12.2018
	HRERA extension of registration vide	01 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Unit no.	GGN-04-0501, 5 th floor, tower no. 4



		[annexure P2, page 27 of complaint]
7.	Unit measuring (super area)	1650 sq. ft.
8.	Provisional allotment letter dated	24.05.2013 [annexure P1, page 20 of complaint]
9.	Date of execution of buyer's agreement	27.06.2013 [annexure P2, page 24 of complaint]
10.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p>Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within <u>36 (Thirty Six) months from the date of start of construction.</u> subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a <u>grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</u></p> <p>(Emphasis supplied)</p> <p>[annexure P2, page 70 of reply]</p>



11.	Date of start of construction as per statement of account dated 14.10.2023 at page 76 of complaint	28.06.2013
12.	Due date of possession	28.11.2016 [Note: Grace period is included]
13.	Total consideration as per statement of account dated 14.10.2023 at page 75 of complaint	Rs.97,49,566/-
14.	Total amount paid by the complainants as per statement of account dated 14.10.2023 at page 76 of complaint	Rs. 97,70,815/-
15.	Occupation certificate	16.07.2019 [annexure R7, page 146 of reply]
16.	Offer of possession	18.07.2019 [annexure R10, page 153 of reply]
17.	Unit handover letter dated	11.03.2020 [annexure R12, page 170 of reply]
18.	Conveyance deed executed on	15.05.2020 [annexure R13, page 174 of reply]
19.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 14.10.2023 at page 75 of complaint	Rs. 4,82,643/-

B. Facts of the complaint

3. The complainants have made the following submissions: -



- a. That somewhere in the month of January 2012, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in the proposed project of respondent, which the Respondent was going to launch the project namely "**Gurgaon Greens**" in the Sector-102, Gurugram. The complainants while relying upon those assurances and believing them to be true, they booked a residential flat bearing no. 0501 on 5th Floor in Tower - 04 in the proposed project of the respondent measuring approximately super area of 1650 sq. ft. in the township to be developed by respondent.
- b. That approximately after one year on 24/05/2013 the respondent issued a provisional allotment letter. The respondent exorbitantly increased the net consideration value of flat by adding EDC, IDC and PLC and when they opposed the unfair trade practices of respondent they inform that these are just the government levies and they are as per the standard rules of government. Thereafter on 27th June 2013 builder buyer agreement was executed on similar illegal, arbitrary, unilateral and discriminatory terms narrated by respondent in provisional allotment letter.
- c. That as per the clause - 14 of the said buyer's agreement dated 27th June 2013, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 36 months with a Five (5) months grace period thereon from the date of start of construction i.e., 28.06.2016



- d. That from the date of booking 30th January 2012 and till 18th July 2019, the respondent had raised various demands for the payment of installments on complainants towards the sale consideration of said flat and the complainants have duly paid and satisfied all those demands as per the buyers agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the buyers agreement.
- e. That as per annexure III (schedule of payment) of buyer's agreement the sales consideration for said flat was Rs. 89,72,925/- That the complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement issued by the respondent, upon the request of the complainant, they have already paid Rs. 97,49,566/- towards total sale consideration. Although the respondent charges Rs. 1,12,576/- extra from complainant. As on 18th July 2019 project was delayed of around three years. At the time of offer of possession builder did not adjusted the penalty for delay possession as per RERA Act 2016. The respondent did not even allow complainants to visit the property at "Gurgaon Greens" before clearing the final demand raised by respondent along with the offer of possession. The respondent handover the physical possession of flat on 11th March 2020.
- f. That the cause of action accrued in favour of the complainants and against the respondent on 30.01.2012 when the complainants had booked the said flat and it further arose when respondent failed

/neglected to deliver the said flat on proposed delivery date. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants:

4. The complainants have sought following relief:

- a. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession;
- b. Direct the respondent to return Rs. 1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.
- c. Direct the respondent to return entire amount paid as GST Tax by complainants between 01.07.2017 to 28.12.2018.
- d. Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs 1,69,524/- in favour of Respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017). and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.
- e. Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:



- a. The complainants have got no locus standi or cause of action to file the present complaint. 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 27.06.2013, as shall be evident from the submissions made in the following paras of the present reply.
- b. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. They have been enjoying the said unit without any demur/protest. That the possession was offered to the complainants on 18.07.2019 and the unit was handed over on 11.03.2020 and thereafter, executed a conveyance deed dated 15.05.2020. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the conveyance deed and the completion of all obligations of the respondent, they chose to remain silent for such a long period and have approached this authority to extort money. The said allegation is nothing but an after thought. The present complaint is not maintainable in view of the fact that the conveyance deed has already been executed and the respondent is absolved of all or any liability towards delay possession charges, even in terms of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016.

- c. That the complainants has even accorded his satisfaction and non claim of compensation in the recitals of the conveyance deed dated 15.05.2020. It has specifically stated that:-

“13. That the actual, physical, vacant, possession of the said Apartment has been handed over to the Vendee and Vendee hereby confirms, taking over possession of the said Apartment / parking space(s) from the Vendors after satisfying himself/ herself that the construction as also the various installations like electrification, work, sanitary fittings, water and sewerage connection, etc. have been made and provided in accordance with the drawings, designs and specifications as agreed and are in good order and condition and that the Vendee is fully satisfied in this regard and has no complaint or claim in respect of the area of the said Apartment, any item of work, material, quality of work, installation, compensation for delay, if any, with respect to the said Apartment etc, therein.”

- d. Thus, the complainants cannot now be allowed to retract from their affirmations and claim more compensation, that has already been granted to him. The complainants were fully satisfied by the compensation of Rs. 89,749/- credited on account of Anti-profiting and Rs. 3,92,610/- credited on account of delay in IOP, by the respondent to the complainants on 12.04.2019 and 18.07.2019 respectively and never raised any grievance to the same.
- e. That the instant complaint is barred by limitation. The complainants have received the offer of possession on **18.07.2019**, on which the cause of action for claiming the delay compensation has arisen. The present complaint has been filed

on **04.10.2023**, after a gross delay of more than 4 years. The complainants cannot be allowed to sleep over its rights indefinitely and wake up at any time as he pleases.

- f. That it is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 11.02.2019. The occupation certificate was thereafter issued by the concerned statutory authority in favour of the respondent dated 16.07.2019.
6. 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 and submissions made by the complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial jurisdiction

8. 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

9. 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;

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.”

10. 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 decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings regarding relief sought by the complainants.

F.I. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

11. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

12. As per clause 14(a) of the buyer's agreement dated 27.06.2013, provides for handover of possession and is reproduced below:

14. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and barring force majeure conditions, subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **36 (Thirty Six) months from the date of start of construction**, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a **grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.***

13. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and



uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

14. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of within 36 months from the date of start of construction plus grace period of 5 months for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project. The authority calculated due date of possession according to clause 14 of the agreement dated 27.06.2013 i.e., within 36 months from from the date of start of construction. The period of 36 months expired on 28.06.2016. As per the settled proposition the clause for grace period is conditional accordingly, this grace period of 5 months be allowed to the promoter at this stage
15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as



one of the reliefs. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 02.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
18. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of



the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the agreement executed between the parties on 27.06.2013, the possession of the subject apartment was to be delivered within thirty six months from the date of start of construction. The period of 36 months expired on 28.06.2016. As far as grace period of 5 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 28.11.2016. The respondent has offered the possession of the subject apartment on 18.07.2019 after receiving OC from the competent authority on 16.07.2019. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 28.11.2016 till offer of possession(18.07.2019) plus two months i.e., 18.09.2019 or actual handover of possession(11.03.2020) whichever is earlier at prescribed rate i.e., 11% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules after deduction of the delayed compensation already paid by the respondent.

F.II.Direct the respondent to return Rs. 1,12,576/-, amount unreasonably charged by respondent by increasing sale price after execution of buyer's agreement between respondent and complainants.

F.III Direct the respondent to return entire amount paid as GST Tax by complainants between 01.07.2017 to 28.12.2018.

F.III Direct the complainant's bank to remove the lien marked over Fixed Deposit of Rs 1,69,524/- in favour of Respondent on the pretext of future payment of HVAT for the period of (01.04.2014 to 30.06.2017). and also order to direct respondent to assist the process of removing lien from complainant's bank by providing NOC for the same.

19. The financial liabilities of the allottee and the promoter comes to an end after the execution of conveyance deed. The complainants could have asked for the claim before the conveyance deed got executed between the parties. Therefore after execution of conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once conveyance deed is executed and accounts has been settled, no claim remains. So, no directions in this regard can be effectuated at this stage.
20. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

G. Directions of the authority

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- a. The respondent is directed to pay interest at the prescribed rate of 11% p.a. for every month of delay from due date of possession i.e., 28.11.2016 till offer of possession (18.07.2019) plus two



months or actual handover of possession(11.03.2020) whichever is earlier. Since possession was offered to allottees on 18.07.2019 plus two months, being earlier. Hence, delayed possession charges be calculated up to that date(18.09.2019) after deduction of the delayed compensation already paid by the respondent.

22. Complaint stands disposed of.
23. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.08.2024

HARERA
GURUGRAM