

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

Complaint no. : 5990 of 2019
First date of hearing : 04.02.2020
Date of decision : 04.02.2020

Jagdeep Kumar
R/o H.No. 1473, Sector 1, Rohtak,
Haryana-124001.

Complainant

Versus

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

Also at: ECE House, 28 Kasturba Gandhi Marg,
New Delhi-110001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Jagdeep Kumar Complainant in person
Shri J.K Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 04.12.2019 has been filed by the complainant/allottee in Form CRA 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 allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of 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.	Heads	Information
1.	Project name and location	Gurgaon Greens, Sector 102, Gurugram.
2.	Project area	13.531 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	75 of 2012 dated 31.07.2012 Valid/renewed up to 30.07.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 95829.92 sq. mtrs.
7.	HRERA registration valid up to	31.12.2018
8.	Date of provisional allotment letter	25.01.2013 [Page 44 of complaint]
9.	Unit no.	GGN-24-1102, 11 th floor, tower 24 [Page 64 of complaint]



10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	22.04.2013 [Page 61 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 88 of complaint]
13.	Total consideration as per statement of account dated 12.12.2019 (Annexure R23 at page 128 of reply)	Rs.1,03,56,452/-
14.	Total amount paid by the complainant as per statement of account dated 12.12.2019 (Annexure R23 at page 129 of reply)	Rs.1,03,63,075/-
15.	Date of start of construction as per statement of account dated 12.12.2019 (Annexure R23 at page 128 of reply)	21.06.2013
16.	Due date of delivery of possession as per clause 14(a) of the said agreement i.e. 36 months from the date of start of construction (i.e. 21.06.2013) plus grace period of 5 months. [Page 75 of complaint]	21.11.2016
17.	Date of offer of possession to the complainant	19.07.2019 [Annexure C5, page 131 of complaint]
18.	Delay in handing over possession till date of offer of possession i.e. 19.07.2019	2 years 7 months 28 days
19.	Status of the project	OC was granted by the statutory authority on 16.07.2019 [Annexure R25 at page 133 of the reply]



3. As per clause 14(a) of the buyer's agreement, the possession was to be handed over within 36 months from the date of start of construction i.e. 21.06.2013 plus grace period of 5 months which comes out to be 21.11.2016. Clause 14 of the buyer's agreement is reproduced below:

"14. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and barring force majeure conditions, and 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."

4. The complainant submitted that the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said flat within the timelines agreed in the flat buyer's agreement and not otherwise. That as on 22.11.2019, there has been total delay of 3 years and 2 months but the respondent has still not given any clue about possession of the said flat. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the



- delayed period of handing over possession till handing over of possession.
- ii. Pass an order to direct the respondent to transfer the proportionate amount out of benefit to the complainant which was gained by respondent through increasing the number of units in project and by change in structural design of project like constructing multilevel parking instead of underground parking and other structural changes like reducing major facilities (Joggers parks, rose garden, amphitheatre, swimming pool).
 - iii. Pass an order to direct the respondent to show the actual records of paying EDC, IDC and PLC to government and return the excess amount collected from the complainant in account of EDC, IDC and PLC charges.
 - iv. Pass an order to direct the respondent to refund the total advance amount taken by respondent on account of maintenance charges.
 - v. Direct the respondent to issue necessary instructions to complainant's bank to remove the lien marked over fixed deposit of Rs.2,21,720/- in favour of respondent on the pretext of future payment of HVAT.
 - vi. Direct the respondent to clear all snag identified and informed by complainant on 23.09.2019 after physical



inspection of the subject unit and immediately handover the flat to the complainant.

5. 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.
6. The respondent contests the complaint on the following grounds:
 - i. The respondent submitted that complaints pertaining to refund, compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Rules and not by this hon'ble authority.
 - ii. That right from the beginning, the complainant was extremely irregular in payment of instalments. The respondent was constrained to issue reminders and letters to the complainant to make payment of demanded amounts.
 - iii. That as per clause 14(b)(v), in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. The complainant had defaulted in timely remittance of instalments and hence the date of delivery of possession



is not liable to be determined in the manner sought to be done by the complainant.

- iv. The respondent submitted that as per clause 16 of the buyer's agreement, the compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement.
 - v. That once an application for grant of OC is submitted for approval in the office of the concern statutory authority, the respondent ceases to have control over the same. Therefore, the time utilised by the statutory authorities for grant of OC to the respondent is necessarily excluded to be excluded from computation of the time period utilised for implementation of the project.
7. 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.
 8. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the



complainant is of considered view that there is no need of further hearing in the complaint.

9. Arguments heard at length.
10. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
11. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 22.04.2013, possession of the booked unit was to be delivered within a period of 36 months plus 5 months grace period from the date of start of construction i.e. 21.06.2013. The grace period of 5 month is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 21.11.2016. In the present case,



the complainant was offered possession by the respondent on 19.07.2019 after receipt of OC dated 16.07.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 22.04.2013 executed between the parties. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 21.11.2016 till the offer of possession i.e. 16.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.1,03,63,075/- as per statement of account dated 12.12.2019 (Annexure R23 at page 129 of reply) against the total sale consideration of Rs.1,03,56,452/- as per statement of account dated 12.12.2019 (Annexure R23 at page 128 of reply).

12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:



- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 21.11.2016 till the offer of possession i.e. 16.07.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
13. Complaint stands disposed of.
14. File be consigned to registry.

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

(Samir Kumar)

Member

Dated: 04.02.2020

Judgement uploaded on 11.02.2020.