

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

Complaint no. : 2054 of 2019
First date of hearing: 04.12.2019
Date of decision : 04.02.2020

1. Ashok Kumar Gupta
2. Rohit Gupta
3. Rachna Gupta

All RR/o 776, Baghban Apartments, Pocket
GH2, Sector 28, Rohini, New Delhi-110024.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: ECE House, 28 Kasturba Gandhi
Marg, New Delhi-110001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Ashok Kumar Gupta Complainant in person
Shri Vaibhav Joshi Advocate for the complainants
Shri J.K Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 06.05.2019 has been filed by the complainants/allottees 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 complainants, 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 35839.92 sq. mtrs.
7.	HRERA registration valid up to	31.12.2018
8.	Date of provisional allotment letter	27.01.2013 [Page 21 of reply]
9.	Unit no.	GGN-24-GF-02, ground floor, tower 24 [Page 25 of complaint]

10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	23.04.2013 [Page 34 of reply]
12.	Payment plan	Construction Linked Payment Plan [Page 53 of complaint]
13.	Total consideration as per statement of account dated 05.05.2019 (Annexure R5 at page 87 of reply)	Rs.1,42,38,300/-
14.	Total amount paid by the complainants as per statement of account dated 05.05.2019 (Annexure R5 at page 88 of reply)	Rs.1,34,64,527/-
15.	Date of start of construction as per statement of account dated 24.04.2019 (Annexure R5 at page 87 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 40 of complaint]	21.11.2016
17.	Date of offer of possession to the complainants	19.07.2019 [Annexure R12, page 119 of reply]
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 R11 at page 116 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 complainants submitted that the respondent has miserably failed to complete the project within stipulated period of 36 months under clause 14(a) of the agreement from the date of start of construction with grace period of 5 months as per buyer's agreement. The possession should have been given to the complainants latest by November 2016, however, neither possession has been given nor the money paid has been refunded.
5. The complainants have moved an application-cum-undertaking that they are seeking delayed possession charges

only and is forgoing other reliefs. 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 complainants for the delayed period of handing over possession till handing over of possession.
6. 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.
7. 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 the complainants have wantonly and consciously defaulted in timely remittance of the instalments in respect of the unit in question. The respondent had proceeded to levy interest on delayed payments in accordance with the terms and conditions incorporated in the buyer's agreement, however, the complainants approached the respondent requesting it to waive off the

delayed payment charges. The respondent even though under no obligation to accede to the unwarranted demand of the complainants, proceeded to waive off the delayed payment charges as a gesture of goodwill.

- iii. That as per clause 14(b)(v), in the event of any default/delay in payment of instalments as per the schedule of payment incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended. The complainants have 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 complainants.
- 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 requisite sanctions needs to be necessarily excluded from computation of the period for implementation of the project.

8. 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.
9. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. 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.
12. 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 23.04.2013, 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 complainants were offered possession by the respondent on 19.07.2019 after receipt of OC dated 19.07.2019. 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 complainants as per the terms and conditions of the buyer's agreement dated 23.04.2013 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 complainants are entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 21.11.2016 till the offer of

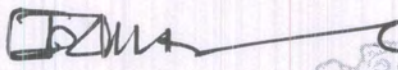
possession i.e. 19.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs. 1,34,64,527/- as per statement of account dated 05.05.2019 (Annexure R5 at page 88 of reply) against the total sale consideration of Rs.1,42,38,300/- as per statement of account dated 05.05.2019 (Annexure R5 at page 87 of reply).

13. 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 complainants from due date of possession i.e. 21.11.2016 till the offer of possession i.e. 19.07.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the


promoter which is the same as is being granted to the complainants in case of delayed possession charges.

14. Complaint stands disposed of.
15. 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.