

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

Complaint no. : 3798 of 2019
First date of hearing : 04.12.2019
Date of decision : 04.02.2020

Anwitaman Datta
R/o: D-100, SF, South City-2, Gurgaon-122002

Complainant

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:

Ms. Vridhi Sharma

Advocate for the complainant

Ms. Kanika Advocate

Advocates for the respondent

ORDER

1. The present complaint dated 04.09.2019 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 35839.92 sq. mtrs.
7.	HRERA registration valid up to	31.12.2018
8.	Date of provisional allotment letter	28.01.2013 [Page 32 of complaint]
9.	Unit no.	GGN-10-1102, 11 TH floor, tower 10 [Page 48 of complaint]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	16.04.2013 [Page 45 of complaint]



12.	Payment plan	Construction Linked Payment Plan [Page 40 of complaint]
13.	Total consideration as per statement of account dated 14.09.2019 (Annexure D at page 143 of reply)	Rs.1,22,24,909/-
14.	Total amount paid by the complainant as per statement of account dated 14.09.2019 (Annexure D at page 145 of reply)	Rs.1,23,15,389/-
15.	Date of start of construction as per statement of account dated 14.09.2019 (Annexure D at page 143 of reply)	14.06.2013
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. 16.04.2013) plus grace period of 5 months. [Page 61 of complaint]	14.11.2016
17.	Date of offer of possession to the complainant	31.05.2019 [Annexure G, page 152 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 31.05.2019	2 years 6 months 17 days
19.	Status of the project	OC was granted by the statutory authority on 30.05.2019 [Annexure RF at page 149 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. 14.06.2013 plus grace period of 5 months which comes out to be 14.11.2016. 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 complainant is filing this complaint against the respondent for failure on the part of the respondent company to deliver the possession by its scheduled date of delivery i.e. latest by 14.11.2016. The respondent company had accepted the booking in the year 2012 and had offered the possession of the unit in the year June 2019, that is after a long delay of almost 3 years from its scheduled date of delivery. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to deliver the immediate possession of the subject unit in the project 'Gurgaon

Greens' along with all the promised amenities and facilities and to the satisfaction of the complainant.

- ii. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant from the promised date of delivery of the flat till the actual delivery of 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. That the respondent raised demands in terms of the agreed schedule of payments, however, complainant defaulted in payment of instalments despite reminder notices or even the final notices and failed to pay due payments on time.
 - ii. That as per clause 14(b)(iv), in case of any default/delay by the allottees in payment of instalments as per the schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to

the satisfaction of the respondent. Since, the complainant had defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainant.

- iii. The respondent submitted that as per clause 12 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.
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 16.04.2013, 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. 14.06.2013. 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 14.11.2016. In the present case, the complainant was offered possession by the respondent on 31.05.2019 after receipt of OC dated 30.05.2019. 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



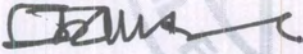
agreement dated 16.04.2013 executed between the parties. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 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. 14.11.2016 till the offer of possession i.e. 31.05.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.1,23,15,389/- as per statement of account dated 14.09.2019 (Annexure D at page 145 of reply) against the total sale consideration of Rs.1,22,24,909/- as per statement of account dated 14.09.2019 (Annexure D at page 143 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. 14.11.2016 till the offer of possession i.e. 31.05.2019. 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.