

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

Complaint no. : 3667 of 2019  
First date of hearing : 04.12.2019  
Date of decision : 04.02.2020

1. Ms. Sunita Yadav  
2. Mr. Laxman Yadav  
R/o: House no. C-446, Sushant Lok-1, Gurgaon,  
Haryana

**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:**

Ms. Neeta Sinha Advocate for the complainants  
Shri J.K Dang along with Shri Ishaan Dang Advocates for the respondent

**ORDER**

1. The present complaint dated 13.09.2019 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	<b>Registered vide no. 36(a) of 2017 dated 05.12.2017 for 90312.85 sq. mtrs.</b>
7.	HRERA registration valid up to	<b>31.12.2018</b>
8.	Date of provisional allotment letter	27.01.2013 [Page 29 of reply]
9.	Unit no.	GGN-15-0501, 5 <sup>th</sup> floor, tower 15 [Page 45 of reply]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	03.04.2013 [Page 42 of reply]



12.	Payment plan	Construction Linked Payment Plan [Page 53 of complaint]
13.	Total consideration as per statement of account dated 27.09.2019 (Annexure R10 at page 161 of reply)	Rs.1,19,48,260/-
14.	Total amount paid by the complainants as per statement of account dated 27.09.2019 (Annexure R10 at page 162 of reply)	Rs.84,49,882/-
15.	Date of start of construction as per statement of account dated 27.09.2019 (Annexure R10 at page 161 of reply)	14.06.2013
16.	Due date of delivery of possession as per clause 14 of the buyer's agreement i.e. 36 months from the date of start of construction (i.e. 14.06.2013) plus grace period of 5 months. [Page 58 of complaint]	<b>14.44.2016</b>
17.	<b>Date of offer of possession to the complainants</b>	<b>13.12.2018</b> [Annexure R15, page 183 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 13.12.2018	2 years and 29 days
19.	Status of the project	OC was granted by the statutory authority on 05.12.2018 [Annexure R14 at page 180 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 complainants submitted that the buyer's agreement was signed through authorised representative on 03.04.2013, in which the completion period of the project as per clause 14(a) was 36 months with a grace period of 5 months i.e. October 2016. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite. The said flat was booked in the name of complainants and her husband was made co-owner vide letter dated 17.09.2015. On 11.09.2015, an amendment agreement was executed between the complainants and the respondent for waiver of delayed payment for an amount of Rs.16,06,413/-but no waiver done till date. The complainants received letter of offer of possession vide letter dated



13.12.2018 with statement of final dues to be paid by 12.01.2019. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to handover possession of the residential apartment and pay delayed 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.
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 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 complainants started defaulting in making payment of instalments. Consequently, the respondent was compelled to issue notices for payment and reminders to the complainants.



- iii. The respondent submitted that so far as payment of compensation/interest to the complainants is concerned, it is submitted that the complainants, being in default, are not entitled to any compensation in terms of clause 16(c) of the buyer's agreement dated 03.04.2013 as amended. Furthermore, in terms of clause 16(d) of the buyer's agreement dated 03.04.2013 as amended, no compensation is payable due to delay or non-receipt of the occupation certificate, completion certificate and/or any other permission/sanction from the competent authority.
- iv. The respondent submitted that believing the assurances and promises of the complainants that they would make all future payments regularly and timely, the respondent entered into an amendment agreement on 11.09.2015 in terms of which, the respondent proceeded to waive delayed payment charges amounting to Rs.16,09,598/- and restructured the payment plan for future instalments with the understanding that the complainants shall make all the time period for delivery of possession shall also be revised. In accordance with clause 3 of the amendment agreement dated 11.09.2015, clause 14(a) of the buyer's agreement dated 03.04.2013 was amended so that the



time period for delivery of possession of 42 months plus grace period of 5 months was to be calculated from the date of execution of the amendment agreement. Thus, the possession of the apartment in question was proposed to be handed over to the complainants on or before 11.09.2019. It is evident from the perusal of the statement of account that the complainants continued to default in making timely payment of sale consideration.

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 complainants 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 03.04.2013, 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 complainants were offered possession by the respondent on 13.12.2018 after receipt of OC dated 05.12.2018. 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 03.04.2013 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. 14.11.2016 till the offer of possession i.e. 13.12.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs.84,49,882/- (as per statement of account dated 27.09.2019, Annexure R10 at page 161 of reply) against the total sale consideration of Rs.1,19,48,260/- as per statement of account dated 27.09.2019 (Annexure R10 at page 161 of reply). The respondent has failed to prove that the waiver of interest amount i.e. Rs.16,06,413/- has been credited to the account of the complainants as per amendment agreement.

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 complainants from due date of possession i.e. 14.11.2016 till the offer of possession i.e. 13.12.2018. 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.
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 25.02.2020