

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

Complaint no. : 2597 of 2019
First date of hearing : 04.12.2019
Date of decision : 04.02.2020

Anjana Sharma
R/o: 617/78, Teacher Colony, Burari,
Delhi-110084

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:

Anjana Sharma Complainant in person
Shri J.K Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 19.06.2019 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.	RERA registered/ not registered	Registered vide no. 36(a) of 2017 dated 05.12.2017 for 90312.85 sq. mtrs.
7.	HRERA registration valid up to	31.12.2018
8.	Date of provisional allotment letter	25.01.2013 [Page 17 of complaint]
9.	Unit no.	GGN-20-0101, 1st floor, tower 20 [Page 33 of complaint]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	08.04.2013 [Page 30 of complaint]



12.	Payment plan	Instalment Payment Plan [Page 24 of complaint]
13.	Total consideration as per statement of account dated 07.06.2019 (Annexure R25 at page 82 of reply)	Rs.98,75,243/-
14.	Total amount paid by the complainant as per statement of account dated 07.06.2019 (Annexure R25 at page 83 of reply)	Rs.96,35,749/-
15.	Date of start of construction as per statement of account dated 07.06.2019 (Annexure R25 at page 82 of reply)	16.06.2013
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. 16.06.2013) plus grace period of 5 months. [Page 43 of reply]	16.11.2016
17.	Date of offer of possession to the complainant	01.06.2019 [Annexure R30, page 100 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 01.06.2019	2 years 6 months 16 days
19.	Status of the project	OC was granted by the statutory authority on 30.05.2019 [Annexure R27 at page 86 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. 16.06.2013 plus grace period of 5 months



which comes out to be 16.11.2016. 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 was very delightful that after 36 months she will be getting her flat. But the respondent wilfully and in the most deliberate manner failed to comply with the obligation of their part as per the buyer's agreement, hence the project got delayed and in the meantime complainant has been compelled to pay repayment of bank loan in the form of EMI which is now extra burden for the complainant. The complainant further submitted that the complainant tried to reach out the respondent to resolve the issue amicably but respondent is still not willing to pay proper interest and damages to the complainant and offering possession of the flat without having any proper OC of the flat. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to deliver flat in question.



- ii. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainant for the delayed period w.e.f. due date of handing over possession till actual physical 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 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 complainant is a wilful and persistent defaulter who has failed to make payment of a sale consideration as per the payment plan opted by the complainant. The respondent was constrained to issue reminders and letters to the complainant to make payment of demanded amounts.
 - iii. It is submitted that the respondent has been prevented by reasons beyond its power and control from timely implementation and development of the project in

question. That clause 14 of the buyer's agreement provides that 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. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. The time taken by the concerned statutory authority to issue an occupation certificate in respect of the project has to be excluded from the computation of the time for implementation and development 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 08.04.2013, 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. 16.06.2013. 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 16.11.2016. In the present case, the complainant was offered possession by the respondent on 01.06.2019 after receipt of OC dated 30.05.2019. The authority



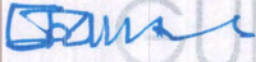
is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 08.04.2013 executed between the parties. As such this project is to be treated as on-going project 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. 16.11.2016 till the offer of possession i.e. 01.06.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs. 96,35,749/- as per statement of account dated 07.06.2019 (Annexure R25 at page 83 of reply) against the total sale consideration of Rs.98,75,243/- as per statement of account dated 07.06.2019 (Annexure R25 at page 82 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. 16.11.2016 till the offer of possession i.e. 01.06.2019. 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 25.02.2020