

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

Complaint no. : 6214 of 2019
First date of hearing : 04.02.2020
Date of decision : 04.02.2020

1. Mr. Ajay Singhal
2. Mrs. Kajal Singhal
Both RR/o: C-903, Pioneer Park, Sector-61, Gurugram **Complainants**

Versus

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

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**

APPEARANCE:

Ms. Surbhi Garg Bhardwaj **Advocates for the complainants**
along with Mr. Gaurav
Bhardwaj

Shri J.K Dang along with Shri **Advocates for the respondent**
Ishaan Dang

ORDER

1. The present complaint dated 06.12.2019 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



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.	RERA 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	30.01.2013 [Annexure R1 at page 27 of reply]
9.	Unit no.	GGN-15-0401, 4 th floor, tower 15 [Page 46 of reply]
10.	Unit measuring	1650 sq. ft.



11.	Date of execution of buyer's agreement	08.05.2013 [Page 43 of reply]
12.	Payment plan	Instalment Payment Plan [Page 35 of reply]
13.	Total consideration as per statement of account dated 17.10.2019 (Annexure R6 at page 103 of reply)	Rs.98,63,260/-
14.	Total amount paid by the complainants as per statement of account dated 17.10.2019 (Annexure R6 at page 104 of reply)	Rs.98,97,998/-
15.	Date of start of construction as per statement of account dated 17.10.2019 (Annexure R6 at page 103 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. 14.06.2013) plus grace period of 5 months. [Page 43 of reply]	14.11.2016
17.	Date of offer of possession to the complainants	12.12.2018 [Annexure R12, page 143 of reply]
18.	Date of unit handover letter	20.03.2019 [Annexure R14, page 151 of reply]
19.	Date of Conveyance Deed	28.03.2019 [Annexure R15, page 154 of reply]



20.	Delay in handing over possession till date of offer of possession i.e. 12.12.2018	2 years 28 days
21.	Status of the project	OC was granted by the statutory authority on 05.12.2018 [Annexure R11 at page 140 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 they finally received the offer of possession on 12.12.2018. The complainants were left with no option except to take possession of the said flat,



construction of which has been delayed for over 3 years. The complainants took the possession of the said flat on 07.03.2019. 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 offer 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. The respondent submitted that Mr. Vishal Kumar (hereinafter 'original allottee') has approached the respondent and expressed an interest in booking an apartment in the said residential project. The original allottees, was allotted unit bearing no. GGN-15-0401,



admeasuring 1650 sq. ft. super area vide provisional allotment letter dated 30.01.2009. The unit was transferred in favour of complainants on 28.06.2013.

- iii. That the complainants have executed an affidavit and indemnity-cum-undertaking whereby the complainants had admitted and acknowledged that they were not entitled to any compensation for delay in handing over possession or any rebate or discount etc. which the original allottee might have been entitled to and the complainants further agreed and undertook to be bound by and to abide by the terms and conditions of the buyer's agreement.
- iv. That respondent submitted that on account of delay and defaults by the complainants, the due date for delivery of possession stands extended in accordance with clause 14(b)(iv) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent. Furthermore, the respondent had completed construction of the apartment/tower by April 2018 and had applied for issuance of the OC on 13.04.2018. The OC was issued by competent authority on 05.12.2018. The said time period taken by the competent authority in issuing OC as well as time taken by government/statutory

authorities in according approvals, permissions etc. necessarily have to be excluded by while computing the time period for delivery of possession.

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 08.05.2013, 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 12.12.2018 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 08.05.2013 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. 12.12.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs.98,97,998/- as per statement of account dated 17.10.2019 (Annexure R6 at page 104 of reply) against the total sale consideration of Rs.98,63,260/- as per statement of account dated 17.10.2019 (Annexure R6 at page 103 of reply).

12. In ***Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015***, it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 if the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion is reproduced below:

"Indemnity-cum-undertaking

30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever.

It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of

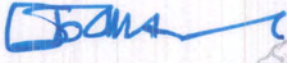
possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."

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. 14.11.2016 till the offer of possession i.e. 12.12.2018. 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.

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 25.02.2020


HARERA
GURUGRAM