

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

**Complaint no. : 5911 of 2019**  
**First date of hearing : 04.02.2020**  
**Date of decision : 04.02.2020**

Vishal Bakshi  
R/o K-1466, Ansal Palam Vihar,  
Gurugram-122017, Haryana.

**Complainant**

Versus

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

Also at: 306-308, Square One, C-2,  
District Centre, Saket, New Delhi-110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Ms. Vridhi Sharma Advocate for the complainant  
Shri J.K Dang along with Shri Advocates for the respondent  
Ishaan Dang

**ORDER**

1. The present complaint dated 27.11.2019 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	<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	28.01.2013 [Annexure R2 at page 40 of reply]
9.	Unit no.	GGN-23-0602, 6 <sup>th</sup> floor, tower 23 [Page 28 of complaint]

10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	17.05.2013 [Page 53 of reply]
12.	Payment plan	Construction Linked Payment Plan (Annexure R3 at page 48 of reply)
13.	Total consideration as per statement of account dated 11.12.2019 (Annexure R6 at page 128 of reply)	Rs.1,02,04,789/-
14.	Total amount paid by the complainant as per statement of account dated 11.12.2019 (Annexure R6 at page 129 of reply)	Rs.1,02,16,103 /-
15.	Date of start of construction as per statement of account dated 11.12.2019 (Annexure R6 at page 128 of reply)	20.06.2013
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. 20.06.2013) plus grace period of 5 months. [Page 69 of reply]	20.11.2016
17.	<b>Date of offer of possession to the complainant</b>	<b>19.07.2019</b> [Annexure R10, page 186 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 19.07.2019	2 years 7 months 29 days
19.	Status of the project	OC was granted by the statutory authority on 16.07.2019 [Annexure R9 at page 183 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. 20.06.2013 plus grace period of 5 months which comes out to be 20.11.2016. 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."*

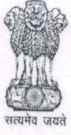
4. The complainant submitted that the complainant has been waiting since June 2016 for the possession of his unit and there is delay of more than 33 months in the completion of the project. The respondent company has failed to deliver the possession of the unit to the complainant within the assured and promised time frame. 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 complainant from the due date of handing over possession till date of 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 right from the beginning, the complainant started defaulting in payment of instalments. Consequently, the respondent was constrained to issue demand noticed and reminders for payment to the complainant.
  - iii. The respondent submitted that on account of delay and defaults by the complainant, the due date of 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 February 2019 and had applied for issuance of the OC on 11.02.2019. The OC was issued by competent authority on 16.07.2019.

The said time period taken by the government/statutory authorities in according approvals, permissions etc. necessarily have to be excluded by while computing the time period for delivery of possession.

- iv. The respondent submitted that as per clause 16(c) of the buyer's agreement, the complainant was not entitled to any compensation, nevertheless, the respondent has credited compensation amounting to Rs. 4,09,697/- against the last demand raised by the respondent.
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.
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 17.05.2013, 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. 20.06.2013. 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 20.11.2016. In the present case, the complainant was offered possession by the respondent on 19.07.2019 after receipt of OC dated 16.07.2019. 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 complainant as per the terms and conditions of the buyer's agreement dated 17.05.2013 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



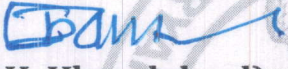
as well as allottee. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 20.11.2016 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 complainant has already paid Rs.1,02,16,103/- as per statement of account dated 11.12.2019 (Annexure R6 at page 129 of reply) against the total sale consideration of Rs.1,02,04,789/- as per statement of account dated 11.12.2019 (Annexure R6 at page 128 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. 20.11.2016 till the offer of possession i.e. 19.07.2019. 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) सत्यमेव जयते

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.02.2020

  
(Samir Kumar)

Member

Judgement uploaded on 25.02.2020