

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

Complaint No. : 167 of 2018
Date of First
Hearing : 16.05.2018
Date of Decision : 20.11.2018

Mr. Manoj Gupta

R/o House No. 1558, Sector-7 Extension,
Gurugram

Presently at: Flat no. C-94, Sector-82, ADLF
Primus, Gurugram

...Complainant

Versus

M/s Emaar MGF Land Limited
Regd. Office at: ECE House, 28, Kasturba
Gandhi Marg, New Delhi-110001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri H.L.Gupta Father of the complainant
Shri Shashi Kant Sharma Advocate for the complainant
Shri Dheeraj Kapoor Advocate for the respondent



ORDER

1. A complaint dated 17.04.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Manoj

Gupta, against the promoter M/s Emaar MGF Land Limited on account of violation of clause 14(a) of the buyer's agreement executed on 30.04.2013 for unit no. GGN-17-0401 on 4th floor and a super area of 1650 q. ft. in the project "Gurgaon Greens", Sector-102, Gurugram for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Gurgaon Greens" in sector 102, Dwarka expressway, Gurugram
2.	Unit no.	GGN-17-0401
3.	Project area	13.531 acres
4.	Nature of real estate project	Group housing colony
5.	Registered/ Not Registered	Registered (36(a) of 2017)
6.	DTCP license	75/2012 dated 31.07.2012
7.	Date of booking	26.08.2012
8.	Date of builder buyer agreement	30.04.2013
9.	Total consideration	Rs. 1,16,11,283.04/-
10.	Total amount paid by the complainant	Rs. 92,49,579/-
11.	Payment plan	Construction linked plan
12.	Date of delivery of possession	Clause 14(a) - 36 months from date of start of construction (14.06.2013) + 5 months grace period i.e.



		14.11.2016 Note: The date of construction has been drawn from statement of account dated 19.05.2017: Annexure C-3 (On start of PCC for foundation)
13.	Delay of number of months/ years upto 20.11.2018	2 years
14.	Penalty clause as per builder buyer agreement dated 30.04.2013	Clause16(a)- Rs. 7.50/- per sq. ft. per month of the super area

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement dated 30.04.2013 is available on record for unit no. GGN-17-0401 according to which the possession of the aforesaid unit was to be delivered by 14.11.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 16.05.2018. The case came up for hearing on 16.05.2018, 05.07.2018,



25.07.2018, 16.08.2018 and 12.09.2018. The reply has been filed by the respondent on 13.06.2018.

Facts of the complaint

5. The complainant submitted that on 26.08.2012, the complainant booked a unit in the project named "Gurgaon Greens" in Sector 102, Dwarka expressway, Gurugram by paying an advance amount of Rs 7,50,000/- to the respondent. Accordingly, the complainant was allotted a unit bearing GGN-17-0401 on the 4th floor situated in tower/building no. 17 having super area of 1650sq. ft.
6. On 30.04.2013, buyer's agreement was entered into between the parties wherein as per clause 14(a), the possession should have been handed over within 36 months from date of start of construction (14.06.2013) + 5 months grace period i.e. 14.11.2016 However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 92,49,579/-.
7. The complainant submitted that at the time of booking of flat, respondent promised and assured that the construction is



going to start very soon. However, the construction had not started even after the lapse of one year of booking. But the respondent continued to make demand of further payments from time to time and the complainant made all the payments as and when demanded.

8. The complainant submitted that on 30.04.2013, a buyer's agreement was executed. It was clearly stipulated at the time of booking of the flat that the possession will definitely be awarded within three years from the date of booking but after going through the buyers agreement it was stipulated that the possession of the flat will be handed over to complainant within a period of 36 months plus five months as a grace period from the starting of construction. Here on this point also respondent has defrauded and cheated the complainant.

9. It is further submitted that after execution of the agreement, the complainant applied for a housing loan with HDFC Bank and accordingly, got approval of the loan to the extent of 80%. It is also submitted that the complainant is in regular payment of EMI on the housing loan from 15.05.2013.

10. The complainant submitted that he made timely visits to the project site and found there was very slow progress in the



construction. On this the complainant visited respondent and explained that with this slow progress on the implementation of the project there is every apprehension that it will not be possible for respondent to offer the possession of the flat within the prescribed period. However, the respondent again reiterated and promised that they will offer the possession of the flat strictly according to the buyer's agreement and there will not be any violation of the same from respondent side. From July 2015 to October 2016 there was absolutely no progress on the project. On this respondent told that the work is being stalled due to non-receipt of certain approvals from the govt. authorities. It is also pertinent to mention here that till April 2015 complainant had already paid more than 75% approx. payment against the said flat.

11. Subsequent enquiries were made in January and August 2017. Finally, when the complainant enquired about the status of completion of the said project in January 2018, they were informed that the project shall be completed only by the end of 2019.
12. As per clause 14(a) of the buyer's agreement, the company proposed to hand over the possession of the said unit by



14.11.2016. The clause regarding possession of the said unit is reproduced below:

14(a) "..... the company proposes to handover the possession of the said unit within 36 months from date of start of construction, subject to timely compliance of the provisions of the agreement by the allottee. The allottee(s) agrees and understands that the company shall be entitled to a grace period of 5 months, for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project."

13. The complainant submitted that per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said Act. as per section 18 of the Act, the promoter is liable to pay . compensation to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms of the agreement of the sale. Further, Section 15 of the HARERA rules, 2017 deal with interest payable by promoter to the allottee.

14. It is further submitted that the Maharashtra Real Estate Authority(MahRera) has in various cases ordered the builders of a housing project to pay a compensation with interest to house buyers due to a default on the part of the promoter to hand over the possession for the flat as per the



sale agreement. In *Avinash Saraf and Neha Duggar Saraf v. Runwal Homes* decided in October 2017, the MahRera awarded a compensation of Rs. 1,90,00,000/- which included the total consideration paid by the complainant, stamp duty charges, registration charges, interest paid by the complainant to the bank after expiry of the subvention period.

15. Issues raised by the complainant

- I. Whether the complainant made all payments in time?
- II. Whether the respondent handed over the possession of the flat to the complainant in duly time period as per clause 14(a) of the builder buyer agreement?
- III. Whether the respondent has completed the entire project?

16. Relief sought

- I. To refund the principal amount paid by the complainant amounting to Rs 92,49,579/- with interest @ 18% per annum from the date of receipt of payments made to the respondent.

Respondent's reply

17. The respondent submitted that the complaint filed by the



complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Act, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble authority under Rule- 28.

18. Further proviso to section 71 clearly states that even in a case where complaint is withdrawn from a consumer forum/commission/NCDRC for the purpose of filing an application under the said Act and said rules, the application, if any, can only be filed before the adjudicating officer and not before the regulatory authority.

19. The respondent stated that the permission to withdraw the complaint under proviso to section 71 is applicable only for the complaints pending before any consumer forum/ commission/NCDRC established under section 9 of the Consumer Protection Act, 1986 and not before any other forum and at the same time, such permission to withdraw has



to be for the purpose of filing it before the adjudicating officer under the said Act. However, in the present case, the complainant has admittedly (admitted in para- 4(3)(q) of the complaint) vide order dated 22.02.2018, withdrawn the present complaint from the permanent Lok Adalat (Public Utility Services), Gurugram and not from any consumer forum/ commission/NCDRC established under section 9 of the Consumer Protection Act, 1986 and no such permission has been taken by the complainant.

20. The respondent submitted that the statement of objects and reasons as well as the preamble of the said Act clearly state that RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of consumer as provided under the consumer protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer as he is already the owner and resident of House No. 1558, Sector -7, Gurugram and Flat No. C-94, Sector-82, ADLF Primus Gurugram.



21. It is clear from the above that the complainant is an investor and due to financial crunch, admitted by the complainant in his email, the complainant became a defaulter, having deliberately failed to make the payment of various instalments within the time prescribed which resulted in outstanding dues and delay payment charges.
22. Respondent further submitted that despite several adversities, the respondent has continued with the construction of the project and is in the process of completing the construction of the project and should be able to apply the occupation certificate for the apartment in question i.e. GGN-17-0401 by 31.12.2018 (as mentioned at the time of registration of the project with RERA).
23. It is submitted that the proposed estimated time of handing over the possession of the said apartment was 36 +5 months i.e. 41 months from the date of start of construction and not within three years of booking, as alleged by the complainant. That, without prejudice to the above, it is submitted that the said proposed time of 41 months is applicable only subject to force majeure.



Determination of issues

24. Regarding the **first issue**, it can be inferred from the

statement of account dated 06.06.2018 in Annexure R-3 that delayed payment charges to the tune of Rs. 1,98,818/- have been accrued as against the complainant. Thus, it cannot be said that the complainant made payments on time.

25. Regarding the **second issue** in the complaint, as to the handing over of possession in due time is concerned, there has been a delay of over 2 years on the part of respondent in handing over the possession to the complainant.
26. Regarding the **third issue** raised by the complainant, the respondent cannot be said to have completed the entire project. However, as stated by the respondent in their reply, they are in the process of completing the project and as per the registration certificate, the revised date of delivery of flat is 31.12.2018.
27. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



“34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

28. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

29. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

30. **Jurisdiction of the authority-** The project ‘Gurgaon Greens’ is located in Sector 102, Dwarka expressway, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

The preliminary objection raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving



aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

31. The project is registered with the authority and as per the registration application, the revised date of delivery of flat is 31.12.2018 Thus, keeping in view the present status of the project, interest of other allottees and other intervening circumstances, the authority is of the view that it will not be just and proper to allow refund at this stage. However, the complainant is entitled for interest @ 10.75% per annum on the principal amount paid by him on account of delayed possession, as per the provisions of Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, till the actual handing over of possession, failing which the complainant is entitled to withdraw from the project.

Decision and directions of the authority

32. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- (i) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% per annum on the amount deposited by the complainant for every



month of delay in handing over the possession. The interest will be given from 14.11.2016 to 20.11.2018 on the deposited amount within 90 days from the date of this order and thereafter, for every month of delay before the 10th of every succeeding month till the handing over of possession.

(ii) If the possession is not given on the date committed by the respondent, i.e. 31.12.2018, then the complainant shall be at liberty to withdraw from the project.

33. The complaint is disposed of accordingly.

34. The order is pronounced.

35. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

HARERA
GURUGRAM



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 20.11.2018

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 20.11.2018
Complaint No.	167/2018 case titled as Mr. Manoj Gupta Vs M/s Emaar MGF Land Limited
Complainant	Mr. Manoj Gupta
Represented through	Shri H.L.Gupta-father of the complainant in person with Shri Shashikant Sharma, Advocate.
Respondent	M/s Emaar MGF Land Limited
Respondent Represented through	Shri Dheeraj Kapoor Advocate for the respondent.
Last date of hearing	23.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Project is registered with the authority.

As per clause 14 (a) of the Builder Buyer Agreement, the flat/unit No. GGN-17-0401 was to be handed over to the complainant on 14.11.2016. However, the builder-M/s Emaar MGF Land Limited has not delivered the unit in time. The complainant has already deposited Rs.92,49,579/- out of total sale consideration of Rs.1,16,11,283/-. Project is registered with the authority and as per registration application, the revised date of delivery of flat is 31.12.2018 and as such, complainant is entitled for delayed possession charges@ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the actual handing

over the offer of possession failing which the complainant is entitled to withdraw from the project.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)