

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 20.12.2018
Complaint No.	828/2018 Case titled as Madan Gopal Kamboj V/S Emaar MGF Land Ltd
Complainant	Madan Gopal Kamboj
Represented through	Complainant in person with S/Shri Abhay Jain & Kamal Sharma, Advocates for the complainant.
Respondent	Emaar MGF Land Ltd
Respondent Represented through	Shri Ketan Luthra, authorized representative with Shri Ishaan Dang Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Arguments heard.

Project is registered with the authority which will be expired on 31.12.2018. Counsel for the respondent stated that they have applied for extension of registration which is pending with the authority. The re-revised date of delivery of possession is 31.12.2019.

As per clause 14 (a) of the Builder Buyer Agreement dated 4.4.2013 for unit No. GGN-24-0902, 9th floor, Building No.24, in Gurgaon Greens in Sector-102, Dhankot, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of

construction i.e. 21.6.2013 + 5 months grace period which comes out to be 21.11.2016.

However, counsel for the complainant has objected to this date as he claims that it should be counted from the date of signing of BBA. As per usual practice and as per judgment in **Neelkamal Realtors Suburban Pvt. Ltd. versus UOI and Ors (W.P. 2737 of 2017)**, decided by Bombay High Court, the date of signing of the BBA taken as 4.4.2013 (when the builder has accepted the full amount).

Counsel for the complainant has stated that as per statement of account submitted by the respondent this is the date for casting of ECC which cannot be treated the date of start of construction because prior to excavation is essential which is part of start of construction. Counsel for the respondent has been advised to intimate the date of Bhumi Pujan so that the same can be considered the date of start of construction in this project.

Counsel for the respondent has stated that Bhumi Pujan was held on 5.6.2013 to start the construction, as such, the due date of delivery of possession is to be counted from 5.6.2013. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.93,97,023/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 5.12.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over possession failing which the complainant is entitled to refund the amount.

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date 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)
20.12.2018

Subhash Chander Kush
(Member)
20.12.2018

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

Complaint No. : 828 of 2018
Date of first hearing : 20.12.2018
Date of Decision : 20.12.2018

Mr. Madan Gopal Kamboj
B- 606, Panchsheel Apartments,
Plot no. 9, Sector 10, Dwarka, New Delhi.

...Complainant

Versus

M/s Emaar MGF Land Limited
Emaar MGF Business Park,
Mehrauli-Gurgaon Road,
Sector 28, Gurugram-122002

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Abhay Jain and Kamal
Sharma with complainant in
person

Advocate for the complainant

Shri Ketan Luthra, authorized
representative with Shri
Ishaan Dang.

Advocate for the respondent



ORDER

1. A complaint dated 07.09.2018 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.

Madan Gopal Kamboj, against the promoter M/s Emaar MGF Land Limited on account of violation of clause 14(a) of the buyer's agreement executed on 04.04.2013 for unit no. GGN-24-0902 , tower/building no. 24, 9th floor admeasuring super area of 1650 sq. 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. Since, the buyer's agreement has been executed on 04.04.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016 .
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	GGN-24-0902, 9 th floor, building no. 24
4.	Project area	13.531 acres
5.	Registered/ not registered	36 (a) of 2017 dated 05.12.2017
6.	DTCP license	75 of 2012



7.	Date of buyer's agreement	04.04.2013
8.	Total consideration	Rs. 92,64,983/-
9.	Total amount paid by the complainant	Rs. 93,97,023/-
10.	Payment plan	Construction linked plan
11.	Date of delivery of possession Clause 14(a)- 36 months from date of start of construction, i.e. 21.06.2013(on start of construction) + 5 months grace period.	21.11.2016
12.	Revised date of completion as per RERA registration certificate	31.12.2018
13.	Delay of number of months/ years upto 11.12.2018	2 years 1 month
14.	Penalty clause as per builder buyer agreement	Clause 16(a)- Rs. 7.50/- per sq. ft. per month of the super area

4. 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 04.04.2013 is available on record for unit no. GGN-24-0902, tower/building no. 24, 9th floor, admeasuring super area of 153.29 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 21.11.2016. 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.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for



appearance. The case came up for hearing on 20.12.2018. The reply has been filed by the respondent and the same has been perused.

Facts of the complaint

6. The complainant submitted that the complainant booked a unit in the project named "Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram for amount of Rs. 7,50,000/- on 25.01.2012 and the respondent issued a provisional letter dated 25.01.2013 whereby flat/unit no. GGN-24-0902, was allotted to complainant.
7. The complainant submitted that buyer's agreement was entered between the respondent and complainant on 04.04.2013 and the date of possession was 36 months for construction and further 5 months for paper work after start of construction work without giving any firm date.
8. The demand raised dated 04.04.2013 for 22.5% of BSP, 100% of EDC and IDC and 22.5% of PLC and the builder started PCC of foundation after getting total payment of 30% of BSP, 30% of PLC and 100% of EDC and IDC
9. The builder was very slow as can be seen from the fact that expiry of 41 months from the date signing of agreement i.e. 04.04.2013, builder had demanded only 55% of the payment amounting to Rs. 55.44 lakh and had not done more than 35% of the work.
10. The complainant submitted that despite delay and handover of possession, the builder did not hesitate to claim the penal



interest @ 24% p. a., as per BBA clause 13. The complainant paid 46,415/- as delayed payment charges at this higher rate of interest and complainant has paid 55% of the payment . Later the builder reduced rate of penal interest to 18% and then to 10 % from 01.05.2017 after RERA came into effect in Haryana. The complainant has paid Rs.93,87,63/- and Rs. 55414/- as penal interest till now. But the possession has not been delivered by the respondent till date. Hence, the complainant was constrained to file the present complaint.

Issues raised by the complainant

The relevant issues raised in the complaint are:

- I. Whether the due date of delivery of possession to be calculated from the date of issuance of allotment letter or from the date of signing of builder buyer agreement.
- II. Whether the respondent is entitled to pay interest at prescribed rate the amount on amount of Rs.93,87,863/- on account of delay in delivery of possession?

Relief sought

- I. Direct the respondent to pay the interest at rate of at least @ SBI MCLR +2% or more as described by HARERA on the amount received by the respondent, for the delayed period of possession.



Respondent's reply

11. The respondent submitted that the complaint filed by the complainants is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.
12. The respondent submitted that present complaint raises several issue which cannot be decided by way of the present complaint in summary proceeding and require evidences to be led by both parties and the complaint is beyond the preview of this hon'ble authority and can be adjudicated by civil court.
13. The respondent submitted that complaints pertaining to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the "said Act") are required to be filed before the adjudicating officer under Rule-29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the "said Rules") read with Section 31 and Section 71 of the said Act and not before this hon'ble regulatory authority under rule-28. section 31, section 71, rule-28 and rule-29.



14. The respondent submitted that in the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint under rule-28 of the said rules and is seeking the relief of refund, interest and compensation u/s 18 of the said act. Therefore, even though the project i.e. "Gurgaon Greens", Sector 102, Gurugram (pertaining to the apartment in question and hereinafter referred to as the "said project") of the respondent is covered under the definition of "ongoing projects" and registered with this hon'ble regulatory authority and declaration given by the respondent is that project would be completed by 31.12.2018. The Project is an advance stage of completion and the respondent shall endeavour to offer possession within the timelines given to the authority.
15. The respondent submitted that the claims have been made in a manner unknown to the common law of contract and are specifically, contrary to the text of Indian contract Act,1872.
16. The respondent submitted that on the basis of the request to the respondent ,the name of Mrs. Urmila Kamboj was added vide letter dated 02.11.2016 and she become co allottee in the said unit. However, the present complaint has been filed only by Mr. Madan Gopal Kamboj. As such, this complaint is liable to rejected on this ground alone for non- joinder of parties.



17. The respondent submitted that complainant has filed this complaint and is seeking the relief of “interest at the rate at least @ SBI MCLR + 2% or more ”, amongst other reliefs. As per Act read with HARERA rules, complaint for payment of interest is maintainable only before the adjudicating officer.
18. The respondent submitted that complainants are defaulters, having deliberately failed to make the payment of various instalments within the time prescribed, which resulted in delay payment charges, as reflected in the statement of account dated 25.09.2018.
19. The respondent submitted that complaint filed is entirely premature. Assuming without conceding that there is a delay in handing over of possession, it is submitted that as per buyer agreement, in case there is a delay in handing over of possession, the agreement envisages payment of compensation of Rs.7.50/- per sq. ft. per month of the super area for the period of delay beyond 36 + 5 months, subject to other terms and condition as contained in the buyer agreement.



Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

20. With respect to **first issue** raised by the complainant, it can be seen from the terms of agreement dated 04.04.2013 duly executed between the parties the due date of the delivery of possession as per clause 14 (a) has to be calculated from the date of commencement of construction and not from the date of signing of agreement.
21. With respect to **second issue** raised by the complainant, as per clause 14(a) of the buyer's agreement dated 04.04.2013, the possession was to be handed over within 36 months from the date of commencement of construction plus 5 months grace period thereon, which on calculation comes out to be 21.11.2016. However, the respondent has failed to deliver the possession till date.

During the course of arguments, the authority has observed project is registered with the authority which will be expired on 31.12.2018. Counsel for the respondent has stated that they have applied for extension of registration which is pending with the authority. The re-revised date of delivery of possession is 31.12.2019. As per clause 14 (a) of the builder buyer agreement dated 04.04.2013 for unit no. GGN-24-0902, 9th floor, building No.24, in Gurgaon Greens in sector-102, Dhankot, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of construction i.e. 21.6.2013 + 5 months grace period which comes out to be 21.11.2016. However, counsel for the complainant has



objected to this date as he claims that it should be counted from the date of signing of BBA. As per usual practice and as per judgment in **Neelkamal Realtors Suburban Pvt. Ltd. versus UOI and Ors (W.P. 2737 of 2017)**, decided by Bombay High Court, the date of signing of the BBA taken as 04.04.2013 (when the builder has accepted the full amount). Counsel for the complainant has stated that as per statement of account submitted by the respondent this is the date for casting of ECC which cannot be treated the date of start of construction because prior to excavation is essential which is part of start of construction. Counsel for the respondent has been advised to intimate the date of Bhumi Pujan so that the same can be considered the date of start of construction in this project.

22. Counsel for the respondent has stated that Bhumi Pujan was held on 05.06.2013 to start the construction, as such, the due date of delivery of possession is to be counted from 05.06.2013. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.93,97,023/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 05.12.2016 amounting to Rs. 20,61,874.38/- as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the



handing over possession failing which the complainant is entitled to refund the amount.

As the possession of the flat was to be delivered by 21.11.2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

32. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.
33. 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

34. **Jurisdiction of the authority-** The project "Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has



subject matter jurisdiction along with territorial jurisdiction.

35. The preliminary objections 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.

Decision and directions of the authority

36. During the course of arguments, the authority has observed project is registered with the authority which will be expired on 31.12.2018. Counsel for the respondent stated that they have applied for extension of registration which is pending with the authority. The re-revised date of delivery of possession is 31.12.2019.
37. As per clause 14 (a) of the builder buyer agreement dated 04.04.2013 for unit No. GGN-24-0902, 9th floor, Building No.24, in Gurgaon Greens in Sector-102, Dhankot, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of construction i.e. 21.6.2013 + 5 months grace period which comes out to be 21.11.2016. However, the respondent has failed to fulfil its contractual obligation,



hence, the respondent is liable to pay delayed charges at the prescribed rate of interest @ 10.75% p.a.

38. Thus, the authority exercising its under section 37 of the act hereby directs the respondent to act in accordance with the provisions of section 18 (1) of the Act ibid : -

- i. The respondent is liable to pay arrears of interest @ 10.75% p.a. accrued on the amount paid by the complainant from due date of delivery of possession i.e. 21.11.2016 till 20.12.2018 which comes to Rs. 21,00,620.82/-.
- ii. Thereafter, the monthly interest on the paid Rs. 84,181.66/- be payable by the respondent on 10th of subsequent month till date of offer of possession.

39. The complaint is disposed of accordingly.

40. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

HARERA
GURUGRAM



Date: 20.12.2018

Judgement Uploaded on 08.01.2019