

PROCEEDINGS OF THE DAY	
Day and Date	Friday and 07.12.2018
Complaint No.	560/2018 Case Titled As Savatram Infrastructures Ltd V/S M/S Emaar MGF Land Ltd.
Complainant	Savatram Infrastructures Ltd
Represented through	Shri Vineet Sehgal, Advocate for the complainant.
Respondent	M/S Emaar MGF Land Ltd.
Respondent Represented through	Shri Ketan Luthra, authorized representative with S/Shri J.K.Dang and Ishaan Dang, Advocates for the respondent.
Last date of hearing	18.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 14 (a) of the Builder Buyer Agreement dated 8.5.2013 for unit No.GGN-3-0802, Gurgaon Greens in Sector 102, Dwarka Expressway, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of start of construction i.e. 25.6.2013 + 5 months grace period which comes out to be **25.11.2016**. However, the respondent has not delivered the unit so far. Complainant has already paid Rs.88,03,616/- to the respondent.

Project was registered with the authority and revised date of possession is December 2018.

Complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **25.11.2016** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the offer of possession otherwise the complainant is entitled to seek refund the amount paid by him with interest.

On the request of counsel for complainant, both builder and buyer shall be at par so far as charging of interest @ 10.75% is concerned on account of delayed payment on the part of buyer.

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)
7.12.2018

Subhash Chander Kush
(Member)
7.12.2018

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

Complaint no 560 of 2018
First date of hearing 18.09.2018
Date of decision 07.12.2018

Savatram Infraventures Ltd (Formerly
known as Savtram Dairy Products Ltd)
Office address : Tilak Road, Akola District,
Akola, Maharashtra-444001

Complainant

Versus

M/s Emaar MGF Land Ltd (Through its
Managing Director)
Reg Office : 306-308,3rd Floor, Square One
C-2,District Center, Saket, New Delhi-110017

Branch Office : Emaar Business Park, MG
Road, Sikandarpur Chowk, Sector 28,
Gurgaon-122002

Respondent

CORAM :

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE :

Shri Vineet Sehgal

Advocate for Complainant

Shri Ketan Luthra authorized
representative on behalf of
respondent company with Shri
Ishaan Dhang, Advocate

Advocate for Respondent



ORDER

1. A complaint dated 19.07.2018 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 Savatram Infraventures Ltd against the promoter M/s Emaar MGF Land Ltd, on account of violation of clause 14 (a) of the buyer's agreement executed on 08.05.2013 for unit no GGN-03-0802 in the project "Gurgaon Greens" for not giving possession on the due date i.e 25.11.2016 which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.
2. Since, the buyer's agreement was executed on 08.05.2013 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, Dwarka Expressway, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Unit no.	GGN-03-0802
4.	Unit area	1650 sq. ft
5.	DTCP license	75 of 2012
6.	Registered/ Not registered	Registered
7.	RERA registration no	36 of 2017
8.	Date of booking	22.01.2013
9.	Date of buyer's agreement	08.05.2013
10.	Total consideration	Rs. 1,20,07,283/-
11.	Total amount paid by the complainant	Rs. 88,03,617/-
12.	Payment plan	Construction linked plan
13.	Date of delivery of possession (As per clause 14 (a) : 36 months from date of start of construction i.e 28.06.2013 (As per date of start of PCC for foundation stated in statement of accounts dated 26.07.2018) + 5 months grace period)	28.11.2016
14.	Delay of number of months/years upto 07.12.2018	2 years 9 days
15.	Penalty clause (As per clause 16 (a) of buyer agreement)	Rs. 7.50/- per sq. ft. per month of the Super Area



4. The details provided above have been checked as per record of the case file provided by the complainant and respondent. A buyer's agreement dated 08.05.2013 is available on record for unit no. GGN-03-0802 according to which the possession of the aforesaid unit was to be delivered by 28.11.2016. 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 respondent for filing reply and for appearance. Accordingly, the respondent appeared on 18.09.2018. The case came up for hearing on 18.09.2018 and 07.12.2018. The reply has been filed on behalf of the respondent on 18.09.2018

FACTS OF THE CASE

5. The complainant submitted that the complainant is a company incorporated under the provisions of Companies Act and the name of the complainant company was changed to Savatram Infraventures Ltd.



6. The complainant submitted that relying upon the reputation of respondent company and being interested in purchasing an apartment in project namely “Gurgaon Greens”, he applied for allotment for the same and deposited a sum of Rs 7,50,000/- as initial deposit along with the said application. Accordingly a provisional allotment letter for unit no GGN-03-0802 was issued to the complainant on 28.01.2013. The total payable amount for the booked residential apartment was Rs 1,20,07,283/- plus taxes.
7. The complainant also submitted that he has paid total amount of Rs 88,03,616 towards the sale consideration of the said apartment vide various cheques and RTGS transactions.
8. The complainant submitted that pursuant to the issue of provisional allotment letter, the respondent also executed a buyer’s agreement with the complainant on 08.05.2013.
9. The complainant submitted that the 4th instalment was payable on start of PCC for foundation and the said amount was demanded by the respondent from the complainant in the month of June 2013. Thus it is apparent that the



construction of project was started prior to June 2013 as per the own admission of the respondent.

10. The complainant submitted that as per clause 14 (a) of the buyer agreement, the respondent committed delivery of possession within a period of 36 months from the date of start of construction i.e 28.06.2013 along with a grace period of 5 months. Therefore the respondent was liable to complete the construction work by the June 2016 without grace period. The respondent has failed to finish the construction work of the project till date.
11. The complainant submitted that the buyers agreement was one sided and drafted in favour of the respondent pointing out to the grave unfair trade practices being carried out by the respondent.
12. The complainant also submitted that he served a legal notice upon the respondent on 25.09.2017 thereby seeking the refund of the amount deposited by them as the respondent was not able to hand over the possession of the flat to them as agreed as per the terms of the agreement.



13. The complainant also submitted that the said apartment was purchased by the complainant exclusively for the personal use of its director but the respondent has been deficient in providing services to the complainant. Hence, the complainant was constrained to file the present complaint.

ISSUES RAISED BY THE COMPLAINANT

14. The issues raised by the complainant are as follows :

- I. Whether the respondent is liable to refund the total consideration paid by the complainant along with interest at the rate of State Bank of India highest marginal cost of lending plus 2% on account of non-delivery of possession of subject unit within stipulated period?
- II. Whether the complainant is entitled to receive compensation on account of long harassment and mental agony?



RELIEF SOUGHT

15. The reliefs sought by the complainant are as follows :

- i. **Direct the respondent to provide refund of total the total consideration paid by the complainant along with interest from the date of deposit till the date of refund.**
- ii. **Direct the respondent to refund legal cost incurred by the complainant.**

REPLY BY THE RESPONDENT

16. The respondent submitted that the present complaint is not maintainable before this authority and the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession and refund of the money paid by the complainant for the booking. Thus it was further submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the said Act read with rule 29 of HARERA Rules 2017 and not by this authority.

17. The respondent submitted that the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of



the provisions of the Act as well as incorrect understanding of the terms and conditions of the buyers agreement.

18. The respondent submitted that the complainant were irregular as far as payment of instalments was concerned. Payment request reminder letters dated 01.07.2013, 30.12.2016, 02.04.2017, 09.05.2017, 05.10.2017, 12.01.2018 and notice dated 06.02.2018 were sent to the complainant by the respondent.

19. The respondent submitted that the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought.

20. The respondent submitted that it is evident from the demand letters sent to the complainant that the construction was progressing as per schedule.

21. The respondent also submitted that consequent to the coming into force of the Act and after the project in question has been registered under the same the date of completion of the apartment stands extended to December 2018. It is only after December 2018 if the construction of the apartment has not been completed subject to force majeure conditions or any extension of registration under the Act, the complainant



can make any complaint seeking refund and compensation.

The complaint is highly premature.

Determination of issues:

22. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under :

- i. **First issue :** With respect to first issue, the authority is of the view that the current status of the project in question is completed above 40% therefore order for refund will not serve the interest of the project and hamper the interest of other allottees who wishes to continue with the project. Therefore the respondent is not liable to refund the total consideration amount paid by the complainant.

However as per clause 14 (a) of the buyer agreement, the respondent committed delivery of possession within a period of 36 months from the date of start of construction i.e 28.06.2013 along with a grace period of 5 months. In the present case the respondent has failed to deliver the possession of the allotted unit on the



assured date of 28.11.2016. Therefore the respondent is liable to deliver the possession of the booked apartment along with delay interest under section 18 (1) proviso to the complainant at the prescribed rate of 10.75%, for every month of delay till the date of handing over of possession.

- ii. **Second Issue** : The authority does not have jurisdiction to deal with the cases of compensation however the complainant is at liberty to approach appropriate forum to seek relief.

Findings of the Authority

23. Jurisdiction of the authority-

i. **Subject Matter Jurisdiction**

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.



ii. **Territorial Jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

24. In the present case, as per clause 14 (a) of the builder buyer agreement dated 8.5.2013 for unit No.GGN-3-0802, Gurgaon Greens in Sector 102, Dwarka Expressway, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of start of construction i.e. 28.6.2013 + 5 months grace period which comes out to be 28.11.2016. However, the respondent has not delivered the unit so far. Complainant has already paid Rs.88,03,616/- to the respondent. Project was registered with the authority and revised date of possession is December 2018.



25. On the request of the counsel for the complainant, both builder and buyer shall be at par as far as charging of interest @10.75% is concerned on account of delayed payment on the part of buyer.

Decision and directions of the authority

26. After taking into consideration all the material facts as adduced and produced by both the parties, 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 in the interest of justice and fair play:

- i. As per provision of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 the respondent is duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 25.11.2016 till the actual offer of possession.
- ii. The arrears of interest accrued so far from the due date of delivery of possession i.e 28.11.2016 to the date of order i.e 07.12.2018 amounting to Rs 19,16,113/- shall be paid to



the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest which comes to Rs 78,865.73/- shall be made before 10th of subsequent month till handing over the possession.

27. The complaint stands disposed of.
28. The order is pronounced.
29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 07.12.2018

Judgement Uploaded on 09.01.2018

HARERA
GURUGRAM

