

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 14.02.2019
Complaint No.	1501/2018 case titled as Krishan Kumar Gupta V/S M/S Godrej Properties Ltd
Complainant	Krishan Kumar Gupta
Represented through	Shri Navnitya Prakash Goyal on behalf of complainant with Shri Rajan Gupta Advocate
Respondent	M/s Godrej Properties Ltd
Respondent Represented through	Shri Anindo Vyas and Ms. Surabhi Kapur authorized representatives on behalf of respondent-company with Shri Kapil Madan, Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

It has been stated by the counsel for the respondent that the respondent actually received occupation certificate on 16.10.2014 for the Tower-J in which the unit of the complainant is situated. However, DTCP, vide Memo dated 17.12.2014 had ordered to keep the occupation certificate in

abeyance. Respondent thereafter, wrote several letters to DTCP to vacate the abeyance instruction but all efforts made on the part the respondent gone vain and the respondent was constrained to file a Writ Petition No.4575/2016 before the Hon'ble High Court of Punjab & Harayna challenging the memo dated 17.12.2014 of DTCP. While allowing the Writ Petition filed by the respondent the Hon'ble High Court directed the DTCP to decide the matter in a time bound manner and finally the DTCP withdrawn their memo dated 17.12.2014 and thereafter the respondent issued possession letter to the complainant on 23.03.2016, as such, their stand for any delayed possession claimed by the complainant stands vindicated. In view of the facts and circumstances mentioned above the complainant is not eligible for delayed possession charges. It has further been averred by the respondent that complainant is in arrear of due payment of Rs.15,54,395/- as on 17.12.2018. As per statement of accounts wherein certain unreasonable charges, such as, holding and maintenance charges including interest have been levied on the buyer which are not tenable to the extent that since the matter remained sub-judice, as such, principle of equity is applicable on both the parties. As such, respondent is directed to take a lenient view in the matter and to waive off all the charges as the complainant has already paid excess amount than the actual payment.

Complainant is also liable to pay interest at the rate of 10.75% which shall be calculated at the time of delivery of possession on delayed payments, if any, as per the provisions of Section 19 (6) of the Real Estate (Regulation and Development) Act 2016.

Complaint stands disposed of in above terms. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
14.02.2019

Subhash Chander Kush
(Member)

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

**Complaint no. : 1501 of
2018**
First date of hearing 14.02.2019
Date of decision : 14.02.2019

Mr. Krishna Kumar Gupta
R/o WZ 106/79, Rajouri Garden
Extension, New Delhi: 110027.

...Complainant

Versus

1. M/s Godrej Properties Ltd.
(through its director/authorised
representative)
Office: Plot no. 35, 3rd floor, UM
House, sector 44, Gurugram.
2. M/s Frontier Home Developers Pvt.
Ltd.
(through its director/authorised
representative)
Office: 6/81, WEA, Padam Singh
Road, Karol Bagh, New Delhi-110005.

...Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Navditya Prakash Goyal Advocate for the complainant
with Shri Rajan Gupta
Shri Kapil Madan Advocate for the respondent
Shri Anindo Vyas and Ms. Surabhi Kapur Authorised representatives on
behalf of respondent company



ORDER

1. A complaint dated 01.11.2018 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. Krishna Kumar Gupta against the promoter M/s Godrej Properties Ltd.

2. Since, the apartment buyers agreement dated 24.06.2011 has been executed prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by both the parties, the authority has decided to treat this complaint as an application to issue directions for compliance of obligations by the promoters under section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

Nature of project: Residential

DTCP License no: 88 of 2008 dated 07.05.2008



1.	Name and location of the project	Godrej Frontier, sector 80 Gurugram
2.	Registered/Unregistered	Not registered
3.	Unit no.	J 0101, 1 st floor, tower J
4.	Unit admeasuring	2262 sq. ft.
5.	Allotment letter	23.12.2010
6.	Date of agreement	24.06.2011
7.	Total consideration as per annexure A of allotment letter	Rs 1,07,03,414/-
8.	Total amount paid by the complainant	Rs. 1,08,05,266/-
9.	Payment plan	Construction linked
10.	Date of delivery of possession. Clause 4.2: within 33 months with a grace period of 6 months	24.09.2014
11.	Delay in handing over possession till date	1 year 5 months 29 days
12.	Penalty as per clause 4.2 of apartment buyer's agreement	Rs. 5/- per month per square feet of the super built up area of the apartment
13.	Offer of possession	23.03.2016
14.	Occupation certificate	16.10.2014



3. As per the details provided above, which have been checked as per record of the case file. An apartment buyer agreement is available on record for unit no. J 0101, 1st floor, tower J. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on 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 14.02.2019. The case came up for hearing on 14.02.2019. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE:

5. That respondent had launched a project known as “Godrej Frontier” in sector 80 Gurugram, Haryana in the year 2010. That the respondent company had spent a huge amount of money for the launch of the above project and assured the interested buyers that it is a dream project for investors. The complainant believed the promise of the respondent company and became inclined towards the project and invested his hard earned money in the above project.
6. That complainant booked a flat in above mentioned project and respondent allotted one unit bearing no. J0101, 1st floor, area admeasuring 2262 sq. ft. in “Godrej Frontier” in sector 80, Gurugram-Haryana (hereinafter referred to as “said property”). That the total cost of the said property was Rs.



1,07,03,413/- The complainant had made the first payment of Rs. 5,00,000/- on 26.10.2010.

7. That even though the complainant had made the first payment on 26.10.2010 and approximately Rs. 19,05,792/- was paid by complainant till December-2010, the respondent had entered into builder buyer agreement with the complainant only on 24.06.2011 i.e. after expiry of more than seven months from the date of first payment made to the respondent company.

8. This clearly shows that the intention of the respondent company from the very beginning was to cheat the complainant as the above act was nothing but to illegally gain additional time for handing over possession by delaying the signing of the builder buyer agreement.

9. That as per clause 4.2 of the said agreement the respondent company assured the complainant that the physical possession of the said flat with all amenities would be handed over to the complainant within 33 months i.e. by 24.03.2014.

10. That further as per clause 5.2 of the said agreement the respondent promise to issue possession notice only if the



complainant satisfied himself that all the work has been completed as per the description and specification stated in schedule IV of the said agreement.

11. That complainant has already made more than the sale consideration i.e. Rs. 1,08,05,266/- to the respondent, still neither the respondent did development work in terms of agreement nor hand over the possession as per terms of the agreement.
12. That very surprisingly the respondent had offered possession of the above-mentioned units without even having the occupation certificate and the same has been done by the respondent in hurried manner just to run away from his liability to pay late possession charges and started charging illegally maintenance charges and holding charges.
13. That respondent informed the complainant that they have received occupation certificate on 16.10.2014, however thereafter the complainant came to know that occupation certificate was put in abeyance by DTCP and finally got it approved on 22.03.2016. That even otherwise complainant came to know that the basic amenities/facilities mentioned in



schedule IV of the agreement e.g. club house, swimming pool, health club with gymnasium, children play area/meditation hall, multiple purpose hall, tennis court are not operational and even on most of them the construction work has not been started, still the respondent illegally offered possession to the complainants. Surprisingly the respondent also started raising illegal demand in the name of holding charges even though it was the respondent who had failed to comply with the terms of the agreement and failed to deliver possession on time.

14. That offering possession by the respondent without occupation certificate and basic amenities as part of schedule IV discussed above amounts to cheating and fraud on the part of respondent.

15. That various communication and meeting has been conducted between the parties but all in vain. The above act and conduct on the part of respondent company clearly shows that their intention from the very beginning was to cheat the innocent buyers (complainant).



16. That above act and conduct on the part of respondent company force the complainant not to continue in the project and therefore wants refund of their money invested in the above project along with interest @ 24 % per annum from the date of payment till realization from respondent/opposite party. The respondent is also liable to compensate the complainant for the cheating and harassment done by them.

ISSUES RAISED BY THE COMPLAINANT:

15. The following issues has been raised by the complainant
- i. Whether or not the respondent had valid occupation certificate on the date of offer of possession?
 - ii. Whether or not the respondent completed all the work as per the description and specification stated in schedule IV of the builder buyer agreement?
 - iii. Whether or not the complainant is entitled for refund of Rs 1,08,05,266/- invested by him in the said project?



RELIEF SOUGHT BY THE COMPLAINANT:

16. The following reliefs have been prayed for:

- i. Direct the respondent to refund the amount of Rs. 1,08,05,266/- along with interest.
- ii. Any other relief which this hon'ble authority deem fit to meet the ends of justice.

REPLY BY THE RESPONDENT:

17. The instant reply is filed on behalf of the respondent no.1 and respondent no. 2 by Mrs. Surabhi Kapur who is duly authorized vide a board resolution dated 01.11.2017 and a power of attorney dated 21.06.2010.

18. It is submitted that the complainant has booked an apartment no. J 0101 in the in the project namely "Godrej Frontier" situated at Sector 80, Gurugram vide an application from dated 27.10.2010 wherein he opted for a construction linked plan and promised timely payment as per the agreed schedule. In accordance with the terms of application form, the answering respondent issued a allotment letter dated 23.12.2010 to the complainant.

19. It is submitted that that thereafter a builder buyer agreement dated 24.06.2011 (hereinafter referred to as "BBA") was executed between the parties. It is submitted that the BBA



clearly mentioned that the respondents will offer possession within 33 months and shall also have 6 months of grace period for completion as per clause 4.2 of the BBA. Thus, as per clause 4.2, the tentative completion date was 24.09.2014. Further, the said clause also clearly provide that the possession delivery date shall be subject to the force majeure events in which case the period shall be extended. Further, clause 4.1. of clearly enumerated that respondent may complete the project in part and the complainant has given a specific consent and no objection in the BBA itself.

20. That the respondents have throughout complied with each and every clause of the BBA. That in order to deliver the flats in time, an application dated 12.04.2014 (inadvertently mentioned as 12.04.2013) was filed before the office of the Directorate of Town and Country Planning (hereinafter referred to as "DTCP") for the issuance of the occupation certificate (OC), which was duly received by the DTCP on 29.04.2014. Thereafter, the occupation certificate was granted by DTCP on 16.10.2014 for the said project.



21. It is pertinent to mention that soon after receiving the occupation certificate, the respondents started the formalities for offering possession of the flats to the allottees. Considering the high volume of allottees, the respondents decided to offer phase-wise possession of the flats to the allottees.

22. However, in the interim, in view of the outburst of ongoing public interest litigation titled as “Mukesh Sharma vs. State of Haryana”, bearing CWP No. 23839/ 2014, pending before the hon’ble Punjab and Haryana High Court at Chandigarh, DTCP subsequently issued a letter bearing No. ZP-433/2014/28350, dated 17.12.2014, directing not to offer further possession of any flats to the allottees, and kept the occupation certificate granted by DTCP in abeyance. Hence, the respondents were constrained not to offer further possession of the flats in the said project, including that of the complainant.

23. As such, the possession of the flat booked by the complainant could not be offered, even though the same was already constructed and ready for occupation. It is reiterated that the



respondents could no longer offer possession of the booked flats to its customers due to the aforesaid letter dated 17.12.2014 issued by DTCP.

24. It is submitted that the respondents made all possible endeavors to get the aforesaid instructions quashed/ set aside. In this regard, the show-cause notice issued by DTCP, vide memo no. ZP-433/2014/28350 and its letter dated 17.12.2014, was duly and cogently replied vide letter dated 29.12.2014, which was then received by DTCP on 30.12.2014, wherein misconceptions under which letter dated 17.12.2014 was issued by DTCP had been succinctly clarified. The said reply letter also highlighted the concerns of the customers, and the various grievances faced by them along with those of the respondents. Thereafter, another letter to the aforesaid show cause notice was issued on 18.02.2015, which was also received by DTCP on 23.02.2015.

25. That thereafter, another request was made to DTCP vide letter dated 27.07.2015 to vacate the stay instructions, more so considering the hardship faced by the flat buyers. That subsequent to the aforesaid letters, another detailed



representation was made to DTCP vide letter dated 01.10.2015, which also went in vain. As such, the concerns of the flat owners were regularly highlighted to DTCP with a view to protect their interests.

26. Without prejudice to the above, even otherwise, as per clause 4.2 of the agreement, the complainant had duly agreed that respondent is entitled to an extension of time from the tentative completion date for the issuance of possession notice, if the delay is on account of any stay or prohibitory order passed by any competent authority.

27. That DTCP vide an order dated 01.02.2016 rejected respondent's representation was rejected. Aggrieved by the decision of DTCP, opposite party no. 1 preferred a writ petition no. 4575/2016 before hon'ble High Court praying to set aside show cause notice dated 17.12.2014, order dated 01.02.2016, permission to handover/offer possession of the flats to allottees of the said project etc.

28. That the hon'ble High Court vide an order dated 10.03.2016 directed DTCP to decide respondents representation in a time bound manner. In compliance thereof, said representation



was decided by DTCP vide order dated 22.03.2016, whereby DTCP withdrew show cause notice dated 17.12.2014, and memo dated 01.02.2016. Thereafter, a possession letter was issued to the complainant dated 23.03.2016 requesting the complainant to take the possession his apartment.

29. That the complainant thereafter failed to pay the outstanding amount and also failed to take the possession of the apartment on frivolous issues. It is submitted that the respondent thereafter wrote several reminder letters dated 24.04.2015, 03.08.2016, 23.08.2016, 10.10.2016 26.10.2016 requesting the complainant to clear the outstanding and take possession. As on 22.11.2018 total amount of Rs.15,54,395/- is due and payable by the complainant.

30. That it is relevant to state here that the respondents applied for grant of OC for community building/clubhouse on 29.12.2014 and reminder letter 16.12.2015. OC was granted by DTCP vide memo dated 19.06.2017 and same was informed to customers vide email dated 22.06.2017. Later permission to use pool was granted by District Sports



Council, Gurugram vide letter dated 20.12.2017 and 06.03.2018.

31. That the present complaint is only a frivolous and vexatious litigation initiated by the complainant with a severely *mala fide* ulterior motive to not only extort illegal monies from the respondents, but also to avoid the payment of his contractual duties/ dues as agreed under the agreement.

32. It is further submitted that the present complaint is not maintainable in as much as the possession of the apartment was issued to the complainant much before the rules of RERA came into force. Further, it is submitted that the project itself is not required to be registered in RERA and thus the present proceedings are misconceived. Thus, the present complaint is liable to be dismissed on that score alone.

Without prejudice to the above, it is submitted that the complaint is not maintainable before the adjudicating authority as neither there any delay in the offer of the possession of the flat nor there is loss occurred to the complainant that can be attributed to the respondents.



33. It is submitted that the present complaint is wholly erroneous, misconceived and is not maintainable in the eyes of the law. Thus, the instant complaint is liable to be dismissed on account of concealment of material facts and documents, besides being vitiated on account of the false, vexatious and unsubstantiated allegations levelled by the complainant. It is submitted that there is no misrepresentation or violations of any rules of RERA nor that the complainant has suffered any loss attributable to the answering respondent.

DETERMINATION ON ISSUES

15. Issue wise determination are as follows:

- i. With respect to the **first issue**, the occupation certificate is dated 16.10.2014 and the offer of possession was made by the respondent on 23.03.2016. Thus, the respondent had a valid occupation certificate on the date when the offer of possession was made.



- ii. With respect to the **second issue** raised by the complainant, there are a list of amenities and specifications provided in the said schedule IV. The respondents have attached photographs of certain amenities. It is also pertinent to note that occupation certificate dated 16.10.2014 with respect to the said project has been issued.
- iii. With respect to the **third issue** raised by the complainant, it is noted that an occupation certificate dated 16.10.2014 has been granted. It has further been averred by the respondents that complainant is in arrear of due payment of Rs 15,54,395/- as on 17.12.2018. As per statement of accounts wherein certain unreasonable charges such as holding and maintenance charges including interest has been levied on the buyer which are not tenable to the extent that since the matter remained sub judice, as such principle of equity is applicable on both the parties. As such, respondents are directed to take a lenient view in the matter and to



waive off all the charges as the complainant has already paid excess amount than the actual payment. Thus, refund may not be allowed.

FINDINGS OF THE AUTHORITY:

16. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to 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.
17. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
18. 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.
19. It has been stated by the counsel for the respondent that the respondent actually received occupation certificate on 16.10.2014 for the tower J in which the unit of the



complainant is situated. However DTCP, vide memo dated 17.12.2014 had ordered to keep the occupation certificate in abeyance. Respondent thereafter wrote several letters to DTCP to vacate the abeyance instruction but all efforts made on the part the respondent gone in vain and the respondent was constrained to file a writ petition no 4575/2016 before the hon'ble high court of Punjab and Haryana challenging the memo dated 17.12.2014 of DTCP. While allowing the writ petition filed by the respondent the hon'ble high court directed the DTCP to decide the matter in a time bound manner and finally the DTCP withdrew their memo dated 17.12.2014 and thereafter the respondent issued possession letter to the complainant on 23.03.2016 as such their stand for any delayed possession claimed by the complainant stands vindicated. In view of the facts and circumstances mentioned above the complainant is not eligible for delayed possession charges. It has further been averred by the respondent that the complainant is in arrear of due payment of Rs 15,54,395/- as on 17.12.2018.



20. As per statement of accounts wherein certain unreasonable charges such as holding and maintenance charges including interest has been levied on the buyer which are not tenable to the extent that since the matter remained sub judice, as such

principle of equity is applicable on both the parties. As such, respondent is directed to take a lenient view in the matter and to waive off all the charges as the complainant has already paid excess amount than the actual payment.

21. Complainant is also liable to pay interest at the rate of 10.75% which shall be calculated at the time of delivery of possession on delayed payments, if any, as per the provisions of section 19(6) of the Real Estate (Regulation and Development) Act, 2016.

DECISION AND DIRECTION OF AUTHORITY

22. 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 parties in the interest of justice and fair play:

- a. The respondent is directed to take a lenient view in the matter and waive off all the charges i.e. holding and maintenance charges as the complainant has already paid excess amount than the actual payment.
- b. The complainant is also liable to pay interest at the rate of 10.75% which shall be calculated at the time of delivery of



possession on delayed payments, if any, as per the provisions of section 19(6) of the Real Estate (Regulation and Development) Act, 2016.

23. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.
24. Case file be consigned to the registry.
25. Order is pronounced.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 14.02.2019

Judgement uploaded on 26.02.2019

HARERA
GURUGRAM

