

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Monday and 21.01.2019
Complaint No.	737/2018 Case Titled As Naveen Kumar Suman V/S Emaar MGF Land Ltd
Complainant	Naveen Kumar Suman
Represented through	Shri Pardeep Sharma, Advocate for the complainant
Respondent	M/S Emaar MGF Land Ltd
Respondent Represented through	Shri Ketan Luthra authorized representative on behalf of respondent-company with S/Shri Ishaan Dang and Ankit Mehta, Advocates.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

### **Proceedings**

#### **Project is registered with the authority.**

Arguments heard.

Complaint was filed on 23.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 20.9.2018, 16.11.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 16.11.2018 and 29.11.2018 for non-filing of reply even after service of notices.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Copy of reply has been handed over to the counsel for the complainant.

Brief facts of the matter are as under :-

As per clause 14 (a) of the Builder Buyer Agreement dated 6.6.2013 for unit No GGN-26-GF-01, Ground Floor, Tower No.26, Gurgoan Greens in Sector 102, 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. 18.10.2013 + 5 months grace period which comes out to be 18.3.2017. Complainant has already paid Rs.30,65,064/- to the respondent against a total sale consideration of Rs.1,49,55,900/-. There are certain inter-se disputes between the parties w.r.t date of start of construction and late payment for which the respondent has already charged interest at the rate of 24%. Now, at a belated stage before coming into force RERA Act, the respondent has intimated the cancellation of flat/unit on account of non-payment by the buyer/complainant on 2.12.2018. Later-on, the respondent arbitrarily cancelled the flat/unit on 28.12.2018 after affording them lot of opportunities for making payment and forfeited the entire amount which is unfair and un-justified on their part. No refund has been given to the complainant. As a matter of fact and as per past precedent, the respondent should have forfeited only 10% of the total sale consideration and refund the balance amount as per judgment passed by NCRDC. Respondent is directed to refund the amount alongwith interest at the rate of 10.75% after deducting 10% from the total sale consideration amount within a period of 90 days from the date of this order.

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

Samir Kumar  
(Member)  
21.9.2018

Subhash Chander Kush  
(Member)

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

**Complaint no. : 737 of 2018**  
**Date of First hearing : 21.01.2019**  
**Date of decision : 21.01.2019**

Sh. Naveen Kumar Suman  
R/o Flat no. 101, House no. RZF-777/20,  
Gali no. 16, Raj Nagar Part-II(Two),  
Palam Colony, New Delhi-110075

**...Complainant**

Versus

M/s Emaar MGF Land Limited  
Office at: 306-308, Third Floor, Square One,  
C-2, District Centre, Saket,  
New Delhi-110017

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Sh. Pardeep Sharma  
Sh. Ketan Luthra

Advocate for the complainant  
Authorised representative on  
behalf of the respondent  
company

Sh. Ishaan Dang and Sh. Ankit  
Mehta

Advocate for the respondent



**ORDER**

1. A complaint dated 20.08.2018 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 Sh. Naveen Kumar Suman against the promoter M/s Emaar MGF Land Limited in respect of unit described below in the project 'Gurgaon Greens', on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 06.06.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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.	Project area	13.531 acres
4.	Unit no.	GGN-26-GF-01, GF floor, tower/building no. 26
5.	Unit area	1650 sq. ft.



6.	Registered/ not registered	<b>36(a) of 2017 dated 05.12.2017</b>
7.	Revised date of completion as per RERA registration certificate	<b>31.12.2018</b> <b>Note: The respondent has applied for extension for registration till 31.12.2019.</b>
8.	DTCP license	75 of 2012 dated 31.07.2012 Note: the said license was renewed on 29.11.2018.
9.	Approval of building plans	22.01.2013 <b>Note: The building plans have been revalidated on 23.10.2018.</b>
10.	Date of booking	19.03.2013
11.	Date of provisional allotment letter	03.04.2013
12.	Date of buyer's agreement	<b>06.06.2013</b>
13.	Basic sale price	Rs. 1,21,27,500/- (as per buyer's agreement)
14.	Total consideration	Rs.1,49,55,900/- (as per buyer's agreement)
15.	Total amount paid by the complainant	Rs. 30,65,064/- (as per statement of account dated 29.09.2016, annexure P/6, pg 77 of the complaint)
16.	Payment plan	Construction linked plan
17.	Date of delivery of possession	<b>18.03.2017</b>



		Clause 14(a)- 36 months from date of start of construction, i.e. 18.10.2013 (as per statement of account dated 29.09.2016, annexure P/6, pg 77 of the complaint) + 5 months grace period
18.	Delay of number of months/ years up to 21.01.2019	1 year 10 months
19.	Penalty clause as per buyer's agreement dated 06.06.2013	Clause 16(a)- Rs. 7.50/- per sq. ft. per month of super area of unit for the period of delay

4. The details provided above have been checked on the basis of the record available in the case file. A buyer's agreement dated 06.06.2013 is available on record, according to which the possession of the same was to be delivered by 18.03.2017. Neither the respondent has delivered the possession of the said until 18.03.2017 nor they have paid any compensation @ Rs.7.50/- per sq. ft. per month of the for the period of such delay as per clause 16(a) of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.



The case came up for hearing on 21.01.2019. The reply has been filed by the respondent after service of three notices consecutively for the purpose of filing reply.

### **Facts of the complaint**

5. On 19.03.2013, the complainant along with his brother, Sh. Arun Kumar Suman booked a residential unit in the project named "Gurgaon Greens" in Sector 102, Village Dhankot, Gurugram by paying an advance amount of Rs 7,50,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing no. GGN-26-GF-01, on GF floor, in tower/building no. 26 admeasuring 1650 sq. ft vide provisional allotment letter dated 03.04.2013.
6. The complainant submitted that thereafter, a buyer's agreement was jointly executed on 06.06.2013 between the respondent on one hand and the complainant with his brother, Sh. Arun Kumar Suman on other hand. As per clause 14(a) of the agreement, possession was to be handed over within 36 months from date of start of construction plus 5 months grace period, i.e. by 18.03.2017. It is pertinent to mention that the schedule of payment was appended as Annexure-III of the buyer's agreement and in that schedule,



except for the date of booking no other date was mentioned. Therefore, the allottees had no option but to depend on the intimations from the respondent from time to time regarding the progress of the project.

7. The complainant submitted that his brother, Sh. Arun Kumar Suman no longer wanted to remain an allottee of the said flat. So, on his request the flat transferred in the name of the complainant who was also a co-applicant when the buyer's agreement dated 06.06.2013 was signed. In this regard, the respondent issued a letter dated 13.12.2013 confirming the change of nomination in favour of the complainant. Vide this letter dated 13.12.2013, it was also intimated to the complainant that the next instalment amounting to Rs.21,42,875/- shall be due and payable within 6 months from the start of construction slab. It was also mentioned in the same letter that a separate demand letter shall be sent by the respondent 15-20 days prior to due date. Vide same letter, the respondent acknowledged that a payment of Rs.27,65,064/- was made towards the said flat.

8. The complainant submitted that to utter shock and surprise of the complainant, when on 13.12.2013, the complainant's brother handed over the statement of account dated





13.11.2013 to the complainant, the complainant after going through the same came to know that despite the fact that the construction has not started on that date, an amount of Rs.9,97,625/- had already been raised by the respondent under the head 'start of construction'. Therefore, it is amply clear that the respondent had raised the demand prior to the start of construction.

9. The complainant submitted that thereafter he visited the respondent's office and pointed out that the demand was made without starting the construction, upon which the respondent's officials assured him that they would make the corrections in the statement of account and accordingly, raise a demand of Rs.9,97,625/- as and when the construction starts and further assured that no penal interest would be charged on the said amount. In the meanwhile, the complainant after such assurance, made another payment of Rs.3,00,000/- through cheque dated 20.01.2014.

10. The complainant submitted that despite the assurances of the respondent's officials, the respondent not only maintained the demand of Rs.9,97,625/- w.e.f. 18.10.2013 but also levied penal interest on the aforesaid amount, which was totally illegal, which is clear from the statement of account dated



09.02.2015. The repeated protests by the complainant visiting the respondent's office and meeting the officials have been to no avail. The complainants within his rights stopped making further payments till the illegal demands were set right by the respondent, however, the respondent continued to charge the penal interest @ 24% by incorporating and maintaining the illegal demand and penalty which is clear from the statement of account dated 09.02.2015.

11. The complainant further submitted that later, the respondent unilaterally increased the price of the said flat to Rs.1,57,20,577/- apart from raising illegal and unsustainable penal interest, which is violation of RERA, 2016 and rules and bylaws framed thereunder.

12. The complainant submitted that the project has not been completed and the promoter has indulged in numerous violations which run contrary to the provisions of the RERA, 2016 and rules and regulations framed there under entitling the complainant to stop making the payments and claim for refund along with interest.

**13. Issues to be determined**

The relevant issues as culled out from the complaint are as



follows:

- I. Whether the promoter is liable to return the amount of Rs.30,65,064/- against the booking of the flat bearing unit no. GGN-26-GF-01 admeasuring 1650 sq. ft. in the project 'Gurgaon Greens'?
- II. At what rate of interest, the promoter is liable to return the amount of Rs.30,65,064/- w.e.f. 20.01.2014?

#### 14. Relief sought

- I. Direct the respondent to return the amount of Rs.30,65,064/- against the booking of the flat bearing unit no. GGN-26-GF-01 admeasuring 1650 sq. ft. in the project 'Gurgaon Greens'.

#### Respondent's reply

Reply has been filed by the respondent. However, the reply has been filed on wrong facts as the complaint pertains to unit no. GGN-26-GF-01 while the reply pertains to GGN-26-GF-02.

Thus, the same cannot be perused.

#### Determination of issues

The authority decides the issues raised by the parties as under:



15. With respect to the **first and second issue**, as per clause 14(a) of the buyer's agreement dated 06.06.2013, the possession was to be handed over within 36 months from date of start of construction, i.e. 18.10.2013 + 5 months grace period. Accordingly, the due date of delivery of possession comes out to be 18.03.2017. Thus, the respondent has failed in handing over the unit as per the terms and conditions of the buyer's agreement. As per the submissions of the complainant, the project has not been completed. Further, the project is registered vide registration no. 36(a) of 2017 dated 03.09.2017 wherein the promoter undertook to handover possession by 31.12.2018. The said date has expired. It is also pertinent to mention that the respondent has intimated the cancellation of flat/unit on account of non-payment by the complainant on 02.12.2018. Later-on, the respondent arbitrarily cancelled the flat/unit on 28.12.2018 after affording them lot of opportunities for making payment and forfeited the entire amount which is unfair and un-justified on their part. No refund has been given to the complainant. Thus, the authority is of the view that as a matter of fact and as per past precedent, the respondent should have forfeited only 10% of the total sale consideration and refund the



balance amount as per judgment passed by NCRDC in **DLF Ltd. v. Bhagwanti Narula**. The complainant is thus entitled to refund of the amount alongwith interest at the rate of 10.75% after deducting 10% from the total sale consideration amount.

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

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.

17. 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 and directions of the authority**

18. **Jurisdiction of the authority-** The project “Gurgaon Greens” is located in Sector 102, Village Dhankot, Gurugram thus the authority has complete territorial jurisdiction to entertain the present complaint. 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.

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.

19. As per clause 14(a) of the buyer's agreement dated 06.06.2013, the possession was to be handed over within 36 months from date of start of construction + 5 months grace period. Accordingly, the due date of delivery of possession comes out to be 18.03.2017. Thus, the respondent has failed in handing over the unit as per the terms and conditions of the buyer's agreement. As per the statement of account attached in the file, the complainant has paid a sum of Rs. 30,65,064/-. There are certain inter-se disputes between the parties w.r.t date of start of construction and late payment for which the respondent has already charged interest at the rate



of 24%. Moreover, the respondent has intimated the cancellation of flat/unit on account of non-payment by the buyer/complainant on 2.12.2018. Later-on, the respondent arbitrarily cancelled the flat/unit on 28.12.2018 after affording them lot of opportunities for making payment and forfeited the entire amount which is unfair and un-justified on their part. No refund has been given to the complainant. As a matter of fact, and as per past precedent, the respondent should have forfeited only 10% of the total sale consideration and refund the balance amount as per the NCDRC judgment in **DLF Ltd. v. Bhagwanti Narula** (RP/3860/2014 decided on 06.01.2015), not more than 10% of the total consideration can be forfeited as earnest money as the forfeiture of amount exceeding 10% of the sale price would be unreasonable and only the amount which is paid at the time of concluding the contract can be said to be the earnest money.



20. 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 refund the amount paid by the complainant alongwith interest at the rate of 10.75% after

deducting 10% of the total sale consideration amount from the said amount within a period of 90 days from the date of this order.

21. The order is pronounced.
22. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 21.09.2019

Judgement Uploaded on 11.03.2019

**(Subhash Chander Kush)**

Member



HARERA  
GURUGRAM

