

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

Complaint no. : 5142 of 2019
First date of hearing : 18.11.2019
Date of decision : 16.01.2020

1. Rajinder Singh
2. Romit Kaur
R/o WW-42, GF, Malibu Town,
Sohna Road, Gurugram-122018.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Regd. office: 306-309, Square One, C-2,
District Center, Saket, New Delhi-110017.
Also at: Emaar MFG Business Park,
M.G. Road, Sector 28, Sikandarpur Chowk,
Gurugram, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Ishaan Dang
Shri Ketan Luthra

Advocate for the complainants
Advocate for the respondent
Authorised representative for
the respondent company

ORDER

1. The present complaint dated 08.11.2019 has been filed by the complainants/allottees in the Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the

Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	Emerald Plaza in Emerald Hills" at Sector 65, Gurugram.
2.	Project area	3.963 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	10 of 2009 valid/renewed up to 20.05.2019
5.	Name of licensees	Active Promoters Pvt. Ltd. & Others C/o Emaar MGF Land Ltd.
6.	RERA registered/not registered	Not registered
7.	Date of grant of OC	08.01.2018
8.	Allotment letter dated	09.03.2010 (Page 27 of complaint)
9.	Unit no.	EPO-06-029, 6 th floor [Page 36 of complaint]
10.	Unit measuring	637.67 sq. ft.



11.	Increase in area of the unit vide letter of offer of possession dated 25.01.2018	658.69 sq. ft.
12.	Date of execution of buyer's agreement	11.02.2011 [Page 35 of complaint]
13.	Payment plan	Construction linked payment plan [Page 52 of complaint]
14.	Total consideration as per statement of account dated 20.06.2019 (Page 79 of complaint) and also as per statement of account dated 15.10.2019, page 108 of reply.	Rs.45,79,878/-
15.	Total amount paid by the complainants as per statement of account dated 20.06.2019 (page 80 of complaint) and also as per statement of account dated 15.10.2019, page 109 of reply.	Rs.50,81,363/-
16.	Due date of delivery of possession as per clause 16(a) of the said agreement i.e. 30 months from the date of execution of this agreement (11.02.2011) plus grace period of 120 days for applying and obtaining necessary approvals in respect of commercial complex. [Page 43 of complaint]	11.12.2013
17.	Date of offer of possession	25.01.2018 [Page 68 of complaint]
18.	Delay in handing over possession till date of offer of possession i.e. 25.01.2018	4 years 1 month 14 days
19.	Status of the project	OC received on 08.01.2018

3. As per clause 16(a) of the buyer's agreement, the possession was to be handed over within a period of 30 months from the date of execution of agreement (11.02.2011) plus grace period of 120 days which comes out to be 11.12.2013. Clause 16 of the buyer agreement is reproduced below:

"16. POSSESSION

(a) Time of handing over the possession

- (i) *That the possession of the office spaces in the commercial complex shall be delivered and handed over to the allottee(s) within 30 months of the execution hereof, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement...*
- (ii) *The allottee(s) agrees and understands that the company shall be entitled to a grace period of 120 days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the commercial complex."*

4. The complainants submitted that the respondent failed to handover possession of the said unit by the due date but has offered possession to the complainants on 29.01.2018 and demanded unreasonable amount under different heads. Also, the respondent has increased the area of the office without any justification from 637.67 sq. ft. to 658.69 sq. ft. The complainants visited the project site and took photographs of office space and construction site. Photographs clearly shows incomplete and ongoing construction at project site and their

allotted unit as a complete mess with hanging wires, no paints at walls, non-installation of promised A/C and much more, seeing the delayed and poor progress, the complainants have completely lost the faith in respondent company. The respondent did not construct the 3rd basement which was mentioned in payment plan and was promised by the respondent and adequate parking facility is an essential attribute of any commercial project. Hence, this complaint inter alia for the following reliefs:

- i. Direct the respondent to pay interest at the prescribed rate from due date of possession till handing over of possession on the amount paid by the complainants.
- ii. Respondent be directed to give possession of fully developed office space with all promised amenities.
- iii. Respondent party may kindly be directed to withdraw the demands (as demanded in offer of possession letter) under different heads:
 - a. Administrative charges Rs.14,160/-
 - b. Electricity connection charges Rs.94,281/-
 - c. Sewerage connection charges Rs.1625/-
 - d. Advance monthly charges for 12 months Rs.1,11,925/-
- iv. Respondent may kindly be directed to restrain from charging holding charges.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. The respondent contests the complaint on the following grounds:
 - i. The respondent submitted that right from the beginning, the complainants were extremely irregular as far as payment of instalments was concerned and the respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding dues under the payment plan opted by them.
 - ii. The respondent submitted that as per clause 16(b)(vi), in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over possession shall be extended accordingly, solely on the respondent's discretion till payment of all outstanding amounts till satisfaction of the respondent. Since, the complainants have defaulted in timely remittance of payments, therefore, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present case.

- iii. The respondent submitted that time taken by the statutory authorities in granting the occupation certificate in respect of the project needs to be excluded in determining the time period utilised for implementation of the project. The respondent had submitted an application for issuance of OC on 26.05.2017 before the concerned authority. The OC was thereafter sanctioned on 08.01.2018. It is submitted that once an application for issuance of OC is submitted before the concerned statutory authority, the respondent ceases to have control over the matter in any manner whatsoever. Therefore, the time period utilised by the concerned statutory authority for grant of OC needs to be excluded from computation of time period for implementation of the project.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
8. The Authority on the basis of information, explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.

9. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 16(a) of the buyer's agreement executed between the parties on 11.02.2011, possession of the booked unit was to be delivered within a period of 30 months from the date of execution of the agreement plus 120 days grace period. The grace period of 120 days is allowed to the respondent due to contingencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 11.12.2013. The respondent offered possession of the subject unit to the complainants on 25.01.2018 after receipt of occupancy certificate dated 08.01.2018. Accordingly, it is the

failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 11.02.2011 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delayed possession interest @ 10.20% p.a. w.e.f. 11.12.2013 till offer of possession i.e. 25.01.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have paid a sum of Rs.50,81,363/- against the total sale consideration of Rs.45,79,878/- as per statement of account dated 20.06.2019 at page 79 and 80 of complaint and as per statement of account dated 15.10.2019 at page 108 and 109 of reply.

11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 11.12.2013 till the offer of possession i.e. 25.01.2018. The arrears of interest


accrued so far shall be paid to the complainants within 90 days from the date of this order.

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge any amount from the complainants which is not part of the buyer's agreement.
 - iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
12. Complaint stands disposed of.
 13. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated:

Judgement uploaded on 29.01.2020