

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

Complaint no. : 1729 of 2018
First date of hearing: 12.03.2019
Date of decision : 21.01.2020

Commander Narender Kumar
R/o H.no. 352, Block I, Defence Officers
Colony, Chanakyapuri, New Delhi-110021.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar Business Park, M.G. Road,
Sector 28, Sikandarpur Chowk,
Gurugram-122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Kuldeep Kohli along with
Shri Gaurav Rawat
Shri Ishaan Dang
Shri Ketan Luthra

Advocates for the complainant
Advocate for the respondent
AR of the respondent company

ORDER

1. The present complaint dated 26.11.2018 has been filed by the complainant/allottee in 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 complainant, 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 Floors Premier at Emerald Estate, Sector 65, Gurugram.
2.	Project area	25.49 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2018
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	"Emerald Estate" registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
7.	HRERA registration valid up to	23.08.2022
8.	Occupation certificate granted by the competent statutory authority on	08.01.2018 [Page 161 of reply]



9.	Date of provisional allotment letter	18.12.2009 [Page 44 of reply]
10.	Unit no.	EFP-29-0302, 3 rd floor [Page 70 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	18.01.2010 [Page 68 of complaint]
13.	Payment plan	Construction Linked Payment Plan [Page 102 of complaint]
14.	Total consideration as per statement of account dated 10.12.2018 (Annexure R29 at page 121 of reply)	Rs.71,86,732/-
15.	Total amount paid by the complainant as per statement of account dated 10.12.2018 (Annexure R29 at page 122 of reply)	Rs.68,23,248/-
16.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of execution of agreement (i.e. 18.01.2010) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 83 of complaint]	18.04.2013
17.	Date of offer of possession to the complainant	Not offered
18.	Delay in handing over possession till date of decision i.e. 21.01.2020	6 years 9 months 3 days

3. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 36 months from the date of execution of agreement i.e. 18.01.2010 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project which comes out to be 18.04.2013. Clause 11 of the buyer's agreement is reproduced below:

"11. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this buyer's agreement, and not being in default under any of the provisions of this buyer's agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the company, the company proposes to hand over the possession of the unit within 36 months from the date of execution of the buyer's agreement. The allottee(s) agrees and understands that the company shall be entitled to a grace period of 3 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project."

4. The complainant submitted that after payment of each and every demand letter, the petitioner was in hope that he will get possession of his flat soon but the dreams of the petitioner were shattered and scattered as the respondent left no stone unturned to cheat the petitioner and extract money from his petitioner disguising that flat is complete and ready to be handed over. The complainant has become helpless and has to run from pillar to post for the possession of his flat though he had made payment more than the agreed amount/consideration. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the unit in question to the complainant as per buyer's agreement dated 18.01.2010.
 - ii. Direct the respondent to pay interest at the rate of 24\$ per annum till possession of the flat on the amount paid by the complainant towards purchase of flat from the date of first payment.
 - iii. Restrain the respondent from raising fresh demand for payment under any head, as the complainant had already made considerable payment under construction linked plan though construction has not been made till date.
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 the provisions of the Act are not applicable to the project in question. The application for issuance of OC in respect of the tower in question was made on 30.06.2017 i.e. before the notification of the Rules. The OC has been thereafter issued on 08.01.2018 (before pending of fire NOC). Thus,

the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. This hon'ble Authority does not have jurisdiction to entertain and decide the present complaint.

- ii. The respondent submitted that although the OC was received for the tower/apartment in question, it was noticed by the respondent that the competent authority appeared to have overlooked the fact that fire NOC had not been issued by the fire department. This discrepancy was brought to the notice of the competent authority (DTCP) by the respondent vide representation dated 08.02.2018 (Annexure R33) and the respondent is not acting upon the said OC and has consequently not offered possession of any apartment in the towers for which fire NOC is still pending including the apartment in question.
- iii. The respondent submitted that complaints pertaining to compensation are to be decided by the Adjudicating Officer under Section 71 of the Act read with rule 29 of the Rules and not by this hon'ble authority.
- iv. The respondent submitted that-

12. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the project has got

delayed on account of following reasons which were/are beyond the power and control of the respondent.

13. That the building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code (NBC) in terms of which buildings having height of 15 mtrs. or above but having area of less than 500 sq. mtrs. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.

Subsequently, NBC was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two staircases. Furthermore, it was notified vide gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.

14. That the Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application, has been insisting on two staircases in all high-rise buildings even in cases where the building plans stood approved with a provision for a single staircase and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the developer within one year from the date of issuance of provisional Fire NOC...

15. That the fire department...

Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the respondent has taken a decision to go ahead and construct the second staircase. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of the OC and subject to force majeure conditions, possession of the apartment shall be offered to the complainant.'

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 complainant, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. 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.
11. On consideration of the circumstances, the documents and other record and submissions made by the parties 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 11(a) of the buyer's agreement executed between the parties on 18.01.2010, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of execution of the

agreement. The grace period of 3 month is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 18.04.2013. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. The possession has not yet been offered by the respondent to the complainant. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 18.01.2010 to hand over the possession within the stipulated period. The complainant had paid Rs.68,23,248/- against a total sale consideration of Rs.71,86,732/- as per statement of account dated 10.12.2018 at page 121 and 122 of the reply. 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 complainant is entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 18.04.2013 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

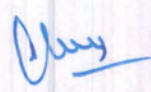
12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- 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 complainant from due date of possession i.e. 18.04.2013 till the offer of possession. 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 offer of possession shall be paid before 10th of each subsequent month.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
13. Complaint stands disposed of.
14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 21.01.2020

judgement uploaded on 10.02.2020