

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

Complaint no. : 75 of 2019
First date of hearing : 04.12.2019
Date of decision : 04.02.2020

1. Atul Singh
2. Priya Singh
Both RR/o House No. 2936, Sector-23,
Gurugram.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Tushar Bahmani
Shri J.K Dang along with Shri
Ishaan Dang

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 29.01.2019 has been filed by the complainants/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 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 Hills-Floors, Sector 65, Gurugram.
2.	Project area	102.7412 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	10 of 2009 dated 21.05.2009 Valid/renewed up to 20.05.2019
5.	Name of licensee	Active Promoters Pvt. Ltd. & others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 162 of 2017 dated 29.08.2017 for 55.962 acres
7.	HRERA registration valid up to	28.08.2022
8.	Date of provisional allotment letter	31.07.2009 [Page 23 of complaint and Pg. 27 of reply]
9.	Unit no.	EHF-267-A-FF-114, 1 st floor, building no. Amber [Annexure P/5 at page 23 of complaint]
10.	Unit measuring	1380 sq. ft.
11.	Date of execution of buyer's agreement	27.02.2010 [Page 34 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 71 of complaint and 75 of reply]



13.	Total consideration as per schedule of payment annexed with the buyer's agreement (Annexure III at page 71 of the complaint and page 75 of reply)	Rs. 49,73,400/-
14.	Total amount paid by the complainants as per statement of account dated 28.01.2019 (Annexure R5 at page 30-31 of reply)	Rs. 56,61,750/-
15.	Due date of delivery of possession as per clause 13(i) of the said agreement i.e. 27 months from the date of execution of this agreement (i.e. 27.02.2010) plus grace period of 6 months. [Page 49 of complaint and 53 of reply]	27.11.2012
16.	Date of offer of possession to the complainants	30.07.2018 [Annexure R7 page 97 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 30.07.2018	5 years 8 months 3 days
18.	Status of the project	OC was granted by the statutory authority on 30.05.2018 [Annexure R12 at page 112 of the reply]

3. As per clause 13(i) of the buyer's agreement, the possession was to be handed over within a period of 27 months from the date of execution of agreement i.e. 27.02.2010 plus grace period of 6 which comes out to be 27.11.2012. Clause 13 of the buyer's agreement is reproduced below:

"13. POSSESSION



(i.) *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 agreement, and not being in default under any of the provisions of this agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the company, the company proposes to hand over the possession of the floor within 27 months from the date of execution of this agreement. The allottee(s) agrees and understands that the company shall be entitled to a grace period of 6 months, for applying and obtaining the occupation certificate in respect of the floor and/or the project."

4. The complainants submitted that as per buyer's agreement dated 27.02.2010, the respondent was required to handover the actual physical possession of the unit on or before 27.11.2012 which includes the additional 6 months grace period. But due to factual circumstances at the site of the said project, the construction work has started after huge and unexplained delay and that the project of the respondent has not been yet completed. The respondent has miserably failed to handover the actual physical possession of the apartment in dispute till date and had breached the terms and conditions of the buyer's agreement signed between the parties. Hence, this complaint inter-alia for the following reliefs:

i. Direct the respondent to pay delayed possession charges on the entire amount of sale consideration deposited till date with them from the date possession as per the buyer's agreement i.e. on 27.11.2012 till actual handing over of possession.



- ii. Direct the respondent to handover the actual physical possession of the apartment in dispute along with payment of delayed possession 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 complaints pertaining to refund, compensation and interest 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.
 - ii. The respondent submitted that the complainants have wilfully and consciously defaulted in timely remittance of the instalments enumerated in the schedule of payment. However, the complainants maliciously and deliberately chose to ignore the just and legitimate demand of the respondent and wilfully defaulted in remittance of the instalment as per schedule of payment.
 - iii. That as per clause 13 (v), in the event of any default/delay by the allottees in payment as per the schedule of payment incorporated in the buyer's agreement, the date



of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present complaint by the complainants.

- iv. The respondent submitted that as per clause 15 of the buyer's agreement, the compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement.
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, 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. 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. Counsel for the complainants after consulting the complainants intends to forgo other reliefs except delayed possession charges.
12. 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 13(i) of the buyer's agreement executed between the parties on 27.02.2010, possession of the booked unit was to be delivered within a period of 27 months plus 6 months grace period from the date of execution of the agreement. The grace period of 6 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 27.11.2012. In the present case, the complainants were offered possession by the respondent on 30.07.2018 after receipt of OC dated 30.05.2018. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 27.02.2010, executed between the parties. 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. 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 at rate of the prescribed interest @ 10.20% p.a. w.e.f. 27.11.2012 till the offer of possession i.e. 30.07.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs. 56,61,750/- (as per statement of account dated 28.01.2019, Annexure R5 at page 30 of reply) against the total sale consideration of Rs. 49,73,400/- as per schedule of payment annexed with the buyer's agreement (Annexure III at page 71 of the complaint and page 75 of reply).



13. 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. 27.11.2012 till the offer of possession i.e. 30.07.2018. 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 anything 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.
14. Complaint stands disposed of.
15. File be consigned to registry.

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

(Samir Kumar)

Member

Dated: 04.02.2020

Judgement uploaded on 11.02.2020.