

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

Complaint no. : 1689 of 2019
First date of hearing : 04.12.2019
Date of decision : 04.02.2020

1. Mr. Anant Anjaneya
2. Ms. Anshu Anjaneya
Both RR/o C-5, Parsvnath Green Ville,
Sohna Road, Gurugram-122001.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar MGF Business Park,
M.G. Road, Sikanderpur, Sector 28,
Gurugram, Haryana-122001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for the complainants
Shri J.K Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 24.04.2019 has been filed by the complainants/allottees 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 Floors at Emerald Hills, 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	04.07.2009 [Page 30 of reply]
9.	Unit no.	EHF-267-A-FF-057, 1 st floor, block/building no. Amber [Page 40 of reply]
10.	Unit measuring	1380 sq. ft.



11.	Date of execution of buyer's agreement	26.02.2010 [Page 24 of complaint and 38 of reply]
12.	Payment plan	Construction Linked Payment Plan [Page 44 of complaint]
13.	Total consideration as per statement of account dated 15.05.2019 (Annexure R10 at page 103 of reply)	Rs.54,57,578/-
14.	Total amount paid by the complainants as per statement of account dated 15.05.2019 (Annexure R10 at page 104 of reply)	Rs.48,51,963/-
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. 26.02.2010) plus grace period of 6 months. [Page 33 of complaint]	26.11.2012
16.	Date of offer of possession to the complainants as alleged by the respondent	11.05.2019 [Annexure R10, page 104 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 11.05.2019	6 years 5 months 15 days
18.	Status of the project	OC was granted by the statutory authority on 09.05.2019 [Annexure R11 at page 105 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. 26.02.2010 plus grace



period of 6 months which comes out to be 26.11.2012. 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 independent 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 3 months, for applying and obtaining the occupation certificate in respect of the floor and/or the project."

4. The complainants submitted that even after exorbitant delay of almost 6 and a half years, the complainants have still not received the possession of the flat/plot and aggrieved of which the complainants on numerous instance demanded the respondent to handover the possession and also to pay interest for the delayed possession which all demands were in vain. [Note: The respondent has offered possession to the complainants on 11.05.2019 i.e. after filing of complaint.]

Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay interest for the delayed period of handing over possession from the time as stated under section 2(za).
- ii. The respondent shall be ordered to recalculate the interest to be charged or already charged at the same rate of interest at which he is ordered to pay to the allottee i.e.



@ State Bank of India highest marginal cost of lending rate plus 2 %.

- iii. The respondent shall be ordered not to charge any holding charges, interest on the pending payments at the time of offer of possession after the settlement of dues as per the Act.
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. That the complainants defaulted in remittance of instalments on time. The complainants failed to remit the instalments within time prescribed for the same as per schedule of payments. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of the outstanding



amounts payable by them under the payment plan opted by the complainants.

- iii. The respondent submitted that it was clearly mentioned in the buyer's agreement that the compensation for any delay in delivery of possession would only be given to such allottees who were not in default of their obligations envisaged under the agreement and who had 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 at length.
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 13(i) of the buyer's agreement executed between the parties on 26.02.2010, 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 26.11.2012. In the present case, the complainants were offered possession by the respondent on 11.05.2019 as agreed upon by both the parties after receipt of OC dated 09.05.2019. 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 26.02.2010 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. 26.11.2012 till the offer of possession i.e. 11.05.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs.48,51,963/- as per statement of account dated 15.05.2019 (Annexure R10 at page 104 of reply) against the total sale consideration of Rs.54,57,578/- as per statement of account dated 15.05.2019, Annexure R10 at page 104 of reply. Respondent is directed not to levy any holding charges.

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 complainants from due date of possession i.e. 26.11.2012 till the offer of possession i.e. 11.05.2019. 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.
 - v. Respondent is directed not to levy any holding charges.
13. Complaint stands disposed of.
14. File be consigned to registry.

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.02.2020

Judgement uploaded on 11.02.2020.

(Samir Kumar)

Member