

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

Complaint no. : 2525 of 2019
First date of hearing : 04.12.2019
Date of decision : 04.02.2020

Karan Singh Chettri
R/o H.No. R-18B, Windsor Court,
DLF Phase 4, Gurugram-122001, Haryana.

Complainant

Versus

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

Also at: ECE House, 28 Kasturba Gandhi Marg,
New Delhi-110001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sukhbir Yadav Advocate for the complainant
Shri J.K Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 01.07.2019 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 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	10.07.2009 [Page 39 of reply]
9.	Unit no.	EHF-350-C-SF-047, 2 nd floor, block/building no. Coral [Page 29 of complaint]
10.	Unit measuring	1750 sq. ft.

11.	Date of execution of buyer's agreement	10.12.2009 [Page 27 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 71 of complaint]
13.	Total consideration as per statement of account dated 10.07.2019 (Annexure R6 at page 120 of reply)	Rs.64,68,170/-
14.	Total amount paid by the complainant as per statement of account dated 10.07.2019 (Annexure R6 at page 121 of reply)	Rs.59,94,302/-
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. 10.12.2009) plus grace period of 3 months. [Page 47 of complaint]	10.06.2012
16.	Date of offer of possession to the complainant	01.08.2018 [Annexure P4, page 92 of complaint and Annexure R9, page 127 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 01.08.2018	6 years 1 month 22 days
18.	Status of the project	OC was granted by the statutory authority on 30.05.2018 [Annexure R8 at page 125 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. 10.12.2009 plus grace



period of 3 months which comes out to be 10.06.2012. 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 complainant submitted that the main grievance of the complainant in the present complaint is that in spite of complainant paying more than 100% of the actual cost of the floor as per demand and ready to pay any or all reasonable demands, but the respondent party firstly failed to give the possession of the independent floor on promised time i.e. 10.06.2012. Secondly failed to give interest on delay possession from due date of possession till physical possession of independent floor and thirdly demanding unreasonable demands. Hence, this complaint inter-alia for the following reliefs:

- i. Pass an appropriate order directing the respondent to pay interest at the prescribed rate for every month of delay from due date of possession i.e. 10.06.2012 till the



- physical possession of floor on amount paid by complainant.
- ii. The respondent party may kindly be directed to refrain from charging Rs.3,27,398/- under different heads i.e.
- (a) Additional EDC/IDC Rs.54,795/-
 - (b) Administrative Charges Rs.14,160/-
 - (c) Electrification Charges Rs.66,867/-
 - (d) Interest free deposit Rs.87,500/-
 - (e) Advance maintenance charges Rs.1,04,076/-
- iii. Respondent party may kindly be directed to handover the possession of the independent floor to the allottee immediately, complete in all respect and execute all required documents for transferring/conveying the ownership of the respective independent floor.
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 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.

- ii. That the complainant has been defaulting in payment of instalments and consequently, the respondent has been compelled to issue demand notices and reminders for payment.
- iii. That as per clause 13(v), in case 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 complainant had defaulted in timely remittance of payments as per the 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 case by the complainant.
- 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.

- v. That the time period utilised by the concerned statutory authority to grant the OC to the respondent needs to be necessarily excluded from computation of the 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, 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 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 10.12.2009, possession of the booked unit was to be delivered within a period of 27 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 10.06.2012. In the present case, the complainant was offered possession by the respondent on 01.08.2018 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 complainant as per the terms and conditions of the buyer's agreement dated 10.12.2009 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 complainant is entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 10.06.2012 till the offer of possession i.e. 01.08.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.59,94,302/- (as per statement of account dated 10.07.2019, Annexure R6 at page 121 of reply) against the total sale consideration of Rs.64,68,170/- as per statement of account dated 10.07.2019 (Annexure R6 at page 120 of reply).

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. 10.06.2012 till the offer of possession i.e. 01.08.2018. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
 - ii. The complainant is directed to take over the possession of the allotted unit after settlement of account with the respondent and the respondent shall adjust the delayed



- possession charges against the dues to be paid by the complainant.
- 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.

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

(Samir Kumar)

Member

Dated: 04.02.2020

Judgement uploaded on 11.02.2020.