

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

**Complaint no. : 1219 of 2019**  
**First date of hearing : 04.12.2019**  
**Date of decision : 04.02.2020**

Sushil Kumar Bhatia  
R/o H.No. 64, Sector 40,  
Gurugram-122002.

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Sanjeev Sharma  
Shri J.K Dang along with Shri  
Ishaan Dang

Advocate for the complainant  
Advocates for the respondent

**ORDER**

1. The present complaint dated 25.03.2019 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	<b>Registered vide no. 162 of 2017 dated 29.08.2017 for 55.962 acres</b>
7.	HRERA registration valid up to	<b>28.08.2022</b>
8.	Date of provisional allotment letter	23.07.2009 [Page 34 of reply]
9.	Unit no.	EHF-350-I-FF-017, 1 <sup>st</sup> floor, block/building no. Ivory [Page 27 of complaint]
10.	Unit measuring	1750 sq. ft.
11.	Date of execution of buyer's agreement	22.12.2009 [Page 26 of complaint]



12.	Payment plan	Construction Linked Payment Plan [Page 48 of complaint]
13.	Total consideration as per statement of account dated 26.03.2019 (Annexure R16 at page 231 of reply)	Rs.83,41,514/-
14.	Total amount paid by the complainant as per statement of account dated 26.03.2019 (Annexure R16 at page 232 of reply)	Rs.84,49,837/-
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. 22.12.2009) plus grace period of 3 months. [Page 36 of complaint]	22.06.2012
16.	<b>Date of offer of possession to the complainant</b>	<b>02.09.2016</b> [Annexure R8A, page 170 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 02.06.2016	4 years 2 months 11 days
18.	Unit handover letter [Page 182 of reply]	08.12.2016
19.	Conveyance deed registered on [Page 188 of reply]	27.02.2018
20.	Status of the project	OC was granted by the statutory authority on 09.06.2016 [Annexure R8 at page 169 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. 22.12.2009 plus grace period of 3 months which comes out to be 22.06.2012. 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 respondent offered the possession of the unit in question after delay of almost 4 and a half years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant visited the office of the respondent with the request to pay interest for the delayed possession but the same were in vain. 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).

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 provisions of the Act are not applicable to the phase of the project in which the apartment in question is situated. The OC in respect of the property in question was issued on 09.06.2016 and the possession of the apartment was also handed over to the complainant on 12.11.2016 i.e. prior to the notification of the Rules. Thus, the project in question is not an ongoing project under rule 2(o) of the Rules. The project does not require registration and consequently has not been registered under the provisions of the project. This Authority does not have jurisdiction to entertain and decide the complaint.
- ii. 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.
- iii. The respondent submitted that Dr. Rajeev Chhabra and Dr. Anubha Chhabra (hereinafter 'original allottee') had approached the respondent some time in year 2009 for



purchase of independent unit in its project. The original allottees, in pursuance of the application form dated 18.06.2009, was allotted an independent unit bearing no. EHF-350-I-FF-017, located on first floor in the project vide allotment letter dated 23.07.2009. The original allottees were extremely irregular in payment of instalments and consequently, the respondent was compelled to issue reminders and requests for payment. In the year 2012, the original allottees entered into agreement to sell the floor in question in favour of the complainant. The complainant had agreed to undertaken to comply with all the terms and conditions of the buyer's agreement dated 22.12.2009.

- iv. That the complainant has been irregular regarding the remittance of the instalments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of the outstanding amounts payable by him under the payment plan opted by the complainant.
- v. 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 original allottee as well as 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.

- vi. 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.
  - vii. That the time taken by the 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.
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 22.12.2009, 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





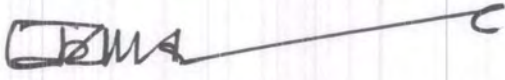
respondent: Therefore, the due date of handing over possession comes out to be 22.06.2012. In the present case, the complainant was offered possession by the respondent on 02.09.2016 as agreed upon by both the parties after receipt of OC dated 09.06.2016. The authority is of the considered view that 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 22.12.2009 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. 22.06.2012 till the offer of possession i.e. 02.09.2016 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs. 84,49,837/- (as per statement of account 26.03.2019 (Annexure R16 at page 232 of reply) against the total sale consideration of Rs.83,41,514/- as per statement of account 26.03.2019 (Annexure R16 at page 231 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. 22.06.2012 till the offer of possession i.e. 02.09.2016. 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 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.

  
(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

  
(Samir Kumar)

Member

Dated: 04.02.2020