

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

Complaint no. : 1103 of 2018
First date of hearing : 13.02.2019
Date of decision : 04.02.2020

1. Mrs. Nirmal Gupta
 2. Mrs. Jyoti
- Both RR/o H.No. 528/3, Opp. Ghanteshwar
Mandir, Roshan Pura, Gurgaon, Haryana.

Complainants

Versus

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

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 16.10.2018 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 Hills- Plots, 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.	Unit no.	EHP-400-I-042 [Page 26 of complaint]
9.	Unit measuring	1380 sq. mtrs. (400 sq. yds.)
10.	Increase in area of the unit vide letter of offer of possession dated 25.07.2016	375.45 sq. mtrs. [page 40 of complaint]
11.	Date of execution of plot buyer's agreement	28.12.2009 [Page 25 of complaint]
12.	Payment plan	Time linked payment plan [Page 71 of reply]

13.	Total consideration as per statement of account dated 24.10.2018 (Page 140 of reply)	Rs.1,62,22,651/-
14.	Total amount paid by the complainants as per statement of account dated 24.10.2018 (Page 141 of reply)	Rs.1,63,98,454/-
15.	Due date of delivery of possession as per clause 8 of the said agreement i.e. 30 months from the date of execution of this agreement (i.e. 28.12.2009) [Page 28 of complaint]	28.06.2012
16.	Date of offer of possession to the complainant	25.07.2016 [Page 40 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 25.07.2016	4 years 27 days
18.	Unit handover letter signed on	31.08.2017 [Page 108 of reply]
19.	Conveyance deed executed on	06.11.2017 [Page 58 of complaint]

3. As per clause 8 of the plot buyer's agreement, the possession was to be handed over within a period of 30 months from the date of execution of agreement i.e. 28.12.2009 which comes out to be 28.06.2012. Clause 8 of the plot buyer's agreement is reproduced below:

"8. Subject to force majeure conditions and reasons beyond the control of the company, the company shall make every endeavor to deliver possession of the plot to the allottee(s) within a period of 27 (twenty-seven) months from the date of execution of this buyer's agreement..."

4. The complainants submitted that the complainant, after an exorbitant delay of almost 4 years, received letter for offer of possession dated 25.07.2016 with respect to the plot in question. However, no interest as per law for the delayed period was offered by the respondent to the complainants. Further at the time of handing over the possession of the flat in question, the area of the plot was increased from 334.45 sq. mtrs. to 375.79 sq. mtrs. and which increase was done without the consent of the complainants.
5. Shri Sanjeev Sharma, Advocate for the complainant has filed an application wherein he has withdrawn the other reliefs except the delayed possession charges. Hence, this complaint inter-alia for the following reliefs:
 - i. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession i.e. 28.03.2012 till the handing over of possession on the amount paid by complainants.
6. 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.
7. The respondent contests the complaint on the following grounds:

- i. The respondent submitted that provisions of the Act are not applicable to the project in question. The application for issuance of completion certificate in respect of the project wherein the plot in question is located has been submitted on 16.02.2016 i.e. well before the notification of the Rules.
- ii. The respondent submitted that complaints pertaining to interest, compensation etc. 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. That the complainant on transfer of the plot in question from M/s Enpeecon (original allottee) had executed an indemnity-cum-undertaking whereby the complainants had categorically stated that they would not claim any compensation for delay in handing over possession or rebate under a scheme otherwise or any other discount by whatever name from the respondent.
- iv. That right from the beginning, M/s Enpeecon was extremely irregular as far as payment of instalments was concerned. The complainants having purchased the plot in question from M/s Enpeecon are not entitled to any compensation or interest in terms of buyer's agreement.

8. 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.
9. 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.
10. Arguments heard at length.
11. 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.
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 8 of the plot buyer's agreement executed between the parties on 28.12.2009, possession of the booked



unit was to be delivered within a period of 30 months from the date of execution of the agreement. Therefore, the due date of handing over possession comes out to be 28.06.2012. In the present case, the complainants were offered possession by the respondent on 25.07.2016. 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 complainants as per the terms and conditions of the plot buyer's agreement dated 28.12.2009 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 complainants are entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 28.06.2012 till the offer of possession i.e. 25.07.2016 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs. 1,63,98,454/- (as per statement of account dated 24.10.2018 at page 141 of reply) against the total sale consideration of Rs.1,62,22,651/- as per statement of account dated 24.10.2018 at page 140 of reply.

13. In *Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015*, it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion is reproduced below:

“Indemnity-cum-undertaking

30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever.

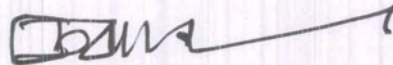
It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity.”

14. 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. 28.06.2012 till the offer of possession i.e. 25.07.2016. 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.

15. Complaint stands disposed of.

16. File be consigned to registry.



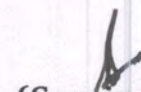
(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.02.2020

Judgement uploaded on 11.02.2020.



(Samir Kumar)

Member