

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

**Complaint no. : 2232 of 2019**  
**First date of hearing: 11.09.2019**  
**Date of decision : 04.02.2020**

Sandeep Bishnoi  
R/o: Village Post Office Mohmmad Pur Tehsil-  
District Fatehabad-125050

**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 Sushil Yadav Proxy counsel for the complainant  
Shri J.K Dang along with Advocates for the respondent  
Shri Ishaan Dang

**ORDER**

1. The present complaint dated 03.06.2019 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 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	<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	24.04.2012 [Page 36 of reply]
9.	Unit no.	EVP-A-T-33, 2 <sup>nd</sup> floor, building no. Topaz [Annexure P/2 at page 36 of complaint]



10.	Unit measuring	1380 sq. ft.
11.	Date of execution of buyer's agreement	17.05.2012 [Page 54 of reply]
12.	Payment plan	Instalment Payment Plan [Page 71 of complaint]
13.	Total consideration as per statement of account dated 30.05.2019 (Annexure R16 at page 49 of reply)	Rs.4,94,86,598/-
14.	Total amount paid by the complainant as per statement of account dated 30.05.2019 (Annexure R16 at page 49 of reply)	Rs.4,81,64,370/-
15.	Due date of delivery of possession as per clause 8 of the said agreement i.e. 24 months from the date of execution of this agreement (i.e. 17.05.2012) plus grace period of 3 months. [Page 57 of reply]	17.08.2014
16.	<b>Date of offer of possession to the complainant</b>	<b>25.02.2016</b> [Annexure R24, page 93 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 25.02.2016	1 years 6 months 8 days

3. As per clause 8 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. 17.05.2012 plus grace period of 3 which comes out to be 17.08.2014. Clause 8 of the 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 allottees within a period of 24 months from the date of execution of this buyer's 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 he has suffered loss and damage in as such as they had deposited the money in the hope of getting the said unit for their residential purposes. The complainant had fairly booked the said unit in the year 2012 and till 2019, the complainant has no idea about the fate and future of the project while losing major chunk of their lifelong savings. Hence, this complaint inter-alia for the following reliefs:
- i. Direct the respondent to give possession of the subject unit in the said project of the respondent.
  - ii. Direct the respondent to pay interest as per the applicable rate of interest on amount paid by the complainant from the due date as per the buyer's agreement till the date of realisation which is retained by the respondent without delivering the flat in time.
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 possession, 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 Mr. Zakir Husain Ali Bhai (hereinafter 'original allottee') had approached the respondent sometime in year 2009 for purchase of independent plot in its project. The original allottee, in pursuance of the application form dated 31.03.2012, was allotted an independent unit bearing no. EVP-A-T-33, admeasuring 500 sq. yds. located in block Topaz in the project vide provisional allotment letter dated 24.04.2012. Thereafter, the complainant approached the original allottee for purchasing his rights and title in the unit in question. The original allottee acceded to the request of the complainant and agreed to transfer and convey his rights, entitlement and title in the unit in question to the complainant for a valuable sale consideration of Rs.4,96,90,000/-.





- iii. The respondent submitted that the complainant was stepping into the shoes of the original allottee and therefore all the rights and liabilities of the original allottee were transferred to the complainant. The original allottee was not entitled to any compensation or interest for delay, if any, in offering possession of the unit in terms of the buyer's agreement on account of default of terms and conditions thereof by him.
- iv. The complainant was offered possession of the unit through letter of offer of possession on 25.02.2016. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit to the complainant. However, the complainant approached the respondent with request for payment of compensation for alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent, in order to avoid any unwarranted controversy, proceeded to settle the wantonly instigated frivolous dispute with the complainant by crediting an amount of Rs. 4,59,500/- as a gesture of goodwill.

- v. The respondent submitted that clause 8 of the buyer's agreement provides that 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.
- vi. The complainant had further executed an affidavit and indemnity cum undertaking dated 09.07.2013 whereby the purchasers had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of original allottee. It was further declared that the complainant has been substituted in place of the original allottee and was not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.
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 8 of the buyer's agreement executed between the parties on 17.05.2012, possession of the booked unit was to be delivered within a period of 24 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 17.08.2014. In the present case, the complainant was offered possession by the respondent on 25.02.2016 after receipt of OC dated 08.01.2016. 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 17.05.2012 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. 17.08.2014 till the offer of possession i.e. 25.02.2016 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.4,81,64,370/- (as per statement of account dated 30.05.2019, Annexure R16 at page 49 of reply) against the total sale consideration of Rs.4,94,86,598/- as per statement of account dated 30.05.2019 (Annexure R16 at page 49 of reply).





12. 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.”*





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 complainant from due date of possession i.e. 17.08.2014 till the offer of possession i.e. 25.02.2016. 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.
14. Complaint stands disposed of.
15. File be consigned to registry.

  
(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.02.2020

  
(Samir Kumar)

Member