

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

Complaint no. : 453 of 2019
First date of hearing : 08.08.2019
Date of decision : 04.02.2020

Mr. Dharampal Sheoran
R/o: H.No. 1444, Sector-13 HUDA,
Bhiwani, 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 Abhishek Raghav

Advocate for the complainant

Shri J.K Dang along with Shri

Advocates for the respondent

Ishaan Dang

ORDER

1. The present complaint dated 06.02.2019 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-Floors, 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	27.07.2009 [Annexure R2 page 27 of reply]
9.	Unit no.	EHF-350-I-FF-122, 1 st floor, block/building Ivory [Page 49 of reply]
10.	Unit measuring	1750 sq. ft.



11.	Date of execution of buyer's agreement	10.12.2009 [Page 47 of reply]
12.	Payment plan	Construction Linked Payment Plan [Page 91 of reply]
13.	Total consideration as per statement of account dated 18.02.2019 (Annexure R10 at page 36 of reply)	Rs.74,23,244/-
14.	Total amount paid by the complainant as per statement of account dated 18.02.2019 (Annexure R10 at page 37 of reply)	Rs.76,32,260/-
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 6 months. [Page 67 of reply]	10.06.2012
16.	Date of offer of possession to the complainant	23.11.2016 [Annexure R24, page 129 of reply]
17.	Date of unit handover letter	14.07.2018 [Annexure A7, page 60 of complaint]
18.	Delay in handing over possession till date of offer of possession i.e. 23.11.2016	4 years 5 months 13 days
19.	Status of the project	OC granted on 09.06.2016 [Page 177 of reply] Conveyance Deed on 28.08.2018 [Page 145 of 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 6 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 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 6 months, for applying and obtaining the occupation certificate in respect of the floor and/or the project."

4. The complainant submitted that the respondent was to provide possession of the property by July 2012. However, it was only on 23.11.2016, the complainant received intimation of possession of property vide letter dated 23.11.2016. On 14.07.2018, the complainant was handed over possession of the unit and the complainant signed the unit handover letter on 14.07.2018. this delay has caused mental agony for the complainant. Hence, this complaint inter-alia for the following reliefs:

- i. Direct respondent to pay an interest for delay in possession of the unit to the complainants for a period of delay from the date of agreed possession as per the

buyer's agreement till the actual physical possession of the unit.

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. The respondent submitted that Mr. Ashish Sachdeva and Mrs. Seema Sachdeva (hereinafter 'original allottees') had approached the respondent sometime in year 2009 for purchase of independent unit in its project. The original allottees, in pursuance of the aforesaid application form dated 23.06.2009, was allotted an independent unit bearing no. EHF-350-I-FF-122, located on first floor in the project vide allotment letter dated 27.07.2009. Thereafter, the complainant approached the original allottee for purchasing their rights and title in the unit in question. The original allottees acceded to the request of

- the complainant and agreed to transfer and convey their rights, entitlement and title in the unit in question to the complainant for a valuable sale consideration of Rs.70,00,000/-.
- iii. The respondent submitted that the complainant was stepping into the shoes of the original allottees and therefore all the rights and liabilities of the original allottee were transferred to the complainant. The original allottees were not entitled to any compensation or any 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 them.
 - iv. That right from the beginning, the original allottees were irregular regarding the remittance of instalments on time. The respondent was constrained to issue several payment request letters, reminders etc. to the allottees requesting them to make payment of outstanding amounts payable by them under payment plan opted by them.
 - v. That as per clause 13(b)(v), in the event of any default or delay in payment of instalments as per the schedule of payment incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended.

- vi. The respondent submitted that as per clause 15 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.
- vii. That the complainant declared in an affidavit and indemnity-cum-undertaking (Annexure R14 and R15) that the complainant having been substituted in the place of the original allottees in respect of the provisional allotment letter of the unit in question was not entitled to any compensation for delay, if any, in delivery of possession of the unit or any 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.
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 23.11.2016 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 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. 23.11.2016 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.76,32,260/- as per statement of account dated 18.02.2019, Annexure R10 at page 36 of reply against the total sale consideration of Rs.74,23,244/- (as per statement of account dated 18.02.2019, Annexure R10 at page 37 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 if 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. 10.06.2012 till the offer of possession i.e. 23.11.2016. 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


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.02.2020

Judgement uploaded on 25.02.2020