

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

**Complaint no. : 603 of 2019**  
**First date of hearing : 04.12.2019**  
**Date of decision : 04.02.2020**

Satyand Shukla  
R/o: B-1148, GF, IFFCO Colony,  
Sector-17-B, Gurugram, Haryana.

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: Emaar MGF Business Park,  
M.G. Road, Sikandarpur Chowk,  
Sector 28, Gurugram, Haryana.  
Also at: 306-308, Square One, C-2,  
District Centre, Saket, New Delhi-110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Varun Chugh Advocate for the complainant  
Shri J.K Dang along with Shri Ishaan Dang Advocates for the respondent

**ORDER**

1. The present complaint dated 27.02.2019 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	<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	10.08.2009 [Page 32 of reply]
9.	Unit no.	EHF-267-A-SF-037, 2 <sup>nd</sup> floor, building no. Amber [Page 39 of reply]
10.	Unit measuring	1380 sq. ft.
11.	Date of execution of buyer's agreement	26.02.2010 [Page 38 of reply]
12.	Payment plan	Construction Linked Payment Plan [Page 75 of reply]



13.	Total consideration as per statement of account dated 07.03.2019 (Annexure R26 at page 141 of reply)	Rs.54,77,059/-
14.	Total amount paid by the complainant as per statement of account dated 07.03.2019 (Annexure R26 at page 141 of reply)	Rs.53,32,563/-
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. 26.02.2010) plus grace period of 6 months.	26.11.2012 [Page 53 of reply]
16.	<b>Date of offer of possession to the complainant</b>	<b>10.06.2019</b> [Annexure R29, page 148 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 10.06.2019	6 years 6 months 15 days
18.	Status of the project	OC was granted by the statutory authority on 09.05.2019 [Annexure R28 at page 146 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. 26.02.2010 plus grace period of 6 which comes out to be 26.11.2012. 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 by virtue of agreement to sell between the original allottees and the complainant, the respondent transferred the unit in question in name of the complainant vide nomination letter dated 07.06.2012 (Copy Annexure C). The project was to be completed by May 2012 with grace period of six months. The project has been inordinately delayed. The respondent has resorted to misrepresentation. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover possession of the apartment to the complainant in time bound manner.
- ii. Direct the respondent to pay interest @ 18% as interest towards delay in handing over the property in question as per the Act and the Rules.

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. That the original allottees as well as the complainant have been irregular regarding the remittance of instalments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the original allottees as well as the complainant to make payment of the outstanding amounts payable by them under the payment plan opted by them.
  - iii. That as per clause 13(v), in case of any default or delay by the allottees in payment of instalments 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 allottees as well as the complainant has defaulted in timely remittance of instalments as per schedule of

payment, the date of delivery of possession is not liable to be determined in the manner sought to be done 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.
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.

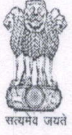
11. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13(i) of the buyer's agreement executed between the parties on 26.02.2010, possession of the booked unit was to be delivered within a period of 27 months plus 6 months' grace period from the date of execution of the agreement. The grace period of 6 months 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 26.11.2012. In the present case, the complainant was offered possession by the respondent on 10.06.2019 after receipt of OC dated 09.05.2019. 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 26.02.2010 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 the 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 charges at the rate of prescribed interest @ 10.20% p.a. w.e.f. 26.11.2012 till the offer of possession i.e. 10.06.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.53,32,563/- (as per statement of account dated 07.03.2019, Annexure R26 at page 142 of reply) against the total sale consideration of Rs.54,77,059/- as per statement of account dated 07.03.2019 (Annexure R26 at page 141 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. 26.11.2012 till the offer of possession i.e. 10.06.2019. 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

Dated: 04.02.2020

  
(Samir Kumar)

Member

Judgement uploaded on 25.02.2020