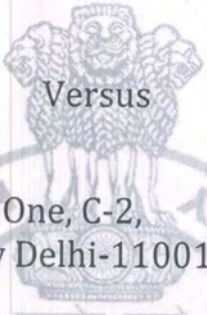


**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 2475 of 2019
First date of hearing : 04.12.2019
Date of decision : 04.02.2020

1. Mr. Ritesh Dutt
2. Ms. Neha Dutt
Both RR/o: House no. 3635, Sector-23,
Gurugram-122017.

Complainants


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:

None

None appeared on behalf of the
complainants

Shri J.K Dang along with Shri
Ishaan Dang

Advocates for the respondent

ORDER

1. The present complaint dated 02.07.2019 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-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	06.07.2009 [Page 54 of compliant]
9.	Unit no.	EHF-267-J-FF-067, 1 st floor, block/building no. Jemma [Page 62 of complaint]



10.	Unit measuring	1380 sq. ft.
11.	Date of execution of buyer's agreement	17.03.2010 [Page 61 of reply]
12.	Payment plan	Construction Linked Payment Plan [Page 91 of complaint]
13.	Total consideration as per statement of account dated 10.10.2019 (Annexure R9 at page 143 of reply)	Rs.53,50,712/-
14.	Total amount paid by the complainants as per statement of account dated 10.10.2019 (Annexure R9 at page 143 of reply)	Rs.58,97,698/-
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. 17.03.2010) plus grace period of 6 months. [Page 76 of reply]	17.12.2012
16.	Date of offer of possession to the complainants	17.07.2019 [Annexure R3, page 25 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 17.07.2019	6 years 7 months
18.	Status of the project	OC was granted by the statutory authority on 15.07.2019 [Annexure R2 at page 24 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. 17.03.2010 plus grace period of 6 which comes out to be 07.12.2012. 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 complainants submitted that as per buyer's agreement possession time was 27 months, with an extension of 6 months i.e. possession should have been given by 16th Sep. 2013, as per buyer's agreement with extended timelines. In 2017-2018, possession was given to units in Jemma block of Emerald Hills but still the complainants have not received the possession of their unit. From last 1 year, the complainants are hearing multiples versions on the reasons behind the delay in possession of the unit. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay interest at the prescribed rate on the amounts paid by the complainants for the delayed period of handing over possession till offer of possession.



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 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. Ritesh Dutt and Mrs. Neha Dutt had approached the respondent sometime in year 2009 for purchase of independent unit in its project. They, in pursuance of the application form dated 04.06.2009, was allotted an independent unit bearing no. EHF-267-J-FF-067, located on first floor in the project vide allotment letter dated 06.07.2009.
 - iii. That the complainants were too irregular regarding the timely remittance of instalments on time. The respondent was constrained to issue payment request letters, reminders etc. requesting the complainants to make payment of outstanding amounts payable by them under the payment plan opted by them.



- iv. That as per clause 13(v), in event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended.
- v. 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 complainants and the respondent 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. The complainants were not present on the date of hearing but by virtue of clause 13(i) of the buyer's agreement, it can be inferred that the complainants are entitled to delayed possession charges. By virtue of clause 13(i) of the buyer's agreement executed between the parties on 17.03.2010, 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 17.12.2012. In the present case, the complainants were offered possession by the respondent on 17.07.2019 after receipt of OC dated 15.07.2019. 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 complainants as per the terms and conditions of the buyer's agreement dated 17.03.2010. 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 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. 17.12.2012 till the offer of possession i.e. 17.07.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs. 58,97,698/- as per statement of account dated 10.10.2019 (Annexure R9 at page 143 of reply) against the total sale consideration of Rs. 53,50,712/- as per statement of account dated 10.10.2019 (Annexure R9 at page 143 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 complainants from due date of possession i.e. 17.12.2012 till the offer of



possession i.e. 17.07.2019. 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.
13. Complaint stands disposed of.
14. 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