

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

Complaint no. : 368 of 2019
First date of hearing: 17.09.2019
Date of decision : 04.02.2020

Harvinder Singh
R/o: H.No. 995, Sector-28, Faridabad-121008,
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 Varun Chugh Advocate for the complainant
Shri J.K Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 21.02.2019 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	29.07.2009 [Page 46 of reply]
9.	Unit no.	EHF-214-J-GF-082, Ground floor, building no. Jemma [page 62 of reply]



10.	Unit measuring	1180 sq. ft.
11.	Date of execution of buyer's agreement	13.03.2010 [Page 61 of reply]
12.	Payment plan	Construction Linked Payment Plan [Page 98 of reply]
13.	Total consideration as per statement of account dated 13.03.2019 (Annexure R10 at page 55 of reply)	Rs.65,26,990/-
14.	Total amount paid by the complainant as per statement of account dated 13.03.2019 (Annexure R10 at page 54 of reply)	Rs.63,16,715/-
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. 13.03.2010) plus grace period of 6 months. [Page 76 of reply]	13.12.2012
16.	Date of offer of possession to the complainant	07.10.2016 [Annexure R28, page 150 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 07.10.2016	3 years 9 months 24 days
18.	Status of the project	OC was granted by the statutory authority on 09.06.2016 [Annexure R1 at page 35 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. 13.03.2010 plus grace period of 6 which comes out to be 13.12.2012. 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 complainant submitted that on 27.01.2017, the complainant sent an email to the respondent to settle the issues regarding compensation for delay in possession by the respondent and further reminded vide email dated 23.02.2017 but vide email dated 27.02.2017 respondent flatly denied arrogantly and misusing the dominant position and curtailed the legal right of the complainant as per builder buyer's agreement. Further, on 28.06.2017 the complainant again visited to the office of respondent and shown them photographs in his mobile phone and asked them to complete rectification work earliest and handover the possession but respondent payed no heed to legitimate requests of the complainant. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to give possession of the flat in question to the complainant in habitable condition with all amenities as mentioned in the buyer's agreement with a direction to get conveyance deed registered in favour of the complainant without any further delay.
 - ii. Interest for delay in possession should be awarded in favour of the complainant and against the respondent.
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. Amit Goel (hereinafter 'original allottee') 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 13.07.2009, was allotted an independent unit bearing no.

EHF-214-J-GF-082, located on ground floor in the project vide provisional allotment letter dated 27.07.2009. 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.61,78,934/-.

- 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 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 allottee was irregular regarding the remittance of instalments on time. The respondent was constrained to issue several payment request letters, reminders etc. to the original allottee requesting him to make payment of outstanding



- amounts payable by them under the 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 time taken by the statutory authorities in granting the OC in respect of the project needs to be excluded in determining the time period utilised for implementation of the project.
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 13.03.2010, 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 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 13.12.2012. In the present case,

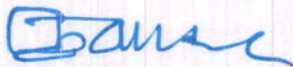


the complainant was offered possession by the respondent on 07.10.2016 after receipt of OC dated 09.06.2016. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 13.03.2010. 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 complainant is entitled to delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 13.12.2012 till the offer of possession i.e. 30.07.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs. 63,16,715/- (as per statement of account dated 13.03.2019, Annexure R10 at page 55 of reply) against the total sale consideration of Rs. 65,26,990/- as per statement of account dated 13.03.2019 (Annexure R10 at page 54 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. 13.12.2012 till the offer of possession i.e. 07.10.2016. 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.
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