

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

Complaint no. : 1222 of 2019  
First date of hearing : 28.08.2019  
Date of decision : 28.01.2020

1. Mr. Ved Prakash Ahuja  
2. Mr. Vimal Ahuja  
Both RR/o: House No.D-22, Saket, Street No. 13,  
Saket, Near Kotak Mahindra Bank,  
New Delhi-110017.

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
Address: 306-308, Square One, C-2,  
District Centre, Saket, New Delhi-110017.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Ishaan Dang  
Shri Ketan Luthra

Advocate for the complainants  
Advocate for the respondent  
AR of the respondent  
company

**ORDER**

1. The present complaint dated 10.04.2019 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 allottees 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 Floors Select at Emerald Hills, Sector 65, Gurugram.
2.	Project area	198.03625 acres
3.	Nature of the project	Residential gated colony
4.	DTCP license no. and validity status	i. 10 of 2009 dated 21.05.2009 Valid/renewed up to 20.05.2019 ii. 113 of 2011 dated 22.12.2011 Valid/renewed up to 21.12.2017
5.	Name of licensee	Active Promoters Pvt. Ltd. and others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	<b>"Emerald Hills" registered vide no. 162 of 2017 dated 29.08.2017</b>
7.	HRERA registration valid up to	<b>28.08.2022</b>
8.	Date of provisional allotment letter	13.01.2012 [Annexure R2 at page 36 of reply]



9.	Unit no.	EFS-B-I-SF-169, 2 <sup>nd</sup> floor
10.	Unit measuring	2000 sq. ft.
11.	Date of execution of buyer's agreement	22.02.2012 [Page 27 of complaint]
12.	Payment plan	Instalment payment plan [Page 82 of complaint]
13.	Total consideration as per statement of account dated 18.04.2019 (page 186 of reply)	Rs.1,50,42,436/-
14.	Total amount paid by the complainants as per statement of account dated 18.04.2019 (page 187 of reply)	Rs.1,43,08,584/-
15.	Date of start of construction as per statement of account dated 18.04.2019	05.10.2016
16.	Due date of delivery of possession as per clause 13(a) of the said agreement i.e. 24 months from the start of construction (05.10.2016) plus 3 months grace period [Page 46 of complaint]	<b>05.01.2019</b>
17.	<b>Date of offer of possession to the complainants</b>	<b>05.04.2019</b> [Page 180 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 05.04.2019	3 months
19.	Status of the project	OC received on 03.04.2019 [Page 178 of reply]

3. As per clause 13(a) of the agreement, the possession was to be handed over within a period of 24 months from the start of construction i.e. 05.10.2016 plus grace period of 3 months for

applying and obtaining the CC/OC in respect of the unit and/or the project which comes out to be 05.04.2019. Clause 13 of the buyer's agreement is reproduced below:

**"13. POSSESSION**

**(a) 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 independent floor within 24 months from the start of construction. 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 independent floor and/or the project."*

4. The complainants submitted that on 18.12.2017, the complainants purchased the said independent floor from the first allottees (i.e. Mr. Jeevan Saini and Mrs. Vandana Saini) with the permission of the respondent. The respondent issued nomination letter in name of the complainants on 14.03.2018. The main grievance of the complainants in the present complaint is that in spite of complainants having paid more than 96.87% of the actual amounts of the independent floor, but the respondent has failed to deliver the possession of the fully constructed and developed independent floor. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the independent floor to the allottees immediately, complete

- in all respect and execute all required documents for transferring/ conveying the ownership of the respective floor allotted.
- ii. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession on amount paid by the complainants as per section 18 of the Act.
  - iii. Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the buyer's agreement.
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. That the complainants executed an indemnity cum undertaking whereby the complainants admitted and acknowledged that they were not entitled to claim any

compensation for delay in handing over possession or any rebate or discount from the respondent and further agreed and undertook not to raise any claim with regard to the same from the respondent.

iii. That the construction of the unit was completed, and the respondent applied for issuance of the occupation certificate from the competent authority on 04.02.2019. The OC was issued on 03.04.2019. The possession of the unit was offered to the complainants vide letter of offer of possession dated 05.04.2019.

iv. That as per clause 15 of the buyer's agreement, compensation for delay in delivery of possession shall be given to such allottees who are not in default of their obligations under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. The original allottees, having defaulted in payment of instalments, and are thus not entitled to any compensation or any amount towards interest under the buyer's agreement. Consequently, the complainants cannot demand or claim any right which was not available to the original allottees.

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 and 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. By virtue of clause 13(a) of the buyer's agreement executed between the parties on 22.02.2012, possession of the booked unit was to be delivered within a period of 24 months plus 3 months grace period from the start of construction (i.e.



05.10.2016). The grace period of 3 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 05.01.2019. 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, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 22.02.2012 to hand over the possession within the stipulated period. 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. In this case, the respondent has offered the possession of the unit to the complainants on 05.04.2019 after receipt of OC dated 03.04.2019. As such the complainants are entitled to delayed possession interest at rate of the prescribed @ 10.20% p.a. w.e.f. 05.01.2019 till the offer of possession i.e. 05.04.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs.1,43,08,584/- against the total sale consideration of Rs.1,50,42,436/- as per statement of account dated 18.04.2019 at page 187 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 complainants from due date of possession i.e. 05.01.2019 till the offer of possession i.e. 05.04.2019.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- v. 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.

14. Complaint stands disposed of.

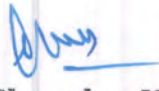
15. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.01.2020

  
**(Subhash Chander Kush)**

Member