

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

**Complaint no. : 1719 of 2019**  
**First date of hearing : 28.11.2019**  
**Date of decision : 28.01.2020**

1. Mr. Abhishek Kapur  
2. Mr. Anubha Bhatla  
3. Mr. Virender Kumar Kapur  
All RR/o: House No.1502, Tower 2,  
The Palms South City-I, Gurugram-122001.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: Emaar Business Park, M.G Road,  
Sikandarpur, Sector 28, Gurugram-122002.

Also at: 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 Hemant Kumar Yadav

Proxy counsel for Shri  
Satyavir Singh, Advocate for  
the complainants

Shri Ishaan Dang  
Shri Ketan Luthra

Advocate for the respondent  
AR of the respondent  
company

**ORDER**

1. The present complaint dated 22.04.2019 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	10.01.2012 [Annexure R2 at page 31 of reply]
9.	Unit no.	EFS-B-I-GF-175, ground floor, block/building no. Ivory
10.	Unit measuring	1800 sq. ft.
11.	Date of execution of buyer's agreement	16.03.2012 [Page 110 of complaint and page 58 of reply]
12.	Payment plan	Instalment payment plan [Page 85 of complaint]
13.	Total consideration as per statement of account dated 29.04.2019 (page 53 of reply)	Rs.1,52,12,700/-
14.	Total amount paid by the complainants as per statement of account dated 18.04.2019 (page 54 of reply)	Rs.1,45,49,939/-
15.	Date of start of construction as per statement of account dated 29.04.2019, page 53 of reply	19.08.2014
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 (19.08.2014) plus 3 months grace period [Page 47 of complaint]	<b>19.11.2016</b>
17.	<b>Date of offer of possession to the complainants</b>	<b>29.12.2018</b> [Page 142 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 29.12.2018	2 years 1 month 10 days



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. 19.08.2014 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 19.11.2016. 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 the respondent gave the letter of possession on 29.12.2018 prematurely well knowing that, neither the unit was ready for occupation nor the legal documentation specifically the 'declaration' as required is in place with the clear intention of putting the burden of holding charges on the complainants. In view of the above, since the respondent is in default, the complainants are entitled to invoke section 18 of the Act. Hence, this complaint inter-alia for the following reliefs:

- i. To declare that the respondent had failed to honour the terms and conditions of the agreement and other statutory conditions/approvals and thus, is liable to be proceeded against the provisions of the Act.
  - 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.
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 right from the beginning, the complainants were irregular regarding the remittance of instalments on time. The respondent was constrained to issue several payment request letters, reminders etc. to the complainants requesting them to make payment of

outstanding amounts payable by them under the payment plan/instalment plan opted by them.

- iii. That it is categorically expressed in clause 13(e) that in the 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.
  - iv. That as per clause 15 of the buyer's agreement, compensation for delay in delivery of possession shall only 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.
  - v. That the complainants were offered possession of the unit in question through letter of offer of possession dated 29.12.2018. That the respondent, as a gesture of goodwill, has credited compensation for delay, in terms of the buyer's agreement, even though the complainants were not eligible for the same on terms thereof.
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 16.03.2012, 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. 19.08.2014). 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 19.11.2016. 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 16.03.2012 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 29.12.2018. As such the complainants are entitled to delayed possession interest at rate of the prescribed @ 10.20% p.a. w.e.f. 19.11.2016 till the offer of possession i.e. 29.12.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs.1,45,49,939/- against the total sale consideration of Rs.1,52,12,700/- as per statement of account dated 29.04.2019 at page 53 of reply.

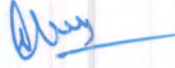
12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
  - i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of



delay on the amount paid by the complainants from due date of possession i.e. 19.11.2016 till the offer of possession i.e. 29.12.2018. 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.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Dated: 28.01.2020

Judgement uploaded on 20.02.2020