

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

Complaint no. : 1240 of 2018
First date of hearing : 29.01.2019
Date of decision : 28.01.2020

1. Mr. Ravi Lodha
2. Mrs. Riddhi Lodha
Both RR/o: F-43, ground floor, Tulip
Garden, Sector 57, Gurugram-122002.

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sanjeev Sharma Advocate for the complainants
Shri Ishaan Dang Advocate for the respondent
Shri Ketan Luthra AR of the respondent
company

ORDER

1. The present complaint dated 17.10.2018 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 Premier III at Emerald Estate, Sector 65, Gurugram.
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2020
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
7.	HRERA registration valid up to	23.08.2022
8.	Date of provisional allotment letter	13.09.2011 [Annexure R2 at page 31 of reply]
9.	Unit no.	EFP-III-43-0001, ground floor, building no. 43



10.	Unit measuring	1975 sq. ft.
11.	Date of execution of buyer's agreement	05.03.2012 [Page 30 of complaint]
12.	Payment plan	Instalment payment plan [Page 40 of reply]
13.	Total consideration as per statement of account dated 23.10.2018 (page 127 of reply)	Rs.1,53,94,882/-
14.	Total amount paid by the complainants as per statement of account dated 23.10.2018 (page 129 of reply)	Rs.1,23,64,246/-
15.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 24 months from the date of execution of buyer's agreement (05.03.2012) plus 3 months grace period [Page 35 of complaint]	05.06.2014
16.	Date of offer of possession to the complainants	Not offered
17.	Delay in handing over possession till date of decision i.e. 28.01.2020	5 years 7 months 23 days

3. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 24 months from the date of execution of buyer's agreement i.e. 05.03.2012 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



05.06.2014. Clause 11 of the buyer's agreement is reproduced below:

"11. 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 buyer's agreement, and not being in default under any of the provisions of this buyer's agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the company, the company proposes to hand over the possession of the unit within 24 months from the date of execution of buyer's agreement. 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 unit and/or the project."

4. The complainants submitted that the respondent has failed to handover the possession of the unit as per buyer's agreement dated 05.03.2012, by due date i.e. 05.06.2014, including three months extension period. On 23.02.2018, complainants entered into settlement cum amendment agreement dated 05.03.2012 wherein it was stated that the respondent has agreed to pay additional compensation at rate of ₹ 5 per sq. ft. per month over and above the rate specified in the buyer's agreement, commencing from due date of possession till date of offer of possession to the allottees. The respondent again failed to hand over the possession of the unit by 30.06.2018 as per completion schedule provided by the respondent at the time of signing settlement cum amendment agreement.

5. The complainant has filed an application for amendment in complaint dated 10.06.2019 wherein it is stated that complainants want the possession of the said unit along with interest for delay possession from 05.06.2014 till offer of possession as per the Act and the Rules and not the refund of the entire deposited amount. Hence, this complaint inter-alia for the following reliefs:
- i. Direct the respondent parties 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.
6. 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.
7. 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 the apartment allotted to the complainants is nearing completion and respondent expects to complete construction and apply for OC in January 2019. Once the OC is received, after receipt of balanced payment, possession of the apartment shall be handed over to the complainants.
8. 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.
9. 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.
10. Arguments heard.
11. The Act is to protect the rights of the stakeholders 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.



12. 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 11(a) of the buyer's agreement executed between the parties on 05.03.2012, possession of the booked unit was to be delivered within a period of 24 months plus 3 months grace period from the date of execution of buyer's agreement (i.e. 05.03.2012). 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 05.06.2014. 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 05.03.2012 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 not offered the possession of the unit to the complainants. As such the complainants are entitled to



delayed possession interest at rate of the prescribed @ 10.20% p.a. w.e.f. 05.06.2014 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs. 1,23,64,246/- against the total sale consideration of Rs.1,53,94,882/- as per statement of account dated 23.10.2018 (page 127 of reply).

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. 05.06.2014 till the offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
- 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.

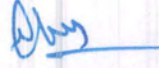
15. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.01.2020


(Subhash Chander Kush)

Member

Judgement uploaded on 02.03.2020