

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

Complaint no. : 689 of 2018
First date of hearing : 14.12.2018
Date of decision : 04.03.2020

Mrs. Anju Sharma
R/o 74-B, Vikas Nagar, Pakhowal Road,
Near Geeta Mandir, Ludhiana-141013.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office address: Emaar Business Park,
M.G. Road, Sikandarpur Chowk, Sector 28,
Gurugram-122001, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sanjeev Sharma
Shri Amit Chahal

Advocate for the complainant
Proxy counsel for Shri J.K. Dang,
Advocate for the respondent

ORDER

1. The present complaint dated 08.08.2018 has been filed by the complainant/allottee in the 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 Plaza in Emerald Hills" at Sector 65, Gurugram.
2.	Project area	3.963 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	10 of 2009 dated 21.05.2009 valid/renewed up to 20.05.2019
5.	Name of licensees	Active Promoters Pvt. Ltd. & Others C/o Emaar MGF Land Ltd.
6.	RERA registered/not registered	Not registered
7.	Date of grant of OC	08.01.2018 (Page 23 of reply)
8.	Unit no.	EPS-FF-012, 1 st floor [Page 24 of complaint]
9.	Unit measuring	569.66 sq. ft.
10.	Decrease in area of the unit vide letter of offer of possession dated 27.01.2018.	562.82 sq. ft.
11.	Date of execution of buyer's agreement	30.06.2010 [Page 23 of complaint]
12.	Payment plan	Construction linked payment plan [Page 42 of complaint]

13.	Total consideration as per statement of account dated 27.08.2018 (Page 86 of reply)	Rs. 43,56,373/-
14.	Total amount paid by the complainant as per statement of account dated 27.08.2018, page 87 of reply.	Rs.43,83,654/-
15.	Due date of delivery of possession as per clause 16(a) of the said agreement i.e. 30 months from the date of execution of this agreement (30.06.2010) plus grace period of 120 days for applying and obtaining necessary approvals in respect of commercial complex. [Page 32 of complaint]	30.04.2013
16.	Date of offer of possession	27.01.2018 [Page 62 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 27.01.2018	4 years 8 month 28 days
18.	Status of the project	OC received on 08.01.2018
19.	Specific relief sought	Direct the respondent to pay delay possession interest at the prescribed rate from due date of possession till handing over of possession on the amount paid by the complainant.

3. As per clause 16(a) of the buyer's agreement, the possession was to be handed over within a period of 30 months from the date of execution of agreement (30.06.2010) plus grace period of 120 days which comes out to be 30.04.2013. Clause 16 of the buyer agreement is reproduced below:

"16. POSSESSION

(a) Time of handing over the possession

- (i) *That the possession of the retail spaces in the commercial complex shall be delivered and handed over to the allottee(s) within thirty (30) months of the execution hereof, subject however to the allottee(s) having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee(s) under this agreement having been paid in time to the company. The company shall give notice to the allottee(s), offering in writing, to the allottee to take possession of the retail spaces for his occupation and use.*
- (ii) *The allottee(s) agrees and understands that the company shall be entitled to a grace period of 120 days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 16, for applying and obtaining necessary approvals in respect of the commercial complex."*

4. The complainant submitted that as per the space buyer's agreement, the possession of the unit in question was to be handed by January 2013, however at that time the construction of the project was far from completion. The complainant after an exorbitant delay of almost 5 years received letter for offer of possession on 27.01.2018 with respect to the unit in question, however, no interest for the delayed period was offered by the respondent to the complainant. Further while giving offer of possession, the respondent illegally without the consent of the complainant reduced the area of the unit in question from 569.66 sq. ft. to



562.82 sq. ft. Hence, this complaint inter alia for the aforesaid relief.

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 the provisions of the Act are not applicable to the project in question. The application for issuance of OC in respect of the project in question was made on 26.05.2017, i.e. well before the notification of the Rules. The OC has been thereafter issued on 08.01.2018. The respondent has applied for part completion certificate for the project where services are complete and hence, the project does not fall in the definition of 'ongoing project' under rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act.
 - ii. The respondent submitted that the complaints pertaining to interest, compensation and refund 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.
 - iii. The respondent submitted that right from the beginning, the complainant was extremely irregular as far as



payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan opted by her.

- iv. The respondent submitted that as per clause 18 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 the agreement and further have not defaulted in payment as per payment plan annexed with the agreement. The complainant, having defaulted in payment of instalments, is thus not entitled to any compensation under the buyer's agreement. As per statement of account dated 27.08.2018, the complainant has an outstanding liability of Rs.2,374/- including delayed payment charges.
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 and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.



9. The authority has complete jurisdiction to decide the present complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent 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 16(a) of the buyer's agreement executed between the parties on 30.06.2010, possession of the booked unit was to be delivered within a period of 30 months from the date of execution of the agreement plus 120 days grace period. The grace period of 120 days is allowed to the respondent due to contingencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 30.04.2013. The respondent offered possession of the subject unit to the complainant on 27.01.2018 after receipt of occupancy certificate dated 08.01.2018. 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. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 30.06.2010 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. As such, the complainant is entitled to delayed possession interest @ 10.15 % p.a. w.e.f. 30.04.2013 till offer of possession i.e. 27.01.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has paid a sum of Rs.43,83,654/- against the total sale consideration of Rs.43,56,373/- as per statement of account dated 27.08.2018 at page 86 and 87 of reply.

11. 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. 10.15 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 30.04.2013 till the offer of possession i.e. 27.01.2018. 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 payments, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge any amount 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 of interest @10.15 % by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
12. Complaint stands disposed of.
 13. File be consigned to registry.


(Samir Kumar)

Member


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2020

Judgement uploaded on 17.03.2020