

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

Complaint no. : 690 of 2018
First date of hearing : 14.12.2018
Date of decision : 04.03.2020

1. Mr. Sumeet Ahluwalia
 2. Mrs. Ramanjit Ahluwalia
- Both RR/o A/1, 261, Safdurjung Enclave,
New Delhi.

Complainants

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 complainants
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 complainants/allottees 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 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 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 22 of reply)
8.	Unit no:	EPS-GF-031, ground floor [Page 24 of complaint]
9.	Unit measuring	732.34 sq. ft.
10.	Decrease in area of the unit vide letter of offer of possession dated 27.01.2018	719.75 sq. ft.
11.	Date of execution of buyer's agreement	08.09.2010 [Page 22 of complaint]
12.	Payment plan	Construction linked payment plan [Page 33 of complaint]
13.	Total consideration as per statement of account dated 30.08.2018 (Page 80 of reply)	Rs.54,61,952/-



14.	Total amount paid by the complainants as per statement of account dated 30.08.2018, page 81 of reply.	Rs.50,88,460/-
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 (08.09.2010) plus grace period of 120 days for applying and obtaining necessary approvals in respect of commercial complex. [Page 28 of complaint]	08.07.2013
16.	Date of offer of possession	27.01.2018 [Page 48 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 27.01.2018	4 years 6 month 19 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 complainants.

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 (08.09.2010) plus grace period of 120 days which comes out to be 08.07.2013. 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 complainants submitted that the promoter only raised construction up to 5th floor slab up to the time of handing over the possession in June 2013 so the complainants also slowed down the payments of instalments but still paid Rs.50,88,460/- to the promoter on different occasions. In January 2018, builder offered the possession and raised a demand of Rs.8,03,070/-. On receiving the demand letter and letter for possession, the complainants were aghast as there was no mention of delayed possession interest and compensation for delayed possession. 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 occupation certificate in respect of the project in question was made on 26.05.2017, i.e. well before the notification of the Rules. The occupation certificate 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 possession, 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 complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan opted by them.



- 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 complainants, having defaulted in payment of instalments, are thus not entitled to any compensation under the buyer's agreement. As per statement of account dated 30.08.2018, the outstanding amount including the delayed payment charges payable by the complainants to the respondent is Rs.3,95,531/-.
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 complainants 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 complainants at a later stage.

10. On consideration of the circumstances, the evidence and other record and submissions made by the complainants 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 08.09.2010, 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 08.07.2013. The respondent offered possession of the subject unit to the complainants 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 complainants. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 08.09.2010 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 complainants are entitled to delayed possession interest @ 10.15% p.a. w.e.f. 08.07.2013 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 complainants have paid a sum of Rs.50,88,460/- against the total sale consideration of Rs.54,61,952/- as per statement of account dated 30.08.2018 at page 80 and 81 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 complainants from due date of possession i.e. 08.07.2013 till the offer of possession i.e. 27.01.2018. 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 payments, if any, after adjustment of interest for the delayed period.

- iii. The respondent shall not charge any amount 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 of interest @10.15% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
12. Complaint stands disposed of.
13. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2020


(Subhash Chander Kush)

Member

Judgement uploaded on 17.03.2020