

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

Complaint no. : 2428 of 2019
First date of hearing : 20.11.2019
Date of decision : 14.12.2020

1. Mr. S Giri Sunder
2. Mrs. Malini Giri Sunder
Both RR/o D-6/4, First Floor,
DLF Exclusive Floors, DLF Phase 5,
Gurugram-122009, Haryana.

Complainants

Versus

1. M/s Emaar MGF Land Ltd.
Address: Emaar Business Park, M.G. Road,
Sikanderpur Chowk, Sector 28,
Gurugram, Haryana.
Also at: 306-308, 3rd floor, Square One,
C-2, District Centre, Saket, New Delhi-110017.

2. Ms. Shilpa Gupta
Director of Emaar MGF Land Ltd.
Address: ECE House, 28, Kasturba
Gandhi Marg, New Delhi-110001.

3. Mr. Prateek Bali
(Authorised Signatory of Emaar MGF Land Ltd.)
Address: Emaar Business Park, M.G. Road,
Sikanderpur Chowk, Sector 28,
Gurugram, Haryana

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Kuldeep Kumar Kohli
Shri J.K. Dang along with Shri
Ishaan Dang

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 11.06.2019 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 Premier 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 16.01.2025 |
| 5. | Name of licensee | Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd. |



| | | | |
|-----|---|-----|--|
| 6. | HRERA registered/ registered | not | 'Emerald Estate' registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs. |
| 7. | HRERA registration valid up to | | 23.08.2022 |
| 8. | Provisional allotment letter | | 28.10.2009 [Page 37 of complaint] |
| 9. | Unit no. | | EFP-33-0501, 5 th floor, building no. 33 [Page 46 of complaint] |
| 10. | Unit measuring | | 1650 sq. ft. |
| 11. | Date of execution of buyer's agreement | | 09.02.2010 [Page 42 of complaint] |
| 12. | Payment plan | | Construction linked payment plan [Page 78 of complaint] |
| 13. | Total consideration as per statement of account dated 01.03.2018 [Page 143 of complaint] and 12.06.2019 [Page 62 of reply] | | Rs.70,21,304/- |
| 14. | Total amount paid by the complainants as per statement of account dated 12.06.2019 | | Rs.68,35,883/- [Page 63 of reply] |
| 15. | Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 36 months from the date of execution of buyer's agreement (09.02.2010) plus 3 months grace period [Page 59 of complaint] | | 09.05.2013 |
| 16. | Date of offer of possession to the complainants | | Not offered |



| | | |
|-----|--|-------------------------|
| 17. | Delay in handing over possession till date of decision i.e. 14.12.2020 | 7 years 7 months 5 days |
|-----|--|-------------------------|

3. As per clause 11(a) of the agreement, the possession of the unit in question was to be handed over within a period of 36 months from the date of execution of buyer's agreement i.e. 09.02.2010 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 09.05.2013. 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 36 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 completion certificate/occupation certificate in respect of the Unit and/or the Project."

4. The complainants submitted that the said unit was allotted to them on 28.10.2009. The buyer's agreement was executed on 09.02.2010 between the complainants and the respondent. The buyer's agreement proposed the possession of the unit within 36 months from the date of execution of buyer's agreement. The possession of the unit was scheduled by 09.02.2013. The payments to be made by the complainants



were based on the construction on the ground but unfortunately the demands being raised was not corresponding to the factual situation on ground. The project got abandoned for 3 consecutive years 2015, 2016 and 2017. The complainants, despite having paid around 98% of the payment against the total consideration amount, have not been delivered the possession of the said apartment. The settlement-cum-amendment agreement dated 28.03.2018 came out to be another farce. The respondent with false assurances to allottees got the delivery time extended with the allottees approval without mentioning new possession date. Such an open-ended agreement was illegal and had no legal sanctity and no monetary or qualitative benefit passed on to complainants. The respondent miserably failed to complete the construction work of the project within assured time limit thereby grossly violating the terms and conditions of the buyer's agreements. The respondent is unable to offer possession even after a delay of 62 months. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to get the occupancy certificate and handover the possession of the said residential floor in the project in question in habitable form with all amenities.

- ii. Direct the respondent to pay interest at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.
 - iii. Refund the HVAT and other taxes paid by the complainants to the respondent due to delayed construction.
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 no.1 contested the complaint on the following grounds:
- i. The respondent submitted that the complainants have filed the present complaint seeking interest and refund of certain amounts collected by the respondent on account of alleged delay in delivering possession of the unit booked by the complainants. The complaints pertaining to penalty, 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 provisions of the Act are not applicable to the project in question. The



application for issuance of occupation certificate in respect of the tower in which the apartment in question was made on 29.06.2017 i.e. before the notification of Rules. The occupation certificate has been thereafter issued on 08.01.2018. However, as the Fire NOC was awaited for few blocks (including the unit in question), therefore the respondent, vide letter dated 08.02.2018, informed DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited. Thus, part of the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. The project does not require registration and has not been registered under the provisions of the Act. This hon'ble Authority does not have the jurisdiction to decide the present complaint.

- iii. That the said unit was allotted to the complainants vide provisional allotment letter dated 28.10.2009. The complainants consciously and wilfully opted for construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every instalment on time as per the payment schedule. The complainants were irregular regarding the

remittance of instalments on time. 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 instalment plan opted by them.

- iv. The respondent submitted that clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. The complainants, having defaulted in timely remittance of instalments, are thus not entitled to any compensation or any amount towards interest under the buyer's agreement.
- v. The respondent submitted that the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and above), irrespective of area of each floor, are now required to have two staircases. The construction of

the second staircase is almost complete and the respondent shall soon submit a report to the competent authorities. Thereafter, subject to force majeure conditions and receipt of occupation certificate, possession of the apartment shall be offered to the complainants. *Secondly*, the defaults on the part of the contractor.

- vi. Hence, the complaint is liable to be dismissed.
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 both the parties, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. The authority has complete jurisdiction to decide the complaint regarding 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.

11. On consideration of the documents available on record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of section 11(4)(a) of the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 09.02.2010, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of execution of buyer's agreement (i.e 09.02.2010). 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 09.05.2013.
12. However, vide settlement agreement dated 28.03.2018, the complainants have agreed to extend the time period for handing over the possession of the said unit as per the schedule of possession shared by the company and accepted by the allottees. In lieu of the allottees agreeing to extend time line for handing over the possession, the company has agreed to pay an additional compensation @ Rs.5/- per sq. ft. per month over and above the rate specified in the buyer's agreement commencing from the due date of possession as per buyer's agreement till the date of offer of possession to the allottee, as a gesture of goodwill to compensate the allottee for



delay in handover of possession of the unit. Further, it was also agreed that the allottee further agrees and undertakes that he shall not raise any further claim against the company towards compensation for delay under the said Act or any other law for the time being in force. The relevant clauses of the said settlement-cum-amendment agreement are reproduced below for ready reference:

"1. The Parties have agreed to extend the time period for handing over possession of the said Unit as per the schedule for possession shared by the Company and accepted by the Allottee. The 'Time for handing over the Possession' as stipulated in the Buyer's Agreement shall accordingly stand modified...

2. That the Company, without prejudice and in lieu of the Allottee agreeing to extend time line for handing over possession, the Parties have mutually arrived at a fair estimate for compensating the Allottee for the said delay in handover of possession of the Unit. In terms of the fair estimate arrived at between the Parties, the Company has agreed pay an additional compensation @Rs.5/- per sq. ft. per month over and above the rate specified in the Buyer's Agreement commencing from the due date of possession as per Buyer's Agreement till the date of offer of possession to the Allottee, as a gesture of goodwill to compensate the Allottee for delay in handover of possession of the Unit...

3. ...

4. ...

5. The Allottee agrees that the above-mentioned benefit of additional compensation @ Rs.5/- per sq. ft. per month over and above the rate specified in the Buyer's Agreement given to the allottee shall be towards the full and final settlement of his grievance regarding the delay in handover of possession of the Unit. That the Allottee shall be left with no other claims, benefits, compensation, etc. of any nature whatsoever with respect to the said delay in his individual capacity or as a part of any group. The Allottee



further agrees and undertakes that he shall not raise any further claim against the Company towards compensation for delay under the Real Estate (Regulation and Development) Act, 2016 or any other law for the time being in force. The Allottee undertakes not to raise any claim of whatsoever nature against the company now or in future under any law for the time being in force other than what is mentioned in this agreement..."

13. Vide settlement agreement, the parties have agreed to extend time period of handing over possession of the said unit as per the schedule for possession shared by the company and in lieu of the allottee agreeing to extended timeline for handing over possession, the respondent has agreed to pay additional compensation @ Rs.5/- per sq. ft. per month over and above the rate specified in the buyer's agreement [Note: As per clause 13 of the buyer's agreement, the allottee(s) shall be entitled to payment of compensation for delay at the rate of Rs.5/- per sq. ft. per month of the super area till the date of notice of possession]. The promoter cannot take advantage of its dominant position as it extended timeline of handing over possession but in lieu of that it failed to give advantage to the allottee. It is pertinent to mention here that the respondent has even failed to handover possession as per the new timeline given by the respondent at the time of settlement agreement and has also failed to pay additional compensation as per the agreement. Therefore, it can be concluded that the respondent has not acted upon the settlement-cum-amendment



agreement dated 28.03.2018 and the said agreement cannot be considered.

14. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the buyer's agreement dated 09.02.2010 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. In this case, the respondent has not offered the possession of the unit to the complainants till date. As such the complainants are entitled to delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. from due date of possession i.e. 09.05.2013 till the handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the Rules.
15. 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. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 09.05.2013 till the handing over 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 the handing over of possession shall be paid before 10th of each subsequent month.

- 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 @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

16. Complaint stands disposed of.

17. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram


(Samir Kumar)

Member

Dated: 14.12.2020

Judgement uploaded on 30.01.2021.