

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

Complaint no. : 2174 of 2018  
First date of hearing : 12.03.2019  
Date of decision : 01.10.2020

Shri. Sachin Johar  
R/o: GC, Elite Tower G, Belgravia,  
Central Park-2 Resorts, Sector-48,  
Gurugram, Haryana

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman  
Member  
Member**

**APPEARANCE:**

Shri Varun Chugh  
Shri Ishaan Dang  
Shri Ketan Luthra

Advocate for the complainant  
Advocate for the respondent  
AR of the respondent  
company

**HARERA**  
GURUGRAM  
**ORDER**

1. The present complaint dated 18.12.2018 has been filed by the complainant/allottee 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 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 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.	06 of 2008 dated 17.01.2008
	License valid/renewed upto	16.01.2025
	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
5.	HRERA registered/ not registered	<b>Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.</b>
	HRERA registration valid up to	<b>23.08.2022</b>
6.	Provisional allotment letter	<b>13.09.2011</b> [Page 15 of complaint and 48 of reply]
7.	Unit no.	EFP-III-37-0101, 1 <sup>st</sup> floor, building no. 37 [Page 24 of complaint]

8.	Unit measuring	1650 sq. ft.
9.	Date of execution of buyer's agreement	25.04.2012 [Page 22 of complaint]
10.	Payment plan	Construction linked payment plan [Page 16 of complaint]
11.	Total consideration as per statement of account dated 23.04.2019 [Page 89 of reply]	Rs.1,23,39,249/-
12.	Total amount paid by the complainant as per statement of account dated 23.04.2019 [Page 90 of reply]	Rs.1,17,82,851/-
13.	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 (25.04.2012) plus 3 months grace period [Page 31 of complaint]	<b>25.07.2014</b>
14.	<b>Date of offer of possession to the complainant</b>	<b>Not yet offered</b>
15.	Delay in handing over possession till date of decision i.e. 01.10.2020	6 years 2 months 6 days

3. As per clause 11(a) of the buyer's 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. 25.04.2012 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 25.07.2014. Clause 11(a) 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 completion certificate/occupation certificate in respect of the Unit and/or the Project."*

4. The complainant submitted that initially said unit was booked by one Sh. Manmeet Singh Ahluwalia (original allottee). On 25.04.2012, the original allottee entered into buyer's agreement with the respondent. Subsequent thereto, on 05.07.2012, the complainant herein entered into agreement to sell with the original allottee with regard to the said unit. In the agreement dated 25.04.2012, the respondent had categorically stated that the possession of the said apartment would be handed over to the complainant within 24 months from the date of signing of buyer's agreement with a further grace period of another 3 months. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of possession by 50 months. The project was to be completed by October 2014 with grace period of three months. The progress of the project updated on the

website of the respondent clearly shows that there is no headway and the respondent has been misleading the customers and not giving them concrete schedule of completion. The respondent has committed gross violation of provision of section 18(1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to buyer. Hence, this complaint inter-alia for the following reliefs (as per application dated 25.02.2020 moved by the complainant):

- i. Direct the respondent to handover the possession of the property/apartment to the complainant in a time bound manner.
  - ii. Direct the respondent to pay interest towards delay in handing over the property in question as per the provisions of the Act and the Rules.
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 complainant has filed the present complaint seeking interest, refund and

compensation for alleged delay in delivering possession of the unit booked by the complainant. The complaints pertaining to 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 allotment of the unit in question was transferred by Mr. Manmeet Singh Ahluwalia (original allottee) to the complainant and Mrs. Chitrakshi Munjal vide agreement to sell dated 05.07.2012. The complainant and original allottee had approached respondent requesting it to endorse the provisional allotment of the unit in question in complainant's name. The complainant had further executed an affidavit dated 03.08.2012 and an indemnity cum undertaking dated 03.08.2012 whereby the complainant had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the complainant having been substituted in the place of the original allottee in respect of the provisional allotment of the unit in question were not entitled to any

compensation for delay, if any, in delivery of possession of the unit in question.

iii. 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 respondent has taken a decision to go ahead and construct the second staircase. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of occupation certificate and subject to force majeure conditions, possession of the apartment shall be offered to the complainant. *Secondly*, the defaults on the part of the contractor.

iv. 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 complainant at a later stage.
11. On consideration of the circumstances, the documents and submissions made by the parties regarding contravention as per provisions of rule 28(2), 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 25.04.2012, 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. 25.04.2012). 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 25.07.2014.

12. Copy of 'Indemnity cum undertaking of the transferee/ nominee' dated 03.08.2012 given by the complainant at the time of getting the apartment in question transferred in his name is annexed as Annexure A6 of the complaint. The relevant clause of the said indemnity cum undertaking reads as under:

*"1. That, the indemnifier, accept and agree with the terms and conditions as set out in the Agreement which he/she have fully understood and undertake to pay all charges and abide by all the terms and conditions of the provisional registration/ registration/ booking/allotment for the Apartment/ Unit/ Independent Floor/ Flat/Plot and other terms imposed by the Beneficiary from time to time. The indemnifier having been appraised, understands and confirms that being the Nominee/ Transferee, he/she is not entitled to any claim, compensation for delay in handing over possession and undertakes not to raise any claim whatsoever with regard to the same."*

13. The respondent has not clarified as to why a need arose for the complainant to sign any such indemnity cum undertaking and as to why the complainant has agreed to surrender his legal rights which were available or had accrued in favour of the original allottee. It is not the case of the respondent that the complainant has executed this indemnity cum undertaking out of his free will and concern. Such an undertaking/ indemnity bond given by a person thereby giving up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to a suspicion. If even a slightest of doubt arises in the mind of the adjudicator that such an

agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices. Therefore, this Authority does not place reliance on the said affidavit/ indemnity cum undertaking in view of order dated 03.01.2020 in case titled as *Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015*, it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced below:

***"Indemnity-cum-undertaking***

*30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever.*

*It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect*

*which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."*

14. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the buyer's agreement dated 25.04.2012 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 complainant till date. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. 9.30% p.a. w.e.f. 25.07.2014 till offer of possession as per provisions of 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 complainant from due

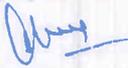
date of possession i.e. 25.07.2014 till the offer of possession.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of each subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

16. Complaint stands disposed of.

17. File be consigned to registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**Dr. K.K. Khandelwal**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.10.2020

Judgement uploaded on 27.10.2020