

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

Complaint no. : 3385 of 2019
First date of hearing : 20.11.2019
Date of decision : 21.01.2020

Nikhil Garg
R/o 152/14, Jacobpura, Gurugram,
Haryana-122001.

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Gaurav Bhardwaj Advocate for the complainant
Shri Ishaan Dang Advocate for the respondent
Shri Ketan Luthra AR of the respondent company

ORDER

1. The present complaint dated 07.08.2019 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 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 Floors Premier at Emerald Estate, Sector 65, Gurugram.
2.	Project area	25.49 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 16.01.2018
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	"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.	Date of provisional allotment letter	16.06.2010 [Page 22 of complaint]
9.	Unit no.	EFP-II-55-0302, 3 rd floor [Page 33 of complaint]
10.	Unit measuring	1975 sq. ft.



11.	Date of execution of buyer's agreement	04.05.2011 [Page 29 of complaint]
12.	Payment plan	Construction Linked Payment Plan [Page 65 of complaint]
13.	Total consideration as per statement of account dated 10.07.2019 (Annexure R23 at page 60 of reply)	Rs.1,05,72,392/-
14.	Total amount paid by the complainant as per statement of account dated 10.07.2019 (Annexure R23 at page 61 of reply)	Rs.88,76,631/-
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 agreement (i.e. 04.05.2011) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 46 of complaint]	04.08.2014
16.	Date of offer of possession to the complainant	Not offered
17.	Delay in handing over possession till date of decision i.e. 21.01.2020	5 years 5 months 17 days

3. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 36 months from the date of execution of agreement i.e. 04.05.2011 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 04.08.2014.

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 36 months from the date of execution of the 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 despite delay of more than 5.5 years, the respondent has not offered possession of the subject unit. In mid-2015, the complainant visited the site and was shocked to see the status of the project as no construction was going on as per the promises and representations made by the respondent. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the unit in question to the complainant.
- ii. Direct the respondent to pay delayed possession charges on the principal amount paid by the complainant towards the said unit at prescribed rate of interest from the due date of possession i.e. 04.08.2014 till the actual handing over of possession.



- iii. Direct the respondent to charge delayed payment charges at the equitable rate of interest i.e. prescribed rate of interest in accordance with the Act, 2016 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 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 complainant was irregular regarding the remittance of instalments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts due and payable by the complainant under payment plan opted by him.
 - iii. That as per clause 11(b)(iv), in the event of any default or delay by the allottees in payment of instalments as per the schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall

also stand extended accordingly solely on the respondent's discretion till the payment of all outstanding amounts to the satisfaction of the respondent. Since, the complainant has defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainant.

iv. The respondent submitted that-

'16. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of following reasons which were/are beyond the power and control of the respondent:

(i) Second stair case issue:

The building plans for the apartment/tower in question was approved by the competent authority under the then applicable National Building Code (NBC) in terms of which buildings having height of 15 mtrs. or above but having area of less than 500 sq. mtrs. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.

Subsequently, NBC was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two stair cases.

Furthermore, it was notified vide gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.

The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application, has been insisting on two stair cases in all high-rise buildings even in cases where the building plans stood approved with a provision for a single stair case



and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the developer within one year from the date of issuance of provisional Fire NOC...

Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the respondent has taken a decision to go ahead and construct the second stair case will be completed in an year's time. Thereafter, upon issuance of OC and subject to force majeure conditions, possession of the apartment shall be offered to the complainants.

(ii) Default of contractors

A contract dated 01.11.2010 was executed between the respondent and M/s BL Kashyap and Sons (BLK/Contractor) in terms of which the contractor was to construct residential projects being developed by the respondent in the name and style of 'Emerald Estate' and 'Emerald Floors Premier' including civil structure, finishing, MEP, external development infrastructure, horticulture, EWS, clubhouse etc. The start date of the project as determined by the parties was 26.07.2010 and the scheduled date of completion of project was 25.07.2013.

That the contractor was not able to meet the agreed timelines for construction of the project. The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of material etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site...'

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 explanation and other submissions made and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. The Act is to protect the rights of the stake-holders 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.
11. 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 04.05.2011, 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 the agreement. The grace period of 3 month 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 04.08.2014. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable in 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 04.05.2011 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 at rate of the prescribed interest @ 10.20% p.a. w.e.f. 04.08.2014 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.88,76,631/- against the total sale consideration of Rs.1,05,72,392/- as per statement of account dated 10.07.2019 at page 60 and 61 of reply.

12. 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 complainant from due date of possession i.e. 04.08.2014 till the offer of



possession. 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 10th of each subsequent month.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything 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 @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

13. Complaint stands disposed of.

14. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 21.01.2020

Judgement uploaded on 10.02.2020