

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

**Complaint no. : 1855 of 2018**  
**First date of hearing : 12.03.2019**  
**Date of decision : 21.01.2020**

Madhu Bala  
R/o H.no. 155, Ganga Bhawan,  
Gurudwara Road, Civil Lines, Gurugram.

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: ECE House, 28  
Kasturba Gandhi Marg, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Smt. Madhu Bala Complainant in person  
Shri Mukul Kumar Sanwariya 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 21.11.2018 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 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.	Occupation certificate granted by the competent statutory authority on	05.03.2019 [Page 30 of reply]



9.	Date of provisional allotment letter	31.10.2009 [Page 26 of complaint]
10.	Unit no.	EFP-15-0202, 2 <sup>nd</sup> floor [Page 31 of complaint]
11.	Unit measuring	1975 sq. ft.
12.	Date of execution of buyer's agreement	20.02.2010 [Page 29 of complaint]
13.	Payment plan	Construction Linked Payment Plan [Page 63 of complaint]
14.	Total consideration as per statement of account dated 23.04.2019 (Annexure R22 at page 60 of reply)	Rs.84,45,526/-
15.	Total amount paid by the complainant as per statement of account dated 23.04.2019 (Annexure R22 at page 61 of reply)	Rs.81,02,745/-
16.	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. 20.02.2010) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 44 of complaint]	20.05.2013
17.	<b>Date of offer of possession to the complainant</b>	<b>Not offered</b>
18.	Delay in handing over possession till date of decision i.e. 21.01.2020	6 years 8 months 1 day



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. 20.02.2010 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 20.05.2013.

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 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 the complainant had made almost full payment of nearly 99% out of total consideration but didn't get the possession till date. The respondent has not completed the project till date and not even offered the possession to the complainant. The respondent has delayed the possession of the unit deliberately or for the reasons know best to him. 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 date of execution of provisional allotment letter till realisation as per the provisions of section 18, 19(1) and (2) of the Act.
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 tower in question was made on 29.06.2017 i.e. before the notification of the Rules. The OC has been thereafter issued on 05.03.2019. Thus, the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. This hon'ble Authority does not have jurisdiction to entertain and decide the present complaint.
  - ii. 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.
- iii. 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 payable by the complainant under payment plan opted by her.
- iv. That as per clause 11(b)(iv), in the case of any default/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 be 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 in the present case by the complainant.
- v. 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 and hence the respondent cannot be held responsible for the same:*

*(i) That 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 staircases.*

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

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

*(ii) That 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. However, the contractor did not adhere to the said requests and the work at the site came to a standstill. Letters sent by the respondent to BLK has been annexed herewith as Annexure R28...'*

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, 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 20.02.2010, 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 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 20.05.2013. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable 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 20.02.2010 to hand over the possession within the stipulated period. The complainant had paid Rs.81,02,745 against a total sale consideration of Rs.84,45,526/-. The respondent has received occupation certificate on 05.03.2019 but the possession has not yet been offered by the respondent to the complainant. 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. 20.05.2013 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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. 20.05.2013 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 10<sup>th</sup> 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.

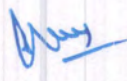
13. Complaint stands disposed of.
14. File be consigned to registry.

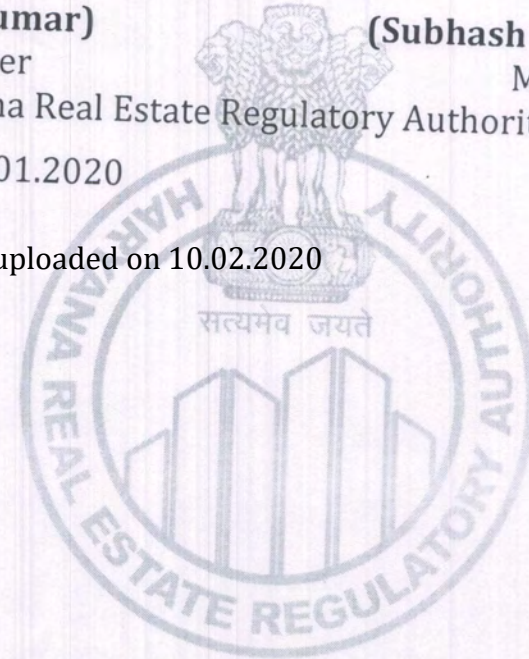
  
**(Samir Kumar)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2020

Judgement uploaded on 10.02.2020

  
**(Subhash Chander Kush)**  
Member



**HARERA**  
GURUGRAM