

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

Complaint no. : 979 of 2019  
First date of hearing : 26.09.2019  
Date of decision : 28.01.2020

Mr. Vishal Gyanchand Verma  
R/o. 1-32, Ground Floor,  
South City-2, Sec-49, Sohna Road  
Gurugram-122018.

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: 306-308, 3<sup>rd</sup> Floor,  
Square One, C-2, District Centre,  
Saket, New Delhi-110017.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Kuldeep Kohli along with  
Shri Gaurav Rawat  
Shri Ishaan Dang  
Shri Ketan Luthra

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

**ORDER**

1. The present complaint dated 04.04.2019 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 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. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2020
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	<b>Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.</b>
7.	HRERA registration valid up to	<b>23.08.2022</b>
8.	Date of provisional allotment letter	31.05.2011 [Page 31 of reply]
9.	Unit no.	EFP-III-37-0202, 2 <sup>nd</sup> floor, building no. 37
10.	Unit measuring	1650 sq. ft.





11.	Date of execution of buyer's agreement	31.03.2012
12.	Payment plan	Instalment payment plan [Page 56 of complaint]
13.	Total consideration as per statement of account dated 01.04.2019 (Annexure R20 at page 98 of reply)	Rs. 1,21,45,848/-
14.	Total amount paid by the complainant as per statement of account dated 01.04.2019 (Annexure R20 at page 98 of reply)	Rs. 1,15,90,270/-
15.	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 (31.03.2012) plus 3 months grace period [Page 45 of complaint]	30.06.2014
16.	<b>Date of offer of possession to the complainant</b>	<b>Not offered</b>
17.	Delay in handing over possession till date of decision i.e. 28.01.2020	5 years 6 months 29 days

3. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 24 months from the date of execution of buyer's agreement i.e. 31.03.2012 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 30.06.2014. 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 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 occupation certificate in respect of the unit and/or the project."*

4. The complainant submitted that even after payment of over 95% of the total sale consideration and a long wait of almost 5 years from the time of agreement of sale, the unit is nowhere near to completion. The complainant being diligent buyers and consumers, made continuous follow ups asking the respondent on status and update on the project. The complainant received no satisfactory response from the respondent.
5. The complainant has filed an application through its counsel to amend the relief clause wherein it is stated that keeping in view the present circumstances, the complainant wishes to withdraw the relief of refund and is seeking relief of delayed possession interest. Hence, this complaint inter-alia for the following reliefs:
  - i. Direct the respondent to handover the possession of the said floor with the best amenities and specifications as



promised in all completeness without any further delay along with prescribed rate of interest per annum till handing over of possession.

6. 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.
7. The respondent contests the complaint on the following grounds:
  - i. The respondent submitted that complaints pertaining to refund, 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 Mr. Vidyut Patnaik & Mr. Nagen Chandra (hereinafter 'original allottees') had approached the respondent in year 2011 for purchase of independent unit in its project. The original allottees, in pursuance of the application form dated 31.05.2011, was allotted an independent unit bearing no. EHP-III-37-0202, located on second floor in the project vide allotment letter dated 13.09.2011. Thereafter, Mr. Gurpreet Singh Vohra and Mrs. Ravinder Vohra (hereinafter 'subsequent allottees') approached the



original allottees for purchasing their rights and title of the unit. The original allottees acceded to the request of the subsequent allottees and agreed to transfer and convey their rights, entitlement and title of the unit to the subsequent allottees for a valuable sale consideration of Rs.1,15,82,307/-. An agreement to sell dated 01.02.2013 had been executed between the original allottees and subsequent allottees is place on record.

- iii. That the subsequent allottees had further executed an affidavit dated 01.02.2013 and an indemnity cum undertaking dated 01.02.2013 whereby the subsequent allottees 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 allottees. It was further declared that they have been substituted in the place of the original allottees and were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or any other discount. The subsequent allottees acceded to the request of the complainant and agreed to transfer and convey their rights, entitlement and title of the unit to the complainant for a valuable sale consideration of Rs.1,17,68,575/-. An



agreement to sell dated 30.04.2013 had been executed between the subsequent allottees and complainant is place on record. The complainant had further executed an affidavit and indemnity cum undertaking dated 30.04.2013 whereby the complainant had declared that he having been substituted in the place of the subsequent allottee will not be entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or any other discount.

iv. That as per clause 11(b)(iv), in case of any default/delay in payment of instalments as per the schedule of payment incorporated in the buyer's agreement, the date of delivery of possession shall be extended accordingly.

v. The respondent submitted that-

*'17. 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) 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.*

*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. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of the OC and subject to force majeure conditions, possession of the apartment shall be offered to the complainant.'*

8. 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.
9. The Authority, on the basis of information and other submissions made and the documents filed by the complainant and the respondent, is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.





11. 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.
12. 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 31.03.2012, possession of the booked unit was to be delivered within a period of 24 months plus 3 months grace period from the execution of buyer's agreement (i.e. 31.03.2012). 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 30.06.2014. 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 31.03.2012 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. As such the complainant is entitled to delayed possession interest at rate of the prescribed @ 10.20% p.a. w.e.f. 30.06.2014 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.1,15,90,270/- against the total sale consideration of Rs. 1,21,45,848/- as per statement of account dated 01.04.2019 at page 98 and 99 of reply.

13. In *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 if the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. The relevant portion 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. 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. 30.06.2014 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

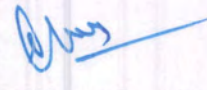


possession shall be paid before 10<sup>th</sup> of each subsequent month.

- 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 @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges
15. Complaint stands disposed of.
16. File be consigned to registry.

  
**(Samir Kumar)**

Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
**(Subhash Chander Kush)**

Member

Dated: 28.01.2020

Judgement uploaded on 20.02.2020