

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

**Complaint no. : 1084 of 2019**  
**First date of hearing : 28.11.2019**  
**Date of decision : 28.01.2020**

1. Mr. Ved Prakash Ahuja  
2. Mrs. Ved Ahuja  
Both RR/o: H.No. D-22, Marg-13, Saket,  
Near Kotak Mahindra Bank,  
New Delhi-110017.

**Complainants**

**Versus**

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

Also at: 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 Sukhbir Yadav  
Shri Ishaan Dang  
Shri Ketan Luthra

Advocate for the complainants  
Advocate for the respondent  
AR of the respondent  
company

**ORDER**

1. The present complaint dated 18.03.2019 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 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	14.09.2011 [Annexure R1 at page 31 of reply]



9.	Unit no.	EFP-III-39-0301, 3 <sup>rd</sup> floor, building no. 39
10.	Unit measuring	1975 sq. ft.
11.	Date of execution of buyer's agreement	26.04.2012 [Page 31 of complaint]
12.	Payment plan	Instalment payment plan [Page 51 of complaint]
13.	Total consideration as per statement of account dated 26.03.2019 (page 148 of reply)	Rs. 1,41,64,501/-
14.	Total amount paid by the complainants as per statement of account dated 26.03.2019 (page 149 of reply)	Rs.1,26,90,934/-
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 (26.04.2012) plus 3 months grace period [Page 40 of complaint]	<b>26.07.2014</b>
16.	<b>Date of offer of possession to the complainants</b>	<b>Not offered</b>
17.	Delay in handing over possession till date of decision i.e. 28.01.2020	5 years 6 months 2 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. 26.04.2012 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



26.07.2014. 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 complainants submitted that in spite of complainants have paid over 92% of the actual amounts of the unit, but the respondent party has failed to deliver the possession of the fully constructed and developed unit. Now it is more than 8 years from the date of booking and even the constructions of all units are not completed, it clearly shows the negligence of the builder. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent parties to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession on amount paid by the complainants as per section 18 of the Act.

- ii. Direct the respondent to handover the possession of the floor to the allottee immediately complete in all respects and execute all required documents for transferring/ conveying the ownership of the respective flat allotted.
  - iii. Direct the respondent from giving effect to the unfair clauses unilaterally incorporated in the flat buyer's agreement.
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 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 Mrs. Kalpana Pujar (hereinafter 'first allottee') has approached the respondent in June 2011 for purchase of an apartment in its project. The first allottee was allotted an apartment bearing no. EFP-III-39-0301, vide allotment letter dated 14.09.2011. The allotment was transferred in favour of

Mr. Jatin Sehgal & Mrs. Kawaljit Kaur (hereinafter 'second allottees'). The second allottees transferred the apartment in favour of the complainants on the basis of transfer documents executed by both the parties.

- iii. The respondent further submitted that the terms and conditions as set out in the buyer's agreement have to be read in conjunction with the affidavit executed by the complainants, at Annexure R4E, whereby the complainants have agreed and admitted that they are not entitled to any compensation, discount etc. from the respondent due to delay in delivering possession. Further, the purchase of the unit in question in re-sale, knowing fully well that start of construction of the unit had been delayed for reasons beyond the control of the respondent, in conjunction with the affidavit executed by the complainants, clearly indicates that the complainants have waived all requirement of the time bound delivery of the unit.

- iv. The respondent submitted that-

*'14. That without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainants 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.*



15. 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...

17. That the fire department...

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 complainants.'

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 the complainants and the respondent, 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 26.04.2012, 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. 26.07.2014). 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 26.07.2014. 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 26.04.2012 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 complainants. As such the complainants are entitled to delayed possession interest at rate of the prescribed @ 10.20% p.a. w.e.f. 26.07.2014 till the offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants have already paid Rs.1,26,90,934/- against the total sale consideration of Rs.1,41,64,501/- as per statement of account dated 26.03.2019 at page 148 of reply.

12. 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.”*

13. 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 complainants from due




date of possession i.e. 26.07.2014 till the offer 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 offer of possession shall be paid before 10<sup>th</sup> of each subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

14. Complaint stands disposed of.

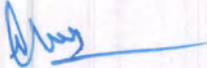
15. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.01.2020

  
**(Subhash Chander Kush)**

Member

Judgement uploaded on 20.02.2020