



**HARERA**  
**GURUGRAM**

Complaint No. 1257 of 2020

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

Complaint no. : 1257 of 2020  
First date of hearing : 28.04.2020  
Date of decision : 14.12.2020

1. Mrs. Amrita Baid  
2. Rakesh Sirohia  
Both RR/o: D115, Oakwood Estate  
DLF Phase-II, Gurugram.

**Complainants**

Versus

M/s Emaar MGF Land Ltd.  
Address: Emaar MGF Business Park, M.G.  
Road, Sikanderpur Chowk, Sector 28,  
Gurugram - 122002, Haryana.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Gaurav Rawat  
Shri J.K Dang along with Shri  
Ishaan Dang

Advocate for the complainants  
Advocates for the respondent

**ORDER**

1. The present complaint dated 11.03.2020 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 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 16.01.2025
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 on	15.05.2020 [Document not placed on record]
9.	Provisional allotment letter	21.10.2009 [Page 13 of complaint]
10.	Unit no.	EFP-30-0502, 5 <sup>TH</sup> floor [Page 20 of complaint]
11.	Unit measuring	1650 sq. ft.



12.	Date of execution of buyer's agreement	25.02.2010 [Page 18 of complaint]
13.	Payment plan	Construction linked payment plan [Page 52 of complaint]
14.	Total consideration as per statement of account dated 24.02.2020, page 53 of complaint and 30.04.2020, page 97 of reply	Rs.75,27,023/-
15.	Total amount paid by the complainants as per statement of account dated 24.02.2020, page 54 of complaint and 30.04.2020, page 98 of reply	Rs.70,63,595/-
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 buyer's agreement (25.02.2010) plus 3 months grace period [Page 33 of complaint]	25.05.2013
17.	<b>Date of offer of possession to the complainants</b>	27.05.2020 [As alleged by the respondent at page 7 of written arguments, <b>no document placed on record</b> ]
18.	Delay in handing over possession till date of offer of possession i.e. 27.05.2020	7 years 2 days

3. As per clause 11(a) of the 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. 25.02.2010 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 25.05.2013. 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 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 complainants submitted that as per clause 11(a) of buyer's agreement, respondent assured that the possession of the unit within 36 months from the date of execution of buyer's agreement plus grace period of 3 months and according to that the flat was to be deliver till 25.05.2013. The complainants further submitted that despite receiving of more than 98% payment of all the demands raised by the respondents for the said floor, the respondent has failed to deliver the possession of the allotted floor to the complainants. Hence, this complaint inter-alia for the following reliefs:

i. Direct the respondent to handover the possession of floor along with prescribed interest per annum.

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 contested 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 the issuance of occupation certificate in respect of the project in question was made on 29.06.2017 i.e. well before the notification of the Rules. The occupation certificate has been thereafter issued on 08.01.2018. However, as the Fire NOC was awaited for a few blocks (including the unit in question), therefore the respondent, vide letter dated 08.02.2018, informed the DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited. Thus, the project in question is not an ongoing project under rule 2(1)(o) of the Rules. The project has not been registered under the provisions of the Act. This hon'ble authority does not have jurisdiction to entertain and decide the present complaint.

ii. The respondent submitted that the complainants have filed the present complaint seeking possession and interest on account of alleged delay in delivering

possession of the unit booked by the complainants. The complaints pertaining to 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 subject unit was allotted to the complainants vide provisional allotment letter dated 21.10.2009. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every installment on time as per the payment schedule. Thereafter, the buyer's agreement was executed on 25.02.2010.
- iv. The respondent submitted that the complainants were irregular regarding the remittance of installments on time. Demand notices, reminders etc. had been sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting them to timely discharge their outstanding financial liability but to no avail.
- v. The respondent submitted that 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. The construction of the second staircase is almost complete, and the respondent shall soon submit a report to the competent authorities. Upon completion of construction of the second staircase and issuance of the Fire NOC and occupation certificate, thereafter, possession of the apartment shall be offered to the complainants. *Secondly*, the defaults on the part of the contractor.

vi. Hence, the complaint is liable to be dismissed.

7. The complainants have filed **written arguments** on 18.09.2020 wherein it is stated that the Act came into force on 01.05.2016 and on which date the respondent had not received any completion certificate from the concerned authorities and thus, the respondent was under a legal obligation to get the project registered with this Authority within three months from 01.05.2016 and which the respondent has failed to do so even till date. The complainants submitted that the respondent is contending that the



complaint is not maintainable as it pertains to a buyer agreement executed before the coming into force of the Act, In this context, it is submitted that this hon'ble Authority has repeatedly held in Sarika Arora V. TATA Housing development Co. Ltd. (complaint no. 126 of 2019 order dated 25.04.2019) that only the penal provisions of the RERA Act will not be applicable; however, the authority in such cases treats the complaint as an application for non-compliance of the contractual obligation on the part of the builder in terms of section 34(f) of the RERA Act and is empowered to grant appropriate reliefs therein including the relief of payment of delayed possession charges to the complainants.

8. The complainants submitted that the High Court of Bombay in Neelkamal Realtors Suburban Pvt. Ltd. & Ors. V. Union of India and Ors., Writ Petition no. 2737 of 2017 decided on 06.12.2017, has held that the RERA Act is a social and beneficial legislation and that the provisions of RERA Act do not rewrite the clauses of the completion or handing over possession in buyer's agreement. Under section 4(2)(1)(C) of the Act, the promoter is given opportunity to prescribe fresh timeline while making registration of the project itself from penal consequences, however, the promoter is not absolved of its liability under agreement.





9. The respondent has filed **written arguments** on 06.10.2020. The respondent had submitted an application dated 29.06.2017 for issuance of occupation certificate before the concerned statutory authority. Occupation certificate has been thereafter granted by the concerned statutory authority vide memo bearing no. ZP-441-Vol-II/JD(RD)/2020/8294 dated 15.05.2020. The construction of the staircase has already been completed. After receipt of occupation certificate, has offered possession of the unit in question through letter of offer of possession dated 27.05.2020 to the complainants. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit to them. However, the complainants did not take any step to complete the necessary formalities or to pay the balance amount liable to be paid by them.
10. The respondent submitted that the complainants and the respondent are bound by terms and conditions of the buyer's agreement and the respondent put reliance in this regard upon various citations: **2000(1) Apex Court Journal 388, AIR 1996 SC 2508, AIR 1990 SC 699**. The respondent submitted that this hon'ble authority does not have jurisdiction and authority to legally direct levying of interest and in this regard, the respondent has put reliance on order dated **02.05.2019**

*passed by Justice Darshan Singh (Retd.) Chairman, Haryana Real estate Appellate Tribunal, Chandigarh.*

11. The respondent further submitted that the liability to pay interest imposed on the developer is in the nature of compensation. It has further been held that any determination of dispute pertaining to payment of interest under sections 12, 14, 18 and 19 is to be adjudicated by the adjudicating officer as per section 71 of the Act. While supporting this contention, the respondent has place reliance on *Neelkamal Realtors Suburban Pvt. Ltd. and anr. Versus Union of India and ors. [2018(1) RCR (Civil) 298]*.
12. The respondent submitted that no compensation/interest of any nature deserves to be granted for the span of time commencing from revision of National Building Code (NBC) in the Year 2016, till issuance of occupation certificate. The said period deserves to be exempted for all intents and purposes. In light of legal and factual position submitted above, it is evident that there is no merit in the grievances raised in the present complaint qua the respondent.
13. Arguments heard.
14. 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.



15. 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.
16. Arguments heard.
17. 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 complainants at a later stage.
18. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the respondent is in contravention of the provisions of section 11(4)(a) of the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 25.02.2010, 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 buyer's agreement (i.e. 25.02.2010). 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 25.05.2013. In the present case, the respondent has offered the possession of the unit to the

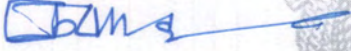
complainants on 27.05.2020 after receipt of occupation certificate dated 15.05.2020.

19. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 25.02.2010 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 complainants are entitled to delayed possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession i.e. 25.05.2013 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
20. 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 complainants from due date of possession i.e. 25.05.2013 till the handing over of possession i.e. 27.05.2020. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
  - ii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.

iii. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

21. Complaint stands disposed of.


22. File be consigned to registry.

  
(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2020

  
(Samir Kumar)

Member

Judgement uploaded on 30.01.2021.