

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

Complaint no. : 1293 of 2020  
First date of hearing : 28.04.2020  
Date of decision : 14.12.2020

Mr. Rakesh Singh  
R/o: H. No. 526, Sector-23, Gurugram.

**Complainant**

Versus

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Kuldeep Kumar Kohli  
Shri J.K. Dang along with Shri  
Ishaan Dang

Advocate for the complainant  
Advocates for the respondent

**ORDER**

1. The present complaint dated 13.03.2020 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 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	<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.	<b>Occupation certificate</b> granted on	<b>08.01.2018</b> [Page 122 of reply] <b>15.05.2020</b> [Page 159 of reply]
9.	Provisional allotment letter	31.10.2009 [Page 42 of complaint]
10.	Unit no.	EFP-12-0301, 3 <sup>rd</sup> floor, building no. 12

		[Page 51 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	18.01.2010 [Page 47 of complaint]
13.	Payment plan	Construction linked payment plan [Page 43 of complaint]
14.	Total consideration as per statement of account dated 22.07.2020 page 52 of reply	Rs.73,79,422/-
15.	Total amount paid by the complainant as per statement of account dated 22.07.2020 page 53 of reply	Rs.74,13,206/-
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 (18.01.2010) plus 3 months grace period [Page 64 of complaint]	<b>18.04.2013</b>
17.	<b>Date of offer of possession to the complainant</b>	<b>17.01.2020</b> [Page 133 of complaint]
18.	Delay in handing over possession till date of offer of possession i.e. 17.01.2020	6 years 8 months 30 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. 18.01.2010 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 18.04.2013. 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 complainant submitted that the said unit was allotted to them vide provisional allotment letter dated 30.10.2009. Subsequently, the buyer's agreement was executed on 18.01.2010 between the complainants and the respondent. 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. The possession was due on 18.04.2013. That after many requests and emails, the complainant received the offer of possession on 17.01.2020. The complainant further submitted that the OC for the servant room which is located on Terrace which is part of the said unit is awaited. Hence, this complaint inter-alia for the following reliefs:



- i. Direct the respondent to handover the possession of the said apartment with the best amenities and specifications as promised in all completeness without any further delay.
  - ii. Direct the respondent to pay interest on the amount paid by the complainant at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act 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 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 tower/apartment 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 12.02.2018, 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 does not require registration and consequently 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 complainant has filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the apartment booked by the complainant. The 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.
- iii. The respondent submitted that the subject apartment was provisionally allotted to the complainant vide provisional allotment letter dated 31.10.2009. The buyer's agreement was executed between the complainant and the respondent on 18.01.2010. The complainant had opted for a construction linked payment

plan and had agreed and undertaken to make payment in accordance therewith. However, the complainant started defaulting in payments right from the very beginning. Consequently, the respondent was constrained to issue various notices and reminders for payment.

- iv. The respondent submitted that the complainant, being in default, is not entitled to any compensation in terms of clause 13(c) of the buyer's agreement. Despite this, the respondent has credited an amount of Rs.6,43,907/- as compensation to the complainant. Furthermore, Early Payment Rebate (EPR) of Rs.1,464/- has also been credited to the account of the complainant.
- 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 has been completed and thereafter,

possession of the said unit has been offered to the complainant. *Secondly*, the defaults on the part of the contractor.

- vi. The respondent submitted that the respondent has received occupation certificate dated 15.05.2020 which includes the servant room in question.
- vii. Hence, the complaint is liable to be dismissed.
7. Arguments heard.
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. 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.



11. On consideration of the circumstances, the documents and other record and submissions made by 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 18.01.2010, 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. 18.01.2010). 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 18.04.2013. The respondent has offered the possession of the subject unit to the complainant on 17.01.2020.
12. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 18.01.2010 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 complainant is entitled to delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession i.e. 18.04.2013 till the handing over of possession




as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

13. It has been brought to the notice of the Authority by the counsel for the respondent that as per statement of account dated 22.07.2020 (Annexure R3 of reply filed by the respondent), the respondent has already given compensation amounting to Rs.6,43,907/- to the complainant on account of delay in handing over possession as per clause 12 of the buyer's agreement. Therefore, the amount so paid by the respondent towards compensation for delay shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
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. 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 18.04.2013 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
  - ii. However, the respondent has already paid a sum of Rs.6,43,907/- towards delay in handing over possession

at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid by the respondent/promoter as delay possession charges under proviso to section 18(1) read with rule 15 of the Rules.

- 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 @ 9.30% 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.

  
(Dr. K.K. Khandelwal)  
Chairman

  
(Samir Kumar)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2020

Judgement uploaded on 30.01.2021.