

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

Complaint no. : 989 of 2020
First date of hearing : 28.04.2020
Date of decision : 14.12.2020

Mr. Ved Prakash Sharma
R/o H.No.163 Boulevard Du Lac,
The Beverly Hills 23, Sam Mun Tsai Road,
Tai Po Hong Kong.

Complainant

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Manish Yadav Advocate for the complainant
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 25.02.2020 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	'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.	Provisional allotment letter	29.06.2010 [Page 36 of reply]
9.	Unit no.	EFP-II-55-0301, 55 th floor, [Page 21 of complaint]
10.	Unit measuring	1975 sq. ft.
11.	Date of execution of buyer's agreement	03.08.2010 [Page 19 of complaint]

12.	Payment plan	Construction linked payment plan [Page 73 of complaint]
13.	Total consideration as per statement of account dated 26.03.2020, page 61 of complaint	Rs.1,05,72,389/-
14.	Total amount paid by the complainants as per statement of account dated 26.03.2020, page 62 of reply	Rs.90,48,965/-
15.	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 (03.08.2010) plus 3 months grace period [Page 34 of complaint]	03.11.2013
16.	Date of offer of possession to the complainants	Not offered
17.	Delay in handing over possession till date of decision i.e. 14.12.2020	7 years 1 months 11 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. 03.08.2010 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 03.11.2013. 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 buyer's agreement was executed on 03.08.2010 between the complainant and the respondent. As per clause 11(a) of buyer's agreement, respondent assured that the possession of the unit shall be handed over within 36 months from the date of execution of buyer's agreement plus grace period of 3 months. That despite receipts of all payments as per payment plan except the final payment to be made on issue of possession letter, the complainant was not delivered the possession of the unit. The delivery of the said unit as per the agreement was scheduled by 03.11.2013. The unit is still not delivered after a delay of 6 years and 3 months. The complainant has been duped off with his hard-earned money invested in the said project and the complainant submits that the respondent has adopted serious unfair trade practice by failing to deliver the possession of the unit booked in time. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay delay interest on the amount paid by the complainant at prescribed rate as per the provisions of the Act and the Rules.
 - ii. Direct the respondent to deliver the possession of the unit as promised in 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 contested the complaint on the following grounds:
 - i. The respondent submitted that the complainant has filed the present complaint seeking possession and interest for alleged delay in delivering possession of the unit booked by the complainant. The 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.
 - ii. The respondent submitted that respondent submitted that the subject unit was allotted to the complainant vide provisional allotment letter dated 29.06.2010. The complainant 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 complainant shall remit every installment on time as per the payment schedule. The buyer's agreement was executed between the parties on 03.08.2010 between the complainant and the respondent.

- 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 the payment plan opted by him.
- iv. The respondent submitted that the project of the respondent is an 'on-going project' under RERA and same has been registered with the Authority vide memo no. HRERA-482/2017/829 dated 24.08.2017. the registration of the project is valid till 23.08.2022.
- v. The 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. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of occupation certificate and subject to force majeure conditions, 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 respondent has filed **written arguments** on 06.10.2020. The respondent submitted that it has already completed construction of 2nd staircase and accordingly, the respondent has submitted an application dated 16.07.2020 for grant of occupation certificate before the concerned statutory authority.
8. The respondent submitted that the complainant 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.**



9. 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]*.
10. 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.
11. The complainant has filed **written arguments** on 05.11.2020 wherein the complainant has stated that the respondent is stating the complainant has delayed payment of instalments on numerous occasions from 18.05.2010 to 19.08.2019 and consequently became liable for delayed payment interest. The complainant has paid almost all instalments as demanded and in fact in advance before the due date. Only two instalments


have been delayed out of which one is of 3 days was due to dispatch or receipt in delay of cheque and the second one was 20 days was due to oversight in sending payment in time. In fact, the complainant has paid all demands and has sent email for correction which has not been reflected in the statement of account so far.

12. Arguments heard.
13. 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.
14. The Authority, on the basis of information and explanation 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.
15. 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 03.08.2010, 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. 03.08.2010). 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 03.11.2013. In this case, the respondent has not offered the possession of the unit to the complainant till date.


16. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 03.08.2010 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. 03.11.2013 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
17. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- 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. 03.11.2013 till the handing over 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 handing over of possession shall be paid before 10th of each subsequent month.
 - 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.
18. Complaint stands disposed of.
19. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram


(Samir Kumar)

Member

Dated: 14.12.2020

Judgement uploaded on 30.01.2021.