

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

Complaint no. : 210 of 2020
First date of hearing: 17.03.2020
Date of decision : 14.12.2020

1. Ramesh Chandra Uppal
2. Madhu Uppal
Both RR/o: H.No.8/26-C, 2nd Floor,
East Patel Nagar, New Delhi-110008

Complainants

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Dhingra Advocate for the complainants
Shri J.K. Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 14.01.2020 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 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 16.01.2025
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	13.09.2011 [Page 28 of reply]
9.	Unit no.	EFP-III-40-101, 1 st floor, building no. 40 [Page 31 of complaint]



10.	Unit measuring	1975 sq. ft.
11.	Date of execution of buyer's agreement	22.02.2012 [Page 29 of complaint]
12.	Payment plan	Construction linked payment plan [Page 49 of complaint]
13.	Total consideration as per statement of account dated 25.12.2019 (page 78 of complaint)	Rs. 1,31,25,927/-
14.	Total amount paid by the complainants as per statement of account dated 25.12.2019 (page 78 of complaint)	Rs. 1,20,75,950/-
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 (22.02.2012) plus 3 months grace period [Page 38 of complaint]	22.05.2014
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	6 years 6 months 22 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. 22.02.2012 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



22.05.2014. Clause 11(a) 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 on 22.02.2012, they entered into an agreement with the respondent and as per Annexure-3 of agreement dated 22.02.2012, the total sale consideration was Rs. 1,31,56,257.01/- including PLC and other charges. It is submitted that according to the said agreement, the complainants ought to have received the physical possession of the unit within 24 months from the date of execution of buyer's agreement or within an extended period of 3 months subject to applying and obtaining the occupation certificate in respect of the unit and/or the project but the respondent failed to handover physical possession of the unit as per buyer's agreement dated 22.02.2012, booked by the complainants in the project of respondent till 22.05.2014, including the three month extension period. That the acts of the respondent have

caused severe hardship both financially and mentally. Respondent has not honoured the commitment to the complainants in terms of the buyer's agreement and also that the handover of the apartment has been shifted now to Q3 of 2020 as per the latest information from the respondent.

Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to offer immediate possession of the unit in question to the complainants.
 - ii. Direct the respondent to pay for delay in offer of possession by paying interest as prescribed under the Real Estate (Regulation and Development) Act 2016 read with Haryana Real Estate (Regulation and Development) Rules, 2017 on the entire amount deposited against the property in question so booked by the complainants.
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 complainants have filed the present complaint seeking possession and interest on account of the alleged delay in delivery of

possession of the unit booked by the complainants. The complaint 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 the subject unit was allotted to the complainants vide provisional allotment letter dated 13.09.2011. The complainants consciously and wilfully opted for construction linked plan for remittance of the sale consideration for the unit in question and further represented to respondent that they shall remit every instalment on time as per the payment schedule. The buyer's agreement was executed between the complainants and the respondent on 22.02.2012.
- iii. The respondent submitted that as per clause 11(b)(iv) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on respondent's discretion till the payment of all outstanding amounts to the satisfaction of respondent.
- iv. The respondent submitted that the project of the respondent is an 'ongoing project' under RERA and the

same has been registered vide memo no. HRERA-482/2017/829 dated 24.08.2017. It is submitted that the registration of the project is valid till 23.08.2022 and therefore, cause of action, if any, would accrue in favour of the complainants to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period.

- 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. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of the 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 07.12.2020 wherein it is stated 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 which are as follows **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.**
8. 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]**.
9. 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.

10. The Authority on the basis of information, explanation, 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.
11. 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 22.02.2012, 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. 22.05.2014). 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 22.05.2014. In this case, the respondent has not offered the possession of the unit to the complainants.
12. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 22.02.2012 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. As such the complainants are entitled to delayed possession charges at prescribed rate of interest i.e. 9.30 % p.a. w.e.f. 22.05.2014 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 22.05.2014 till the handing over 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 handing over of possession shall be paid on or before 10th of each subsequent month.
- iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate i.e. 9.30 % 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.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2020


(Samir Kumar)

Member

Judgement uploaded on 30.01.2021.