

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

Complaint no. : 1415 of 2020
First date of hearing : 14.07.2020
Date of decision : 14.12.2020

Mr. Pawan Anand
R/o H.No. A1/89, 2nd Floor,
Safdarjung Enclave, New Delhi-110029

Complainant

Versus

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

Also at: 306-308, 3rd floor, Square One,
C-2, District Centre, Saket, New Delhi-110017.

Also at: ECE House, 28, Kasturba
Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Snajeev Dhingra
Shri J.K. Dang along with Shri
Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 17.03.2020 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	'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	05.03.2019 [Page 115 of reply]



9.	Provisional allotment letter	03.11.2009 [Page 40 of reply]
10.	Unit no.	EFP-11-0202, 2 nd floor, [Page 31 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	20.02.2010 [Page 28 of complaint]
13.	Payment plan	Construction linked payment plan [Page 73 of complaint]
14.	Total consideration as per statement of accounts dated 17.01.2020, page no. 108 of complaint and 31.08.2020, page 102 of reply	Rs. 73,21,496/-
15.	Total amount paid by the complainant as per statement of accounts dated 17.01.2020, page no. 109 of complaint and 31.08.2020, page 103 of reply	Rs. 74,24,071/-
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 (20.02.2010) plus 3 months grace period [Page 44 of complaint]	20.05.2013
17.	Date of offer of possession to the complainant	17.01.2020 [Page no. 103 of complaint]
18.	Delay in handing over possession till date offer of possession i.e. 17.01.2020	6 years 7 months 28 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. 20.02.2010 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 20.05.2013. 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 complainant submitted that on 03.11.2009, the respondent issued the letter of provisional allotment of unit in the project. That on 20.02.2010 complainant entered into a buyer's agreement with the respondent. As per clause 11(a) of the said agreement, respondent was liable to handover the possession of the said unit within 36 months from the date of execution of that agreement. But the respondent failed to handover of physical possession of the unit as per buyer's agreement dated 20.02.2010, booked by the complainant in the project of respondent till 20.05.2013, including the three months extension period. The respondent offered the

possession to the complainant on 17.01.2020. That respondent has duped the complainant of the hard-earned money invested by the complainant here in by its act of not handing over the physical possession within time period, stipulated the buyer's agreement. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to pay for delay in offer of possession by paying interest as prescribed under the Act read with the Rules on the entire deposited amount against the property in question so booked by the complainant.
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 03.11.2009. The

buyer's agreement was executed between the complainant and the respondent on 20.02.2010. 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 and consequently became liable for payment of delayed payment charges.

- iv. The respondent submitted that the complainant, being in default, are not entitled to any compensation in terms of clause 16(c) of the buyer's agreement. However, the respondent has nevertheless proceeded to credit compensation amounting to Rs.6,34,956/- against the last demand raised by the respondent on offer of possession.
- 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. The construction of the second staircase has been completed and the respondent is in receipt of occupation certificate dated 05.03.2019. However, on account of the construction of second staircase, keeping in mind the safety of the allottees and their families, the offer of possession was held in abeyance until completion of construction of second staircase and issuance of Fire NOC and thereafter, possession of the said apartment was offered to the complainant vide letter dated 17.01.2020. The complainant was called upon to complete certain formalities/ documentation so as to enable the respondent to handover possession and also to make payment of outstanding dues. *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 12.10.2020. 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.

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. 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.
10. Arguments heard.
11. 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.

12. 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.
13. On consideration of the documents available on record and submissions made by both the parties regarding contravention under the Act, 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 20.02.2010, 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. 20.02.2010). 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 20.05.2013. The respondent has offered the possession of the unit to the complainant on 17.01.2020 after receipt of occupation certificate dated 05.03.2019.
14. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement

dated 20.02.2010 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 complainant is entitled to delay possession charges at the prescribed rate of interest i.e. 9.30 % p.a. w.e.f. 20.05.2013 till the handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the Rules.


15. It has been brought to the notice of the Authority by the counsel for the respondent that as per statement of account dated 31.08.2020 (Annexure R5 of reply filed by the respondent), the respondent has already given compensation amounting to Rs.6,34,956/- 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.
16. 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. 20.05.2013 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.6,34,956/- 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 the part of 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.

17. Complaint stands disposed of.

18. 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.