

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

Complaint no. : 648 of 2020
First date of hearing : 06.03.2020
Date of decision : 14.12.2020

1. Om Prakash Pandey
2. Ranjana Pandey
Both RR/o: D-14/15, First Floor,
Ardee City, Sector-52, Gurgaon, Haryana

Complainants

Versus

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 Kuldeep Kumar Kohli Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 14.02.2020 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	05.03.2019 [Page 140 of reply]
9.	Provisional allotment letter	09.11.2009 [Page no. 63 of complaint]
10.	Unit no.	EFP-07-0101, First floor, [Page 75 of complaint]

11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	09.02.2010 [Page 58 of reply]
13.	Payment plan	Construction linked payment plan [Page 107 of complaint]
14.	Total consideration as per statement of account dated 31.03.2020, page no. 127 of reply	Rs. 84,20,053/-
15.	Total amount paid by the complainants as per statement of account dated 31.03.2020, page no. 128 of reply	Rs.88,08,162/-
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 (09.02.2010) plus 3 months grace period [Page 88 of complaint]	09.05.2013
17.	Date of offer of possession to the complainants	14.02.2020 [Page 142 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 14.02.2020	6 years 9 months 5 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. 09.02.2010 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 09.05.2013. 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 the said unit was allotted to them vide provisional allotment letter issued to complainants on 09.11.2009. That on 10.12.2009, the respondent and complainants both executed the buyer's agreement. As per clause 11(a) of the said agreement, the respondent shall deliver the unit within 36 months from the date of execution of agreement with an extended period of 3 months i.e. 10.03.2013. The complainants visited the site and were shocked to see the status of the project as no construction was going on at the site and the status of construction was not at all in consonance with the construction plan based on which the payments were collected. That having no other option, the complainants in the month of March 2018 had personally present himself to inquire about the status of the unit and date

of possession of the unit but surprisingly the respondent promised that delivery of possession of the unit would be in the month of July 2018 but the complainants were deprived of the possession then as well. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to handover the possession of the unit as soon as possible.
 - ii. Direct the respondent to adjust the entire amount of interest due to the complainants from the date of the delivery period as per agreement to actual delivery of possession against the demands from 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 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 was 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 complainants have filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. 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 complainants vide provisional allotment letter dated 09.11.2009. The

buyer's agreement was executed between the complainants and the respondent on 09.02.2010. The complainants had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainants started defaulting in payments right from the very beginning and consequently the respondent was constrained to issue notices and reminders for payment.

- iv. The respondent submitted that the complainants, being in default, are 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.6,70,216 as compensation to complainants. Furthermore, a sum of Rs.6,78,453 has been credited to the complainants as early payment rebate.
- 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 is almost complete and the respondent shall soon submit a report to the competent authorities. In the meanwhile, the respondent is in receipt of occupation certificate dated 05.03.2019. Possession of the apartment was offered to the complainants vide letter of offer of possession dated 14.02.2020. 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 has been 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 filed **written arguments** on 12.10.2020. 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.**

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 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.
11. On consideration of the documents available on record and submissions made by the complainants regarding

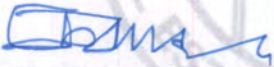
contravention under the Act, the Authority is satisfied that the respondent is in contravention of the provisions of section 11(4)(a) of the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 09.02.2010, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of execution of buyer's agreement (i.e. 09.02.2010). 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 09.05.2013. The respondent has offered the possession of the unit to the complainants on 14.02.2020 after receipt of occupation certificate dated 05.03.2019.

12. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 09.02.2010 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 delay possession charges at the prescribed rate of interest i.e. 9.30 % p.a. w.e.f. 09.05.2013 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

13. It has been brought to the notice of the Authority by the counsel for the respondent that as per statement of account dated 31.03.2020 (Annexure R6 of reply filed by the respondent), the respondent has already given compensation amounting to Rs.6,70,216/- to the complainants 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 complainants from due date of possession i.e. 09.05.2013 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
 - ii. However, the respondent has already paid a sum of Rs.6,70,216/- 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 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 @ 9.30 % by the promoter which is the same as is being granted to the complainants 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.