

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

**Complaint no.** : 742 of 2020  
**First date of hearing:** 17.03.2020  
**Date of decision** : 14.12.2020

1. Vinay Aggarwal  
2. Archna Aggarwal  
Through GPA Ashok Kumar  
Both RR/o: Flat No. 601, Tower No. 17,  
Vipul Greens, Sector-48,  
Sohna Road, Gurugram-122018

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: 306-308, Square one,  
C-2, District Centre, Saket,  
New Delhi-110017

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Vinay Aggarwal Complainant in person  
Shri J.K. Dang along with Shri Advocates for the respondent  
Ishaan Dang

**ORDER**

1. The present complaint dated 18.02.2020 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 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.	Date of provisional allotment letter	21.10.2011 [Annexure A at page 19 of complaint]
9.	Unit no.	EFP-III-52-0501, 5 <sup>th</sup> floor, building no. 52



		[Page 112 of complaint]
10.	Unit measuring	1975 sq. ft.
11.	Date of execution of buyer's agreement	20.03.2012 [Page 92 of complaint]
12.	Payment plan	Construction linked plan [Page 112 of complaint]
13.	Total consideration as per statement of account dated 14.11.2019 at page 10 of complaint and 04.03.2020 at page 59 of reply	Rs. 1,49,30,506/-
14.	Total amount paid by the complainants as per statement of account dated 14.11.2019 at page 11 of complaint and 04.03.2020 at page 60 of reply	Rs.1,41,28,750/-
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 (20.03.2012) plus 3 months grace period [Page 101 of complaint]	<b>20.06.2014</b>
16.	<b>Date of offer of possession to the complainants</b>	<b>Not offered</b>
17.	Delay in handing over possession till date of decision i.e. 14.12.2020	6 years 5 months 24 days
18.	Relief Sought	The respondent be directed to pay the interest at the prescribed rates w.e.f. 19.06.2014 which is the due date of possession till the actual date of possession on amount deposited by complainants as per statement of account.

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. 20.03.2012 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 20.06.2014. 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 the respondent has collected Rs 32 Lakhs within 80 days of booking. For about 21 months, there was absolutely no activities by the respondent. Thus, company utilizes this huge amount. On 19.06.2014 which is due date of possession as per buyer's agreement, the respondent collected about Rs. 96 lakhs and thereafter work totally stopped for 29 months. Last instalment was paid on 09.04.2018. The complainants were regularly in touch with the respondent about fate of the unit in question. The

respondent pushed the possession of delivery date multiple times, there is unprecedented delay. This is going from early 2015. Hence, this complaint inter-alia for the aforesaid relief.

5. On the date of hearing, the Authority explained to the respondents/promoters 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 interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. The complaint pertaining to compensation, interest etc. 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 21.10.2011. The complainants had opted for construction linked payment plan and had agreed and undertaken to make payment in accordance therewith.

The buyer's agreement was executed between the complainants and the respondent on 20.03.2012.

- iii. The respondent submitted that the project has been registered under the Act vide memo no. HRERA-482/2017/829 dated 24.08.2017 and the registration is valid up till 23.08.2022.
- iv. 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 construction of the second staircase is almost complete and the respondent shall soon submit a report to the competent authorities. Upon completion of construction of the second staircase and issuance of Fire NOC and occupation certificate, possession of the apartment shall be offered to the complainants. *Secondly*, the defaults on the part of the contractor.
- v. Hence, the complaint is liable to be dismissed.

7. The complainants have filed **written arguments** on 18.09.2020. The complainants submitted that the respondent failed to write complete building plan memo no. in the advertisement dated 17.09.2011 in the Times of India newspaper. The building plan which was shown in the advertisement actually bears memo no. ZP-441/JD(BS)2010/120 dated 07.01.2011 and the subject unit does not fall under this building plan. The complainants submitted that they have booked the said unit on the basis of this advertisement and the promoter has collected Rs32 Lakhs on the basis of this building plan.
8. The complainants submitted that the building plan for the subject unit was approved vide memo no. ZP-441/JD(BS)2013/49788 dated 29.08.2013 for 25 towers and 302 flats. Thus, number of towers increased from 33 to 58 and total number of flats increased from earlier 1044 to 1346. It is correct that as per DTCP Haryana rules, every promoter has every right to change the building plan by following set procedure in which basic set requirement has not been followed as any such change was never informed to us by email or through registered post. Also, on the date of signing of buyer's agreement dated 20.03.2012, promoter has no building plan approval for the subject unit. Thus, the promoter



has violated section 10 of Haryana Development and Regulation of Urban Areas Act, 1975 by collecting Rs.32 Lakhs prior to sanction of building plan which was sanctioned on 29.08.2013. The building plan is valid for 5 years i.e. up to 28.08.2018.

9. The complainants submitted that the instalment no.5<sup>th</sup> and 6<sup>th</sup> on casting of 1<sup>st</sup> floor roof slab and casting of 2<sup>nd</sup> floor roof slab were demanded on same date i.e. 05.12.2013 which is unfair trade practice.
10. The complainants further submitted that the license no. 6 of 2008 was granted on 17.01.2008 and the same was valid up to 16.01.2010. The same has been renewed several time and as on date it is valid up to 16.01.2025. This clearly shows that promoter will take about 17 years to complete the project. Also, in para 6 of the said license, it is written that the licensee will not give any advertisement for sale of the shop/flat area before the approval of layout plan/building plan. Thus, the promoter has again violated the rules of DTCP Haryana by giving advertisement on 17.09.2011 whereas the building plans were approved on 29.08.2013.
11. The respondent has filed **written arguments** on 07.12.2020 wherein it is stated 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 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.**

12. 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]**.
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, 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.
15. 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.
16. 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 20.03.2012, 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. 20.03.2012). 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 20.06.2014. In this case, the

respondent has not offered the possession of the unit to the complainants.

17. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 20.03.2012 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 delay possession charges at prescribed rate of interest i.e. 9.30 % p.a. w.e.f. 20.06.2014 till the handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the Rules.
18. 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. 20.06.2014 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 before 10<sup>th</sup> 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 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.

19. Complaint stands disposed of.


20. 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.