

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

Complaint no. : 3671 of 2019
First date of hearing: 20.11.2019
Date of decision : 14.12.2020

1. Mr. Vaibhav Sharma
2. Ms. Jasreen Singh
Both RR/o Flat no. 1701, Engineers
Apartment, Sector 18A, Plot no.11,
Dwarka, New Delhi.

Complainants

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 Gaurav Rawat Advocate for the complainants
Shri J.K. Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 27.08.2019 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 28 of reply]
9.	Provisional allotment letter	30.10.2009 [Page 42 of complaint and page 39 of reply]

10.	Unit no.	EFP-09-0302, 3 rd floor, building no. 09 [Page 48 of complaint]
11.	Unit measuring	1650 sq. ft.
12.	Date of execution of buyer's agreement	28.01.2010 [Page 44 of complaint]
13.	Payment plan	Construction linked payment plan [Page 80 of complaint]
14.	Total consideration as per statement of account dated 21.12.2018 [Page 98 of complaint]	Rs.73,73,360/-
15.	Total amount paid by the complainants as per statement of account dated 21.12.2018 [Page 99 of complaint]	Rs.70,04,683/-
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 (28.01.2010) plus 3 months grace period [Page 61 of complaint]	28.04.2013
17.	Date of offer of possession to the complainants	Not offered
18.	Delay in handing over possession till date of decision i.e. 14.12.2020	7 years 7 months 16 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. 28.01.2010 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 28.04.2013. 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 dated 30.10.2009. Subsequently, the buyer's agreement was executed on 28.01.2010 between the complainants 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. The possession was due on 28.04.2013. That after payment of total sale consideration and a long wait of more than 6 years from the time of purchase of said unit, the same is no where near to completion. In the meanwhile, while the complainants were struggling to address the issues with respondent, the respondent misrepresented

the complainants yet again and lured them into entering a settlement agreement on the pretext of giving them their dues and possession of the said unit on an extended timeline subject to the complainants not raising any dispute legally through RERA/NCDRC etc. The said settlement agreement was again one sided with not specifying any timeline of possession and was a standard draft which the complainants were obligated to sign off, if they needed their units. Such was the threat and fear of respondent. The terms of the settlement agreement also awarded the complainants additional Rs.5/- per sq. ft. per month from what was referred to the buyer's agreement and the said settlement agreement was to be treated as an amendment of buyer's agreement. The settlement agreement states that the time period for handing over the possession of the said unit has been modified, but it failed to mention any probable or new timelines dealing with the possession of the unit to the complainants. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the said apartment with the best amenities and specifications as promised in all completeness without any further delay.

- ii. Direct the respondent to pay interest on the amount paid by the complainants at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.
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 interest and refund of certain amounts collected by the respondent on account of alleged delay in delivering possession of the unit booked by the complainants. 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 the provisions of the Act are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower in which the apartment in question



was made on 29.06.2017 i.e. before the notification of Rules. The occupation certificate has been thereafter issued on 05.03.2019. Thus, part of the project in question is not an 'ongoing project' under rule 2(1)(o) of the Rules. The project does not require registration and has not been registered under the provisions of the Act. This hon'ble Authority does not have the jurisdiction to decide the present complaint.

- iii. The respondent submitted that the complainants have executed a settlement agreement dated 28.11.2018 with the respondent in full and final settlement of all claims, contentions and grievances harboured by them. The settlement agreement expressly records that the complainants are left with no further claims, benefits, compensation for delay etc. of any nature whatsoever in respect of the unit in question and that the complainants shall not raise any other claim, compensation etc. of any nature whatsoever. The complainants are bound by the terms and conditions of the said agreement which supersedes all earlier agreements between the parties. The said agreement executed by the complainants in consideration of the benefits that were extended to them by the respondent. The benefits enumerated in the

settlement agreement were towards full and final settlement of all claims, contentions and grievances of the complainants. The complainants admittedly are not left with any further claims, benefits, compensation etc. of any nature whatsoever in respect of the unit in question and therefore filing of the instant complaint is an abuse of process of law.

- iv. That the said unit was allotted to the complainants vide provisional allotment letter dated 30.10.2009. The complainants consciously and wilfully opted for a construction linked payment plan for remittance of sale consideration for the unit in question and further represented that they shall remit every instalment on time as per the payment schedule. Subsequently, the buyer's agreement was executed between the parties on 28.01.2010. The rights and obligations of the complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement.
- 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 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 23.11.2020 wherein it is stated that the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The complainants have executed a settlement agreement dated 28.11.2018 with the respondent in full and final settlement of all the claims, contentions and grievances harboured by them. It is further pertinent to mention that the settlement agreement expressly records that the complainants are left with no further claims, benefits, compensation for delay, etc of any nature whatsoever in respect of the unit in question and that the complainants shall not raise any other claim, compensation etc. of any nature whatsoever. The complainants are bound by the terms and



conditions of the said agreement which supersedes all earlier agreements between the parties. It is respectfully submitted that the settlement agreement was executed by the complainants in consideration of the benefits that were extended to them by the respondent. It is further pertinent to mention that the benefits enumerated in the settlement agreement were towards full and final settlement of all claims, contentions and grievances of the complainants. The complainants admittedly are not left with any further claims, benefits, compensation etc of any nature whatsoever in respect of the unit in question and therefore filing of the instant complaint is an abuse of process of law. Reliance is placed upon the following citation:

"MANU/SC/0607/2020

37. However, the cases of the eleven purchasers who entered into specific settlement deeds with the developers have to be segregated. In the case of these eleven persons, we are of the view that it would be appropriate if their cases are excluded from the purview of the present order. These eleven flat purchasers having entered into specific deeds of settlement, it would be only appropriate and proper if they are held down to the terms of the bargain. We are not inclined to accept the contention of the learned Counsel of the Appellants, Mr. Prashant Bhushan, that the settlement deeds were executed under coercion or undue influence since no specific material has been produced on record to demonstrate the same.

38. Similarly, the three Appellants who have transferred their title, right and interest in the apartments would not be entitled to the benefit of the present order since they have sold their interest in the apartments to third parties. The written submissions which have been filed before this Court indicate

that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. In HUDA v. Raje Ram MANU/SC/8534/2008 : (2008) 17 SCC 407, this Court while holding that a claim of compensation for delayed possession by subsequent transferees is unsustainable"

8. 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 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.**
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. 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.
11. The Authority, on the basis of information 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.
12. Arguments heard.
13. 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.
14. 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 28.01.2010, 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.

28.01.2010). 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 28.04.2013.

15. However, vide settlement agreement dated 28.11.2018, the complainants have agreed to extend the time period for handing over the possession of the said unit as per the schedule of possession shared by the company and accepted by the allottees. In lieu of the allottees agreeing to extend timeline for handing over the possession, the company has agreed to pay an additional compensation @ Rs.5/- per sq. ft. per month over and above the rate specified in the buyer's agreement commencing from the due date of possession as per buyer's agreement till the date of offer of possession to the allottee, as a gesture of goodwill to compensate the allottee for delay in handover of possession of the unit. Further, it was also agreed that the allottee shall not raise any further claim against the company towards compensation for delay under the said Act or any other law for the time being in force. The relevant clauses of the said settlement-cum-amendment agreement are reproduced below for ready reference:

"1. The Parties have agreed to extend the time period for handing over possession of the said Unit as per the

schedule for possession shared by the Company and accepted by the Allottee. The 'Time for handing over the Possession' as stipulated in the Buyer's Agreement shall accordingly stand modified...

2. That the Company, without prejudice and in lieu of the Allottee agreeing to extend time line for handing over possession, the Parties have mutually arrived at a fair estimate for compensating the Allottee for the said delay in handover of possession of the Unit. In terms of the fair estimate arrived at between the Parties, the Company has agreed pay an additional compensation @Rs.5/- per sq. ft. per month over and above the rate specified in the Buyer's Agreement commencing from the due date of possession as per Buyer's Agreement till the date of offer of possession to the Allottee, as a gesture of goodwill to compensate the Allottee for delay in handover of possession of the Unit...

3. The Allottee agrees that the above-mentioned benefit of additional compensation @ Rs.5/- per sq. ft. per month over and above the rate specified in the Buyer's Agreement given to the allottee shall be towards the full and final settlement of his grievance regarding the delay in handover of possession of the Unit. That the Allottee shall be left with no other claims, benefits, compensation, etc. of any nature whatsoever with respect to the said delay in his individual capacity or as a part of any group. The Allottee further agrees and undertakes that he shall not raise any further claim against the Company towards compensation for delay under the Real Estate (Regulation and Development) Act, 2016 or any other law for the time being in force. The Allottee undertakes not to raise any claim of whatsoever nature against the company now or in future under any law for the time being in force other than what is mentioned in this agreement..."

16. Vide settlement agreement, the parties have agreed to extend time period of handing over possession of the said unit as per the schedule for possession shared by the company and in lieu of the allottee agreeing to extended timeline for handing over possession, the respondent has agreed to pay additional

compensation @ Rs.5/- per sq. ft. per month over and above the rate specified in the buyer's agreement [Note: As per clause 13 of the buyer's agreement, the allottee(s) shall be entitled to payment of compensation for delay at the rate of Rs.5/- per sq. ft. per month of the super area till the date of notice of possession]. The promoter cannot take advantage of its dominant position as it extended timeline of handing over possession but in lieu of that it failed to give advantage to the allottee. It is pertinent to mention here that the respondent has even failed to handover possession as per the new timeline given by the respondent at the time of settlement agreement and has also failed to pay additional compensation as per the agreement. Therefore, it can be concluded that the respondent has not acted upon the settlement-cum-amendment agreement dated 28.11.2018 and the said agreement cannot be considered.

17. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.01.2010 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. In the present case, the respondent has not offered the possession of


the unit to the complainants till date. As such the complainants are entitled to delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of handing over possession i.e. 28.04.2013 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. 28.04.2013 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 the handing over of possession shall be paid 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 @ 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

Dated: 14.12.2020


(Samir Kumar)

Member

Judgement uploaded on 30.01.2021.