

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

Complaint no. : 2071 of 2019
First date of hearing : 28.11.2019
Date of decision : 09.12.2020

Saurabh Khanna
R/o: W-13, Greater Kailash-I,
New Delhi-110048

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd Floor, Square One,
C-2, District Centre, Saket, New Delhi-110017.

Also at: 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 Nitish Banka
Shri J.K. Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 08.05.2019 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 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	14.12.2011 [Page 65 of complaint]
9.	Unit no.	EFP-III-41-0101, 1 st floor, building no. 41 [Page 78 of complaint]
10.	Unit measuring	1975 sq. ft.

11.	Date of execution of buyer's agreement	13.02.2012 [Page 76 of complaint]
12.	Payment plan	Construction linked payment plan [Page 109 of complaint]
13.	Total consideration as per statement of account dated 05.05.2019 (page 36 of reply)	Rs. 1,39,54,603/-
14.	Total amount paid by the complainant as per statement of account dated 05.05.2019 (page 37 of reply)	Rs. 1,22,93,150/-
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 (13.02.2012) plus 3 months grace period [Page 91 of complaint]	13.05.2014
16.	Date of offer of possession to the complainant	Not offered
17.	Delay in handing over possession till date of decision i.e. 09.12.2020	6 years 6 month 26 days
18.	Relief sought	Direct the respondent to pay interest at prescribed rate on the amount paid by the complainant from the due date of handing over possession till the date of handing over of possession.

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. 13.02.2012 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 13.05.2014. 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 complainant submitted that on 13.02.2012, the buyer's agreement for the said unit was executed between the complainant and the respondent. Subsequently, upon receiving the demand letters from time to time from the respondent, the complainant has paid all the payments on time and in total has paid sum of Rs.1,22,68,311/- which contributes more than 88% of the total consideration. On 05.07.2017, the complainant sent an email to the respondent enquiring about the status of the flat and in response dated 06.07.2017, it was stated that the hand over shall be initiated in June 2018 for tower-41 as per the forecasted schedule updated on the website. However, in actual there is no photograph/ update of tower-41. However, the respondent



has failed to complete construction and deliver possession of the flat within stipulated period. Hence, this complaint inter-alia for the aforesaid relief.

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 complainant has filed the present complaint seeking refund and compensation for alleged delay in delivering possession of the unit 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.
 - ii. The respondent submitted that the subject unit was allotted to the complainant vide provisional allotment letter dated 14.12.2011. The complainant 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 he shall remit every instalment on time as per the payment



schedule. The buyer's agreement was executed between the complainant and the respondent on 13.02.2012.

- iii. The respondent submitted that the complainant had defaulted in timely remittance of the instalments to the respondent. The respondent had issued payment request letter calling upon the complainant to make payment of instalment payable by the complainant under the payment plan opted by him.
- iv. 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. Since, the complainant had defaulted in timely remittance of payments as per the schedule of payment, the date of delivery of possession is liable to be determined in the manner sought to be done in the present case by the complainant.
- v. 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 complainant to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period.

- vi. 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 the first quarter of 2020. Thereafter, upon issuance of the occupation certificate and subject to force majeure conditions, possession of the apartment shall be offered to the complainant. *Secondly*, the defaults on the part of the contractor.
- vii. The respondent submitted that several allottees, including the complainant, have defaulted in timely remittance of the payment of instalments which was an essential and indispensable requirement for

conceptualisation and development of the project. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent.

- viii. Hence, the complaint is liable to be dismissed.
7. 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.
8. 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.
9. 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 the Act. By virtue of clause 11(a) of the buyer's

agreement executed between the parties on 13.02.2012, 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. 13.02.2012). 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 13.05.2014. In the present case, the respondent has not offered the possession of the unit to the complainant.

10. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 13.02.2012 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 complainant is entitled to delay possession charges at prescribed rate of interest i.e. 9.30 % p.a. w.e.f. 13.05.2014 till the date of handing over of the possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
11. 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 complainant from due date of possession i.e. 13.05.2014 till the handing over of possession.

- ii. The arrears of interest accrued so far shall be paid to the complainant 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 complainant which is not part of the buyer's agreement.
12. Complaint stands disposed of.
 13. File be consigned to registry.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram


(Samir Kumar)

Member

Dated: 09.12.2020

Judgement uploaded on 30.01.2021.