

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

**Complaint no. :** 4263 of 2019  
**First date of hearing :** 20.11.2019  
**Date of decision :** 14.12.2020

Mr. Ravi Kumar Bhadani  
R/o Flat no. 703, Tower A,  
Oberoi Exquisite, Goregaon East,  
Mumbai-400063.

**Complainant**

**Versus**

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

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Varun Chugh

Advocate for the complainant

Shri J.K. Dang along with Shri  
Ishaan Dang

Advocates for the respondent

**ORDER**

1. The present complaint dated 13.09.2019 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 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 29 of reply]
9.	Provisional allotment letter	28.01.2012 [Page 15 of complaint]
10.	Unit no.	EFP-25-0301, 3 <sup>rd</sup> floor, building no. 25

		[Page 19 of complaint]
11.	Unit measuring	1975 sq. ft.
12.	Date of execution of buyer's agreement	03.02.2012 [Page 17 of complaint]
13.	Payment plan	Construction linked payment plan [Page 16 of complaint]
14.	Total consideration as per statement of account dated 11.08.2019 [Page 50 of complaint] and 18.01.2020 [Page 63 of reply]	Rs.1,43,14,032/-
15.	Total amount paid by the complainant as per statement of account dated 18.01.2020 [Page 64 of reply]	Rs.1,43,94,313/-
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 (03.02.2012) plus 3 months grace period [Page 32 of complaint]	<b>03.05.2015</b>
17.	<b>Date of offer of possession to the complainant</b>	20.11.2019 [Page 148 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 20.11.2019	4 years 6 months 17 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. 03.02.2012 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 03.05.2015. 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 initially, he had booked a unit in the project 'Emerald Floors Select', Sector 65, Gurugram and was allotted unit bearing no. EFS-I-167A and made an advance payment of Rs.15 Lacs against the said unit on 26.04.2011. However, later it came to light that the respondent was not having the necessary approvals for the said project. Thereafter, on 19.11.2011, the complainant requested the respondent for transfer of the unit. On 28.01.2012, the unit bearing no. EFP-25-0301 admeasuring 1975 sq. ft. was allotted to the complainant. The total cost of the floor was Rs.1,43,14,032/- and since it was construction linked plan, hence the payment was to be made on the basis of schedule of payment provided by the respondent. Thereafter, on 03.02.2012 the complainant entered into a buyer's agreement

with the respondent. In the said agreement, the respondent had categorically stated that the possession of the said apartment would be handed over to the complainant within 36 months from the date of signing of buyer's agreement with a further grace period of another 3 months. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of possession by 48 months. The project was to be completed by February 2015 with grace period of three months. The progress of the project updated on the website of the respondent clearly shows that there is no headway and the respondent has been misleading the customers and not giving them concrete schedule of completion. The respondent has committed gross violation of provision of section 18(1) of the Act by not handing over the timely possession of the unit in question and not giving the interest and compensation to buyer. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of the property/apartment to the complainant in a time bound manner.
- ii. Direct the respondent to pay interest @18% p.a. as payment towards delay in handing over the property in question as per the provisions of the Act and the Rules.

- iii. Direct the respondent to immediately add his wife's name as co-applicant.
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 project 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 05.03.2019. Thus, the project in question is not an ongoing project under rule 2(1)(o) of the Rules. The project 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 penalty and interest for alleged delay in delivering possession of the unit booked by the complainant. 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.
- iii. The respondent submitted that the complainant was irregular regarding the remittance of instalments on time. Respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts due and payable by him under the payment plan/instalment plan opted by him.
- iv. The respondent submitted that clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. However, the complainant, having defaulted in payment of instalment, is thus not entitled to any compensation or penalty or any amount towards interest under 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 is almost complete and the respondent shall soon submit a report to the competent authorities. *Secondly*, the defaults on the part of the contractor.

vi. The respondent submitted that despite default of several allottees, the respondent has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situate is complete and the respondent has already received the occupation certificate for ground plus three storeys. Thereafter, the respondent has offered possession of the unit on 21.11.2019. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant.

vii. Hence, the complaint is liable to be dismissed.

7. The respondent has filed *written arguments* on 24.11.2020 wherein it has been stated that the respondent had submitted





an application dated 29.06.2017 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department on 05.03.2019. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for implementation of the project.

8. 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 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 complainant at a later stage.

14. On consideration of the documents available on record and submissions made by 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 03.02.2012, 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. 03.02.2012). 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 03.05.2015.
15. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 03.02.2012 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. In this case, the respondent has offered the possession of the unit to the complainant on 20.11.2019 after receipt of occupation certificate dated 05.03.2019. Copies of the relevant documents

have been placed on record. Subsequently an application was filed by the complainant for adding the name of his wife as co-applicant. The respondent has claimed that vide various letters the concerned statutory authority has time and again advised the respondent not to add co-applicant in allotment and BBA after issuance of occupation certificate. The Authority after hearing the submissions made by the parties observed that normally after issuance of occupation certificate addition of co-applicant are not allowed. However, since the parties have agreed mutually, the name of wife of the complainant be added as co-applicant. Original documents retained by the respondent be returned to the complainant immediately.

16. As such the complainant is 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. 03.05.2015 till handing over of possession as per provision to section 18(1) of the Act read with rule 15 of the Rules.
17. 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. 03.05.2015 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. The name of wife of the complainant be added as co-applicant.
  - iii. The respondent shall not charge anything from the complainant which is not part of the 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.
18. Complaint stands disposed of.
19. 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.