

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

Complaint no. : 5293 of 2019
First date of hearing : 20.11.2019
Date of decision : 14.12.2020

1. Mr. Sugam Asani
2. Mr. Sunil Asani
R/o C-36, Double Storey, Ramesh
Nagar, H.O., West Delhi.

Complainants

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

None
Shri J.K. Dang along with Shri
Ishaan Dang

For the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 11.11.2019 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.	Provisional allotment letter	28.10.2009 [Page 11 of complaint]
9.	Unit no.	EFP-11-0502, 5 th floor, building no. 11 [Page 17 of complaint]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	20.02.2010 [Page 14 of complaint]
12.	Payment plan	Construction linked payment plan [Page 46 of complaint]



13.	Total consideration as per statement of account dated 06.11.2019 [Page 56 of reply]	Rs.73,79,421/-
14.	Total amount paid by the complainants as per statement of account dated 06.11.2019 [Page 57 of reply]	Rs.68,37,139/-
15.	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 (20.02.2010) plus 3 months grace period [Page 30 of complaint]	20.05.2013
16.	Date of offer of possession to the complainants	27.05.2020 [as per para 8 of written arguments filed by the complainants and also admitted by the respondent at para 24 of written arguments but not supported by document by parties]
17.	Delay in handing over possession till date of offer of possession i.e. 27.05.2020	7 years 7 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. 20.02.2010 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 20.05.2013. 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 booked by them in the year 2009 and the same was provisionally allotted vide letter dated 28.10.2009. Thereafter on 20.02.2010, the complainants entered into 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 them within 36 months from the date of signing of buyer's agreement with a further grace period of 3 months. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of possession by 72 months. The respondent has promised to complete the project by February 2013 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 section 18(1) of the Act by not handing over the timely possession of the unit in question and not giving 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 complainants in a time bound manner.
 - ii. Direct the respondent to pay interest @ 18% p.a. towards delay in handing over the 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 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. 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 complainants have filed the present complaint seeking possession and interest on account of alleged delay in delivering possession of the unit booked by the complainants. The complaints pertaining to 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 complainants were irregular regarding the remittance of instalments on time. The respondent was compelled to issue demand notices, reminders, etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan opted by them. The respondent was constrained to issue several payment request letters requesting complainants to timely remittance of instalments as per the schedule of payment.
- 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 respondent has taken a decision to go ahead and construct the second staircase. It is expected that 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.

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

7. The complainants have filed **written arguments** on 21.09.2020 wherein they have reasserted the facts of the complaint. They have stated that they are waiting for possession of the said apartment since Feb 2013, which was due date of possession of the said apartment. The respondent has offered the possession of the subject unit on 27.05.2020 i.e. after a long delay of 7 years that too without compensation. Therefore, the complainants are entitled to get the possession of the said apartment as soon as possible and interest @24% for delayed possession.



8. The respondent has filed **written arguments** on 23.11.2020 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. 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.
9. 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.**



10. 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]*.
11. 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.
12. 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.
13. Arguments heard.
14. 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.

15. On consideration of 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 20.02.2010, 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 20.02.2010). 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 20.05.2013.
16. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 20.02.2010 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. In this case, the respondent has offered the possession of the unit to the complainants on 27.05.2020. As such the complainants are entitled to delay possession charges at prescribed rate of



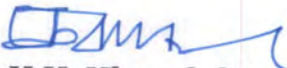
interest i.e. 9.30% p.a. w.e.f. 20.05.2013 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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 complainants from due date of possession i.e. 20.05.2013 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. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- iii. 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.

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.