

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

Complaint no. : 6592 of 2019
First date of hearing : 06.03.2020
Date of decision : 14.12.2020

1. Atul Purwar
2. Divya Gupta
Both RR/o: 99, Brookside,
London EN 4, 8TS.

Complainants

Versus

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

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Varun Chugh Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 09.01.2020 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 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	21.10.2009 [Page no. 11 of complaint]
9.	Unit no.	EFP-31-0401, 4 th floor, building no. 31 [Page 16 of complaint]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	22.02.2010 [Page 14 of complaint]



12.	Payment plan	Construction linked payment plan [Page 12 of complaint]
13.	Total consideration as per statement of account dated 20.08.2019, page no. 45 of complaint and 31.01.2020, page 36 of reply	Rs. 75,41,470/-
14.	Total amount paid by the complainants as per statement of account dated 20.08.2019, page no. 46 of complaint and 31.01.2020, page 37 of reply	Rs.70,71,362/-
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 (22.02.2010) plus 3 months grace period [Page 17 of complaint]	22.05.2013
16.	Date of offer of possession to the complainants	Not Offered
17.	Delay in handing over possession till date of order i.e. 14.12.2020	7 years 6 months 22 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. 22.02.2010 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 22.05.2013. 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 complainants entered into a buyer's agreement with the respondent on 22.02.2010. As per clause 11(a) of the said agreement, the respondent had categorically stated that the possession of the said unit would be handed over to the complainants within 36 months from the date of signing of the buyer's agreement, with a further grace period of another 3 months. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 75 months. The complainants were made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to handover the possession of the unit to the complainants in a time bound manner.
- ii. Direct the respondent to pay interest towards delay in handing over the unit in question as per provisions of Act.



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 unit 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 for 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.

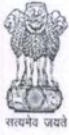


- iii. The respondent submitted that the subject unit was allotted to the complainants vide provisional allotment letter dated 21.10.2010. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainants shall remit every installment on time as per the payment schedule. Thereafter, the buyer's agreement was executed between the complainants and the respondent on 22.02.2010.
- iv. 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.
- v. The respondent submitted that 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 the 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. Arguments heard.
8. 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.
9. The Authority, on the basis of information and explanation 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.
10. 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 22.02.2010, 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. 22.02.2010). 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 22.05.2013. In the present case, the respondent has not offered the possession of the unit to the complainants till date.

11. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 22.02.2010 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. As such the complainants are entitled to delay possession charges at the prescribed rate of interest i.e. 9.30 % w.e.f. 22.05.2013 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
12. 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. 22.05.2013 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 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.
13. Complaint stands disposed of.
14. File be consigned to registry.

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

(Samir Kumar)

Member

Dated:

JUDGEMENT UPLOADED ON 30.01.2021.