

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

**Complaint no. : 6005 of 2019**  
**First date of hearing : 21.01.2020**  
**Date of decision : 14.12.2020**

Mr. Rajesh Kalra  
R/o G-16/19, DLF City, Phase I,  
Gurugram, Haryana- 122002

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Varun Chugh  
Shri Ishaan Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 28.11.2019 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 30 of reply]
9.	Provisional allotment letter	30.11.2009 [Page 10 of complaint]
10.	Unit no.	EFP-02-0102, 1 <sup>st</sup> floor, building no. 02 [Page 15 of complaint]
11.	Unit measuring	1650 sq. ft.



12.	Date of execution of buyer's agreement	25.03.2010 [Page 12 of complaint]
13.	Payment plan	Construction linked payment plan [Page 11 of complaint]
14.	Total consideration as per statement of account dated 13.03.2020 [Page 136 of reply]	Rs.80,38,841/-
15.	Total amount paid by the complainant as per statement of account dated 13.03.2020 [Page 137 of reply]	Rs.75,62,985/-
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 (25.03.2010) plus 3 months grace period [Page 28 of complaint]	<b>25.06.2013</b>
17.	<b>Date of offer of possession to the complainant</b>	<b>20.02.2020</b> [As per application filed by the complainant on 12.03.2020 for issuance of necessary directions to the respondent]
18.	Delay in handing over possession till date of decision i.e. 20.02.2020	6 years 7 months 26 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. 25.03.2010 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 25.06.2013. 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 complainant submitted that the said unit was booked by the complainant in the year 2009 and the same was provisionally allotted vide letter dated 30.11.2009. Thereafter on 25.03.2010, the complainant 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 the complainant 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 74 months. The respondent has promised to complete the project by March 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 provision 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 convey the title of the property and 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. towards delay in handing over the property in question as per the provisions of the Act and the Rules.
  - iii. Direct the respondent not to levy any penal interest in case of non-payment of the amount demanded by the respondent as per intimation of the possession and not to levy holding charges till the disposal of this complaint.
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 30.06.2017 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 interest for alleged delay in delivering possession of unit booked by 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. That the subject unit was allotted to the complainant vide provisional allotment letter dated 30.11.2009. The complainant consciously and wilfully opted for construction linked plan for remittance of the sale consideration for the unit in question and represented

that the complainant shall remit every instalment on time as per schedule of payment. The respondent submitted that the complainant was irregular regarding the remittance of instalments on time. The 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 opted by him.

- 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. The construction of the second staircase is almost complete and the respondent shall soon submit a report to the statutory authorities towards the same. Thereafter, upon issuance of 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.

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

7. The respondent has filed **written arguments** on 23.11.2020 wherein it has been stated that the respondent had submitted an application dated 30.06.2017 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has thereafter been granted 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 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 25.03.2010, 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. 25.03.2010). 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 25.06.2013.
15. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 25.03.2010 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 complainant on 20.02.2020 after receipt of occupation certificate dated 05.03.2019. 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. 25.06.2013 till the handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the Rules.

16. With respect to relief regarding holding charges, Hon'ble NCDRC in its order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015** held as under:

*"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."*

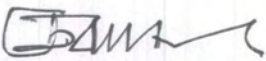
17. Therefore, the respondent-promoter cannot levy holding charges as it does not suffer any loss on account of the allottee



taking possession at a later date even due to an ongoing court case.

18. As far as interest on the due payments from the complainant is concerned, interest 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.
19. 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. 25.06.2013 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 respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
  - iii. 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.

- iv. The respondent shall not charge holding charges from the complainant.
20. Complaint stands disposed of.
21. File be consigned to registry.

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

  
(Samir Kumar)  
Member

Dated: 14.12.2020

Judgement uploaded on 11.02.2021.



**HARERA**  
**GURUGRAM**