

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

Complaint no. : 3080 of 2020
First date of hearing : 20.10.2020
Date of decision : 02.02.2021

1. Col. Sunil Rana
2. Ms. Ritu Rana
Both RR/o: - H.No. 1290, Sector- 6,
Huda Urban Estate, Bahadurgarh, Haryana

Complainants

Versus

M/s Emaar MGF Land Ltd.
Reg. Office at: - Emaar MGF Business Park,
M.G. Road, Sikanderpur Chowk, Sector 28,
Gurugram, Haryana-122102

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Dhingra Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 05.10.2020 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	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	02.11.2009 [Page 23 of complaint]
9.	Unit no.	EFP-06-0101, 1 st floor [Page 33 of complaint]
10.	Unit measuring	1650 sq. ft. [Page 33 of complaint]
11.	Date of execution of buyer's agreement	20.02.2010 [Page 29 of complaint]



12.	Payment plan	Construction linked payment plan [Page 65 of complaint]
13.	Total consideration as per statement of account dated 29.06.2020 [Page 104 of reply]	Rs. 80,51,602 /-
14.	Total amount paid by the complainants as per statement of account dated 29.06.2020 [Page 105 of reply]	Rs.75,42,796/-
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 46 of complaint]	20.05.2013
16.	Date of offer of possession to the complainant	14.02.2020 [page 107 of complaint]
17.	Delay in handing over possession till the offer of possession i.e. 14.02.2020	6 years, 8 months, 25 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 on 11.10.2009, they paid booking amount of Rs.5,00,000/- in favour of the respondent towards booking of the said unit. On 02.11.2009, the respondent issued letter of provisional allotment in respect of the apartment bearing no. EFP-06-0101 having super area of 1650 sq. ft. in the said project. On 20.02.2010, complainants entered into buyer's agreement with the respondent. As per clause 11(a) of the said agreement, respondent was liable to handover the possession of the said unit within 36 months from the date of execution of that agreement with a grace period of 3 months. Therefore, actual date of handing over possession was 20.05.2013 as per clause 11(a) of the agreement. On 14.02.2020, respondent offered the possession to the complainants however, the respondent has not paid delay possession charges. Hence, this complaint inter-alia for the following reliefs:

- i. To direct the respondent to pay for delay in offer of possession by paying interest as prescribed under the



Real Estate (Regulation and Development) Act 2016 read with Haryana Real Estate (Regulation and Development) Rules 2017 on the entire deposited amount which has been deposited against the property in question so booked by the complainants.

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 provisions of the Act are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower/apartment in question was made on 30.06.2017, i.e. before the notification of the Rules. The occupation certificate was thereafter issued on 08.01.2018. However, as the Fire NOC was awaited for a few blocks (including the unit in question), therefore the respondent, vide letter dated 12.02.2018, informed the DG-TCP, Haryana that it has not acted upon the OC and has not offered the units of those towers for possession for which Fire NOC is awaited. Thus, the project in question is not an 'ongoing



project” under rule 2(1)(o) of the Rules. The project does not require registration and consequently has not been registered under the provisions of the Act. This hon’ble authority does not have the jurisdiction to entertain and decide the present complaint.

- ii. That complainants have filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complaints pertaining to interest and compensation 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 apartment bearing number EFP-06-0101 was provisionally allotted to the complainants vide provisional allotment letter dated 03.11.2009. Thereafter, buyer’s agreement was executed between the complainants and the respondent on 20.02.2010. The complainants had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the complainants started defaulting in payments right from the very beginning and consequently became liable for



payment of delayed payment charges. Consequently, the respondent was compelled to issue notices and reminders for payment to the complainants. In so far as payment of compensation/interest to the complainants is concerned, it is submitted that the complainants, being in default, are not entitled to any compensation in terms of clause 13(c) of the buyer's agreement.

- iv. That the occupation certificate in respect of the apartment in question was received on 05.03.2019 and thereafter possession of the apartment was offered to the complainants vide offer of possession letter dated 14.02.2020. The complainants were called upon to make payment of balance sale consideration, complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the apartment to the complainants. However, the complainants failed to do the needful and consequently the respondent has been unable to hand over possession of the apartment to the complainants.
- v. That 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 complainant. *Secondly*, the defaults on the part of the contractor.

- vi. Hence, the present complaint deserves 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 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.
9. On consideration of the documents filed and submissions made by both the parties regarding contravention under the Act, 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 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.

10. 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 part of the respondent is established. In this case, the respondent has offered the possession of the unit to the complainants on 14.02.2020. As such the complainants are entitled to delay possession charges at the prescribed rate of interest i.e. 9.30.% 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.
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 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - 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.
12. Complaint stands disposed of.
 13. File be consigned to registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2021


(Dr. K.K. Khandelwal)
Chairman

Judgement uploaded on 08.04.2021.