

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

Complaint no. : 564 of 2020
First date of hearing : 06.03.2020
Date of decision : 02.02.2021

Kavita Sadana
R/o: 163, Sainik Vihar, Pitampura,
New Delhi-110034.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One,
C-2, District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Pawan Kumar Ray
Shri J.K. Dang along with Shri
Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 31.01.2020 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 table:

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.	Occupation certificate received on	05.03.2019 [Page 34 of reply]
9.	Provisional allotment letter	06.02.2010 [Page 43 of reply]
10.	Unit no.	EFP-22-0101, 1 st floor [Page 29 of complaint]
11.	Unit measuring	1975 sq. ft. [Page 29 of complaint]



12.	Date of execution of buyer's agreement	13.04.2010 [Page 25 of complaint]
13.	Payment plan	Construction linked payment plan [Page 61 of complaint]
14.	Total consideration as per statement of account dated 11.02.2020, page 71 of reply	Rs.91,42,408/-
15.	Total amount paid by the complainant as per statement of account dated 11.02.2020, page 72 of reply	Rs.93,19,252/-
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 (13.04.2010) plus 3 months grace period [Page 42 of complaint]	13.07.2013
17.	Date of offer of possession to the complainant	17.01.2020 [Page 134 of reply]
18.	Delay in handing over possession till date of offer of possession i.e. 17.01.2020	6 years 6 months 4 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. 13.04.2010 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 13.07.2013. 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 she booked the said unit in the aforesaid project vide application dated 27.01.2010 and paid booking amount of Rs.5,00,000/-. On 13.04.2010, a buyer's agreement was executed between the respondent and the complainant. The respondent drew an unfair, arbitrary and one-sided agreement with the complainant wherein the respondent had drawn all the provisions in their favour. In the agreement, the complainant was denied fair scope of compensation in case of delay in possession and was supposed to pay heavy penalty in case of delay in payment of instalments. The arbitrary and unfairness of the buyer's agreement can be derived from the clauses 1.2(c) and 13(a). As per possession clause of the buyer's agreement, the possession of the apartment was to be delivered within 36 months from the execution of the buyer's agreement. The clause allowed 3 months grace period. Thus, the respondent



was supposed to handover the possession latest by 13.07.2013 months from the date of execution of buyer's agreement. However, till date the respondent has not handed over the possession of the flat to the complainant. There is a delay of more than 6 years in delivering the possession and during all this intervening period, the respondent has not paid any compensation to the complainant for such inordinate and unexplained delay from their end. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to deliver immediate possession of the flat along with promised amenities and facilities and to the satisfaction of the complaint.
 - ii. Direct the respondent to pay interest on the amount paid by the complainant at prescribed rate towards delay in handing over the possession of 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. 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 and compensation 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 subject vide application form dated 27.01.2010 applied to the respondent for provisional allotment of a unit in the project. The unit in question was allotted to the



complainant vide provisional allotment letter dated 06.02.2010. The complainant 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 complainant shall remit every installment on time as per the payment schedule.

- iv. 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 payable by the complainant under the payment plan opted by her.
- v. The respondent submitted that the respondent had offered possession of the unit in question through letter of offer of possession dated 17.01.2020 to the complainant. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question. However, the complainant had approached the respondent demanding compensation alleging delay in delivery of possession of the unit in question. The respondent



transparently and fairly conveyed to the complainant that she is not entitled to any compensation on account of defaults of various clauses of the buyer's agreement committed by her. The respondent in order to settle the frivolous and unwanted controversy needlessly instigated by the complainant, proceeded to credit an amount of Rs. 7,43,141/- to the account of the complainant as a gesture of goodwill. The complainant has accepted the aforesaid amount in full and final satisfaction of her alleged grievances.

- vi. 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 and the respondent has succeeded in completing construction of the apartment in question and the occupation certificate in respect thereof has been received on 05.03.2019. Thereafter, possession of the



apartment has been offered to the complainant vide offer of possession letter dated 17.01.2020. *Secondly*, the defaults on the part of the contractor.

vii. 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 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. 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.
11. On consideration of the documents placed on record and submissions made by both the parties, 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 13.04.2010, 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 (13.04.2010). 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 13.07.2013. The respondent has offered the possession of the unit to the complainant on 17.01.2020 after receipt of occupation certificate dated 05.03.2019.

12. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 13.04.2010 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 complainant is entitled to delay possession charges at the prescribed rate of interest i.e. 9.30 % w.e.f. 13.07.2013 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
13. It is evident from the statement of account dated 11.02.2020 (at page 71 of reply filed by the respondent) that the respondent has already given compensation amounting to



Rs.7,43,141/- to the complainant on account of delay in handing over possession as per clause 13 of the buyer's agreement. Therefore, the amount so paid by the respondent towards compensation for delay shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

14. Hence, the authority hereby passes 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. 13.07.2013 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. However, the respondent has already paid a sum of Rs. 7,43,141/- towards delay in handing over possession at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid by the respondent/promoter as delay possession charges under proviso to section 18(1) read with rule 15 of the Rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - v. Interest on the delay 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.
15. Complaint stands disposed of.
 16. 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.