

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

Complaint no. : 6814 of 2019
First date of hearing : 06.03.2020
Date of decision : 02.02.2021

Vijay Kumar Khanna
R/o: F-231, Antriksh Apartments, Sector-14,
Extension, Rohini, Delhi-110085

Complainant

Versus

M/s Emaar MGF Land Ltd.
(Through its Chairman & Managing Director)
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

Advocate for the complainant

Shri J.K. Dang along with Shri
Ishaan Dang

Advocates for the respondent

ORDER

1. The present complaint dated 16.01.2020 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 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	15.06.2010 [Page 25 of complaint]
9.	Unit no.	EFP-II-35-0102, 1 st floor [Page 31 of complaint]
10.	Unit measuring	1650 sq. ft.
11.	Date of execution of buyer's agreement	19.04.2011 [Page 29 of complaint]



12.	Payment plan	Construction linked payment plan [Page 63 of complaint]
13.	Total consideration as per statement of account dated 20.11.2019 at page 87 of complaint and 16.04.2020 at page 62 of reply	Rs.95,90,337/-
14.	Total amount paid by the complainant as per statement of account dated 20.11.2019 at page 88 of complaint and 16.04.2020 at page 63 of reply	Rs.90,77,043/-
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 (19.04.2011) plus 3 months grace period [Page 44 of complaint]	19.07.2014
16.	Delay in handing over possession till date of decision i.e. 02.02.2021	6 years 6 months 14 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. 19.04.2011 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 19.07.2014. 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 allotted to him vide provisional allotment letter dated 15.06.2010 and the complainant paid booking amount of Rs.5,00,000/-. Subsequently, the buyer's agreement was executed on 19.04.2011 between the complainant and the respondent. As per clause 11(a) of buyer's agreement, respondent assured that the possession of the unit within 36 months from the date of execution of buyer's agreement plus grace period of 3 months. The possession was due on 19.07.2014. That the complainant has paid 100% of the total consideration amount to the respondent but still the unit has not been delivered yet. Hence, this complaint inter-alia for the following reliefs:
- i. Direct the respondent to handover immediate possession of the subject unit along with all the promised amenities and facilities.



- ii. Direct the respondent to pay interest at prescribed rate interest in favour of the complainant from the promised date of delivery of the unit till the actual delivery of the same.
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 complainant has filed the present complaint seeking possession and interest 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.
 - ii. That the project of the respondent is an "ongoing project" under RERA and the same has been registered under the Act by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-482/2017/829 dated 24.08.2017. It is submitted that the registration is valid till 23.08.2022.



- iii. The respondent submitted that the subject unit was allotted to the complainant vide provisional allotment letter dated 15.06.2010 in pursuance of application form dated 26.05.2010. 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. Thereafter, buyer's agreement was executed on 19.04.2011.
- 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 him.
- v. 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 complainant. *Secondly*, the defaults on the part of the contractor.

- vi. Hence, the present complaint deserves to be dismissed.
7. The respondent has filed **written arguments** on 08.10.2020. 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: **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.**



8. 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]*.
9. The respondent submitted that no compensation/interest of any nature deserves to be granted for the span of time commencing from revision of National Building Code (NBC) in the Year 2016, till issuance of occupation certificate. The said period deserves to be exempted for all intents and purposes. In light of legal and factual position submitted above, it is evident that there is no merit in the grievances raised in the present complaint qua the respondent.
10. Arguments heard.
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. 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 filed 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 19.04.2011, 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. 19.04.2011). 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 19.07.2014. As per record, the

respondent has not offered the possession of the unit to the complainant till date.

15. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 19.04.2011 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 % p.a. w.e.f. 19.07.2014 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
16. 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. 19.07.2014 till the handing over of possession.
 - ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. Thereafter, the monthly payment of interest till offer of

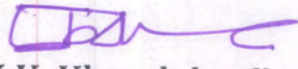
- possession so accrues shall be paid on or before 10th of subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30 % by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
17. Complaint stands disposed of.
 18. 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.