

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

Complaint no. : 2043 of 2018
First date of hearing: 12.03.2019
Date of decision : 23.07.2019

1. Mr. Krishan Kumar Grover

2. Mr. Yogesh Grover

Both R/o: House no. 2L-12, NIT Faridabad

...Complainants

Versus

Emaar MGF Land Limited

Office at: Emaar Business Park, M.G. Road,
Sikanderpur, Sector-28, Gurugram- 122002

...Respondent

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Shri Sushil Yadav

Shri Ketan Luthra

Advocate for the complainants

AR on behalf of respondent

ORDER

1. A complaint dated 04.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Krishan Kumar Grover and Mr. Yogesh Grover, against the promoter Emaar MGF Land Limited, on account of violation of clause 11(a) of buyer's agreement dated 18.02.2011 in respect of unit described below for not handing over possession by the



due date which is in violation of section 11(4)(a) of the Act ibid. in respect of apartment/unit described below in the project "Palm Hills", on account of violation of the section 11(4)(a) of the Act ibid.

2. Since, the buyer's agreement dated 18.02.2011 has been executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Palm Hills", Sector 77, Gurugram.
2.	Applied OC on	24.04.2017
3.	HRERA registered/unregistered	Registered (256 of 2017)
4.	Revised registration date	02.10.2022
5.	DTCP license no.	56 dated 31.08.2009
6.	Payment plan	Construction linked plan (page 101 of reply)
7.	Unit no.	PH3-21-0801, 8 th floor, building no. 21 (page 30)

		of reply)
8.	Area of unit	1450 sq. ft'
9.	Allotment letter	08.09.2010
10.	Total consideration as per statement of account dated 10.12.2018	Rs. 67,94,326/- (page 101 of reply)
11.	Total amount paid by the complainants as per statement of account dated 10.12.2018	Rs. 64,74,974/- (page 102 of reply)
12.	Buyer's agreement executed on	18.02.2011
13.	Due date of possession Clause 11(a) - company proposes to handover unit within 33 months from the date of start of construction + 3 months grace period (start of construction - 22.02.2011)	22.02.2014
14.	Delay in offering possession till date of decision 23.07.2019	5 years 5 months 1 days
15.	Penalty clause	Clause 13(a) - Rs. 7.50/- per sq. ft' per month of super area till the date of notice of possession

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement dated 18.02.2011 is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 25.02.2014 as per the said buyer's agreement. The promoter has failed to deliver the possession of the said unit to the

complainants by the due date. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Case came up on hearing on 12.03.2019, 09.04.2019 and 28.05.2019. The reply has been filed by the respondent and has been perused by the authority.

FACTS OF THE COMPLAINT

6. The complainants submitted the respondent gave advertisement in various leading newspapers about their forthcoming project named "Palm Hills". Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the Bharat Tent House, booked a flat admeasuring super area 1450 sq ft in aforesaid project of the respondent for total sale consideration is Rs.70,58,179/- which includes BSP, car parking, IFMS, club membership, PLC etc including taxes, and the buyers agreement was executed on 18.02.2011. Out of the total sale consideration amount, the complainants made payment of Rs. 64,74,974/- to the respondent vide different cheques on

different dates, the details of which are as annexed with the complaint.

7. As per buyer's agreement, the respondent had allotted a unit bearing no PH3-21-0801 having super area of 1450 sq. ft. to the complainants.
8. The complainants submitted that as per clause 11 of the buyer's agreement, the respondent had agreed to deliver the possession of the flat within 33 months from the date of start of construction with an extended period of three months and according to that the flat was to be deliver till 24.02.2014.
9. The complainants submitted that some of the clauses in the buyer's agreement that the complainants/buyers were made to sign by the respondent are one sided.
10. The complainants submitted that they regularly visited the site but was surprised to see that construction was very slow. The complainants submitted that despite receiving more than 90 % payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the

respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.

11. The complainants submitted that as per clause 13 (a) of the buyer's agreement dated 18.02.2011, it was agreed by the respondent that in case of any delay, they shall pay to the complainants a compensation @ Rs.7.5/- per sq. ft. per month of the super area of the unit for the period of the delay. It is, however, pertinent to mention herein that a clause of compensation at such a nominal rate of Rs.7.5/- per sq. ft. per month for the period of delay is unjust and the opposite party has exploited the complainants by not providing the possession of flat on time. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that respondent have incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.7.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2 % per annum rate of interest and whereas as per the buyer's agreement and

demand letters, the opposite party charges 24% per annum interest on delayed payment.

ISSUES TO BE DETERMINED

12. Following issues have been raised by the complainants:

- a. Whether the developer has violated the terms and conditions of the buyer's agreement?
- b. Whether the complainants are entitled for possession along with prescribed interest for delay in possession?
- c. Whether the respondent/firm should be penalized for not completing the construction on time and there is no reasonable justification for the delay?
- d. Whether interest cost being demanded by the respondent /developer is very high i.e. 24% which is unjustified and not reasonable?

RELIEF SOUGHT

12. In view of the above, complainants seeks the following reliefs:

- a. Direct the respondents to handover the possession of flat along with prescribed interest per annum on compounded rate from the date of booking of the unit in question.

- b. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainants.

REPLY OF THE RESPONDENT

13. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupation certificate in respect of the project in question was made on 24.04.2017, i.e well before the notification of the Haryana Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as 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.
14. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of

the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this hon'ble authority.

15. The respondent submitted that the complainants had approached the respondent sometime in the year 2010 for purchase of an independent unit in its upcoming residential project "Palm Hills" (hereinafter "the project") situated in Sector 77, village Shikohpur, Tehsil & District Gurugram, Haryana. It is submitted that the complainants prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

16. The respondent submitted that thereafter the complainants vide application form dated 15.08.2010 applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application

form, were allotted an independent unit bearing no PH3-21-0801, located on the 8th floor, in the project vide provisional allotment letter dated 08.09.2010. The complainants consciously and wilfully 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 would remit every instalment on time as per the payment schedule.

17. The respondent submitted that from the beginning, the complainants were extremely irregular in payment of instalments. The respondent was constrained to issue a payment request letters, reminders etc. to the complainants requesting them to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by them. The payment reminders sent to the complainants by the respondent clearly mentions the amount that was outstanding, the due date for remittance of the respective amounts as per the schedule of payments and requesting the complainants to timely discharge their outstanding financial liability but to no avail. Statement of

accounts dated 10.12.2018 correctly maintained by the respondent in its due course of business reflecting the delay in remittance of the aforesaid amount are appended.

18. It is submitted that the complainants chose to ignore the payment request letters and reminders issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the buyer's agreement.
19. It is respectfully submitted that the rights and obligations of complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 11 of the buyer's agreement provides that subject to the allottees having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit would be handed over within 33 months plus grace period of 3 months, from the date of start of construction. It is further provided in the buyer's agreement that time period for delivery of possession shall stand

extended on the occurrence of delay for reasons beyond the control of the respondent. Furthermore, it is categorically expressed in clause 11(b)(iv) that in the event of any default or delay in payment of instalments as per the schedule of payments incorporated in the buyer's agreement, the time for delivery of possession shall also stand extended.

20. The respondent submitted that clause 13 of the buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. Complainants, having defaulted in payment of instalments, are thus not entitled to any compensation or any amount towards interest under the buyer's agreement.

21. The respondent submitted that without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainants have alleged that the possession of the unit was to be given not later than February 2014 and therefore cause of action, if any, accrued in favour of the complainants in February 2014. Thus, the complaint seeking interest as a form of indemnification for the alleged delay is barred by limitation.

22. The construction of the project/allotted unit in question stands completed. The respondent has in fact already started the construction of 2nd staircase as mandated by law. It is expected that the construction of the second staircase will be completed in a year's time. It is submitted that as and when the occupation certificate is received by the respondent the possession of the unit in question would be delivered to the complainants, subject to the terms and conditions in the buyer's agreement.

DETERMINATION OF ISSUES

23. **With respect to all the issues:** The relevant clause 11(a) of the said buyer's agreement is reproduced hereunder:

“- company proposes to handover unit within 33 months from the date of start of construction + 3 months grace period”

The construction of the said unit started on 22.02.2011.

Hence, the due date comes out to be 22.02.2014, which means that there is a delay of 5 years 5 months 1 day till date of decision thereby violating clause 11(a) of the said agreement. The delay compensation payable by the respondent @ Rs.7.50/- per sq. ft. per month. As per clause 13(a) of buyer's agreement is held to be very nominal and unjust. The terms of the letter have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements...”

The complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f

22.02.2014 till date of actual offer of physical possession and not at 24% as demanded by complainants. As per the provisions of section 18 (1) proviso of the Real Estate (Regulation and Development) Act, 2016 read with rule 15 of the Rules *ibid*.

FINDINGS OF AUTHORITY

24. 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

25. Application dated 01.07.2019 filed on behalf of the respondent for waiver of costs has been considered and the prayer made in the application is declined.
26. As per clause 11 (a) of the buyer's agreement dated 18.02.2011 for unit no.PH3-21-0801, 8th floor, building no.21, in project "Palm Hills", Sector-77, Gurugram, possession was to be handed over to the complainants within a period of 33 months from the date of start of construction i.e. 22.02.2011 + 3 months grace period which comes out to be 22.02.2014. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.64,74,974/- to the respondent against a total sale consideration of Rs.67,94,326/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f 22.02.2014 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
27. The promoter shall not charge anything from the complainant which is not part of the BBA. Interest on the due payments from the complainant shall be charged at the

prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainants in case of delayed possession.

DECISION AND DIRECTIONS OF THE AUTHORITY


28. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:


- a. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.60% by the promoter which is the same as is being granted to the complainants in case of delayed possession.
- b. 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 offer of possession shall be paid before 10th of subsequent month
- c. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

d. The promoter shall not charge anything from the complainant which is not part of the BBA.

29. Complaint is disposed of accordingly.

30. File be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2019



HARERA
GURUGRAM