

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

Complaint no. : 226 of 2019  
First date of hearing: 09.08.2019  
Date of decision : 09.08.2019

1. Mr. Pankaj Kapoor
2. Mrs. Ekta Bhasin

Both R/o. G04, Tower N, The Palm Drive,  
Golf Course Extension Road, Sector- 66,  
Gurugram.

**Complainants**

Versus

M/s. Emaar MGF Land Ltd.

Office at: -ECE House, 28 K.G. Marg,  
New Delhi - 110001.

**Respondent**

**CORAM:**

**Shri N. K. Goel**

(Former Additional District and Sessions Judge)  
Registrar -cum- Administrative Officer (Petitions)  
Haryana Real Estate Regulatory Authority, Gurugram  
Authorised by resolution no. HARERA,  
GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)

**APPEARANCE:**

Shri Tushar Behmani  
Ms. Manika Balhara

Advocate for the complainants  
A.R. for the respondent

**EXPARTE ORDER**

1. The present complaint relates to a buyer's agreement dated 01.11.2012 executed between one Mrs. Sunita Lal and Mrs. Neelam Bhasin ( in short the "original allottees" ) which was later to be endorsed in favour of the complainants



vide confirmation of nomination letter dated 05.03.2013, registered with this Authority vide registration no. 256 of 2017 and 1 of 2018 (for Tower A and B) in respect of flat/unit measuring 1450 sq. ft. super area bearing no. PH3-66A-0601,6<sup>th</sup> floor, building/block no. 66A of the project namely, "Palm Hills" situated in Sector 77, Gurugram, (in short, the subject flat) for a total sales consideration of Rs. 68,40,279.02 excluding car parking, IFMS, club membership, PLC, etc.

2. The particulars of the complaint are as under: -

1.	Name and location of the Project	'Palm Hills" Sector-77, Gurugram, Haryana.
2.	RERA registered / not registered	<b>Registered vide no. 256 of 2017 1 of 2018 (for Tower A and B)</b>
3.	Nature of real estate project	Group Housing Colony
4.	Total area of the project	24.477 acres
5.	Allotted unit no.	PH3-66A-0601,6 <sup>th</sup> floor, building/block no. 66A
6.	Unit measuring area	1,450 sq. ft.
7.	Date of execution of agreement to sell between original allottees and the respondent	01.11.2012 ( <b>Annx P/4</b> )
8.	Total consideration as per payment plan	Rs. 70,85,853.73 plus IFMS/IFSD ( <b>Pg. 74 of the complaint</b> )

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9.	Total amount paid by the complainant till date	Rs. 73,87,624 (as per statement of account- Annx P/31 at Pg. 142 of the complaint)
10.	Percentage of consideration paid	95 %
11.	Payment plan	Construction linked plan
12.	Due date of delivery of possession as per the agreement	<b>26.02.2014</b> <b>Clause 11(a)</b> – possession to be delivered within 33 months from the date of start of construction plus 3 months grace period.
13.	Date of start of construction as per statement of accounts.	<b>26.02.2011 (Annx P/31)</b>
14.	Delay of number of months/ years	
15.	Penalty clause as per buyer's agreement	Clause 23 i.e. Rs.7.50/- per month per sq. ft. for the period of delay.

3. As per the complainants' version, after learning about the upcoming residential project of the respondent, the complainants met the original allottees Mrs. Sunita Lal and Mrs. Neelam Bhasin of the unit no. PH3-66A-0601 and purchased the same from the original allottees by paying the required sale amount to the original allottees. The said unit was duly transferred in the names of the complainants and a nomination letter dated 05.03.2012 was issued by the respondent to the complainants confirming the transfer of ownership of the unit in question through which the

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complainants entered into the shoes of the original allottees and the terms and conditions of the buyer's agreement were wholly binding upon the complainants for the unit in question.

4. At the time of transfer it was informed to the complainants that the possession of the booked apartment/unit shall be given within 33 months plus 3 months grace period from the date of start of construction which is 25.02.2011 (as mentioned in Annexure P/31). According to the complainants the respondent deliberately avoided to insert the possession date in the buyer's agreement and only mentioned that the possession will be delivered from the start of the construction work whereas there is no mention of the date of commencement of the construction.

5. As per the complainants the buyer's agreement of the unit in question was endorsed in favour of the complainants on 01.11.2012. The sale consideration of the said unit was Rs. 68,60,279 excluding other charges against which the complainants have made a total payment of Rs. 73,87,624 i.e. 95% of the total sales consideration to the respondent, as and when demanded and this has become an admitted fact as per the statement of accounts dated 08.12.2018 (Annexure P/31

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at Page 142). There were minor defaults on the part of the complainants as regard to the payments as the complainant no. 1 is working with a shipping company is stationed oversea during his employment. As and when he returns to India, the dues were cleared with the respondent time and again.

6. As per clause 11(a) of the buyer's agreement dated 01.11.2012, the respondent was liable to handover the possession of the unit within a period of 33 months from the date of start of construction. The complainants and the respondent also agreed to a grace period of 3 months for applying occupation certificate in respect of the unit after the period of 33 months.
7. Further as per clause 13 (a) of the buyer's agreement dated 01.11.2012, in the event of respondent failing to deliver the possession of the unit within the stipulated time period, then the respondent shall pay to the complainants compensation at the rate of Rs. 7.50 per sq. ft. per month of the super area of the unit (1450 sq. ft.) till the date of notice of possession under the provision of clause 12(a) of the buyer's agreement.

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8. There is a huge delay in completion of the mentioned project by the respondent which amounts to breach of the terms and conditions of the buyer's agreement dated 01.11.2012.
9. The complainants state that the respondent is committing unfair trade practice by not allowing the complainants to have a site visit even after repeated requests. It is further stated by the complainants that the respondent has gravely changed the layout of the green area at the site of the apartment in question due to addition of new towers at the site which were not disclosed to the complainants at the time of execution of buyer's agreement between the complainants and the respondent. This also amounts to misrepresentation to the complainants on the part of the respondent.
10. According to the complainants, the respondent has committed grave deficiency on its part and adopted serious unfair trade practice with the complainants by failing to deliver the possession of the booked unit within the prescribed time. Hence, this complaint.
11. The following issues have been raised to be decided by the Authority: -

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1. Whether there is delay in completion of the project in dispute?
  2. Whether the payments paid by the complainants as per the payment schedule to the respondent is justified whereas the onsite construction work is not completed as per the schedule of construction till date?
  3. Whether there has been deliberate or otherwise misrepresentation on the part of developer where the complainants have deposited 95% of the total sale consideration but the project is not getting completed no sooner than April 2019?
12. The reliefs sought by the complainants are given below-
1. Direct the respondent to pay delayed possession charges on the entire amount of sales consideration deposited till date with them to the complainants i.e. on Rs. 73,87,624/- @ 24% interest rate from the date of possession agreed as per the buyer's agreement i.e. on 25.02.2014 till the actual handing over of physical possession of the apartment in dispute.

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2. Direct the respondent to handover the actual physical possession of the apartment in question alongwith payment of delayed possession charges.
  3. Direct the respondent to pay Rs. 5,00,000/- as compensation for causing mental agony and Rs. 50,000/- as litigation expenses to the complainants.
13. Notice of the complaint has been issued to the respondent thrice and the delivery reports have been placed in the file. Despite service of notice the respondent has failed to file the reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.
14. Ms. Balhara, authorised representative appearing on behalf of the respondent still requests for adjournment so that reply can be filed. There is absolutely no ground for adjournment. Arguments heard.

**Issue wise findings of the Authority: -**

15. **Issue no. 1, 2 and 3:** -As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the buyer's agreement (copy annexure

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P/4), there is every reason to believe that vide buyer's agreement dated 01.11.2012 the respondent had agreed to handover the possession of the subject flat to the complainants within a period of 33 months with a grace period of 3 months from the date of start of construction (i.e. 25.02.2011 as per annexure P/31) which, in other words, means that the respondent was bound to offer the physical possession of the subject unit to the complainants on or before 25.02.2014. However, the respondent has failed to offer the possession till date even after a delay of more than 5 years approximately. Hence, in the considered finding of this Authority this is in violation of the terms and conditions of the buyers agreement dated 01.11.2012 and also violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

16. Hence, in the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prescribed rate of interest of 10.60% per annum for every month of delay in terms of section 18(1) proviso of the Real Estate (Regulation and Development) Act,

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2016 read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

17. The Authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes for promoter projects situated in Gurugram. 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.

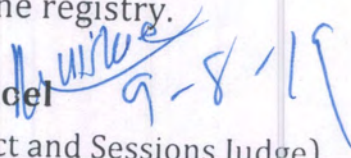
**Decision and directions of the Authority: -**

18. The Authority exercising its power under Section 37 of the Act hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.60% per annum

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with effect from the committed date of delivery of possession i.e. 27.02.2014 till actual offer of possession. The interest accrued so far from the due date of delivery of possession till the date of order be paid within a period of 90 days from this order and thereafter monthly interest at the prescribed rate of 10.60% per annum be paid on or before 10<sup>th</sup> day of each succeeding English calendar month.

19. Application for compensation may be filed before the Adjudicating officer, if the complainants so desire.
20. The complaint stands disposed of accordingly.
21. The case file be consigned to the registry.

  
N. K. Goel

(Former Additional District and Sessions Judge)  
Registrar -cum- Administrative Officer (Petition)  
Haryana Real Estate Regulatory Authority, Gurugram  
Authorised by resolution no. HARERA,  
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Dated:- 09.08.2019

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