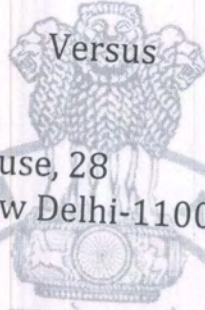


**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 4164 of 2019
First date of hearing : 20.11.2019
Date of decision : 21.01.2020

Kaushal Pal Singh
R/o H.No.15, Sector 2,
Panchkula, Haryana.

Complainant



M/s Emaar MGF Land Ltd.
Address: 1st Floor, ECE House, 28
Kasturba Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Venket Rao
Shri Ishaan Dang
Shri Ketan Luthra

Advocate for the complainant
Advocate for the respondent
AR of the respondent company

HARERA
ORDER
GURUGRAM

1. The present complaint dated 13.09.2019 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 allottee 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	Palm Hills, Sector 77, Gurugram.
2.	Project area	24.477 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 Valid/renewed up to 30.08.2019 b) 62 of 2013 dated 05.08.2013 Valid/renewed up to 04.08.2019
5.	Name of licensee	Robin Software Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.
7.	Date of provisional allotment letter	25.08.2010 [Page 30 of reply]
8.	Unit no.	PH3-15-0101, 1 st floor, block 15 [Page 31 of complaint]



9.	Unit measuring	1450 sq. ft.
10.	Date of execution of buyer's agreement	17.11.2010 [Page 28 of complaint]
11.	Payment plan	Down Payment Plan [Page 59 of complaint]
12.	Total consideration as per statement of account dated 28.09.2019 (Annexure R6 at page 37 of reply)	Rs.61,60,941/-
13.	Total amount paid by the complainant as per statement of account dated 28.09.2019 (Annexure R6 at page 38 of reply)	Rs. 61,60,942/-
14.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 33 months from the date of start of construction plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 42 of reply]	17.11.2013 Note: The date of start of construction cannot be ascertained, therefore, the due date is calculated from agreement (17.11.2010).
15.	Date of offer of possession to the complainant	07.03.2019 [Page 96 of reply]
16.	Delay in handing over possession till date of offer of possession i.e. 07.03.2019	5 years 3 months 18 days
17.	Unit Handover Letter	01.06.2019 [Page 101 of reply]
18.	Conveyance deed executed on	11.06.2019 [Page 104 of reply]
19.	Status of the project	OC granted on 05.03.2019 [Page 93 of reply]



3. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 33 months from the start of the construction plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. The date of start of construction cannot be ascertained, therefore, the due date is calculated from the date of execution of agreement which comes out to be 17.11.2013. 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 33 months from the date of start of construction, subject to timely compliance of the provisions of the buyer's agreement by the allottee. 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 possession was offered to the complainant vide letter dated 07.03.2019 after obtaining the OC dated 05.03.2019. The complainant submitted that vide unit handover letter dated 01.06.2019, the complainant has obtained the possession of the unit in question and has delayed the possession of the unit by the said date. Hence, this complaint inter-alia for the following reliefs:



- i. Direct the respondent to provide prescribed rate of interest per annum from the date of respective deposits.
 - ii. To refer to the Adjudicating Officer of the learned Authority for ascertaining compensation.
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 contests the complaint on the following grounds:
 - i. The respondent submitted that complaints pertaining to refund, 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 right from the beginning, the complainant was extremely irregular in payment of instalments. The respondent was constrained to issue a payment request letter, reminders etc. to the complainant requesting him to make payment of outstanding amounts payable by the complainant under payment plan opted by him.
 - iii. That as per clause 11(b)(iv), in the event of any default or delay in payment of instalments as per the schedule of payment incorporated in the buyer's agreement, the time



for delivery of possession shall also stand extended. Since, the complainant has defaulted in timely remittance of instalments, the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainant.

- iv. The respondent submitted an application for grant of OC to the concerned authority on 26.04.2017. Thereafter, the OC was granted on 05.03.2019. the respondent submitted that once an application for grant of OC is submitted before the concerned authority, the respondent ceases to have control over the same. Therefore, the time taken by the concerned authority for issuing OC needs to be excluded from the time taken by the respondent to implement the project.
- v. The respondent submitted that-

'15. Without admitting or acknowledging in any manner the truth or legality of the allegations levelled by the complainant and without prejudice to the contentions of the respondent, it is submitted that the project has got delayed on account of following reasons which were/are beyond the power and control of the respondent:

- (i) *The building plans for the apartment in question was approved by the competent authority under the then applicable National Building Code (NBC) in terms of which buildings having height of 15 mtrs. or above but having area of less than 500 sq. mtrs. on each floor, were being approved by the competent authorities with a single staircase and construction was being carried out accordingly.*



Subsequently, NBC was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having height of 15 mtrs. and above), irrespective of the area of each floor, are now required to have two stair cases.

Furthermore, it was notified vide gazette published on 15.03.2017 that the provisions of NBC 2016 supersede those of NBC 2005.

The Fire Department is seeking to retrospectively apply the said provision and while processing the Fire NOC application, has been insisting on two stair cases in all high-rise buildings even in cases where the building plans stood approved with a provision for a single stair case and which have been constructed accordingly. The Fire Department has issued a provisional Fire NOC with the requirement that the second staircase would be constructed by the developer within one year from the date of issuance of provisional Fire NOC...

Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the respondent has taken a decision to go ahead and construct the second stair case will be completed in an years time. Thereafter, upon issuance of OC and subject to force majeure conditions, possession of the apartment shall be offered to the complainants.

(ii) The respondent has engaged the services of Mitra Guha, a reputed contractor in real estate, to provide multi level car parking in the project. the said contractor started raising certain false and frivolous issues with the respondent due to which the contractor slowed down the progress of work at site. In spite of repeated reminders from the respondent to the contractor to expedite work at site, the contractor continued to work at slow pace due to reasons best known to him and due to his lackadaisical performance, the construction of the project was slowed down and the whole project got delayed....'

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, explanation, other submissions made and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
11. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention of provisions of 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 17.11.2010, possession of the booked unit was to be delivered within a period of 33 months plus 3 months grace period from the date of start of construction. The




date of start of construction cannot be ascertained, thus, the due date is calculated from the date of buyer's agreement i.e. 17.11.2010. Therefore, the due date of handing over possession comes out to be 17.11.2013. The possession of the subject unit was offered to the complainant on 07.03.2019 after receipt of occupation certificate on 05.03.2019. Copies of the same have been placed on record. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 17.11.2010 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 delayed possession at rate of the prescribed interest @ 10.20% p.a. w.e.f. 17.11.2013 to 05.03.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainant has already paid Rs.61,60,942/- against the total sale consideration of Rs.61,60,941/- as per statement of account dated 28.09.2019 at page 37 and 38 of reply. It has been stated by the counsel for the respondent that possession of the subject unit has already



been offered to the complainant and a conveyance deed has also been executed between the parties.

12. However, counsel for the respondent has tried to justify the delay on account of the fact that there were certain technical impediments w.r.t. provisions of staircase for which as per Gazette Notification of Government of India dated 15.03.2017, it was mandatory on the part of the respondent to build second stair case for fire safety measures. If we analyse the matter in a rightful perspective, the fact is that the possession of the allotted unit has been delivered on 07.03.2019 and there has been delay of about 5 years 3 months and 18 days for which complainant is entitled for delay possession charges.
13. 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. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 17.11.2013 till the offer of possession i.e. 07.03.2019. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
14. Complaint stands disposed of.
15. File be consigned to registry.

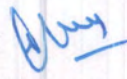

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2020

Judgement uploaded on 06.02.2020


(Subhash Chander Kush)

Member

HARERA
GURUGRAM