

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

**Complaint no. : 867 of 2020**  
**First date of hearing : 06.03.2020**  
**Date of decision : 14.12.2020**

Mr. Anubhav Gupta  
Through GPA Holder Mr. Mahesh Chandra  
Gupta  
R/o: H13, Ridgewood Estate, DLF Phase IV,  
Gurugram-122009

**Complainant**

**Versus**

M/s Emaar MGF Land Ltd.  
Regd. Address: 306-308, 3<sup>rd</sup> floor, Square One,  
C2, District Centre, New Delhi-110017.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Gaurav Rawat Advocate for the complainant  
Shri J.K. Dang along with Shri Advocates for the respondent  
Ishaan Dang

**ORDER**

1. The present complaint dated 24.02.2020 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 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 Gardens, Sector 83, Gurugram.
2.	Total licensed project area	21.90 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	108 of 2010 dated 18.12.2010 Valid/renewed up to 17.12.2020
5.	HRERA registered/ not registered	<b>Registered</b> vide no. <b>330 of 2017</b> dated <b>24.10.2017</b> for towers 1,2,6,8 to 12 and other facilities and amenities
	HRERA registration valid up to	31.12.2018
	<b>Extension</b> of HRERA registration certificate vide no.	<b>02 of 2019</b> dated <b>02.08.2019</b>
	Extension valid up to	31.12.2019
6.	<b>Occupation certificate</b> granted on	17.10.2019 [Page 74 of reply]
7.	Provisional allotment letter	16.11.2011 [Page 130 of complaint]
8.	Unit no.	PGN-12-0305, 3 <sup>rd</sup> floor, building no. 12 [Page 93 of complaint]



9.	Unit measuring (Super area)	1900 sq. ft.
10.	Date of execution of buyer's agreement	15.12.2011 [Page 91 of complaint]
11.	Payment plan	Construction linked payment plan [Page 112 of complaint]
12.	Total consideration as per statement of account dt. 20.04.2020 at page 65 of reply	Rs.1,11,16,515/-
13.	Total amount paid by the complainant as per statement of account dt. 20.04.2020 at page 66 of reply	Rs.1,15,02,318/-
14.	Date of start of construction as per statement of account dt. 20.04.2020 (Page 65 of reply)	30.11.2012
15.	Due date of delivery of possession as per clause 10(a) of the said agreement i.e. 36 months from the date of start of construction i.e. 30.11.2012 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 100 of complaint]	01.03.2016
16.	<b>Date of offer of possession to the complainant</b>	22.10.2019 [Page no. 200 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 22.10.2019	3 years 07 months 21 days

3. As per clause 10(a) of the buyer's agreement, the possession was to be handed over within a period of 36 months from the start of the construction (30.11.2012) plus grace period of 3 months for applying and obtaining the CC/OC in respect of the



unit and/or the project. Therefore, the due date of handing over possession of the subject unit comes out to be 01.03.2016.

Clause 10(a) of the buyer's agreement is reproduced below:

**"10. 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 (Thirty Six) 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 (three) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project."*

4. The complainant submitted that a buyer's agreement was executed between the complainant along with his parents and the respondent on 15.12.2011. That as per clause 10(a) of the said buyer's agreement, the respondent proposed to handover the possession of the unit in question within a period of 36 months from the date of start of construction along with grace period of 3 months. The date of start of construction is 30.11.2012. The due date of possession comes out to be 01.03.2016. As per the demands raised by the respondent, based on the payment plan, the complainant paid a total sum of Rs.1,17,42,318.00 towards the said unit against total sale consideration of Rs. 1,11,16,516/-. That the complainant went



to the office of respondent several times and requested them to allow them to visit the site, but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approach road. That on 22.10.2019, the complainant after many request and emails, received the offer of possession on 22.10.2019. Vide letter dated 05.12.2019, the respondent confirmed deletion of name of Mrs. Nirmal Gupta and Mr. Mahesh Gupta. Now, the property stands in the name of the complainant only.

5. The complainant submitted that vide email dated 14.01.2020, the respondent allotted car parking nos. to the complainant i.e., B-12-4 and B-12-4A. On inspecting the car parking space allotted, complainant found that the car parking allotted was not appropriate. If parking is to be done in B-12-4A then car from parking no. B-12-4 is to be removed first and vice-versa. Hence, the respondent has chested the complainant by wrongfully charging Rs.3,00,000/- on account of additional car parking space.
6. The complainant submitted that the respondent has cheated the complainant by wrongfully charging Rs.6,65,000/- on



account of mini-golf view and the same is not in existence at the project site. Instead of mini golf view, a park has been constructed at the site. The respondent has completely failed to honour the promises and have not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time. The Further, such acts of the respondent are also illegal and against the spirit of RERA Act. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to handover the possession after completing the flat in all aspects to the complainant.
- ii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
- iii. Direct the respondent to pay the amount of Rs. 3,00,000/- charged on account of additional car parking space as there is no driveway for car parking no. B/12-4A.

7. 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.
8. The respondent contested the complaint on the following grounds:
  - i. The respondent submitted that the complainant has filed the present complaint seeking delayed possession charges, refund of amounts and interest on payments made to the respondent on account of alleged delay in delivering possession of the apartment allotted to the complainant. That complaints pertaining to compensation, interest and refund 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. The respondent submitted that the subject unit was allotted to the complainant vide provisional allotment letter dated 16.11.2011. The complainant opted for construction linked payment plan for remittance of sale consideration. The buyer's agreement was executed between the complainant and the respondent on 15.12.2011.

iii. The respondent submitted that the application for issuance of occupation certificate was made on 11.02.2019 before the concerned statutory authority and thereafter, on 17.10.2019, the occupation certificate was granted by the concerned department. The complainant was offered possession of the said unit vide letter of offer of possession dated 22.10.2019. The complainant was called upon to remit balance payment and to complete the necessary formalities/documentation necessary for handover of the said unit to him. The respondent has already credited an amount of Rs. 6,23,447/- to the account of the complainant as compensation. The respondent also credited an amount of Rs. 6,04,501/- as Early Payment Rebate (EPR) to the account of the complainant.

iv. The respondent denied that the respondent has cheated the complainant by wrongfully charging Rs. 3,00,000/- for additional car parking space. It is also denied that a park has been constructed in place of a minigolf area at the project site. The respondent submitted that a golf course measuring 1.5 acres has been provided near Tower 11 and Tower 12. The same shall be ready shortly for use by the allottees in the said project.



- v. Hence, the complaint is liable to be dismissed.
9. The complainant has filed **rejoinder** to the reply filed by the respondent and **written arguments** on 18.09.2020 wherein the complainant denied each and every averment and statement made by the respondent in the reply. The complainant submitted that the respondent has credited an amount of Rs.6,23,447/- to the account of the complainant which is not accepted by the complainant. The respondent credited Rs.6,04,501/- as EPR and this money belongs to the complainant for making advance payment to the respondent as per scheme of the respondent. This money was due in September 2016 which was credited to the complainant's account on 22.10.2019 i.e. after three years.
10. The complainant submitted that the respondent is contending that the complaint is not maintainable as it pertains to a buyer agreement executed before the coming into force of the Act. In this context, it is submitted that this hon'ble Authority has repeatedly held in **Sarika Arora V. TATA Housing development Co. Ltd.** (complaint no. 126 of 2019 order dated 25.04.2019) that only the penal provisions of the RERA Act will not be applicable; however, the authority in such cases treats the complaint as an application for non-compliance of the



contractual obligation on the part of the builder in terms of section 34(f) of the RERA Act and is empowered to grant appropriate reliefs therein including the relief of payment of delayed possession charges to the complainant.

11. The complainant submitted that the High Court of Bombay in ***Neelkamal Realtors Suburban Pvt. Ltd. & Ors. V. Union of India and Ors.***, Writ Petition no. 2737 of 2017 decided on 06.12.2017, has held that the RERA Act is a social and beneficial legislation and that the provisions of RERA Act do not rewrite the clauses of the completion or handing over possession in buyer's agreement. Under section 4(2)(l)(C) of the Act, the promoter is given opportunity to prescribe fresh timeline while making registration of the project itself from penal consequences, however, the promoter is not absolved of its liability under agreement.
12. The complainant submitted that the respondent has cheated the complainant by wrongfully charging Rs.3,00,000/- for additional car parking space. Nahalchand judgment was applied by the hon'ble NCDRC in ***Developers Township Property Owners Welfare Association V. Jai Prakash Associates Ltd.*** 2016 SCC Online NCDRC 1417 and the developer was ordered to refund the parking charges collected



by it from the apartment owners with interest calculated at 12% from the date of payment of such charges.

13. The respondent has filed **written arguments** on 06.10.2020. 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**.
14. 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]**.

15. The respondent submitted that the period utilised by the competent authority for grant of occupation certificate and the period utilised by the complainant to obtain possession of the unit in question deserves to be exempted for all intents and purposes. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent ceases to have any control over the same. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer's agreement.
16. 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.
17. The Authority, on the basis of information and explanation 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.
18. On consideration of the documents available on record and submissions made by the parties, the Authority is satisfied that



the respondent is in contravention of the provisions of section 11(4)(a) of the Act. By virtue of clause 10(a) of the buyer's agreement executed between the parties on 15.12.2011, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of start of construction. The construction started on 30.11.2012. The grace period of 3 months is allowed to the respondent due to contingencies beyond its control. Therefore, the due date of handing over possession comes out to be 01.03.2016.

19. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 15.12.2011 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. 01.03.2016 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
20. The complainant has prayed for an alternate car parking. The counsel for the respondent stated that they have already



allotted double parking space as per DTCP norms and BBA. The Authority is of the view that if the parking space already allotted to the complainant is not as per the norms of DTCP then the complainant shall be entitled to an alternate car parking.

21. 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. 01.03.2016 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. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

22. Complaint stands disposed of.

23. File be consigned to registry.

**(Dr. K.K. Khandelwal)**  
Chairman

**(Samir Kumar)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.12.2020

Judgement uploaded on 30.01.2021.