

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

Complaint no. : 2407 of 2019
First date of hearing : 20.11.2019
Date of decision : 14.12.2020

Mr. Nishant Hasin Khan
R/o: Flat no. 204, Pearl Court-3,
Essel Towers, M.G. Road, Gurugram,
Haryana-122002

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar MGF Business Park,
M.G. Road, Sikanderpur Chowk,
Sector 28, Gurugram-122002, Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Nishan Hasin Khan Complainant in person
Shri J.K. Dang along with Shri Advocates for the respondent
Ishaan Dang

ORDER

1. The present complaint dated 10.06.2019 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 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	Registered vide no. 330 of 2017 dated 24.10.2017 for towers 1,2,6,8 to 12 and other facilities and amenities
	HRERA registration valid up to	31.12.2018
	Extension of HRERA registration certificate vide no.	02 of 2019 dated 02.08.2019
	Extension valid up to	31.12.2019
6.	Occupation certificate granted on	02.05.2019 [Page 132 of reply]
7.	Date of provisional allotment letter	11.06.2012 [Page 74 of complaint]
8.	Unit no.	PGN-08-0002, ground floor, building no. 8 [Page 17 of complaint]
9.	Unit measuring (super area)	1850 sq. ft.



10.	Date of execution of buyer's agreement	11.10.2012 [Page 17 of complaint]
11.	Payment plan	Construction linked payment plan [Page 51 of complaint]
12.	Total consideration as per statement of account dated 03.05.2019 (Page 81 of complaint) and 07.06.2019 (Page 50 of reply)	Rs.1,33,20,962/-
13.	Total amount paid by the complainant as per statement of account dated 03.05.2019 (Page 82 of complaint) and 07.06.2019 (Page 51 of reply)	Rs.1,31,03,641/-
14.	Due date of delivery of possession as per clause 10(a) of the said agreement i.e. 36 months from the date of execution of the agreement i.e. 11.10.2012 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 33 of complaint]	11.01.2016
15.	Date of offer of possession to the complainant	03.05.2019 [Page 75 of complaint]
16.	Delay in handing over possession till date of offer of possession i.e. 03.05.2019	3 years 3 months 22 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 date of execution of the buyer's agreement (11.10.2012) 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 11.01.2016. Clause 10 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 execution of agreement, 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 on 29.05.2012, an amount of Rs.7,50,000/- was paid to the respondent by the complainant towards booking of the apartment in question. On 11.10.2012, a buyer's agreement was executed between the respondent and the complainant in respect of the said apartment. As per clause 10(a) of the buyer's agreement, the possession of the unit was to be handed over within 3 years with a grace period of 3 months from the date of execution of the buyer's agreement i.e. by 11.01.2016. The possession was delayed by 3 years and 3 months. In some of the replies to the emails sent by the complainant, their officials confirmed that the delay compensation would be as per applicable provisions of RERA. While issuing intimation of possession on 03.05.2019, the



respondent credited an amount of Rs.5,50,933/- to the complainant as delay compensation as per the buyer's agreement and not as per the applicable provisions of RERA despite commitments that the delay compensation would be as per applicable provisions of RERA. Hence, the present complaint inter alia for the following relief:

- i. Direct the respondent to pay interest @ prescribed rate on account of delay in handing over possession under section 18 of the Act on amount paid by the complainant to the respondent as per section 18 of the Act.
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 delayed possession charges/interest on account of alleged delay in delivery of possession of the apartment booked by the complainant. That complaints pertaining to compensation 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. That the said apartment was provisionally allotted in favour of the complainant vide provisional allotment letter dated 11.06.2012. Buyer's agreement was executed between the complainant and the respondent on 11.10.2012.
- iii. That the complainant opted for a construction linked payment plan for remittance of the sale consideration for the unit in question. However, right from the beginning, the complainant was extremely irregular with regard to payment of instalments. The respondent was constrained to issue payment request letters, reminder, etc. to the complainant requesting him to make payment of outstanding amounts payable by him under the payment plan opted by him.
- iv. The respondent had submitted an application dated 21.12.2018 for grant of occupation certificate before the concerned statutory authority. The occupation certificate was thereafter issued by the competent authority on 02.05.2019. The complainant was offered possession of the unit in question on 03.05.2019. The complainant was called upon to remit balance payment including delayed

payment charges and to complete the requisite formalities/documentation for handover of the unit in question to the complainant. Furthermore, the respondent, in order to avoid any unwarranted controversy, proceeded to credit an amount of Rs.5,50,933/- to the account of the complainant as a gesture of goodwill. The said payment was made to the complainant in full and final settlement of his alleged claims or grievances or demands against the respondent and is clearly reflected in the statement of account correctly maintained by the respondent in its due course of business.

- v. Hence, the present complaint deserves to be dismissed at the very threshold.
7. The complainant has filed rejoinder dated 06.01.2020 to the reply filed by the respondent and written arguments dated 17.09.2020 to advance his contentions. The complainant has reasserted the facts of the complaint and has submitted that the respondent is in clear breach of clause 10(a) of the buyer's agreement dated 11.10.2012. The respondent be directed not to levy any interest on the due amount as per letter of offer of possession dated 03.05.2019. The complainant was paying the instalments in due time and the same is acknowledged by



release of Early Payment Rebate by the respondent. The complainant submitted that even after misleading the complainant that the delayed possession compensation/interest will be paid as per RERA Rules, the respondent credited the amount of Rs.5,50,933/- as per the buyer's agreement.

8. 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.
9. The Authority, on the basis of information, 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.
10. Arguments heard.
11. On consideration of the documents available on record and submissions made by both the parties 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 10(a) of the buyer's agreement executed between the parties on 11.10.2012, possession of the booked apartment was to be delivered within a period of 36 months plus 3 months grace period from the date of execution of buyer's agreement. 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 11.01.2016. The possession of the subject unit has been offered to the complainant on 03.05.2019 after receipt of occupation certificate dated 02.05.2019. Copies of the relevant documents have been placed on record. However, the complainant has not taken possession of the said apartment till date, hereby the complainant is directed to take over the possession of the said apartment within a period of one month.

12. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 11.10.2012 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. due date of handing over possession i.e. 11.01.2016 till the handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the Rules.
13. It is evident from the statement of account dated 03.05.2019 (at page 81 of complaint filed by the complainant) that the



respondent has already given compensation amounting to Rs.5,50,933/- to the complainant on account of delay in handing over possession as per clause 12 of the buyer's agreement. Therefore, the amount so paid by the respondent towards compensation for delay shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act. As per statement of account dated 03.05.2019, it is evident that an amount of Rs.2,23,984/- is outstanding balance on part of the complainant. Therefore, interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delay possession charges.

14. 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. 11.01.2016 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. However, the respondent has already paid a sum of Rs.5,50,000/- towards delay in handing over possession at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid by the respondent/promoter as delay possession charges under proviso to section 18(1) read with rule 15 of the Rules.
- iii. The complainant is directed to take over the possession of the said apartment within a period of one month.
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delay possession charges.
15. Complaint stands disposed of.
16. 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.