

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

**Complaint no. : 49 of 2020**  
**First date of hearing : 06.03.2020**  
**Date of decision : 14.12.2020**

1. Mr. Anil Kumar Nagpal  
2. Mrs. Rita Nagpal  
Both RR/o 1003, Tower 17, Orchid Petals,  
Sector 49, Islampur, Gurugram, Haryana.

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Address: Emaar 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 Sukhbir Yadav

Advocate proxy counsel for Shri  
Sanjeev Sharma, Advocate for  
the complainants

Shri J.K. Dang along with Shri  
Ishaan Dang

Advocates for the respondent

**ORDER**

1. The present complaint dated 16.01.2020 has been filed by the complainants/allottees 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 complainants, 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	10.01.2018 [Page 182 of reply]
7.	Date of provisional allotment letter	12.01.2011 [Page 50 of reply]



8.	Unit no.	PGN-07-0804, 8 <sup>th</sup> floor, building no. 7 [Page 27 of complaint]
9.	Unit measuring (Super area)	1720 sq. ft.
10.	Date of execution of buyer's agreement	05.05.2011 [Page 25 of complaint]
11.	Payment plan	Instalment Payment Plan [Page 46 of complaint]
12.	Total consideration as per statement of account dated 30.07.2019 (Page 64 of complaint) and 23.01.2020 (Page 117 of reply)	Rs.91,85,666/-
13.	Total amount paid by the complainants as per statement of account dated 30.07.2019 (Page 66 of complaint) and 23.01.2020 (Page 119 of reply)	Rs.91,76,806/-
14.	Date of start of construction as per statement of account dated 30.07.2019	09.08.2012 [Page 64 of complaint]
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. 09.08.2012 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 34 of complaint]	09.11.2015
16.	<b>Date of offer of possession to the complainants</b>	19.03.2018 [Page 62 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 19.03.2018	2 years 4 months 10 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 (09.08.2012) 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 09.11.2015.

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 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 complainants submitted that the said unit was purchased by them in year 2010 on the inducement that the possession of the said unit shall be handed over on time with all amenities as promised. Buyer's agreement with respect to the said unit was executed on 05.05.2011. As per clause 10(a) of the buyer's agreement, the possession of the said unit was to be given latest by November 2015. The possession offered on 19.03.2018 by the respondent is full of deficiencies and the

same has been duly informed and updated to the respondent vide letter dated 18.05.2018, but no response till date has been received by the complainants from the respondent. The respondent is harassing the complainants and threatening to take possession and pay the accrued holding charges of Rs.2,73,246/- which has been completely illegally levied and the respondent does not talk anything about the delayed possession charges. It is submitted that the complainants wish to take possession of the unit in question but in a lawful manner. Furthermore, the unit in question is not in a position to be handed over because of the deficiencies quoted by the complainants and no response till date has been given by the respondent to the letter of the complainants dated 18.05.2018. On repeated reminders and persistent efforts, on 18.04.2018 the respondent paid an amount of Rs. 3,66,259/- for delay possession charges and the same is also reflected in the statement of accounts dated 30.07.2019. As per clause 10(a) it was stipulated that the possession was supposed to be delivered in November 2015, however even after a delay of 4 years and 2 months, the respondent till date has failed to handover vacant and physical possession of the unit to the complainants without any deficiencies. Hence, the present complaint inter alia for the following reliefs:

- i. The respondent shall be directed to pay the interest for the delayed period of handing over the possession from the time as stated under section 2(z).
  - ii. The respondent shall also be directed to pay interest for the period of complaint, pending before the Real Estate Regulatory Authority as it was an obligation cast upon him under the Act to provide and pay the interest automatically under the Act.
  - iii. The respondent shall be ordered not to charge any holding charges, interest on the pending payments at the time of offer of handing over the possession after the settlement of dues as per RERA 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 complainants have filed the present complaint seeking possession, compensation and interest for alleged delay in delivering possession of apartment booked by the complainants. That such complaints 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 complainants had opted for an instalment payment plan and had agreed and undertaken to make payment as per payment plan, upon demands raised by the respondent. The respondent issued demand notices and reminders for payment to the complainants according to the payment plan. The statement of account dated 23.01.2020 reflects the payments made by the complainants as well as delayed payment interest.
- iii. The respondent had completed construction of the apartment/tower in question and made an application to the competent authority for issuance of occupation certificate. The occupation certificate was issued by the competent authority on 10.01.2018. Thereafter, possession of the apartment in question was offered to the complainants vide offer of possession letter dated 19.03.2018.
- iv. The respondent submitted that clause 10(b)(iv) provides that in case of any default by the allottee in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over possession shall

stand extended. Since, the complainants have admittedly defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner sought to be done in the present complaint by the complainants.

- v. Hence, the present complaint deserves to be dismissed at the very threshold.
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 both the parties, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. On consideration of the documents available on 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 Section 11(4)(a) of the Act. By virtue of clause 10(a) of the buyer's agreement executed between the parties on 05.05.2011, 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 09.08.2012. 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 09.11.2015. The possession of the subject unit has been offered to the complainants on 19.03.2018 after receipt of occupation certificate by the competent authority on 10.01.2018.

11. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 05.05.2011 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 complainants are entitled to delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of handing over possession i.e. 09.11.2015 till handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
12. It has been brought to the notice of the Authority by the counsel for the respondent that as per statement of account dated 23.01.2020 (Annexure R6 of reply filed by the



respondent), the respondent has already given compensation amounting to Rs.3,66,259/- to the complainants 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.

13. With respect to relief regarding holding charges, Hon'ble NCDRC in its order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015** held as under:

*"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."*

Therefore, the respondent-promoter cannot levy holding charges as it does not suffer any loss on account of the allottee



taking possession at a later date even due to an ongoing court case.

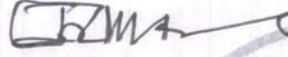
14. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:


- 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 complainants from due date of possession i.e. 09.11.2015 till the handing over of possession. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- ii. However, the respondent has already paid a sum of Rs.3,66,259/- 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 respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- iv. The respondent shall not charge holding charges from the complainants.

- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed 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 11.02.2021.

**HARERA**  
GURUGRAM