

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

Complaint no. : 5988 of 2019
First date of hearing: 21.01.2020
Date of decision : 14.12.2020

Inderjeet Singh
R/o Flat No. S7-902, Close South,
Nirvana Country, Sector - 50,
Gurugram.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar Business Park, MG
Road, Sikanderpur, Sector-28,
Gurugram-122002.
Also at: 306-308, 3rd floor, Square One,
C2, District Centre, New Delhi-110017.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri. Sukhbir Yadav
Shri Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 28.11.2019 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	17.10.2019 [Page 85 of reply]
7.	Date of provisional allotment letter	13.02.2012 [Page 36 of complaint]
8.	Unit no.	PGN-02-1002, 10 th floor, building no. 02 [Page 44 of complaint]
9.	Unit measuring (Super area)	1900 sq. ft.



10.	Date of execution of buyer's agreement	15.03.2012 [Page 39 of complaint]
11.	Payment plan	Construction linked payment plan [Page 63 of complaint]
12.	Total consideration as per statement of account dated 02.11.2019 at page 84 of complaint and dated 07.04.2020 at page 81 of reply	Rs. 1,29,30,595/-
13.	Total amount paid by the complainant as per statement of account dated 02.11.2019 at page 86 of complaint and dated 07.04.2020 at page 83 of reply	Rs. 1,27,63,277/-
14.	Date of start of construction as per statement of account dated 02.11.2019	09.08.2012 [Page 84 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 51 of complaint]	09.11.2015
16.	Date of offer of possession to the complainant	02.11.2019 [Page 79 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 02.11.2019	3 years 11 months 24 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 complainant submitted that on 13.02.2012, the respondent issued provisional allotment letter of unit in the project in favour of the complainant. Thereafter on 15.03.2012, a pre-printed, arbitrary, unilateral buyer's Agreement was executed between respondent and complainant. As per clause No. 10 (a) of buyer's agreement, the respondent has to give the possession of unit within 36 months from the start of construction. The construction work was started on site on 09.08.2012. Therefore, due date of possession was 09.08.2015. The complainant observed that there was no progress in construction of subject unit as per desired time frame, he raised his grievance to respondent. The

respondent failed to give any firm date of possession. That on 02.11.2019, the respondent issued a letter of offer of possession and raised a demand of Rs.20,33,294/-. The said demand included electrification charges of Rs.8,116/-, electricity connection charges of Rs.1,29,140/-, administrative charges of Rs.14,160/- and advance maintenance charges of Rs.74,100/-. The said charges are over and above the agreed sale consideration

5. That the main grievance of the complainant in the present complaint is that in spite of the complainant has paid more than 100% of the actual amounts of unit, the respondent has failed to deliver the possession of fully constructed and developed unit. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to pay interest @ prescribed rate under section 18 of Act, on amount paid by the complainant to the respondent party as instalments towards purchase of unit from the due date of possession till lawful offer of possession under section 18 of RERA Act.
- ii. Refrain the respondent from charging (a) electrification charges of Rs.8,116/- (b) electricity connection charges of

- Rs. 1,29,140/- (c) administrative charges of Rs.14,160/- and (d) advance maintenance charges of Rs.74,100/-.
- iii. Direct the respondent to reversal waiver of any holding charges as levied by developer for not taking possession of incomplete Apartment and surroundings.
 - iv. Direct the respondent to provide electricity connection to apartment.
6. 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.
7. 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 several amounts and interest on the payment made to the respondent for alleged delay in delivering possession of the apartment allotted to the complainant. 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. That the said apartment was provisionally allotted in favour of the complainant vide provisional allotment letter dated 13.02.2012. Buyer's agreement was executed



between the complainant and the respondent on 15.03.2012.

- iii. That the complainant had opted for an instalment payment plan and had agreed and undertaken to make payment as per the payment plan, upon demands raised by the respondent. However, the complainant has consciously defaulted in timely remittance of instalments to the respondent. In terms of clause 10(b)(iv), in the vent of default in payment of amounts demanded by the respondent as per the schedule of payment under the buyer's agreement, the time for delivery of possession shall also stand extended. Therefore, the time period for delivery of possession of the said unit is not liable to be determined in the manner suggested by the complainant. In terms of clause 12 of the buyer's agreement, the compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the buyer's agreement and who have not defaulted in payment of instalments as per the payment plan.
- iv. That the respondent had submitted an application dated 11.02.2019 to the competent authority for issuance of occupation certificate. The occupation certificate was issued by the competent authority on 17.10.2019. Upon receipt of the occupation certificate, possession of the apartment in question was offered to the complainant

vide offer of possession letter dated 02.11.2019. The complainant was called upon to make payment of balance sale consideration and complete the requisite formalities/documentation so as to enable the respondent to handover possession of the apartment to him. That delay compensation amounting to Rs. 6,81,072/- has already been credited to the complainant against the last demand raised. Furthermore, early payment rebate of Rs.15,975/- has also been credited.

v. Hence, the present complaint deserves to be dismissed at the very threshold.

8. The respondent has filed **written arguments** on 24.11.2020 wherein it has been stated that the respondent had submitted an application dated 07.02.2019 for grant of occupation certificate before the concerned statutory authority. The occupation certificate has been granted by the concerned department on 17.10.2019. It is respectfully submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority the respondent ceases to have any control over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for implementation of the project.



9. 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 which are as follows **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.**
10. 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]**.
11. 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.

12. The Authority, on the basis of information 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.
13. On consideration of the documents available on record and submissions made by both 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 15.03.2012, 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 complainant on 02.11.2019 after receipt of occupation certificate dated 17.10.2019. The copies of the same has been placed on record.

14. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 15.03.2012 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 prescribed rate of interest i.e. 9.30% p.a. w.e.f. 09.11.2015 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
15. If the complainant has any grievance regarding completion of building or fit for habitation, they may approach the DTP, Gurugram as the occupation has been granted by the competent authority on 17.10.2019.
16. With respect to the relief sought by the complainant regarding certain charges in the letter of offer of possession, the respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
17. 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."

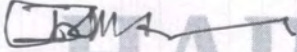
Therefore, the respondent-promoter cannot levy holding charges as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case.

18. 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. 09.11.2015 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. If the complainant has any grievance regarding completion of building or fit for habitation, they may approach the DTP, Gurugram.
 - iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. The respondent shall not charge holding charges from the complainant.
 - 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 delayed possession charges.
19. Complaint stands disposed of.
20. 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.