

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

Complaint no. : 5989 of 2019
First date of hearing : 21.01.2020
Date of decision : 14.12.2020

1. Mr. Varghese Paul
2. Ms. Anjula Varghese
Both RR/o: Flat no. 6007/6, Sector D,
Pocket- 6, Santushi Apartments,
Vasant Kunj, Delhi-110070

Complainants

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 Sukhbir Yadav Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 28.11.2019 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	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 136 of reply]
7.	Date of provisional allotment letter	13.02.2012 [Page 41 of complaint]
8.	Unit no.	PGN-02-0602, 6 th floor, building no. 2 [Page 41 of complaint]
9.	Unit measuring (super area)	1900 sq. ft.



10.	Date of execution of buyer's agreement	15.03.2012 [Page 47 of complaint]
11.	Payment plan	Construction linked payment plan [Page 68 of complaint]
12.	Total consideration as per statement of account dated 02.11.2019 (Page 100 of complaint) and 11.12.2019 (Page 104 of reply)	Rs.1,29,30,595/-
13.	Total amount paid by the complainants as per statement of account dated 02.11.2019 (Page 102 of complaint) and 11.12.2019 (Page 106 of reply)	Rs.1,27,69,269/-
14.	Date of start of construction as per statement of account dated 02.11.2019 at page 100 of complaint	09.08.2012
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. 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 56 of complaint]	09.11.2015
16.	Date of offer of possession to the complainants	02.11.2019 [Page 96 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 date of start of 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 on 01.02.2012, they booked the said apartment by paying a sum of Rs.7,50,000/- as booking amount. On 13.02.2012, respondent issued provisional allotment letter in respect of the said apartment in favour of the complainants. On 15.03.2012, buyer's agreement was executed between the respondent and the complainants. As per clause 10(a) of the buyer's agreement, the respondent has to give the possession of the said apartment within 36 months from the date of start of construction. The construction started on the site on 09.08.2012. Therefore, the due date of possession was 09.08.2015. On 02.11.2019, the respondent issued a letter of offer of possession and raised a demand of Rs.19,18,804/-. 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. The complainants submitted that on 18.11.2019, they visited the project site and during site visit they found that the project is not in habitable position and his unit is not fit for occupation, construction activity was carried on and construction material and waste were spread all around the project. That lifts were not operational, internal roads were not yet made, connecting road was not black topped, paint work was still not finished and parking space was not ready for use and moreover parks and other amenities were not yet developed. On 19.11.2019, the complainants sent a grievance email to the respondent alleging that proposed possession of the premises looked premature and apartment as well as project is still incomplete and further asked for compensation as per RERA on delayed possession. The main grievance of the complainants in the present complaint is that the in spite of having paid more than 100% of the actual amounts of the apartments, the respondent party has failed to deliver the possession of fully constructed

and developed apartment. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to pay interest @ prescribed rate under section 18 of the Act on amount paid by the complainants to the respondent as instalments towards purchase of apartment from the due date of possession till lawful offer of possession (complete in all respect without any pre-condition) under section 18 of the 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. To get reversal waiver of 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 complainants have filed the present complaint seeking, inter alia, possession, compensation and interest for alleged delay in delivering possession of the 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. That the said apartment was provisionally allotted in favour of the complainants vide provisional allotment letter dated 13.02.2012. Buyer's agreement was executed between the complainants and the respondent on 15.03.2012.
- iii. That the complainants 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 complainants were extremely irregular with regard to payment of instalments right from the very beginning and defaulted on numerous occasions in timely payment of sale consideration. The respondent was constrained to issue demand notices and reminders for payment to the complainants.

- iv. The respondent completed construction of the apartment/tower in question and made an application to the competent authority for issuance of occupation certificate in respect of the same. 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 complainants vide offer of possession letter dated 02.11.2019. The complainants were 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 the complainants. That delay compensation amounting to Rs. 6,81,072/- has already been credited to the complainants against the last demand raised. Furthermore, early payment rebate of Rs.16,483/- has also been credited to the complainants.
- v. That clause 12 of the buyer's agreement provides that 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 agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. The



complainants having defaulted in payment of instalments are thus not entitled to any compensation or any amount towards any interest under the buyer's agreement. Nevertheless, the respondent has proceeded to credit an amount of Rs.6,81,072/- towards delayed compensation to the complainants.

vi. 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 vide memo bearing no. ZP-692/AD(RA)/2019/25824 dated 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 complainants 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, 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. Arguments heard.
14. 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 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 apartment 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 02.11.2019 after receipt of occupation certificate dated 17.10.2019. Copies of the same has been placed on record.

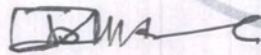
15. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 15.03.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are 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. 09.11.2015 till date of handing over possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
16. If the complainants have 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.
17. With respect to the relief sought by the complainants regarding certain charges in the letter of offer of possession, the respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
18. 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.

19. 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. If the complainants have 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 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.
20. Complaint stands disposed of.
21. 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.