

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

Complaint no. : 260 of 2020
First date of hearing: 06.03.2020
Date of decision : 27.01.2021

Aarti Kapoor
R/o: 160, New Priyadashini Apartment,
Plot No. 19, Sector-5, Dwarka
New Delhi.

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office Address: 306-308, Square One,
C-2, District Centre, Saket,
New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Ujjwal Tandon
Ms. Kanika

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.01.2020 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 Hills, Sector 77, Gurugram.
2.	Project area	29.34 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 Valid/renewed up to 30.08.2024 b) 62 of 2013 dated 05.08.2013 Valid/renewed up to 04.08.2019
5.	Name of licensee	Robin Software Pvt. Ltd. and another C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.
7.	HRERA registration valid up to	02.10.2022
8.	Occupation certificate received on	24.12.2019 [Page 39 of reply]
9.	Provisional allotment letter dated	21.04.2010 [Page 65 of reply]



10.	Unit no.	PH3-12A-0601, 6 th floor, block 12A [Page 41 of complaint]
11.	Unit measuring	1450 sq. ft.
12.	Date of execution of buyer's agreement	04.01.2011 [Page 39 of complaint]
13.	Payment plan	Construction Linked Plan [Page 69 of complaint]
14.	Total consideration as per statement of account dated 26.12.2017 [Page no. 108 of complaint]	Rs. 57,64,113/-
15.	Total amount paid by the complainant as per statement of account dated 26.12.2017 [Page no. 109 of complaint]	Rs. 54,98,529/-
16.	Date of start of construction as per statement of account dated 26.12.2017 [Page 108 of complaint]	25.02.2011
17.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 33 months from the date of start of construction plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 52 of Complaint]	25.02.2014
18.	Date of offer of possession to the complainant	27.12.2019 [Page 42 of reply]
19.	Delay in handing over possession till date of offer of possession i.e. 27.12.2019	5 years 10 months 2 days



3. As per clause 11(a) of the agreement, the possession was to be handed over within a period of 33 months from the date of start of the construction plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. The date of start of construction is 25.02.2011, therefore, the due date of delivery of possession comes out to be 25.02.2014. Clause 11(a) of the buyer's agreement is reproduced below:

"11. 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 33 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 months, for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the project..."*

4. The complainant submitted that the complainant and her husband booked an apartment on 12.03.2010 by paying booking amount of Rs.5,00,000/-. Thereafter, the respondent had issued the provisional allotment letter dated 21.04.2010 wherein the unit no.PH3-12A-0601 was allotted to the complainant. Upon the request of complainant's husband, an indemnity cum undertaking dated 18.12.2010 was executed



by the complainant whereby she was made the sole applicant of the said unit by her husband, Kartik Kashyap and her husband lost all interest in the said unit according the said indemnity cum undertaking. That the buyer's agreement was executed on 04.01.2011. The complainant in compliance of the schedule for payment continued making the payments towards the demands raised by the respondent from time to time in a timely manner. That as pre clause 11(a) of the buyer's agreement, the respondent has agreed to deliver the said unit within 36 months from the date of start of construction i.e. 08.02.2011. Therefore, the possession of the said unit had to be handed over to the complainant on or before 07.02.2014 (*sic*). The complainant further submitted that a period of 8 years has already been passed if calculated from date of execution of the buyer's agreement but neither the possession of the apartment nor the complete amount towards the compensation for delayed possession has been paid to the complainant till date. Hence, this complaint inter-alia for the aforesaid relief.

- i. Direct the respondent to pay interest on every month of delay in handing over of the possession till actual handing

over of possession of the unit in dispute on the entire deposited amount by the complainant.

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 respondent had applied for the occupation certificate for the relevant phase of the project on 24.04.2017 which is prior to the date of publication of the Rules, i.e. 28.07.2017 and hence the said project is not an ongoing project and therefore, this hon'ble Authority has no jurisdiction whatsoever to entertain the present complaint. Hence, the said project in question is not an on-going project under rule 2(1)(o)(i) of the Rules.
 - ii. That the complainant has nowhere disclosed in the complaint that the respondent after receiving the occupation certificate on 24.12.2019 have offered the possession of the apartment to the complainant on 29.12.2019 subject to payment of the outstanding amount



and submission of necessary documents. The complainant has further failed to disclose that compensation of Rs.7,62,263/- towards delayed possession has been given to her. However, till date the complainant has failed to clear the outstanding amount and take possession of the apartment.

- iii. That the husband of the complainant, Mr. Kartik Kashyap booked an apartment in question by booking and thereafter on 21.04.2010, the respondent provisionally allotted the apartment in question to the original allottee. The original allottee on 23.12.2010 requested the respondent to substitute the name of his wife Mrs. Aarti Kapoor, the complainant herein. The original allottee on 23.12.2010 requested the respondent to substitute the name of his wife Mrs. Aarti Kapoor, the complainant herein. The original Allottee and complainant also submitted their respective Affidavits and indemnity cum undertaking seeking substitution of the name of the original allottee with the complainant. Thereafter, buyer's agreement was executed between the original allottee and the respondent on 04.01.2011. The respondent vide letter dated 09.02.2011 informed the complainant about

confirmation of the nomination formalities and the apartment in question stood transferred in the name of the complainant.

- iv. That respondent submitted that the project has got delayed on account of following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and above), irrespective of area of each floor, are now required to have two staircases. The respondent has taken a decision to go ahead and construct the second staircase. Thereafter, upon issuance of the occupation certificate, possession of the apartment has been offered to the complainants. *Secondly*, the respondent had to engage the services of Mitra Guha, a reputed contractor in real estate, to provide multi-level car parking in the project. The said contractor started raising certain false and frivolous issues with the respondent due to which the contractor slowed down the progress of work at site. Any lack of performance from a reputed cannot be attributed to the respondent as the same was beyond its control.



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

7. Arguments heard.
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, 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.
10. 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 the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 04.01.2011, possession of the booked unit was to be delivered within a period of 33 months plus 3 months grace period from the date of start of construction. The date of start of construction is 25.02.2011, therefore, the due date of delivery of possession comes out to be 25.02.2014. The possession of the subject unit was offered to the complainant on 27.12.2019 after receipt of

occupation certificate dated 24.12.2019. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.01.2011 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 delayed possession charges at the prescribed rate of interest @ 9.30% p.a. w.e.f. due date of delivery of possession 25.02.2014 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

11. 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 @ 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession is 25.02.2014 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. 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.
12. Complaint stands disposed of.
13. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2021

(Dr. K.K. Khandelwal)

Chairman

Judgement Uploaded on 02.03.2021.