

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

Complaint no. : 472 of 2020
First date of hearing : 06.03.2020
Date of decision : 27.01.2021

1. Mr. Rajeev Verma
2. Mrs. Puja Verma
Both RR/o: The Residency Shimla View
Estate, Chakkar, Shimla,
Himachal Pradesh.

Complainants

Versus

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

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Sushil Yadav
Shri Ishaan Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 28.01.2020 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 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 113 of reply]



9.	Provisional allotment letter dated	03.09.2010 [Page 38 of reply]
10.	Unit no.	PH4-61-0202, 2 nd floor, block 61 [Page 17 of complaint]
11.	Unit measuring	1950 sq. ft.
12.	Date of execution of buyer's agreement	28.12.2010 [Page 14 of complaint]
13.	Payment plan	Construction Linked Plan [Page 42 of complaint]
14.	Total consideration as per statement of account dated 19.02.2020 [Page no. 56 of reply]	Rs.96,70,727/-
15.	Total amount paid by the complainant as per statement of account dated 19.02.2020 [Page no. 57 of reply]	Rs.97,29,996/-
16.	Date of start of construction as per statement of account dated 19.02.2020 [Page no. 56 of reply]	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 27 of Complaint]	25.02.2014
18.	Date of offer of possession to the complainant	28.12.2019 [Page 44 of complaint]
19.	Delay in handing over possession till date of offer of possession i.e. 28.12.2019	5 years 10 month 3 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 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 complainants submitted that the buyer's agreement was executed between the parties on 28.12.2010. As per clause 11(a) of the buyer's agreement, the respondent had agreed to deliver the possession of the unit within 33 months from the date of start of construction i.e., 24.02.2011 with an extended period of 3 months and according to that the unit was to be delivered till 24.02.2014. That despite receiving of more than 95% payment of all the demands raised by the respondent for



the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period and lastly on 28.12.2019 the respondent sent the letter for offer of possession. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to handover the possession of flat along with prescribed interest per annum on compounded rate from the date of booking of the floor in question.
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 contests the complaint on the following grounds:
- i. The respondent submitted that the complainants have filed the present complaint seeking possession and interest on account of alleged delay in delivering possession of the unit booked by them. The complaints pertaining to refund, compensation and interest 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 project of the respondent is an "ongoing project" under RERA and the same has been registered under RERA Act, 2016 and HRERA Rules, 2017 vide memo no. HRERA-606/2017/1248 dated 03.10.2017.
- iii. That the complainants vide application form dated 12.08.2010 applied to the respondent for provisional allotment of the unit in the said project and vide provisional allotment letter dated 03.09.2010, the said unit was allotted to the complainants. The complainants consciously and willfully opted for construction linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent that they shall remit every instalment on time as per the payment schedule.
- iv. The respondent submitted that right from the beginning, the complainants defaulted in payment of instalments. The complainants were irregular regarding the remittance of instalments on time and the respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of

outstanding amounts payable by them under the payment plan opted by them.

- v. The respondent submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent submitted an application dated 21.02.2019 to the competent authority. The occupation certificate was thereafter granted on 24.12.2019 in favour of the respondent.
- vi. Thereafter, the respondent had offered possession of the unit in question to the complainants vide letter of offer of possession dated 28.12.2019. The complainants were called upon to remit balance payment including delayed payment charges and to complete the formalities/documentation necessary for handover of the unit to him. However, the complainants approached the respondent with the request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The complainants, however, paid no heed to the legitimate requests of the respondent and threatened the respondent with institution of unwarranted litigation. The respondent in



order to avoid any unwanted controversy, proceeded to credit an amount of Rs. 6,42,859/- to the account of the complainants.

- vii. The 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.



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

7. The respondent has filed **written arguments** on 08.10.2020. 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: **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.**
8. 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]**.



9. The respondent submitted that the period utilised by the competent authority for grant of occupation certificate and the period utilised by the complainant to obtain possession of the unit in question deserves to be exempted for all intents and purposes. It is submitted that once an application for issuance of occupation certificate is submitted before the concerned competent authority the respondent ceases to have any control over the same. Therefore, the time period utilised by the concerned statutory authority for granting the occupation certificate needs to be necessarily excluded from the computation of the time period utilised in the implementation of the project in terms of the buyer's agreement.
10. Arguments heard.
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, 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.
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 the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 28.12.2010, 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 complainants on 28.12.2019 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 28.12.2010 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 delivery of possession i.e. 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.

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 @ 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 25.02.2014 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. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% p.a. 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.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2021

Judgement Uploaded on 02.03.2021.


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram