

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

Complaint no. : 3613 of 2020
First date of hearing : 02.02.2021
Date of decision : 02.02.2021

1. Mr. Mukesh Kumar Gupta
2. Ms. Shilpa Gupta
Both RR/o 370A, Alexandra Road,
#0301, Anchorage, Singapore- 159954

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: Emaar MGF Business Park,
M.G. Road, Sikandarpur Chowk,
Sector 28, Gurugram-122002, Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Ms. Neeta Sinha

Advocate for the complainants

Ms. Kanika Gomber

Advocate for the respondent

ORDER

1. The present complaint dated 04.11.2020 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	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 89 of reply]
7.	Date of provisional allotment letter	28.09.2011 [Page 27 of complaint]
8.	Unit no.	PGN-02-0506, 5 th floor, building no. 2 [Page 35 of complaint]
9.	Unit measuring (super area)	1900 sq. ft.



10.	Date of execution of buyer's agreement	31.10.2011 [Page 33 of complaint]
11.	Payment plan	Construction linked payment plan [Page 54 of complaint]
12.	Total consideration as per statement of account dated 28.01.2021 (Page 104 of reply)	Rs.1,13,37,804/-
13.	Total amount paid by the complainants as per statement of account dated 28.01.2021 (Page 106 of reply)	Rs.1,12,46,673/-
14.	Date of start of construction as per statement of account dated 28.01.2021	09.08.2012 [Page 104 of reply]
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 42 of complaint]	09.11.2015
16.	Date of offer of possession to the complainants	02.11.2019 [Page 103 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 the said unit was allotted them vide provisional allotment letter dated 28.09.2011 and thereafter buyer's agreement was executed on 31.10.2011. As per clause 10(a) of the buyer's agreement, the project was to be completed within 36 months from the date of start of construction with a grace period of 3 months. The respondent did not intimate in writing the date of start of construction. However, the schedule of payment was construction linked and the fourth instalment was to be paid on start of excavation. The said demand was made on 09.08.2012. Therefore, the possession of the apartment was required to be offered to the complainants on or before 09.11.2015. The complainants had made payments of all instalments demanded by the respondent amounting to Rs.1,12,46,673/-. The complainants



received offer of possession on 02.11.2019 after delay of several years wherein the respondent adjusted delayed compensation of Rs.6,81,072/- which is their own imaginary calculation. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to handover possession of the residential flat in question and pay delay interest @24% for delay in handing over possession.
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 has contested the complaint on the following grounds:
- i. That the present complaint pertains to the alleged delay in delivery of possession for which the complainants have filed the present complaint before the authority inter alia seeking possession of the unit in question as well as delayed interest @24% p.a. towards delay in handing over the property. It is respectfully submitted that complaints pertaining to interest and compensation etc. 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 complainants vide application form dated 02.09.2011 applied to the respondent for provisional allotment of the unit in the said project developed by the respondent. The said booking application contained detailed terms and conditions and was subject to buyer's agreement (hereinafter referred to as "agreement") to be executed later. Pursuant thereto, the complainants were allotted a unit bearing no. PGN 02-056, in the project vide provisional allotment letter dated 28.9.2011. Subsequently, buyer's agreement dated 31.10.2011 was executed between the complainants and the respondent.
 - iii. That the total sale consideration for the apartment in question, was about Rs.1,13,37,804/- which was to be paid in installments as per the agreed payment plan. Accordingly, respondent kept raising demands on achieving the relevant construction milestone against which payment was required to be made by the complainants. However, the complainants defaulted in few instalments.
 - iv. That the respondent on receipt of the occupation certificate, offered possession of the said unit to the



complainants vide offer of possession letter dated 2.11.2019 subject to making payments and submission of necessary documents. It may be submitted that the complainants have credited with compensation of Rs.6,81,072/- towards the delayed possession. Despite various reminders dated sent, the complainants have failed to comply with the requirements as detailed in the offer of possession notice and take possession of the said unit.

- v. That the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent- (a) that the time period mentioned for handing over of possession is also dependent on the complainants making timely payment of all installments; (b) that several allottees, like the complainants, has defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous



business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants.

- vi. 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, 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 placed 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 10(a) of the buyer's agreement executed between the parties on 31.10.2011, 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 02.11.2019 after receipt of occupation certificate dated 17.10.2019.

11. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 31.10.2011 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. 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.
12. It is evident from the statement of account dated 28.01.2021 (at page 104 of reply filed by the respondent) that the respondent has already given compensation amounting to Rs.6,81,072/- to the complainant 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. 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. 6,81,072/- 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.



- v. Interest on the delay 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 complainants in case of delay possession charges.
14. Complaint stands disposed of.
15. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2021



(Dr. K.K. Khandelwal)

Chairman

Judgement uploaded on 08.04.2021.