

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

Complaint no. : 3615 of 2020
First date of hearing : 02.02.2021
Date of decision : 02.02.2021

1. Mr. Om Prakash Arora
2. Ms. Poonam Arora
Both RR/o 180/6, New Water Tank,
Awasi Niwas, PO Rudrapur,
Uttarakhand-263153.

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:

Smt. Neeta Sinha Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Advocates 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 86 of reply]
7.	Date of provisional allotment letter	22.09.2011 [Page 25 of complaint]
8.	Unit no.	PGN-02-0606, 6 th floor, building no. 2 [Page 31 of complaint]
9.	Unit measuring (super area)	1900 sq. ft.

10.	Date of execution of buyer's agreement	31.10.2011 [Page 29 of complaint]
11.	Payment plan	Construction linked payment plan [Page 50 of complaint]
12.	Total consideration as per statement of account dated 04.12.2020 (Page 78 of reply)	Rs.1,13,37,791/-
13.	Total amount paid by the complainants as per statement of account dated 04.12.2020 (Page 80 of reply)	Rs.1,12,51,647/-
14.	Date of start of construction as per statement of account dated 04.12.2020	09.08.2012 [Page 78 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 38 of complaint]	09.11.2015
16.	Date of offer of possession to the complainants	02.11.2019 [Page 93 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 22.09.2011 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 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 complainants have filed the present complaint seeking interest on the payment made to the respondent on account of the alleged delay in delivery of possession of the apartment allotted to the complainants. It is respectfully submitted that complaints pertaining to compensation, interest and refund 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, in pursuance of the application form dated 02.09.2011, were allotted the said unit in the said project vide provisional allotment letter dated



22.09.2011. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the said unit. The buyer's agreement was executed between the complainants and the respondent on 31.10.2011. The complainants have consciously defaulted in timely remittance of instalments to the respondent and the same is evident from the statement of account dated 04.12.2020.

- iii. That clause 10(a) of the buyer's agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit would be handed over within 36 months from the date of start of construction (09.08.2012). It has further been specified in the same clause that the respondent will be entitled to a grace period of 3 months. Clause 10(b) provides that the time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. In terms of clause 10(b)(iv) in the event 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.



- iv. 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 as envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. It is submitted that the interest demanded by the complainants are compensatory in nature. Therefore, the complainants were/are not entitled to any compensation or interest in the terms of the buyer's agreement. As a gesture of goodwill, an amount of Rs.6,81,072/- had been credited to the account of complainants by the respondent towards compensation for delay even though the complainants were not entitled as per the buyer's agreement.
- v. That the complainant was offered possession of the said unit vide letter of offer of possession dated 02.11.2019. The complainants were called upon to remit balance payment and to complete the necessary formalities/documentation necessary for handover of the said unit to them. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and

conditions of the buyer's agreement. The respondent explained to the complainants that they were not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of the second instalment as per schedule of payment incorporated in the buyer's agreement. The complainants are needlessly prolonging the matter and have till date did not pay the outstanding amount of Rs. 10,38,696/- to the respondent and neither have they taken possession of their unit.

- 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 04.12.2020 (at page 78 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


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2021

Judgement uploaded on 08.04.2021.

HARERA
GURUGRAM