

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

Complaint no. : 1932 of 2018
First date of hearing : 19.03.2019
Date of decision : 26.03.2021

1. Mr. Rajeshwar Arora
2. Mr. Deepak Arora
Both RR/o 153, Kadambari Apartments,
Sector 9, Plot no. 19, Rohini, New Delhi.
(Presently residing at: A2/603, Printers
Apartments, Plot no.18, Rohini,
Sector 13, near Bhagwati Hospital, Delhi.)

Complainants

Versus

M/s Emaar MGF Land Ltd. सत्यमेव जयते
Address: 306-308, 3rd floor, Square One,
C2, District Centre, New Delhi-110017.
Also at: ECE House, 28 Kasturba Gandhi
Marg, New Delhi-110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Shri Tushar Bahmani Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 03.12.2018 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.	Total licensed 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.	HRERA registered/ not registered	Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.
6.	HRERA registration valid up to	02.10.2022
7.	Occupation certificate granted on	24.12.2019 [Page 17 of written arguments filed by the respondent]



8.	Date of provisional allotment letter	02.11.2010 [Page 54 of complaint]
9.	Unit no.	PH3-66A-0202, 2 nd floor, building no. 66A [Page 66 of complaint]
10.	Unit measuring (super area)	1450 sq. ft.
11.	Date of execution of buyer's agreement	10.02.2011 [Page 64 of complaint]
12.	Payment plan	Construction linked payment plan [Page 94 of complaint]
13.	Total consideration as per statement of account dated 07.01.2020 at page 25 of written arguments filed by respondent	Rs.74,88,182/-
14.	Total amount paid by the complainants as per statement of account dated 07.01.2020 at page 26 of written arguments filed by respondent	Rs.80,87,760/-
15.	Date of start of construction as per statement of account dated 07.01.2020	25.02.2011 [Page 25 of written arguments filed by respondent]
16.	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 i.e. 25.02.2011 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 77 of complaint]	25.02.2014
17.	Date of offer of possession to the complainants	07.01.2020



		[Page 20 of written arguments filed by the respondent]
18.	Delay in handing over possession till date of offer of possession i.e. 07.01.2020	5 years 10 months 13 days

3. As per clause 11(a) of the buyer's agreement, the possession was to be handed over within a period of 33 months from the start of the construction (25.02.2011) 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 25.02.2014. Clause 11 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 they signed booking application form on 10.10.2010. Thereafter, a 'Welcome Letter' was issued to the complainants on 02.11.2010 along with 'Provisional Allotment Letter' for the unit in question in



the said project. The buyer's agreement was signed between the complainants and the respondent on 10.02.2011. The complainants had paid 95% of the total amount of the sale consideration as per the payment schedule as demanded by the respondent. There is no default on part of the complainants as regard to the payments and that the payments have been duly paid to the respondent within time. As per the buyer's agreement dated 10.02.2011, the respondent was required to handover the actual physical possession of the said unit on or before 25.02.2014. But due to factual circumstances at the site of the said project, the construction work has started after much delay and that the project of the respondent has not been yet completed. The respondent had failed to handover the actual physical possession of the apartment in dispute till filing of this complaint. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to pay delayed possession charges on the entire amount of sale consideration deposited till date with them to the complainants i.e. on Rs. 69,96,998/- @24% interest from the date of possession agreed as per the buyer's agreement i.e. on 25.02.2014 till actual handing over of physical possession of the apartment in dispute.



- ii. Direct the respondent to handover the actual physical possession of the apartment in dispute along with payment of delayed possession charges.
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 complainants have filed the present complaint seeking interest and compensation for alleged delay in delivering the possession of the apartment booked by the complainants and also possession of the said apartment. The respondent submitted that complaints pertaining to compensation, possession etc. are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this hon'ble authority.
 - ii. The respondent submitted that in accordance with the payment plan opted by the complainants, demand letters dated 04.02.2011, 08.02.2011 for payment were



dispatched to the complainant. The complainants availed a home loan from the Axis bank. The loan sanction letter, tripartite agreement and permission to mortgage was duly issued by the respondent.

- iii. The respondent submitted that vide letter dated 03.03.2017, the complainants were informed that the site plan approved earlier for the project, was proposed to be revised. Accordingly, suggestions/objections against the proposed revision were invited by the respondents as per the requirements of the town and country planning department, Haryana.
- iv. The respondent is conscientiously completing the construction in an expeditious manner and the part of the project in which the apartment in question is situated, is expected to be completed shortly after which the respondent shall make an application for issuance of the occupation certificate in respect thereof. Upon receipt of occupation certificate and subject to reasons beyond the control of the respondent, the possession of the apartment shall be offered to the complainants after receipt of balance amounts and fulfilment of requisite formalities. The respondent has already received the occupation certificate in respect of part of the project



comprising of 25 towers and has also applied for occupation certificate of another 24 towers. Conveyance deeds for the same are also being executed in favour of the allottees. Thus, it is evident that the respondent is committed towards fulfilment of its contractual obligations and is endeavouring to complete construction of all the apartments and to deliver possession to all the allottees, including the complainants expeditiously.

- v. Hence, the present complaint deserves to be dismissed at the very threshold.
7. The respondent has filed **written arguments** on 28.10.2020. The respondent has submitted that the construction of the unit/tower in question was completed in February 2019 and the respondent applied for and has been granted the occupation certificate on 24.12.2019. Upon receipt of the occupation certificate, possession of the unit has been offered to the complainant vide letter of offer of possession dated 07.01.2020. By the said letter, the complainant was called upon to make the balance payment, complete the necessary formalities and documentation so that possession of the unit could be handed over to the complainant.
8. 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.

9. 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.**

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. 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.
12. 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.
13. 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.

14. Arguments heard.

15. On consideration of the documents filed 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 10.02.2011, 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. As per statement of account dated 07.01.2020, the respondent has raised demand on account of "start of construction" on 25.02.2011. Both the parties have agreed to it. Accordingly, 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 has not been offered to the complainants on 07.01.2020 after receipt of occupation certificate dated 24.12.2019.

16. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 10.02.2011 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 rate of the prescribed interest @ 9.30% p.a. w.e.f. due date of handing over 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.


17. It is evident from the statement of account dated 07.01.2020 (at page 25 of written arguments filed by the respondent) that the respondent has already given compensation amounting to Rs.7,53,325/- to the complainants on account of delay in handing over possession as per clause 13 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.
18. Hence, the Authority hereby pass the following order and issue directions under section 37 read with 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. 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. However, the respondent has already paid a sum of Rs.7,53,325/- 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 complainants shall be charged at the prescribed rate i.e. @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

19. Complaint stands disposed of.

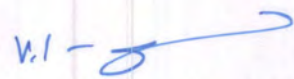
20. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.03.2021


(Vijay Kumar Goyal)

Member

Judgement uploaded on 09.04.2021.