

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

Complaint no. : 1953 of 2019
First date of hearing : 20.11.2019
Date of decision : 26.03.2021

Shilpi Sharma
R/o: B-184, Fateh Nagar
New Delhi

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office Address: 306-308, 3rd Floor,
Square One, C-2, District Centre
Saket, New Delhi-110017

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Smt. Shilpi Sharma
Shri Sanjeev Sharma

Complainant in person
Proxy counsel Shri Tushar
Bahmani, Advocate for the
complainant

Shri J.K. Dang along with Shri
Ishaan Dang

Advocates for the respondent

ORDER

1. The present complaint dated 21.05.2019 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 promoters shall be responsible for all obligations, responsibilities and functions to the allottees 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.
	HRERA registration valid up to	02.10.2022



7.	Occupation certificate received on	24.12.2019 [Page 119 of reply]
8.	Provisional allotment letter dated	19.07.2010 [Page 29 of reply]
9.	Unit no.	PH4-78-0402, 4 th floor, block 78 [Page 50 of complaint]
10.	Unit measuring	1950 sq. ft.
11.	Date of execution of buyer's agreement	28.08.2010 [Page 48 of complaint]
12.	Payment plan	Construction Linked Plan Subvention Plan [Page 109 of complaint]
13.	Total consideration as per statement of account dated 06.10.2020 at page 84 of reply	Rs. 87,49,898/-
14.	Total amount paid by the complainants as per statement of account dated 06.10.2020 at page 85 of reply	Rs.81,65,246/-
15.	Date of start of construction as per statement of account dated 06.10.2020 at page 84 of reply	22.05.2011
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 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 61 of complaint]	22.05.2014
17.	Date of offer of possession to the complainant	07.01.2020 [Page 113 of reply]



18.	Delay in handing over possession till date of offer of possession i.e. 07.01.2020	5 years 7 month 16 days
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3. As per clause 11(a) of the buyer's agreement, the possession of the subject unit 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 22.05.2011, therefore, the due date of delivery of possession comes out to be 22.05.2014. 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 she booked the unit in question by paying booking amount of Rs.5,00,000/- on 15.07.2010 in the said project. The buyer's agreement was executed between the parties to the present complaint on 28.08.2010. The clause 11(a) of the buyer's agreement dated



28.08.2010 mentions that the respondent shall handover the possession of the unit within a period of 33+3 months from the date of start of construction, subject to certain limitations as may be provided in the buyer's agreement and timely compliance of the provisions of the buyer's agreement by the complainant. The complainant and the respondent also agreed to a grace period of 3 months for applying occupation certificate in respect of the unit after the said period of 33 months. On 22.05.2011, the construction commenced on the site. That the complainant had paid 95% of the total amount of sale consideration as per the payment schedule i.e. Rs. 81,65,246/- as demanded by the respondent. As per the buyer's agreement dated 28.08.2010, the respondent was required to hand over the actual physical possession of the mentioned unit on or before 22.05.2014 which includes 3 months' time of grace period after the expiry of 33 months from the start of construction. But due to the factual circumstances at the site of the said project, the construction work has not completed even 50% of the total construction work. That there is a delay in completion of the mentioned project by the respondent which amounts to breach of the



terms and conditions of the buyer's agreement. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay delay interest at prescribed rate for delay in handing over of the possession till actual handing over of possession of the unit.
 - ii. Direct the respondent to handover the actual possession of the unit in dispute to 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 complainants have filed the present complaint seeking compensation and interest for the alleged delay in delivering possession of the unit booked by him. 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 complainant, in pursuance of the application form dated 20.06.2010, was allotted a unit bearing no



PH4-78-0402, located on the 4th Floor, in the project vide provisional allotment letter dated 19.07.2010. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question. The complainant further undertook to be bound by the terms and conditions of the application form. Thereafter buyer's agreement dated 28.08.2010 was executed between the complainant and the respondent. It is pertinent to mention that the buyer's agreement was executed voluntarily and consciously by the complainant after reading and understanding the terms and conditions stipulated therein to her full satisfaction.

- iii. That clause 13 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 envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any



other amount shall be payable to the allottees. It is submitted that the complainant by way of instant complaint are demanding interest and compensation for alleged delay in delivery of possession. The delayed possession charges are compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

- iv. 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.
- v. Thereafter, the respondent had offered possession of the unit in question to the complainants vide letter of offer of possession dated 07.01.2020. 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 them. However, the complainant has consciously



refrained from obtaining possession of the unit in question.

- vi. 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.
- vii. Hence, this complaint is liable to be dismissed.



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 respondents are in contravention of the provisions of the Act. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 28.08.2010, 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 grace period of 3 months is allowed to the respondent due to exigencies beyond its control. As per statement dated 06.10.2020, the respondent has raised demand on account of "start of construction" on 22.05.2011. Both the parties have agreed to it. Accordingly, the date of start of construction is 22.05.2011, therefore, the due




date of delivery of possession comes out to be 22.05.2014. The respondent has offered possession of the subject unit on 07.01.2020 after receipt of OC dated 24.12.2019. Accordingly, it is failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.08.2010 to hand over the possession within the stipulated period.

11. 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 delay possession charges at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of delivery of possession 22.05.2014 till handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
12. 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 @ 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession is 22.05.2014 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.

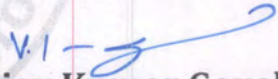
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. Interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
13. Complaint stands disposed of.
14. File be consigned to registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.03.2021

Judgement uploaded on 09.04.2021.


(Vijay Kumar Goyal)
Member