

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

Complaint no. : 4318 of 2020
First date of hearing : 27.01.2021
Date of decision : 26.03.2021

1. Parminder Singh Gill
2. Parveen Gill
Both RR/o : 35, Sector 2,
Panchkula, Haryana-134109.

Complainants

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Shri Pawan Kumar Ray
Smt. Kanika Gomber

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 07.12.2020 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	29.35 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 30.08.2019 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. Valid upto- 02.10.2022
7.	Occupation certificate granted on	24.12.2019 [Page 145 of reply]
8.	Unit no.	PH4-76-0901, 9 th floor, block 76 [Page 37 of complaint]
9.	Unit measuring	1950 sq. ft.



10.	Date of execution of buyer's agreement	18.04.2011 [Page 36 of complaint]
11.	Payment plan	Construction linked plan [Page 51 of complaint]
12.	Total consideration as per statement of account dated 14.02.2020 [page no. 61 of complaint]	Rs.1,02,61,601/-
13.	Total amount paid by the complainants as per statement of account dated 14.02.2020 [page no. 62 of complaint]	Rs.1,06,07,597/-
14.	Date of start of construction as per statement of account dated 14.02.2020 [page no. 61 of complaint]	16.05.2011
15.	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 39 of Complaint]	16.05.2014
16.	Date of offer of possession to the complainants	02.01.2020 [Page 64 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 02.01.2020	5 years 7 months 17 days

3. As per clause 11(a) of the agreement, the possession of the unit in question 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 complainants submitted that the respondent launched the said project in the year 2009. They paid a sum of Rs.5,00,000/- towards booking of the said unit on 05.01.2011. On 18.04.2011, a buyer's agreement was executed between the respondent company and the complainants. As per clause 11(a) of the buyer's agreement, the possession of the said unit was to be handed over within 33 months from the date of start of construction plus grace period of 3 months. The construction of the project started on 16.05.2011 as admitted by the respondent. Therefore, the possession of the unit was to be delivered by 16.05.2014. That after a delay of almost 6 years, the respondent sent a letter of offer of possession dated 02.01.2020 to the complainants whereby it was informed that



the occupation certificate was received, and unit is ready for possession. That at the time of sending the letter of offer of possession, they were in Melbourne, Australia and they flew all the way from Melbourne, Australia only for their appointment with the respondent on 11.03.2020 for taking over physical possession. During their visit on 11.03.2020, the complainants were surprised to see that the project was not complete and the construction was ongoing at the site clarification of delayed payment charges and delay compensation. In the letter dated 02.01.2020, the respondent claimed that they have adjusted a sum of Rs.10,02,995/- towards compensation for delay in possession as per clause 13(a) of the agreement. That the said compensation is inadequate, unfair and unjustified in view of long inordinate and unexplained delay. That till date, the respondent has not completed the unit in all aspects. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to deliver immediate possession of the flat with all the amenities and facilities and to the satisfaction to the complainants.
- ii. Direct the respondent to pay interest @24% p.a. on amount paid by the complainants from the promised date of delivery of 16.02.2014 till the actual delivery of possession.



- iii. Direct the respondent to cancel the offer of possession letter dated 02.01.2020 being incomplete, invalid and illegal.
 - iv. Direct the respondent to issue a fresh demand letter after adjustment of delay compensation and direct then not to include holding charges for delay in taking over possession and not to charge 24% on the outstanding amount in view of offer of possession being invalid and illegal.
 - v. Direct the respondent not to include any other charges which are not part of the buyer's agreement.
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 hon'ble authority, inter-alia seeking possession of the unit in question as well as delayed interest @ 24% p.a. towards delay in handing over the unit.



- ii. That the complainants, in pursuance of the application form dated 04.01.2011, were allotted an independent unit bearing no. PH4-76-0901, located on the 9th floor, in the project vide provisional allotment letter dated 25.01.2011. Thereafter, buyer's agreement dated 18.04.2011 was executed between the complainants and the respondent. The total sale consideration for the apartment in question, was about Rs.96,78,824/- excluding other charges, 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 payment of instalments due on 24.02.2011, 25.04.2011, 9.08.2012, 06.09.2013 and 25.07.2017.
- iii. That on receipt of the occupation certificate dated 24.12.2019, respondent has offered possession to the complainants on 02.01.2020 subject to payment of the outstanding amount and submission of necessary documents. The complainants have also been credited with a compensation of Rs.10,02,995/- towards delayed possession. However, till date the complainants have



failed to complete the possession formalities and take possession of the apartment.

- iv. That 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 took the decision to go ahead and construct the second staircase, thereafter, upon issuance of 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.
- v. That several allottees, have defaulted in timely remittance of payment of instalments 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. It is submitted that the construction of the tower in which the unit in question is situated is already complete and the respondent has already offered possession of the unit in question.

- 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, explanation, other submissions made and the documents filed by the complainants are of considered view that there is no need of further hearing in the complaint.



9. On consideration of the documents available on record and submissions made by both the parties and based on the findings of the authority regarding contravention of provisions of the Act, 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 18.04.2011, 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. The grace period of 3 months is allowed to the respondent due to exigencies beyond its control. As per statement of account dated 14.05.2020, the respondent has raised demand on account of "start of construction" on 16.05.2011. Both the parties have agreed to it. Accordingly, the date of start of construction is 16.05.2011, therefore, the due date of delivery of possession comes out to be 16.05.2014. The possession of the subject unit was offered to the complainants on 02.01.2020 after receipt of occupation certificate dated 24.12.2019. Copies of the same has been placed on record.
10. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 18.04.2011 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. due date of delivery of possession 16.05.2014 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

11. It is evident from the statement of account dated 14.02.2020 (at page 61 of complaint filed by the complainants) that the respondent has already given compensation amounting to Rs.10,02,995/- on 02.01.2020 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.
12. With respect to cancellation of letter of offer of possession dated 02.01.2020, the complainant has only contented in the complaint that one of the reasons for not taking possession was that the unit was incomplete and was not in habitable condition, however, in support of this contention the complainant has failed to place on record any photograph/communication raising protest against the said letter of offer of possession. Therefore, the contention of the


complainant w.r.t cancellation of letter of offer of possession is not sustainable.

13. With respect to the holding charges, the authority has already comprehensively decided the said issue in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.** wherein it was held that respondent cannot levy holding charges on a homebuyer/allottee. Relying on Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015 which was later upheld by the hon'ble Supreme Court of India vide order dated 14.12.2020 in case titled as DLF Home Developers Ltd. (Earlier known as DLF Universal Ltd.) and Anr. V. Capital Greens Flat Buyer's Association in civil appeal nos. 3864-3889/2020, the authority held that the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

14. With respect to charging of 24% on the outstanding amount/delayed payments by the respondent/promoter, the

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. The respondent shall not charge holding charges from the complainants.
 - vi. 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.
16. Complaint stands disposed of.
17. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 26.03.2021

Judgement uploaded on 09.04.2021.