

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

Complaint no. : 6324 of 2019
First date of hearing : 21.01.2020
Date of decision : 26.03.2021

1. Brigadier Deepak Sharma
2. Sonia Sharma
Both RR/o B-2/51, Azad Apartments,
Sri Aurobindo Marg, near IIT Gate,
New Delhi-110016.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Address: 306-308, 3rd floor, Square One,
C2, District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Ms. Vridhi Sharma Advocate for the complainants
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

ORDER

1. The present complaint dated 13.12.2019 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. 12 of 2020 dated 27.05.2020
	HRERA registration valid up to	As ex post facto approval valid for the period from 27.05.2020 and ending with 24.12.2019
6.	Occupation certificate granted on	24.12.2019 [Page 166 of reply]
7.	Date of provisional allotment letter	13.07.2010 [Page 47 of reply]
8.	Unit no.	PH3-17-0502, 5 th floor, building no. 17



		[Page 24 of complaint]
9.	Unit measuring (super area)	1450 sq. ft.
10.	Date of execution of buyer's agreement	16.08.2010 [Page 51 of reply]
11.	Payment plan	Construction linked payment plan [Page 85 of reply]
12.	Total consideration as per statement of account dated 18.01.2020 (Page 132 of reply)	Rs.62,32,872/-
13.	Total amount paid by the complainants as per statement of account dated 18.01.2020 (Page 133 of reply)	Rs.66,19,334/-
14.	Date of start of construction as per statement of account dated 18.01.2020	22.05.2011 [Page 133 of reply]
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 i.e. 22.05.2011 plus grace period of 3 months for applying and obtaining the CC/OC in respect of the unit and/or the project. [Page 68 of reply]	22.05.2014
16.	Date of offer of possession to the complainants	21.01.2020 [Page 169 of reply]
17.	Delay in handing over possession till date of offer of possession i.e. 21.01.2020	5 years 7 months 30 days

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 start of the construction (22.05.2011) 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 22.05.2014. 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 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 they had made the booking of the said apartment in the said project in the year 2010. The buyer's agreement was signed on 16.08.2010. The complainants had paid more than 90% of the sale consideration but despite huge payment, the respondent company has failed to complete the construction of the unit till date. The possession of the possession of the said unit has been due since 22.02.2014. The possession of the apartment was promised by the respondent company within 33 months from the start of construction. The demand for the start of



construction was raised by the respondent company on 22.05.2011 but despite lapse of more than 69 months till date of filing of this complaint, the possession of the unit is nowhere near. The complainants are aggrieved and therefore preferred the present complaint for delivery of possession of the apartment along with delay penalty. The complainants reserve their right to file separate application for compensation for delay, mental harassment and agony before the hon'ble adjudicating officer. Hence, the present complaint inter alia for the following reliefs:

- i. Direct the respondent to immediately deliver the possession of the unit in question in the said project.
 - ii. Direct the respondent to make the payment of delay possession charges at prescribed rate of interest p.a. from the promised date of possession until the actual physical possession of the completely developed unit is given.
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 submitted that the provisions of the Act are not applicable to the project in question. The application for issuance of occupation certificate in respect of the tower/apartment in question was made on 26.04.2017 i.e. before the notification of Rules. Thus, the project in question is not an ongoing project under rule 2(1)(o) of the Rules. The project does not require registration and consequently has not been registered under the provisions of the Act. This hon'ble authority does not have jurisdiction to entertain and decide the present complaint.
- ii. The respondent submitted that the complainants have filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the apartment booked by the complainants. The complaints pertaining to 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.
- iii. The respondent submitted that the said unit was provisionally allotted to the complainants vide provisional allotment letter dated 13.07.2010. Thereafter, buyer's agreement was executed between the



parties on 16.08.2010. The complainants had agreed and undertaken to make payment of sale consideration in accordance with the payment plan but failed to do so. Consequently, the respondent was constrained to issue demand notices and reminders for payment to the complainants.

- iv. The respondent submitted that the construction of the apartment/tower was completed in the month of April 2017 and application for issuance of occupation certificate was made on 26.04.2017. Occupation certificate had been issued by the competent authority on 24.12.2019. Vide offer of possession dated 21.01.2020, the respondent has offered possession of the apartment to the complainants and called upon them to make payment of balance sale consideration and complete the requisite formalities to enable the respondent to handover possession to the complainants. Although the complainants are defaulters and hence not entitled to any compensation, nevertheless an amount of Rs.7,64,408/- has been credited by the respondent as compensation against the last demand raised by the respondent.
- v. 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.

- vi. Hence, the present complaint deserves to be dismissed at the very threshold.
7. The respondent has filed **written arguments** on 28.10.2020. 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.**

8. 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]**.
9. 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.
10. 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.

11. The authority, on the basis of information, explanation, other submissions made and the documents filed by the complainants and the respondent, is of considered view that there is no need of further hearing in the complaint.
12. Arguments heard.
13. On consideration of the documents available on record and submissions made by 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 16.08.2010, 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. As per statement of account dated 18.01.2020, 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 possession of the subject unit has been offered to the complainants on 21.01.2020 after receipt of occupation certificate dated 24.12.2019.

14. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 16.08.2010 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. 22.05.2014 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
15. The respondent has already credited an amount of Rs.7,64,408/- to the complainants on account of delay in handing over possession of the subject unit in terms of clause 13 of the buyer's agreement. The amount so paid by the respondent shall be adjusted towards the prescribed interest to be paid by the respondent under section 18(1) of the Act.
16. Hence, the authority hereby pass the following order and issue directions under section 37 read with section 34(f) of the Act:
- 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. 22.05.2014 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.7,64,408/- 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 @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

17. Complaint stands disposed of.

18. 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.