

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

Complaint no. : 1037 of 2020
First date of hearing : 23.04.2020
Date of decision : 26.03.2021

Mohit Mandhana
R/o: 204, Madhav Vilas,
Madho Singh Circle Bani Park,
Jaipur, Rajasthan

Complainant

Versus

M/s Emaar MGF Land Ltd.
Office Address: Emaar MGF Business Park,
M.G. Road, Sikanderpur Chowk,
Sector-28, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Shri Sanjeev Sharma
Shri J.K. Dang along with Shri
Ishaan Dang

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 05.03.2020 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 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 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. 12 of 2020 dated 27.05.2020 for 7.41 acres
7.	HRERA registration valid up to	As ex post facto approval valid for the period from 27.05.2020 and ending with 24.12.2019



8.	Occupation certificate received on	24.12.2019 [Page 111 of reply]
9.	Provisional allotment letter	04.08.2010 [Page 39 of reply]
10.	Unit no.	PH3-16-0802, 8 th floor, building no. 16 [Page 19a of complaint]
11.	Unit measuring	1450 sq. ft.
12.	Date of execution of buyer's agreement	23.11.2010 [Page 18 of complaint]
13.	Payment plan	Construction Linked Plan [Page 33a of complaint]
14.	Total consideration as per statement of account dated 27.12.2019 at page no. 48 of complaint and dated 12.03.2020 at page 52 of reply	Rs.69,42,842/-
15.	Total amount paid by the complainant as per statement of account dated 27.12.2019 at page no. 49 of complaint and dated 12.03.2020 at page 53 of reply	Rs.72,58,653/-
16.	Date of start of construction as per statement of account dated 27.12.2019 at page no. 48 of complaint	25.02.2011
17.	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 25 of Complaint]	25.02.2014



18.	Date of offer of possession to the complainant	27.12.2019 [Page 43 of complaint]
19.	Delay in handing over possession till date of offer of possession i.e. 27.12.2019	5 years 10 month 2 days

3. As per clause 11(a) of the agreement, the possession 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 25.02.2011, therefore, the due date of delivery of possession comes out to be 25.02.2014. 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 he booked the said unit by paying Rs.1,00,000/- and Rs.4,00,000/- to the promoter on 12.07.2010 and 17.07.2010. The buyer's agreement dated



23.11.2010 was executed between the parties on terms and conditions laid down by the company. As per clause 11(a) of the buyer's agreement, the possession of the unit in question was to be handed over within 33 months from the date of said agreement with a grace period of 3 months. Therefore, the possession was to be handed over lastly by 23.11.2013, however, at that time the construction of the project was far from completion. That while entering into the abovesaid agreement, the respondent sold one car parking space to the complainant for a consideration of Rs.2,00,000/-. All instalments were paid as demanded by the company and amount of Rs.72,58,653/- were paid to the promoter up to 27.12.2019. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay interest for the delayed period of possession as arrears of DPC and further ordered to pay interest for each month till the possession is handed over.
- ii. Direct the respondent to recalculate the interest on equitable basis from the beginning and reimburse, if charged extra than MLCR.



- iii. Direct the respondent to refund back the parking if charged extra without providing garage and on common areas or basements then it is illegal.
 - iv. The VAT charged @ 1% of the total amount is against the policy and notification issued in this regard. The promoter be asked to reimburse the amount.
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. The respondent 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 the rules. Thus, the project in question is not an ongoing project under rule 2(1)(o) of the rules. The said project does not require registration and consequently has not been registered under the provisions of the Act. This hon'ble authority



does not have the jurisdiction to entertain and decide the present complaint.

- ii. The respondent submitted that the complainant has filed the present complaint seeking interest on account of the alleged delay in delivering possession of the apartment 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.
- iii. The respondent submitted that the complainant and his wife, in pursuance of application form dated 10.07.2010, were provisionally allotted the said unit vide letter dated 04.08.2010. The complainant and his wife have consciously and wilfully opted for construction linked payment plan for remittance of sale consideration for unit in question and further represented to the respondent that they shall remit every instalment on time as per payment schedule.
- iv. The respondent submitted that clause 13 of the buyer's agreement dated 23.11.2010 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. The complainant and his wife had defaulted in timely remittance of instalments and are, consequently, not entitled to any compensation or to any amount towards interest under the buyer's agreement.

- v. 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 26.04.2017 to the competent authority. The occupation certificate was thereafter granted on 24.12.2019 in favour of the respondent.
- vi. Thereafter, the respondent had offered possession of the unit in question to the complainant vide letter of offer of possession dated 27.12.2019. The complainant was called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/ documentation necessary for handover of the unit to them. However, the complainant approached



the respondent demanding compensation alleging delay in delivery of possession. The respondent explained to them that they are not entitled to any compensation on account of defaults of various clauses of the buyer's agreement committed by him. However, respondent in order to avoid unwanted controversy, proceeded to credit an amount of Rs. 7,62,263/- to the account of the complainant as a gesture of goodwill.

- vii. 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 complainant. *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 contractor cannot be attributed to the respondent as the same was beyond its control.

- viii. Hence, the present complaint deserves to be dismissed.
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 both the parties, is of considered view that there is no need of further hearing in the complaint.
 9. The preliminary objection raised by the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by

the complainant at a later stage. The said decision of the authority has been upheld by the hon'ble Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as ***Emaar MGF Land Ltd. V. Simmi Sikka and anr.***

10. On consideration of the documents available on record 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 23.11.2010, 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 12.03.2020, the respondent has raised demand on account of "start of construction" on 25.02.2011. Both the parties have agreed to the said date. Accordingly, the date of start of construction is 25.02.2011. 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 25.02.2014. The possession of the subject unit has been offered to the complainant on 27.12.2019 after receipt of occupation certificate dated 24.12.2019.

11. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.11.2010 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 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 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.
12. It is evident from the statement of account dated 12.03.2020 (at page 52 of reply filed by the respondent) that the respondent has already given compensation amounting to Rs.7,62,263/- to the complainant 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.

Interest to be charged on equitable basis



13. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

14. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

Parking space

15. As far as issue regarding parking is concerned where the said agreements have been entered into before coming into force the Act, the matter is to be dealt as per the provisions of the



buyer's agreement. The respondent has charged Rs.2,00,000/- as per annexure III 'Schedule of Payment' of the agreement on account of covered car parking. As per clause 1.2(a) and 1.3, the following provisions have been made regarding parking space:

"1.2 Sale Price for Sale of Unit

(a) Sale Price

(i) The sale price of the Unit ("**Total Consideration**") payable by the Allottee(s) to the Company includes the basic sale price ("**Basic Sale Price/BSP**") of Rs.51,85,229.02/-, cost towards covered car park of Rs.2,00,000/-, External Development Charges ("**EDC**") of Rs.4,88,650/-.....

1.3 Parking Space

a) The Allottee(s) agrees and understands that the exclusively reserved car parking space assigned to the Allottee(s) shall be understood to be together with the Unit and the same shall not have any independent legal entity detached or independent from the said Unit. The Allottee(s) undertakes not to sell/ transfer/deal with such exclusive reserved car parking space independent of the said Unit. In case the Allottee(s) has/have applied for and has been allotted an additional parking space, subject to availability, the same shall also be subject to this condition. However, such additional parking space can only be transferred to any other allottee in the Building/Project."


16. The cost of parking of Rs.2,00,000/- has already been included in the total sale consideration and the same is charged as per the buyer's agreement. Accordingly, the promoter is justified in charging the same.

17. With respect to fourth relief sought by the complainant w.r.t. reimbursement of VAT, the complainant has neither substantiated the same in his pleadings/complaint and also at the time of arguments nor any proof has been placed on record in support of his assertions. Thus, the said relief cannot be granted.
18. Hence, the authority hereby passes 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 i.e. 25.02.2014 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. However, the respondent has already paid a sum of Rs.7,62,263/- 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.

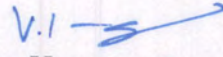
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant 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 23.04.2021