

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

Complaint no. : 980 of 2020
First date of hearing : 23.04.2020
Date of decision : 26.03.2021

1. Neetu Sharma
2. Pradeep Kumar Sharma
Both RR/o: Neetu Nursing Home,
Near Rao Tula Ram Chowk
Mohindergarh, Mahendragarh,
Haryana-123029

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

ORDER

1. The present complaint dated 28.02.2020 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 30.08.2024 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.
7.	Occupation certificate granted on	24.12.2019 [Page 116 of reply]
8.	Unit no.	PH4-67-0502, 5 th floor, building no. 67 [Page 28 of complaint]



9.	Unit measuring	1950 sq. ft.
10.	Date of execution of buyer's agreement	21.01.2011 [Page 24 of complaint]
11.	Payment plan	Construction linked plan [Page 56 of complaint]
12.	Total consideration as per statement of account dated 05.10.2020 [page no. 59 of reply]	Rs.89,32,875/-
13.	Total amount paid by the complainants as per statement of account dated 05.10.2020 [page no. 60 of reply]	Rs. 94,29,311/-
14.	Date of start of construction as per statement of account dated 05.10.2020 [page no. 59 of reply]	22.05.2011
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]	22.05.2014
16.	Date of offer of possession to the complainant	30.12.2019 [Page 77 of complaint]
17.	Delay in handing over possession till date of offer of possession i.e. 30.12.2019	5 years 7 months 8 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 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 2010. They paid a sum of Rs.5,00,000/- towards booking of the said unit. On 21.01.2011, 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. That the complainants paid all the instalments as and when fallen due or demanded by the respondent. That after a delay of almost 6 years, the respondent sent a letter of offer of possession dated 30.12.2019 to the complainants whereby it was informed that



the occupation certificate was received and unit is ready for possession. That aggrieved with long inordinate and unexplained delay of almost 6 years and the inadequate, unfair and unjustified delay compensation alleged to have adjusted in the final demand, the complainants have preferred the present complaint for the following reliefs:

- i. Direct the respondent to deliver immediate possession of unit with all the promised amenities and facilities and to the satisfaction to the complainants.
 - ii. Direct the respondent to pay interest @24% p.a. an amount paid by the complainants for delay in handing over the possession of the unit.
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. That the complainants have filed the present complaint seeking interest for alleged delay in delivery of possession of the unit booked by the complainants. It is respectfully submitted that 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 complainants, in pursuance of the application form dated 15.03.2010, were allotted an independent unit bearing no PH4-67-0502, located on the 5th floor, in the project vide provisional allotment letter dated 07.06.2010. The complainants consciously and willfully opted for a subvention plan for remittance of the sale consideration for the unit in question and further represented to respondent that the complainants shall remit every installment on time as per the payment schedule.
 - iii. That the complainants were irregular regarding the remittance of installments on time. Respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by them. Complainants consciously and maliciously chose to ignore the payment schedule issued by the respondent and flouted in making timely payment of the instalment, which was an essential, crucial and an indispensable requirement under the buyer's agreement. 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 and further causes enormous business losses to the respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

- iv. That buyer's agreement dated 21.01.2011 was executed between the complainants and respondent. 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. The complainants, having defaulted in timely remittance of instalment, were/are thus not entitled to any compensation or any

amount towards interest as an indemnification for delay, if any, under the buyer's agreement.

- v. That the respondent submitted an application dated 21.02.2019 to the competent authority. The occupation certificate was thereafter granted on 24.12.2019 vide memo bearing no. ZP-567-Vol-I/JD(RD)/2019/31934 in favour of the respondent. Thereafter, the respondent had offered possession of the unit in question through letter of offer of possession dated 30.12.2019 to the complainants. 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 him. However, the complainants approached the respondent demanding compensation alleging delay in delivery of possession of the unit in question. Furthermore, the respondent has credited an amount of Rs. 6,28,915/- dated 30.12.2019 and Rs. 3,56,289 dated 17.02.2020 to the account of the complainants as a gesture of goodwill. The complainants have accepted the aforesaid amount in full and final satisfaction of their alleged grievances.
- vi. 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 contractor cannot be attributed to the respondent as the same was beyond its control.

- vii. 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 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, 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 21.01.2011, 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. 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 was offered to the complainant on 30.12.2019 after receipt of occupation certificate dated 24.12.2019.
10. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.01.2011 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 complainant is entitled to delayed possession charges at rate of the prescribed interest @ 9.30% p.a. w.e.f. due date of delivery of possession i.e. 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.

11. It is evident from the statement of account dated 05.10.2020 (at page 59 of reply filed by the respondent) that the respondent has already given compensation amounting to Rs.6,28,915/- on 30.12.2019 and Rs.3,56,289/- on 17.02.2020 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. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

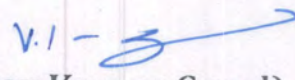
- i. The respondent is directed to pay the interest at the prescribed rate @9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 22.05.2014 till the handing over of possession. The arrears of interest accrued so far shall be

- paid to the complainant within 90 days from the date of this order.
- ii. However, the respondent has already paid a sum of Rs.6,28,915/- on 30.12.2019 and Rs.3,56,289/- on 17.02.2020 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 due 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.
13. Complaint stands disposed of.
14. 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