

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

**Complaint no.** : 902 of 2020  
**First date of hearing** : 06.03.2020  
**Date of decision** : 26.03.2021

Mrs. Neha Sharma  
R/o: H. No. 331, Ward No. 24,  
Jagdish Colony, Rohtak,  
Haryana-124001

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Sharma Advocate for the complainant  
Shri J.K. Dang along with Shri Ishaan Dang Advocates for the respondent

**ORDER**

1. The present complaint dated 24.02.2020 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	<b>Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.</b>
7.	HRERA registration valid up to	<b>02.10.2022</b>
8.	Occupation certificate received on	24.12.2019 [Page 61 of reply]
9.	Provisional allotment letter	04.01.2011 [Page 29 of reply]



10.	Unit no.	PH3-82-0901, 9 <sup>th</sup> floor, block 82 [Page 19a of complaint]
11.	Unit measuring	1575 sq. ft.
12.	Date of execution of buyer's agreement	01.04.2011 [Page 19 of complaint]
13.	Payment plan	Construction linked payment plan
14.	Total consideration as per statement of account dated 24.03.2020 at page 31 of reply	Rs.74,55,961/-
15.	Total amount paid by the complainant as per statement of account dated 24.03.2020 at page 33 of reply	Rs. 76,19,397/-
16.	Date of start of construction as per statement of account dated 24.03.2020 [Page no. 31 of reply]	25.04.2011
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]	25.04.2014
18.	<b>Date of offer of possession to the complainant</b>	28.12.2019 [Page 64 of reply]
19.	Delay in handing over possession till date of offer of possession i.e. 28.12.2019	5 years 8 months 3 days

3. As per clause 11(a) of the agreement, the possession of the subject unit was to be handed over within a period of 33



months from the 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 25.04.2011, therefore, the due date of delivery of possession comes out to be 25.05.2014. 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 they booked the said unit by paying Rs.5,00,000/- to the promoter on 04.12.2010. The buyer's agreement dated 01.04.2011 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 April 2014, 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.4,00,000/. All instalments were paid as demanded by the company and amount of Rs.76,19,397/- were paid to the promoter up to 28.12.2019. 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 pay 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 complainant has filed the present complaint seeking interest for alleged delay in delivering possession of the unit booked by the complainant. 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 project of the respondent is an "ongoing project" under RERA and the same has been registered under RERA Act, 2016 and HRERA Rules, 2017 vide memo no. HRERA-606/2017/1248 dated 03.10.2017.
  - iii. The respondent submitted that the complainant, in pursuance of application form dated 04.12.2010, was provisionally allotted the said unit vide letter dated 04.01.2011. The complainant has 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 he shall remit every instalment on time as per payment schedule. However, right from the beginning, the complainant defaulted in payment of instalments. The complainant



- was irregular regarding the remittance of instalments on time.
- iv. The respondent submitted that clause 13 of the buyer's agreement dated 01.04.2011 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 had defaulted in timely remittance of instalments and is, 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 21.02.2019 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 28.12.2019. The complainant was 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 complainant approached the respondent demanding compensation alleging delay in delivery of possession. The respondent explained to the complainant that he is not entitled to any compensation in terms of the buyer's agreement. However, respondent in order to avoid any unwanted controversy, proceeded to credit an amount of Rs. 5,07,193/- to the account of the complainant.

- 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. 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 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 01.04.2011,



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 date of start of construction is 25.04.2011, therefore, the due date of delivery of possession comes out to be 25.04.2014. The respondent has offered possession of the subject unit on 28.12.2019 after receipt of occupation certificate dated 24.12.2019. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 01.04.2011 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 i.e. 25.04.2014 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 24.03.2020 (at page 31 of reply filed by the respondent) that the respondent has already given compensation amounting to Rs.5,07,193/- 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.61,72,456.52/-, cost towards covered car park of Rs.2,00,000/-, External Development Charges ("EDC") of Rs.5,85,285.75/-*  
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#### **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."*

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.

16. With respect to fourth relief sought by the complainant w.r.t. reimbursement of VAT, the complainant has neither substantiated the same in the pleadings/complaint and also at the time of arguments nor any proof has been placed on record in support of her assertions. Thus, the said relief cannot be granted.
17. 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 i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 25.04.2014 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.



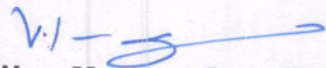
- ii. However, the respondent has already paid a sum of Rs.5,07,193/- towards delay in handing over possession at the time of offer of possession, therefore, the said amount shall be adjusted towards the amount to be paid by the respondent/promoter as delay possession charges under proviso to section 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.
18. Complaint stands disposed of.
19. 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