

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

**Complaint no.** : 901 of 2020  
**First date of hearing** : 06.03.2020  
**Date of decision** : 26.03.2021

1. Mrs. Sonia Sharma  
2. Mr. Ashok Sharma  
Both RR/o: H.No. 56P, Sector-2,  
Rohtak, Haryana-124001

**Complainants**

**Versus**

M/s Emaar MGF Land Ltd.  
Office Address: Emaar MGF 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 complainants  
Shri J.K. Dang along with Shri Advocates for the respondent  
Ishaan Dang

**ORDER**

1. The present complaint dated 24.02.2020 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	29.34 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 90 of reply]
9.	Unit no.	PH4-76-0101, 1 <sup>st</sup> floor, building no. 76





		[Page 21 of complaint]
10.	Unit measuring	1950 sq. ft.
11.	Date of execution of buyer's agreement	29.05.2012 [Page 19 of complaint]
12.	Payment plan	Construction linked payment plan [Page 50 of complaint]
13.	Total consideration as per statement of account 24.03.2020 at page 56 of reply	Rs.1,12,14,924/-
14.	Total amount paid by the complainants as per statement of account dated 24.03.2020 at page 57 of reply	Rs. 1,14,01,461/-
15.	Date of start of construction	<b>07.04.2011</b>  <b>Note:</b> The construction was started on <b>07.04.2011</b> as per statement of account dated 15.11.2019 in complaint no. 6456/2019 (unit situated in same tower in both the complaints)
16.	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 32 of Complaint]	07.04.2014
17.	<b>Date of offer of possession to the complainants</b>	07.01.2020 [Page 93 of reply]





18.	Delay in handing over possession till date of offer of possession i.e. 07.01.2020	5 years 9 months
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3. As per clause 11(a) of the agreement dated 29.05.2012, the possession of the subject unit was to be handed over within a period of 33 months from the date of start of the construction (07.04.2011) 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 delivery of possession comes out to be 07.04.2014. 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 they booked the said unit by paying Rs.5,00,000/- to the promoter on 02.04.2012. The buyer's agreement dated 29.05.2012 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 May 2015, 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 complainants for a consideration of Rs.4,00,000/-. All instalments were paid as demanded by the company and amount of Rs.1,14,01,461/- were paid to the promoter up to 06.01.2020. 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 than 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 complainants have filed the present complaint seeking interest on account of alleged delay in delivering possession of the unit booked by the complainants. 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 complainants, in pursuance of application form dated 02.04.2012, were provisionally allotted the said unit vide letter dated



16.04.2012. The complainants 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. However, right from the beginning, the complainants defaulted in payment of instalments. The complainants were irregular regarding the remittance of instalments on time.

- iv. The respondent submitted that clause 13 of the buyer's agreement dated 29.05.2012 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 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 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 complainants vide letter of offer of possession dated 07.01.2020. 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 them. However, the complainants approached the respondent demanding compensation alleging delay in delivery of possession. The respondent explained to the complainants that they are 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. 8,09,223/- to the account of the complainants.
- 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 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.

viii. Hence, the present complaint deserves to be dismissed.

7. The respondent has filed **written arguments** on 28.10.2020. respondent submitted that the complainants 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]*. The respondent submitted that the period utilised by the competent authority for grant of occupation certificate and the period utilised by the complainants to obtain possession of the unit in question deserves to be exempted for all intents and purposes.
9. 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.
10. 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.

11. 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 complainants at a later stage. The said decision of the authority has been upheld by the 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.***
12. 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 29.05.2012, possession of the booked unit was to be delivered within a period of 33 months from the date of start of construction plus 3 months grace period. The construction was started on **07.04.2011** as per statement of account dated 15.11.2019 in





complaint no. 6456/2019 (this complaint is also in respect of the same building/tower.) Both the parties have agreed to it. Therefore, the due date of delivery of possession comes out to be 07.04.2014. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.05.2012 to hand over the possession within the stipulated period. The possession of the subject unit has been offered to the complainants on 07.01.2020 after receipt of occupation certificate dated 24.12.2019.

13. 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 @ 9.30 % p.a. w.e.f. due date of delivery of possession i.e. 07.04.2014 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.
14. It is evident from the statement of account dated 24.03.2020 (at page 56 of reply filed by the respondent) that the respondent has already given compensation amounting to Rs.8,09,223/- 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.

**Interest to be charged on equitable basis**

15. 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;"*

16. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.

**Parking space**





17. 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.4,00,000/- 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.85,99,500/-, cost towards covered car park of Rs.4,00,000/-, External Development Charges ("**EDC**") of Rs.7,24,639.5/-  
.....

**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.4,00,000/- 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.

18. With respect to fourth relief sought by the complainants w.r.t. reimbursement of VAT, the complainants have neither substantiated the same in their pleadings/complaint and also at the time of arguments nor any proof has been placed on record in support of their assertions. Thus, the said relief cannot be granted.

19. 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 complainants from due date of possession i.e. 07.04.2014 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.8,09,223/- 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.

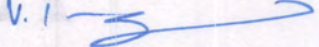
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.
  - v. Interest on the delay payments from the complainants shall 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 delay possession charges.
20. Complaint stands disposed of.
21. 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