

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

Complaint no. : 720 of 2021
Complaint filed on : 04.03.2021
First date of hearing : 26.03.2021
Date of decision : 21.12.2021

1. Akshay Tulshyan
2. Kanta Tulsian
Both RR/o: 1404, Ashoka Enclave, Plot no. 8A,
Sector 11, Dwarka, New Delhi - 110078.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office: 306-308, 3rd floor, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Arjun Agarwal
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 04.03.2021 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.

A. Project and unit related details

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, Haryana
2.	Project area	24.477 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 (For 24.4 acres) Valid/renewed up to 30.08.2024 b) 62 of 2013 dated 05.08.2013 (For 4.87 acres) Valid/renewed up to 04.08.2019
5.	HRERA registered/ not registered	Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.
	HRERA registration valid up to	02.10.2022
6.	Occupation certificate granted on	24.12.2019 [annexure R11, page 144 of reply]
7.	Provisional allotment letter in favour of the complainants/ original allottees dated	09.08.2010 [annexure R2, page 43 of reply]
8.	Unit no.	PH3-19-0701, 7 th floor, building no. 19 [annexure R4, page 50 of reply]
9.	Unit measuring	1450 sq. ft. [Page 50 of complaint]
10.	Date of execution of buyer's agreement between the complainants and the respondent	20.10.2010 [annexure R4, page 48 of reply]
11.	Payment plan	Construction linked payment plan

ii. Any other relief which the hon'ble authority may deem fit qua the facts and circumstances of the present case.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:

- i. That the complainants have filed the present complaint seeking compensation and interest on account of the alleged delay in delivering possession of the unit booked by them. Without prejudice to the submission of the respondent that the present complaint is not maintainable under the Act, 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. The present complaint is liable to be dismissed on this ground alone. Moreover, the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.
- ii. That the complainants have no locus standi or cause of action to file the present complaint. The complainants are not "allottees" under the Act as the complainants have already transferred the unit in question in favour of Mr. Megh Raj Yadav and the transfer has been recorded in the records of the respondent as far back as on 30.08.2019 vide the nomination letter. The complainants have executed transfer documents whereby the complainants have admitted, acknowledged and undertaken that the complainants do not have any right, title or interest in the unit or to claim any compensation in respect thereof. On the basis of the transfer

20.07.2019, the complainants entered into an agreement to sell with Mr. Meg Raj Yadav and Sushma Yadav and agreed to sell the said flat for Rs.75,00,000/- so as to receive some money in order to maintain his livelihood and repay the loan amount taken for the purchase of the said flat. It is pertinent to note that the respondent failed to deliver the possession of the unit as on 20.7.2019 when the complainants entered into an agreement to sell. Owing to the delay in handing over the possession of the flat, the respondent is entitled to pay interest @ 24% p.a. on delayed possession to the complainants from the actual date of possession as per the agreement till the date the complainants entered into an agreement to sell dated 20.7.2019. The respondent is liable to pay a sum of Rs.79,69,622/-.

viii. That the cause of action in the present complaint is subsisting and continuing despite the fact that full payment has been made in 2013 itself. The respondent has neither given possession of the said unit till 20.7.2019 till the said flat was sold, as per their own schedule nor have they paid interest on delayed possession.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:

i. Direct the respondent to pay delay interest of Rs.79,69,622/- calculated @ 24% p.a. from the date of possession i.e., February 2014 till 20.07.2019 i.e., date on which the complainants entered into an agreement to sell.

representations made by the respondent and its representative

repeatedly.

v. That the respondent despite having received the legal notice dated

07.02.2018 have deliberately failed to respond to the same.

Additionally, upon the delivery of the legal notice, the

complainants were able to meet Mr. Vibhash, Legal Executive of the

respondent, who unequivocally stated that delivery of possession

of the unit would stand to be delayed further by another 4 to 5

months and in contrast to earlier representation and the proposed

schedule made available on the official website of the respondent.

vi. That the possession of the project was not delivered by the

respondent even after the delay of 55 months and being aggrieved

by the acts of the respondents, the complainants filed a consumer

complaint in the Hon'ble NCDRC on 07.05.2018 seeking the reliefs

from the Hon'ble Forum. The said consumer complaint was

withdrawn by the complainants on 19.7.2019 with liberty to

approach the RERA Haryana authority on the ground that a matter

with similar facts has been decided by the RERA, Haryana against

the respondent.

vii. That the respondent had not handed over the possession of the flat

even after several months of delay. That due to the financial

exigencies faced by the complainants, the complainants in need of

money were constrained to sell the flat in question. That on

believing in the false, misleading, fraudulent advertisements and complainants, who have invested their hard-earned monies respondent continues to illegally garner benefits from the services not to mention illegal and unfair trade practices. The showcased by the respondent tantamount to a gross deficiency in complainants. The deliberate and lackadaisical approach immense financial and psychological hardships upon the and handover of the possession. The inordinate delay has caused

iv. That the respondent has illegally delayed completion of the project

Rs.61,906,51/-

of the entire consideration in regards the aforementioned unit i.e., in regard to the unit provisionally allotted to them and paid 95% itself. Accordingly, the complainants started to make the payments stage wise payments which were to fall due from September 2010 As per the payment plan selected, the complainants were to make dated 30.7.2010 and appended to the provisional allotment letter. payments as per the payment schedule attached with the letter plan and accordingly the complainants were making timely

iii. That the complainants herein, opted for the installment payment

2014).

construction (i.e., from May 2011 therefore on or by February period of 33 months, from the date of commencement of



12.	Total consideration as per statement of account dated 07.07.2021 at page 114 of reply	Rs. 66,12,974/-
13.	Total amount paid by the complainants as per statement of account dated 07.07.2021 at page 115 of reply	Rs. 66,20,967/-
14.	Date of start of construction as per statement of account dated 07.07.2021 at page 114 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 (22.05.2011) + grace period of 3 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 61 of reply]	22.02.2014 [Note: Grace period is not included]
16.	The complainants have sold the unit in question	The complainants have sold the subject unit to Mr. Megh Raj Yadav and Sushma Yadav (present owners/present allottees) vide agreement to sell dated 20.07.2019 (annexure L, page 133 of complaint) and the respondent had acknowledged them as allottees vide nomination letter dated 30.08.2019 (annexure R9, page 139 of reply).
17.	Date of offer of possession to the present allottees	03.01.2020 [annexure R12, page 147 of reply]
18.	Unit handover letter signed by the present allottees on	14.03.2020 [annexure R13, page 155 of reply]
19.	Conveyance deed executed by the present allottees on	11.06.2020 [annexure R16, page 159 of reply]

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- i. That in 2010, the complainants were seeking to purchase a flat for themselves in Gurgaon, which would have state of the art amenities and features. The complainants approached respondent and from the various types of homes, villas and apartments which were proposed to be built by the respondent, and were being offered for sale, the complainants chose, 'Palm Hills' which was proposed to be constructed with 3BHK and 4BHK apartments. The complainants on 7.7.2010 relying on the marketing claims and representations of the respondent filed an application for provisional allotment provided by the respondent and made an initial deposit of Rs.5,00,000/- as the booking fee for unit PH3-19-0701.
- ii. That on 30.7.2010 vide a letter, the respondent confirmed the booking made by the complainants and also provided a payment schedule in regard to the provisional allotment of the unit. It is pertinent to state herein, that vide the provisional allotment letter dated 9.8.2010, the complainants were conditionally allotted a unit admeasuring 1450 sq. ft. along with a car park in the said project for a total consideration of Rs.61,90,679.02/-. As per the said letter of provisional allotment, subject to standard terms and conditions, the delivery of the apartment was expected to be made within a

documents executed by the complainants, the unit has been transferred to the present allottee, Mr. Megh Raj Yadav and possession of the unit has already been offered and delivered to the present allottee. The present complaint is devoid of any merit and is an abuse of the process of law and warrants immediate dismissal.

- iii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 20.10.2010, as well as the transfer documents executed by the complainants. The provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest or delayed possession charges for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or delayed possession charges beyond the terms and conditions incorporated in the buyer's agreement.
- iv. That the complainants vide application form applied to the respondent for provisional allotment of the unit in the project. The complainants, in pursuance of the aforesaid application form, were

allotted an independent unit bearing no. PH3-19-0701, in the project vide provisional allotment letter dated 09.08.2010. The complainants consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainants.

- v. That the buyer's agreement was executed between the complainants and the respondent on 20.10.2010, willingly and consciously and the complainants duly accepted all the terms and conditions of the same without any objection. The complainants were irregular regarding the remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by them under the payment plan/instalment plan opted by them. The statement of accounts dated 07.07.2021 as maintained by the respondent in due course of its business reflects the delay in remittance of various instalments on the part of the complainants/present allottee.
- vi. That the complainants approached the respondent and requested that the allotment be transferred in favour of Mr. Megh Raj Yadav and Mrs. Sushma Yadav, the present allottees. The complainants and the present allottees executed various transfer documents in terms of which, the complainants agreed and undertook that the complainants shall not have any claim for compensation or any other right, title or interest in the unit after its transfer to the

present allottee and the present allottees, Mr Megh Raj Yadav and Mrs Sushma Yadav agreed and accepted the revised time lines in terms of which the respondent agreed to offer possession of the unit in the month of January 2020. The nomination letter was issued by the respondent on 30.08.2019 transferring the allotment in favour of Mr. Megh Raj Yadav and Mrs. Sushma Yadav.

- vii. That in the meanwhile, the respondent had registered the project under the Act. Registration certificate bearing memo no. HRERA-606/2017/1248 dated 03.10.2017 was issued by the authority. The respondent completed construction and applied for the occupation certificate on 26.04.2017 which was thereafter granted by the concerned statutory authority vide memo bearing no. ZP-567-Vol-I/JD(RD)/2019/31934 dated 24.12.2019. Thereafter, the possession of the unit was offered to the present allottees, Mr. Megh Raj Yadav and Mrs. Sushma Yadav vide offer of possession letter dated 03.01.2010. The possession of the unit has been taken over by the present allottees, Mr. Megh Raj Yadav and Mrs. Sushma Yadav on 14.03.2020 after certifying that he has no claim of any nature whatsoever against the respondent and that the respondent has duly discharged its obligations under the buyer's agreement upon delivery of the property. The conveyance deed has also been registered in favour of the present allottees on 11.06.2020.
- viii. That clause 11(b)(iv) of the buyer's agreement provides that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession shall be extended accordingly, solely on the respondent's discretion till the payment of all

outstanding amounts to the satisfaction of the respondent. Since, the complainants have defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined in the manner sought to be done by the complainants.

- ix. 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. It is submitted that the respondent had applied for grant of occupation certificate vide application dated 26.04.2017. It is submitted that once an application for grant of occupation certificate is submitted before the concerned statutory authority, the respondent ceases to have any control over the same. The sanction of the occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any control over the matter. As far as the respondent is concerned, it has diligently and sincerely pursued the matter before the said statutory authority. Therefore, the time period utilised by the concerned statutory authority for grant of occupation certificate is necessarily required to be excluded from computation of the time utilised by the respondent in implementation and development of the project.
- x. 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 height of 15 mtrs. and above), irrespective of area of each floor, are now required to have two

staircases. Eventually, so as to not cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated the respondent took the decision to go ahead and construct the second staircase. *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.

- xi. That several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. 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 whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is submitted that the construction of the tower in which the unit in question is situated is already complete and the respondent has already delivered possession of the unit in question to the present

allottees. The complainants are opportunists who have sold the unit and thereafter preferred the instant false and frivolous complaint against the respondent in order to try and obtain compensation from the respondent even though the complainants have no right, title or interest in the unit in question. There is no equity in favour of the complainants and the instant complaint is liable to be dismissed at the threshold.

E. Jurisdiction of the authority

6. The preliminary objection raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

8. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

(4) The promoter shall-

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings of the authority

G.I Delay possession charges

10. **Relief sought by the complainants:** Direct the respondent to pay delay interest of Rs.79,69,622/- calculated @ 24% p.a. from the date of

possession i.e., February 2014 till 20.07.2019 i.e., date on which the complainants entered into an agreement to sell.

11. The authority observes that the term "allottee" has been defined under section 2(d) of the Act and the same is reproduced as under:

"2 In this Act, unless the context otherwise requires-

*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, **has been allotted**, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes **the person who subsequently acquires the said allotment through sale, transfer or otherwise** but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*
(Emphasis supplied)

12. Accordingly, following are allottees as per this definition:

(a) Original allottee: A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

(b) Allottees after subsequent transfer from the original allottee:
A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

13. The authority observes that in the present complaint, the complainants are not allottees under the Act on the date of filing of complaint as the complainants does not fall under any of the two categories stated above reason being that the complainants had already transferred the subject unit in favour of Mr. Megh Raj Yadav and Sushma Yadav (subsequent allottees/present owners) vide agreement to sell dated 20.07.2019 and they had been acknowledged as allottees by the respondent vide

nomination letter dated 30.08.2019. Had the intention of the legislature was to cover such complainants, then the stress would be on the terms "who **had been** allotted" the unit. Moreover, after transferring the unit in question, the complainants do not have any right, title or interest in the said property. Thus, the complainants have no locus standi to claim delay possession charges under section 18 of the Act as they do not fall under the term allottee of the Act. Therefore, the relief claimed by the complainants can't be adjudicated as they are not allottees.

14. Complaint stands dismissed on merits.
15. File be consigned to registry.

V1 - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2021


(Dr. K.K. Khandelwal)
Chairman

Judgement uploaded on 25.01.2022.