

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

Complaint no. : 96 of 2019
First date of hearing : 24.04.2019
Date of decision : 24.04.2019

Mrs. Vanni Subhash, w/o. Mr. Subhash Chawla
R/o. A-30, 2nd Floor, Preet Vihar,
Delhi-110092.

Complainant

Versus

M/s Experion Developers Pvt. Ltd.,
Address: -F-9, 1st Floor, Manish Plaza 1,
Plot no. 7, MLU, Sector -10, सत्यमेव जयते
Dwarka, New Delhi-110075.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Anshul Yadav Advocate for the complainant
Shri Manu Jain Advocate for the respondent

ORDER

1. A complaint dated 29.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mrs. Vanni

Subhash, against the promoter M/s Experion Developers Pvt. Ltd., in respect of allotment letter dated 14.04.2014 for residential unit no. B3/403, measuring 1,738 sq. ft. of the project 'The Heartsong' located at Sector 108, Gurugram for not rectifying the terms of alleged one sided buyer's agreement.

2. Since the allotment letter dated 14.04.2014 was issued prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondent/promoter in terms of the provision of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	'The Heartsong', Sector 108, Gurugram
2.	Allotted unit no.	B3/403, tower B3
3.	Date of booking	31.03.2014 (Annx A)
4.	Date of allotment letter	14.04.2014 (Pg. 177 of the reply)
5.	Nature of real estate project	Group housing colony (Annx C)
6.	DTCP license no.	33 of 2010 dated 14.05.2010

7.	Project area	15.025 acres
8.	Admeasuring super area of the allotted unit	1,758 sq. ft.
9.	RERA registered/unregistered	Registered vide no. 113 of 2017 for phase 5
10.	Revised date of completion as per registration certificate	27.08.2019
11.	Date of execution of builder buyer agreement	Not executed
12.	Payment Plan	Instalment linked plan (Pg.181 of the reply)
13.	Total consideration amount as per unit cost details	Rs. 1,29,29,836/- (Pg.179 of the reply)
14.	Total amount paid by the complainant as per statement of account	Rs. 41,04,632/- (Annx R 5)
15.	Date of receipt of Occupation certificate	01.06.2017 (Pg.165 of the reply)
16.	Notice of offer of possession letter	03.03.2017 (Annx R6)
17.	Due date of delivery of possession as per clause 10.1 of drafted agreement: - 36 months + 180 days' grace period from the date of agreement	Cannot be ascertained as the agreement was not signed by the complainant.

4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. An allotment letter dated 14.04.2014 is available on record for the aforesaid unit no. B3/403 in the project namely 'The Heartsong' located at

Sector 108, Gurugram. According to the complainant the respondent has failed to rectify the terms of drafted buyer's agreement despite repeated reminders from the complainant.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 24.04.2019. The case came up for hearing on 24.04.2019. The reply filed by the respondent on 14.02.2019 and the same has been perused by the authority.

Facts of the complaint: -

Briefly put facts relevant for the disposal of the present complaint as per the complainant's version are as follows -

1. The complainant herein, being an issueless woman, sometimes felt depressed at her present residence and thought of having a place of residence that the complainant, trusting and believing completely in the words, assurances and towering claims made by the marketing team, fell into their trap and agreed to book a flat in the project.
2. That the complainant, herein paid in initial amount of Rs 7,00,000/- vide cheque dated 31.03.2014 towards the

booking amount vide receipt number EXTHREC/03138/14-15 dated 11.04.2014 for the booking of flat no. B-3/403.

3. The complainant herein was made to sign the application form by the respondent which the complainant signed under unseen coercion, however, without prejudice to her rights.
4. As per the terms of payment plan within less than 30 days of the booking receipt, complainant paid an amount of Rs.5,06,404/- and dictated 10% of the total cost. The coercive and manipulative technique can be inferred from, by making a reference to payment plan of application form at serial no. 2 where it is 10% of the basic sales price, inclusive of service tax, but the complainant herein and was made to pay more than the mandated amount, and upon objecting to the same by the complainant, the marketing team of the respondent bypassed it casually by stating that the increased payment is inclusive of service tax.
5. The complainant submitted that before making the payment asked for the copy of the apartment buyer agreement with the marketing team of the respondent confirmed to send to the complainant, but only after payment of additional 15% of

the total cost. The complainant herein paid an amount of Rs.17,79,443/- by way of RTGS dt. 10.07.2014.

6. The complainant herein raised the objection that the settled payment, as understandably explained to her and her husband Mr. Subhash Chawla was inclusive of service tax, whereas the consequential demands by the respondent were specifically excluding the service tax and the complainant was consoled by the marketing team that all the payment made herein, will finally be adjusted against the total cost of the said flat and the complainant further asked in immediate supply of the apartment buyer agreement along with specific and explicit payment without any further escalation or addition whatsoever it maybe. It is at this point of time that the complainant sniffed coercive and arm twisting technique of the respondent and its related dishonest and manipulative intentions.

7. The complainant submitted that despite having made in overall payment of Rs 30,00,000/- approx., was not provided the details of the senior management and the only fascia of the respondent herein for the purpose of

interaction/clarification, were either their customer care executive on phone or the marketing executive in person. It is at that point of time, that some disappointment started creeping into the mind of the complainant herein and her husband here too and somehow they were sensing malafide intention of the respondent herein.

8. Thereafter the respondent, through his marketing team provided two copies of apartment buyer agreement and asked the complainant to sign both the copies and handed over to them. The complainant, based on their past experiences of four months, did not sign the said copies and ask them to keep it with the complainant for at least five to six days, so as to make them understand the entire details and ask them, to show the complainant, specific in exact payment plan there and then only, which the marketing team showed to the complainant their **schedule II**, marked as payment plan and the complainant was given some additional cost in the shape of CBFC and CBSD. It is very important to mention that both the copies of the apartment buyer agreement were blank that is not signed by the

defendant herein. That the plaintiff, asked the marketing team to handover both the copies to them for their further understanding, which they refused and took away both the copies with them. That throughout the month of August and major part of September the complainant was telephonically called by the defendant's marketing team, who exhorted her to come to the respondent's office and sign the apartment by agreement to which the complainant already having a needle of suspicion, refused to do so unless and until the copies are supplied to her for their study and then only then they will sign. The respondent tried to impress upon the complainant here in to sign the apartment buyer agreement, but the complainant remained adamant on first reading the apartment by agreement and taking the opinion from other sources, then only sign the same. The entire act on the part of the defendant, smacks of their dishonest and manipulative intentions.

9. The complainant herein alleged that she was disheartened and shocked to find the apartment buyer agreement as an arbitrary, absolutely one-sided, indicative of dishonest

manipulations by the defendant in future and under coercion as he had already grabbed a good chunk of money from the complainant, unequivocal; having balance of equity titled totally in favour of the respondent herein and to the prejudice of the complainant herein, and the complainant, taking advice from common friends, shot an email on 07.10.2015 to the respondent herein, who responded to the same on 09.10.2015 and thereafter there have been regular correspondence through email between the complainant and the respondent herein. It is important to mention herein, that, the complainant, in view of the dishonest and manipulative intentions of the respondent and an apprehension of her arm twisting, the complainant for extracting more payments under threat and coercion, had refused to sign the said unequivocal “agreement”, which ostensibly is to the disadvantage and prejudice of the complainant herein.

10. The complainant submitted that she was given to understand by the marketing team of the respondent, that, the ongoing basic sale price, at the point of time, is going at Rs. 7,200/- per sq. ft. unit and the complainant, as a special case, is being

given the flat @ Rs. 6617/- per sq. unit, which is much lower than ongoing rate and the same is inclusive of service tax and the same is given to complainant on the condition that she will pay 25% of the basic sale price along with car parking + EDC + IDC charges for the possession linked plan(PLP), believing, and trusting their words, the complainant booked the said flat no. B-3/403 @ Rs.6,617/- per sq. unit, whereas, to her utmost shock and disbelief, the ongoing price of the project is Rs 5,500/- per Sq. Unit only and that too, without any advance payment. Whereas the complainant herein, had already paid Rs. 40,00,000/- approx. and the same is lying with the respondent. Further, the complainant was also assured, by the marketing team of the respondent, that the CBFC, CBSD and IFMSD charges would be very small and token in nature. The main component would be the EDC, IDC and car parking charge, whereas the “agreement” not only mentions a huge car parking charge, but also mentions CBFC as Rs. 1,50,000/- and CBSD of Rs. 50,000/- and also mention IFMS deposit of Rs. 1,75,811/- and upon repeated enquiry by the complainant as to the maintenance cost per sq. ft., the

marketing team, all this time, assured the complainant that it would be the lowest in the region (which is absolutely false after coming up to terms with the letter of possession). The complainant does not and shall not subscribe to the “arbitrary terms” as per the agreement of the respondent and therefore, did not sign it so far.

11. The complainant submitted that the respondent, meanwhile in December 2014, started reminding the complainant about the payment of EDC, IDC and car parking charges amounting to an enhanced demand of Rs. 9,45,958/-. The complainant herein, resisted the said payment on the grounds that she has not yet signed the agreement but the defendant threatened to forfeit the earlier payment if the said payment is not made in time i.e. by 15.01.2015. The complainant herein, had no choice but to yield under threat and coercion and ultimately, was made to pay Rs 9,45,958/- the same was paid, however without prejudice, vide check no. 128594, dated 08.01.2015 drawn on IDBI Bank, New Delhi, duly received by the defendant vide his receipt no. EXTHREC/05361/14-15 dated 12.01.2015.. This clearly exhibits the arbitrary, deceitful,

dishonest, indiscreet, manipulative and unequivocal act on the part of the respondent. The complainant herein was, precisely for the act stated above, had suspicion and serious doubts on the respondent herein and have had all the more reasons not to sign the agreement in its arbitrary shape.

12. The respondent herein, shot a letter dated 15.05.2015 to the complainant, captioned as “final reminder notice for submission of apartment buyer agreement”.

13. Ultimately, the complainant had to take legal recourse and she send a legal notice dated 20.06.2016 to the respondent herein, through “AMA Legal”. The respondent herein, through his advocate responded to the aforesaid legal notice with their replication dated 20.07.2016. The said replication, rather than giving solace and resolution to the continuing problem, added to the injury of the complainant by doubting her integrity. Whereas, the complainant, without prejudice, without even signing the agreement, made complete payments, however under the threat and coercion of the respondent herein, the complainant, by this time, had made a total payment of Rs. 39,31,805/- despite the fact that she had

not signed the agreement yet. The said act of the respondent is reprehensible and only added to the woes of the complainant and put her into further trauma.

14.The worst was yet to come for the complainant, as she received a communication dated 03.03.2017, as notice of possession along with set of documents. The same is annexed hereto as **Annexure - H**. This has come as a final blow to the complainant, who was feeling aggrieved and manipulated by the respondent herein.

15.The complainant mailed the queries to the respondent, vide mail dated 22.03.2017 and the same has also been sent by speed post, dated 23.03.2017. The complainant has sent a regular reminder to the respondent herein, the same has so far remained unanswered.

16.The complainant herein, is aggrieved by the deceitful act of the respondent here in where she has been made to pay Rs. 6617/- per sq. ft. as the BSP whereas, the present one vide **Annexure - D** has been Rs. 5500/- per sq. ft. and the complainant herein does not subscribe to the same.

17. That the complainant herein, at the time of booking, in March 2014, was confirmed by the marketing team of the respondent that the maintenance charges, all inclusive, would at best be Rs 2/- per sq. ft. but in the present circumstances, vide **Annexure -H**, the same are coming out to be approximately Rs 4.50/- per sq. ft. and the complainant herein does not subscribe to the same.

18. The complainant was confirmed by the marketing team of the respondent, at the time of booking in March 2014, that, CBFC and CBSD would be nominal amounts whereas, the respondent, vide **Annexure - H (final account statement)**, has demanded Rs. 50,000/- as CBSD, Rs. 1,56,750/- as CBFC Rs. 26,053/- as ad hoc charges towards FTTH/Wi-Fi router charges, Rs. 1,74,359/- towards electric connection charges, Rs. 2,760/- towards FTTH maintenance, and the complainant herein does not subscribe to the same. The ethics and the balance of law enshrines that community building being part of the project, The HeartSong, cannot be treated as one exclusive of the project and neither its maintenance can be exclusive of the common maintenance charges, therefore the

complainant neither subscribes to the exaggerated value of CBFC and CBSD nor does she subscribe to the separate maintenance charges for the community building @ Rs. 1250/- per month as demanded, an arbitrary and adhoc charge of Rs. 3,00,284/- is demanded from the complainant towards the HVAT and the same being arbitrary and illegal, the complainant, does not subscribe to the same.

19. The complainant herein, had already paid, without prejudice, Rs. 39,31,805/- and the respondent here in, **Annexure - H** (final account statement), has demanded Rs. 1,00,01,998/- more thereby making it a total of Rs. 1,39,33,803/- much higher than the quoted price and whereas, the respondent herein, vide **Annexure - D**, the same apartment, having the same area of 1,758/- sq. ft., without any advance payment is quoted at Rs 1,11,29,746/-. The plaintiff submits that she has been duped, misrepresented, induced and lured into signing the application form i.e. **Annexure - A** and for reasons stated above, has yet not signed the agreement. The price difference mentioned above is an indication to falsity, deceit, threat and

coercion and manipulative act on the part of the defendant herein.

20.The respondent has issued the notice of possession dated 03.03.2017 to the complainant herein, in terms of the apartment buyer agreement, whereas the complainant herein had not yet signed the said apartment buyer agreement, thereby invalidating the notice of possession letter dated 03.03.2017.

21.The respondent herein, despite umpteen request, reminders and mails, has not qualified the carpet area in explicit terms while at the time of booking, the marketing team of the respondent confirmed to the complainant herein that the exact carpet area will be at least 82-85% of the super area. The same has not been confirmed to the complainant herein and the complainant herein submits that without having the exact carpet area in terms of RERA also, the complainant shall not subscribe to the agreement or the notice of possession.

22.The respondent, vide notice of possession & Final account statement, is prohibiting the liberty of the complainant herein to take separate individual electricity connection

from Dakshin Haryana Bijli Vitran Nigam Limited and is mandating a separate application from the complainant to Dakshin Haryana Bijli Vitran Nigam Limited the respondent has also not clarified the precise and exact rates for the electricity and the complainant hereto submits that she shall pay only those charges which are as per the rates of Dakshin Haryana Bijli Vitran Nigam Limited and the power backup shall stand under the common maintenance charges as is the practice normally.

23. That the complainant and her husband have visited the site on 20.03.2017 and have found that construction in the opposite tower is going on and they were not allowed to physically inspect their flat B-3/403 and as explained above, there was no one from the senior management to talk to.

24. The complainant submits, that she has been a victim of misrepresented and exaggerated false and tall claims by the respondent's marketing team, that she booked the said flat B-3/403 and is too glad to sign the agreement and is witnessing the deceitful, coercive, unlawful and manipulative acts of the respondent herein, "who has issued the notice of possession

in a hurry without having a copy of the completion certificate". The complainant further submits that she had given enough time to the respondent to solve her issues regarding the flat in the said project but the respondent had failed to care about the issues being faced by the complainant. The complainant even filed a civil suit against the respondent but all in vain. And now the complainant does not want to continue further with the respondent and wants her refund of the hard earned money along with interest.

Issues to be decided:-

1. Whether the complainant is entitled for refund of entire amount of Rs. 39,31,805/-, along with interest?
2. Whether respondent accept a sum more than 10% of the cost of the apartment as an advance payment/ application fee from the complainant without first entering into a written agreement for sale with the complainant and register the said agreement for sale?
3. Whether the information, terms & conditions of the said apartment buyer agreement are just and reasonable and did the respondent take any steps to rectify the same when the

complainant raised them for the first time before the respondent?

Reliefs sought:-

1. Direct the respondent to refund Rs. 39,31,805/- alongwith interest @ 18% p.a. compounded annually.
2. Direct the respondent to pay Rs. 5,00,000/- as compensation for mental agony and Rs. 30,000/- as cost of litigation.

Respondent's reply: -

25. The respondent has contended that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The phase of the project, i.e. "The Heartsong" at Sector-108, Gurugram, Haryana, in which the apartment in question is situated is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 nor is the said project of the respondent registered with this authority. As per Haryana Real Estate (Regulation and Development) Rules-2017 the relevant phase for which part occupation/completion certificate was issued/obtained prior to applicability of RERA

Act/Rules need not to be registered under the RERA Act/Rules and as per the definition of “ongoing projects” under Rule 2(o) of the said Rules.

26. The respondent submitted that it has applied for occupation certificate for the phase of the project in which the apartment in question is situated on 16.08.2016 and received part occupation certificate on 02.03.2017 i.e. prior to applicability of said Act/Rules in the state of Haryana. Thus, the project in question is not an ‘Ongoing Project’ under Rule 2(1)(o) of the Rules and does not require registration under the said Act/Rules. This authority does not have the jurisdiction to entertain and decide the present complaint.

27. It is submitted that the complainant had already filed a civil suit, at Civil Court –Karkardooma, Delhi, in respect of the apartment in question and the plaint was returned, vide order dated 04.07.2017, by the Hon’ble Civil Court on the ground of lack of territorial jurisdiction and the complainant was directed to present the plaint at appropriate civil court. The Complainant instead of filing the plaint/civil suit at Civil Court, Gurugram has

filed the present complaint before RERA Authority Gurugram, which is not maintainable.

28. The complainant has filed the present complaint seeking, *inter alia*, refund of deposited amount with interest. It is respectfully submitted that complaint pertaining to refund and interest or compensation are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this authority. The present complaint is liable to be dismissed on this ground alone.

29. The respondent has contended that the present complaint is not maintainable as the respondent has obtained part occupation certificate and offered possession of the apartment in question to the complainant, vide notice of possession dated 03.03.2017, before applicability of said Act/Rules. The RERA Act/Rules are not applicable retrospectively. The agreed terms of allotment of the apartment in question cannot be modified by any law/rules which came into effect after completion of the transaction of allotment of the apartment. Hence the hon'ble authority has no jurisdiction to entertain and decide the present complaint.

30. The respondent has contended that the present complaint is barred on account of the arbitration clause (clause 26) in the apartment buyer's agreement. Hence, this authority does not have the jurisdiction to hear and decide the present complaint.

31. The complainant has no locus standi or cause of action to file the present complaint. The complainant has not been able to establish the contravention of any provision of the Act by the Respondent.

32. The respondent submitted that the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.

33. The respondent submitted that disputed and complicated questions of fact are involved which shall require leading of evidence and cannot be decided in summary proceedings under the Act. Hence, the present complaint cannot be decided by this authority.

34. The complainant has purchased the apartment in question as a speculative investment. The complainant never intended to reside in the said apartment and has booked the same with a view to earn

a huge profit from resale of the same, thus the complainant is not an “allottee” under the Act but an investor and thus the present complaint is not maintainable at his behest.

35. The complainant has not disclosed the real and true facts of the case, which are detailed in the succeeding paras of the present reply.

36. The respondent has developed a residential group housing project called “The HeartSong”, situated over land admeasuring 15 acres (approx.), situated in Sector 108, Gurugram.

37. The respondent submitted that the complainant had carried out elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent for the purpose of undertaking the development/implementation of the residential project referred to above. The complainant took an independent and informed decision, uninfluenced in any manner by the Respondent to purchase the apartment in question.

38. Although the complainant had opted for possession linked payment plan and agreed and undertaken to comply with the payment plan, the complainant started defaulting in making

payments. As per ledger dated 18.01.2019 an amount of Rs. 98,10,142/- (excluding delayed payment interest, holding charges, taxes and other applicable charges etc.) is still to be paid by the complainant.

39. The respondent submitted that by the notice of possession letter dated 03.03.2017, possession of the apartment was offered to the complainant and she was required to pay the amount as per demand raised along with notice of possession, get the conveyance deed executed and take possession of the apartment booked by her. Along with the said notice of possession the statement of account as well as the demand notice were enclosed. However, out of total demanded amount an amount of Rs. 98,10,142/- (excluding delayed payment interest, holding charges, taxes and other applicable charges etc.) is still due against the complainant.

40. Instead of clearing her outstanding dues, execute conveyance deed and taking possession of the apartment, the complainant started raising false and frivolous excuses as mentioned in her complaint.

41. It is respectfully submitted that the bona fides of the respondent are evident from the fact that the respondent has

completed construction of all the residential towers of the project in question and have obtained occupation certificates dated 30.06.2016, 01.06.2017, 19.12.2017 and 02.05.2018.

42. From the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by this authority.

43. It is submitted that the respondent has acted strictly in accordance with the terms and conditions of the booking application form. There is no default or lapse on the part of the respondent. The allegations made in the complaint are manifestly false and baseless. On the contrary, it is the complainant who is in clear breach of the terms and conditions of the application form by delaying payment of installments as per the payment plan, without any cause or justification. The complainant has failed to sign the apartment buyer's agreement despite repeated requests of respondent. However it is submitted that the terms of booking application has been signed and allotment letter has been accepted by the complainant and the same are binding on the complainant. The complainant is not entitled to any relief as prayed for. The

present application is nothing but an abuse of the process of law and is liable to be dismissed at the threshold.

Determination of issues: -

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:

44. With respect to the **first, second and third issues** raised by the complainant, it seems that the allegations have been made by the complainant just for the sake of raising the issue as no terms and conditions of the apartment buyer agreement which the complainant thinks not just and reasonable has been specified in her pleading. However, on the other side the bonafide conduct of the respondent is proved from the fact that the possession letter has been issued by the respondent vide letter dated 03.03.2017, which is before the due date of delivery of possession if calculated from the date of supplying of copy of agreement i.e. in July, 2017. The due date from said period comes out to be December, 2017. Relevant portion of cause 10 is reproduced below-

“10.1 PROJECT COMPLETION PERIOD.....the Company intends to hand over possession of the Apartment within a period of 36 (thirty-six) months from the date of this Agreement (“Commitment Period”). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days (“Grace Period”) after expiry of the Commitment Period for unforeseen and unplanned Project realties....”

45. Hence, the complainant herself was at fault by not getting the agreement executed despite repeated reminders from the respondent and therefore, the authority is of the view that she is not entitled for the refund of entire paid amount. However, if the complainant wishes to withdraw from the project, the respondent has every right to refund the balance amount to the complainant after deducting 25% of the total sales consideration as earnest money and other charges of non-refundable nature as per clause 40 of the application form dated 31.03.2014. Relevant portion of clause 40 of the application form is reproduced below-

“(40)In case the applicant fails to perform such and other obligations, the Company shall have the right to cancel the allotment of the Apartment and forfeit the Earnest Money among other charges of non-refundable nature.....”

Findings of the authority:-

46. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction. 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.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

47. Arguments heard. Complainant by virtue of this complaint seeks direction from the authority to direct the respondent to refund an amount of Rs. 39,31,805/- alongwith interest in lieu of purchase of unit no. B3/403, tower B 3, in the project “The Heartsong”, located at Sector 108, Gurugram. However before signing the buyer’s agreement, the complainant has raised

certain issues and has found sufficient pretext for not signing the agreement.

48. During the course of argument, it has been stated at bar by the counsel for respondent that occupation certificate has been received by them on 02.03.2017 which is earlier to the coming into force of Haryana RERA Rules. The respondent has also issued a letter of delivery of possession dated 03.03.2017. But the complainant is not forthcoming either for signing of the buyer's agreement or taking possession of the unit in question. On the incoming of RERA, the provisions laid down in the Real Estate (Regulation and Development) Act, 2016 are applicable.

49. As per section 19 (6) of the Act *ibid* which is read as under:-

“Every allottee who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.”

Accordingly, the complainant is directed to make payments due, if any to the respondent with late payment

charges at the prescribed rate in terms of section 18 (1) proviso of the Act *ibid*.

50. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of authority:-

51. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the parties:-

- i. The complainant is directed to sign the buyer's agreement.
- ii. The complainant is directed to make payments of due amounts to the respondent with late payment charges at prescribed rate of interest @ 10.70% per annum and to take possession of the offered unit within a period of 60 days.
- iii. The respondent is also directed to handover the possession of unit in question on completion of all formalities on the part of the respondent.

52. The complaint is disposed of accordingly.

53. The order is pronounced.

54. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated:

Judgement uploaded on 02.05.2019



HARERA
GURUGRAM