

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

Complaint No. : 490 of 2018
First date of Hearing : 28.08.2018
Date of Decision : 10.12.2019

Vibha Gandhi
R/o House no. 825, 2nd Floor, Arjun Nagar,
Kotla Mubarakpur, New Delhi-110003

...Complainant

Versus

Ashish Sarin, Director/CEO
M/s Alpha Corp Development Pvt. Ltd.
Office : Golf view Corporate Towers,
Tower-A, Sector 42, Golf Course Road,
Gurugram, Haryana-122002

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Mr. J.D Chhabra

AR of the complainant

EX-PARTE ORDER

1. A complaint dated 18.07.2018 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, Vibha Gandhi against the respondent Ashish Sarin, Director/CEO, M/s Alpha Corp Development Pvt. Ltd. on account of violation of the

apartment buyer agreement dated 03.09.2011 executed for unit no. D1203, Tower No D in the project "Gurgaon One", Sector-84, Gurugram.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Gurgaon One" at Sector 84, Gurugram
2.	Nature of project	Group housing colony
3.	Occupation certificate	09.10.2017.
4.	DTCP license no	61 of 2009 dated 28.10.2009
5.	Unit no.	D1203, Tower No D
6.	Project area	12.15 acres
7.	Registered/ unregistered	Not registered
8.	Date of transfer of allotment (pg. 16 of the complaint)	01.12.2011
9.	Date of apartment buyer agreement	03.09.2011 (page 36 of the complaint)
10.	Total consideration	Rs. 45,99,629/- (as per schedule of payment page no 61 of the complaint)
11.	Total amount paid by the complainant	Rs 43,17,465/- (as alleged by the complainant in complaint)
12.	Payment plan	Construction Linked Plan (page 61 of the complaint)
13.	Date of delivery of possession as per clause 12.1 - 36 months from the date of start of ground floor roof slab of the tower in which the booking is made i.e. 06.11.2012 + 6 months grace period	06.05.2016 Note: (Date of ground roof slab of the tower construction is 06.11.2012)

14.	Date of offer of possession	13.10.2017
15.	Delay in handing over possession till date of offer of possession i.e. 13.10.2017	1 year 5 months and 7 days
16.	Penalty clause as per builder buyer agreement dated 03.09.2011	Clause 12.4 – Rs 5 per sq. ft. per month of the saleable area for the period of delay

3. The details provided above have been checked and found as per the case file available on record provided by complainant and respondent. As per apartment buyer's agreement executed on 03.09.2011 between the parties, the possession of the aforesaid unit was to be delivered by 06.05.2016 but the respondent delivered the possession on 13.10.2017. The respondent has not paid any interest for the period it delayed in handing over the possession. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid*.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 28.08.2018. The case came up for hearing on 28.08.2018, 18.09.2018, 28.09.2018, 22.10.2018, 06.11.2018, 04.12.2018, 08.01.2019, 18.01.2019, 15.02.2019, 11.04.2019, 03.07.2019, 06.08.2019, 13.08.2019, 26.09.2019 and 10.12.2019.

FACTS OF COMPLAINT

5. The complainant submitted that she purchased a 2BHK flat no. D-1203 admeasuring 923 sq. ft carpet area in the project in the name and style of "Gurgaon One" a residential project located at sector 84, Gurugram and the unit was duly transferred to her by the original allottee Mrs. Punam Khurana vide Letter dated 01.12.2011 bearing memo no AGDPL/COM/GO84/166/D1203/2663.
6. The complainant submitted that the respondent has been charging the instalments as per the construction linked plan and the complainant has timely paid all the dues without any delay.
7. The complainant submitted that the complainant received the last and final instalment demand vide Letter No ACDPL/COM/GO84/D1203/1093 dated 13.10.2017 and alleged the that demand letter containing two superfluous entries basic sale price for an additional area of 89 sq. ft and Escalation in cost in total amounting to Rs. 5,48,986(including GST) were unjustified.
9. The complainant submitted that certain areas and facilities promised by the respondent in the project brochure had inadvertently been omitted while computing the saleable area,

and this was a common error/variation in respect of all customers wherein rectification has been uniformly carried out for all the customers of the project.

10. The complainant also submitted that although as per clause 4.1, the respondent has maintained that the basic sale price has been calculated on the basis of the current prevailing sale price of input materials and that escalation in the sale prices of input materials, if any as per the whole sale price Index (WPI) shall be borne by the allottee but failed to mention the Whole Sale Price Index taken into account at the time of calculation of the basic sale price and the Whole Sale Price paid at the time of purchase of input material year wise. Further, the respondent also failed to mention the criteria for calculation of the Escalation.
11. The complainant also submitted that as per para 4.1, 5% of escalation is to be borne by the respondent himself. However, has failed to provide calculation sheet showing any escalation. Hence, the respondent can not charge any amount on escalation.

Relief sought

The reliefs sought by the complainant are as follows:

- i. Direct the respondent to waive extra amount charged on last installment demand on account of additional common area and escalation as per demand letter dated 13.10.2017.
- ii. Direct respondent to fix all the accessories, furnish, complete the flat and hand over the possession of the flat immediately to the complainant.

Written Submissions on behalf of the Respondent

The respondent submitted as under:-

12. The respondent submitted that the complainant cannot maintain the present complaint before this authority and is liable to be dismissed for want of jurisdiction.
13. The respondent submitted that the present complaint is not maintainable under section 31 of the Act against Director-CEO of M/s Alpha Corp Development Pvt Ltd without impleading the promoter as defined under section 2(zk) of Act.
14. The respondent also submitted that the present dispute arising out of a Real Estate project which was initiated,

sanctioned and completed much before the promulgation of the Act.

15. The respondent also submitted that the “real estate project” in question cannot be said to be an “ongoing project” defined under rule 2(1)(o) of the Haryana Rules and therefore this authority does not have jurisdiction to entertain the present complaint.

16. The respondent also submitted that the Hon’ble Bombay High Court in a case titled as Neelkamal Realtors Suburban Pvt. Ltd. v Union of India [2018 (1) RCR 298] has clarified the ongoing projects and expressly ruled out in para 260 the applicability of the projects which are either completed before the commencement of the Act or projects regarding which occupation certificate has been applied for.

Findings of the authority

17. Jurisdiction of the authority

Subject Matter 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.*

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, 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 complainant.

NOTE: None is present on behalf of the respondent despite calling the matter twice. It seems that the respondent is not interested to contest the matter and, as such, is proceeded against ex-parte.

18. The complainant has sought delayed possession charges and raised following points for consideration of the Authority:

- The respondent has added 89 sq. ft. more area against the total allotted area of 1181 sq. ft. whereas the respondent cannot add or reduce more than 5%(+-) of the super area. As such, respondent is directed to charge only 5% of the super area.
- Complainant has further raised objection with regard to car parking charges which is in the basement and is

covered and as such, this plea of the complainant is not tenable.

- Respondent has demanded a sum of Rs.3,00,000/- as escalation charges which is not justifiable and as such, the respondent cannot link escalation charges with the price index. As such, this escalation charges amounting to Rs.3,00,000/- is unjustified.

19. Respondent has got occupation certificate on 09.10.2017 and offered the possession of the allotted unit to the complainant on 13.10.2017. As per clause 12.1 of the apartment buyer's agreement, the respondent was duty bound to hand over the possession of the allotted unit to the complainant within a period of 36 months plus six months grace period from the date of start of ground floor slab of the particular tower in which the booking is made i.e. 06.11.2012. Thus, the due date of possession comes out to be 06.05.2016, as such, the complainant is entitled for delayed possession charges from 06.05.2016 to 13.10.2017 at the prescribed rate of interest i.e. 10.20.% p.a.

Decision and directions of the authority


20. After taking into consideration all the material facts as adduced and produced by both the parties, 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 respondent in the interest of justice and fair play :

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.20% per annum w.e.f. 06.05.2016 to 13.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
- ii. The complainant is directed to take over the possession of the unit within a period of 30 days by making the requisite payments to the respondent failing which the respondent shall be entitled to charge holding charges.
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.20% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.

- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The promoter shall not charge anything from the complainant which is not part of the apartment buyer's agreement.

27. The order is pronounced.

28. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2019

JUDGEMENT UPLOADED ON 28.01.2020

HARERA
GURUGRAM