PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 26.02.2019
Complaint No.	645/2018 Case Titled As Mr. Sanju Kanwar V/S M/S Apex Buildwell Pvt. Ltd.
Complainant	Mr. Sanju Kanwar
Represented through	Complainant in person with Shri Ashutosh Kumar Advocate.
Respondent	M/S Apex Buildwell Pvt. Ltd.
Respondent Represented through	Shri Sandeep Choudhary Advocate for the respondent.
Last date of hearing	22.1.2019
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Averments made by the counsel for the respondent shall be adjudged at the time of registering of the project.

Report of Local Commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

"Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%."

As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

A plea has been taken by the counsel for the respondent that the licence could not be rewened, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.1.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

As per clause 3 (a) of the Builder Buyer Agreement dated 1.3.2017 for unit No.166, 1st floor, tower Daisy, in project "Our Homes" Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 2.12.2013 + 6 months grace period which comes out to be 2.6.2017. However, the respondent has not delivered the unit in time. Complainant has already paid

Rs.5,60,000/- to the respondent against a total sale consideration of Rs.16 Lakhs. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **2.6.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
26.2.2019

Subhash Chander Kush
(Member)

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 645 of 2018
First date of hearing: 27.09.2018.
Date of decision : 26.02.2019.

Smt. Sanju Kanwar,w/o. Sh. Ramesh Singh.
R/o. H.no. 1078, sector-10A,
Gurugram, Haryana. **Complainant**

Versus

M/s Apex Buildwell Pvt. Ltd.
Regd. Office: 14A/36, W.E.A,
Karol Bagh, New Delhi-110005. **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:
Shri Ashutosh Kumar Advocate for the complainant
Shri Sandeep Choudhary Advocate for the respondent

ORDER

1. A complaint dated 01.08.2018 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 Smt. Sanju Kanwar, against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3(a) of the apartment buyer's agreement executed on 01.03.2017 in respect of apartment no. 166, 1st floor, daisy tower in the project 'our

homes' located at setor-37-C,Gurugram for not handing over possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since, the apartment buyer's agreement has been executed on 01.03.2017 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

- **Nature of the project- affordable group housing**
- **DTCP License no.- 13 of 2012 dated 22.02.2012**
- **License valid/renewed upto-License expired on 22.02.2016. Renewal fees submitted but not renewed.**

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Project area	10.144 acres
3.	RERA registered/ not registered.	**Not registered**
4.	Apartment/unit no.	166, 1st floor, Daisy Tower
5.	Apartment measuring	48 sq. mtr. of carpet area
6.	Date of execution of apartment buyer's agreement	01.03.2017 [page 15 of complaint]
7.	Payment plan	Time linked plan [page 29 of complaint]
8.	Basic sale price as per the said agreement	Rs.16,00,000/- [page 18 of complaint]
9.	Total amount paid by the complainant till date as alleged by	Rs. 5,60,000/- [page 4 of the complaint]

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	the complainant	
10.	**Consent to establish granted on**	**02.12.2013**
11.	Date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals i.e. 02.12.2013)	02.06.2017
12.	Delay in handing over possession till date	1 year,7 months and 20 days

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 01.03.2017 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft. per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv)of apartment buyer's agreement dated 01.03.2017 duly executed between the parties. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The

respondent through his counsel appeared on 13.12.2018. The case came up for hearing on 13.12.2018, 22.01.2019 and on 26.02.2019. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply. The complainant has filed a rejoinder wherein he has re-asserted the contentions raised in the complaint and has denied the assertions of the respondent made in his reply.

Facts of the complaint:-

6. Briefly stated, the facts of the complaint are that the respondent is developing project namely 'our homes' situated at sector 37-C, Gurugram, therefore the hon'ble authority has the jurisdiction to try the present complaint. That relying on the advertisement, the complainant had applied in an affordable housing project under 'government of Haryana affordable housing scheme' and was allotted the said apartment having a carpet area of 48 sq. mtrs. approx. with an exclusive right to use of the apartment together with the proportionate undivided, unidentified, impartial interest in the land underneath with the right to use the common areas and facilities in the said housing complex vide apartment buyer's agreement.

7. The complainant submitted that the apartment buyer's agreement was executed on 01.03.2017 wherein the respondent has promised to handover possession of the flat within 36 months plus 6 months grace period from the commencement of construction upon receipt of all approvals and the respondent failed to develop so called project within the said period. However, till date the possession of the said unit has not been handed over to the complainant.

8. The complainant submitted that he has been visiting the project site and it has been noted that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

9. The complainant submitted that on several occasions, he requested the respondent telephonically as well as through personal visits at their office for delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities asrequired by the respondent but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and lingered on one pretext or the other and refused to deliver the possession of the above said flat.

10. The complainant submitted about his concerns regarding the construction quality as when they checked the internal wall plaster of his allotted unit, its sand came to his hand and it seemed as if the sand was not mixed with right proportion of cement. The complainant requested that some concerned authority which issued license to the builder be held accountable and there should be adopted some mechanism in order to check the basic construction quality as otherwise there will be a risk of life to more than 1100 families who will start living there. It is thus requested to check the basic construction quality of the structure built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent might try to use/deploy cheapest and lowest category material in absence of any such checks from the civic authority.

11. The complainant submitted that some buyers of the project in question have filed complaint about this delay in CM window and one of the complaints has been forwarded to DTP Office, Sector-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15.01.2018 and at that point the complainant came to know that the DTCP license has been expired and not renewed. Thereafter, many buyers requested Mr. R.S. Batt to please take some

action and help them to get this project complete as early as possible. This is respondent's responsibility to chase for license renewal before a sufficient time of expiry and moreover chase with regular follow up till it is renewed.

12. That the basic sale price was Rs.16,00,000/- and the complainant made payments of Rs. 5,60,000/-. That the complainant has approached the respondent company time and again, but the respondent company has failed to respond to the complainant's queries and has not delivered the possession of the said unit. Further, the complainant has stated that the quality of construction done by the promoter is of low quality. The sand of the internal walls plaster came out when the complainant touched it, which shows that the intention of the respondent is only to collect money and spend as low as possible on the construction. Since, the respondent has not delivered the possession of the apartment, the complainant has been suffering economic loss along with other sufferings. Hence, the complainant has filed the current complaint.

13. **Issues raised by the complainant**:-

i. **Whether the respondent delayed in handing over the possession of the unit to the complainant?**

ii. **Whether the quality of construction/building material is of low quality due to which by touching the wall plaster its sand comes in hand?**

iii. **Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?**

14. **Reliefs sought:**

The complainant is seeking the following reliefs:

i. **Interest charged by the builder @ 18% p.a. on delayed payment therefore respondent should pay as per below details:**

Respondent should pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to calculated as and when the thirty-six months was completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente –lite.

ii. Direct the respondent to deliver the possession of the said flat alongwith interest.

Respondent's reply:-

15. The respondent submitted that the respondent is very well committed to the development of the real estate object and the delay being occasioned for delivering the possession of the project as a whole is only because of explainable and excusable causes beyond the control of the respondent. Firstly, on grant of license bearing no. 13 of 2012 dated 22.02.2012, the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 07.05.2013 and the consent to establish by the Office of Haryana State Pollution Control Board, Panchkula was only granted on 02.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016, the respondent is seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana which is yet to be received despite best efforts of the respondent. Further the provisions of Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the

respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13 of 2012 the same got dismissed vide orders dated 19.01.2018 leading to further operational obstacles in completion of the project. And since then the respondent is trying hard to avail all the approvals, permissions and sanctions from the relevant authorities. The respondent submitted that had the approvals and license be granted in time the respondent, given the speed and efficiency of construction would have duly completed the project within the permissible time period by May, 2017.

16. The respondent submitted that the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully. Further, the respondent has contended that the complainant is estopped from filing the present complaint as the complainant himself defaulted in making payments in timely manner which is sine qua non of the performance of the obligations by the respondent. This default has led multiple problems to the respondent company and extra costs being incurred by the respondent.

17. However, the respondent submitted that the construction of the said project is in full swing. That the respondent company

is very much committed to develop the real estate project and as on date the status of construction is as under:

a)	Civil structure	:	Complete
b)	Internal plaster	:	Complete
c)	White wash	:	Under process
d)	Floorings	:	Under process 68% complete
e)	Electric fittings	:	Under process 70% complete.

The respondent has scheduled to deliver the possession of the first phase of the project in December 2018 which comprises of 432 flats in 10 towers and complete delivery in 2nd phase by March 2019 comprising of 16 towers having 704 flats.

18. The respondent further submitted that they are committed to completing the said project and the delay is neither intentional nor deliberate but beyond the control of the respondent and due to extraneous circumstances. First, the respondent could get the consent to establish from HSPCB only on 02.12.2013 due to which the construction could not be started and upon receiving, the construction work has been duly carried out.

HARYANA REAL ESTATE REGULATORY AUTHORITY
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19. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent cannot be penalised for the delay being occasioned. In any case the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. On the other hand even the respondent company due to the uncontrollable delay in the delivery of the project is suffering because it has to pay the huge licence fees for renewal of licenses. More so it is quite evident that the price of the flats in the project had already been fixed in the year 2009 as per the policy on the basis of estimated costs but the costs of men and material has only increased manifold and the respondent company is suffering immense loss of margins due todelay so occasioned without there being any compensation to the respondent company. More so the respondent company had to pay higher renewal charges as per the higher EDC charges due to the uncontrollable delays. Thereby, the suffering of the respondent company is manifold, and the developer margins are shrinking on every account and on the other hand complainant, taking advantage of the precarious situation of

the respondent company, has filed the present complaint to harass the respondent company and to gain wrongfully and avoid interest payments against the outstanding amounts. However, against the odds the respondent company is duty bound to deliver the project very soon.

20. The respondent submitted that though the said project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bona fide manner and the delay occasioned had been beyond the control of the respondent and due to multifarious reasons and given the agreed terms between the parties, the complainant has no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

Determination of issues:-

21. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

22. With respect to the **first issue** raised by the complainant, as per clause 3(a) of apartment buyer's agreement, the possession of the said flat was to be handed over within 36 months from the date of commencement of construction

(with a grace period of 6 months) upon receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent on 02.12.2013. Therefore, the due date of handing over possession will be computed from 02.12.2013. The clause regarding the possession of the said unit is reproduced below:

> *"3(a) offer of possession*
>
> *...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."*

Accordingly, the due date of possession was 02.06.2017 and the possession has been delayed by 1 year 7 months and 20 days till the date of decision. As the possession of the flat was to be delivered by 02.06.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

24. With respect to the **second issue**, the complainant has provided no proof but made only assertion with respect to

sub-standard quality of construction in the complaint. Therefore, the issue is decided in negative.

25. With respect to the **third issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession.

Findings of the authority: -

26. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

27. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

28. Vide proceedings dated 22.01.2019 local commissioner Shri Suresh Kumar Verma SDO (retired) PWD, B and R, Chandigarh was appointed in order to ascertain the construction status of the project. Report of Local Commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

"Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence,the overall completion of the project physically is about 62.88%."

29. Arguments heard. Averments made by the counsel for the respondent shall be adjudged at the time of registering of the project. As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

A plea has been taken by the counsel for the respondent that the licence could not berewened, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.1.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs. 5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

30. As per clause 3 (a) of the apartment buyer agreement dated 01.03.2017 for unit no.166, 1st floor, tower daisy, in project "our homes" Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 2.12.2013 plus 6 months' grace period which comes out to be 2.6.2017.

However, the respondent has not delivered the unit in time. Complainant has already paid Rs.5,60,000/- to the respondent against a total sale consideration of Rs.16 lakhs. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e.10.75% per annum w.e.f **02.06.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Decision and directions of the authority:-

31. 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:

    1. The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay as delayed possession charges from the due date of possession i.e. 02.06.2017 till the actual date of handing over of the possession.

    2. The respondent is directed to pay interest accrued from 02.06.2017 to 26.02.2019 on account of delay in

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handing over of possession which shall be paid to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10th of every succeeding month.

34. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

35. The order is pronounced.

36. Case file be consigned to the registry. A copy of this order be endorsed to the registration branch.

(Samir Kumar) Member

(Subhash Chander Kush) Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement uploaded on 11.03.2019

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