

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

Complaint No. : 1159 of 2018
Date of First : 02.01.2019
Hearing :
Date of Decision : 14.02.2019

Mrs. Savita Sharma

R/o H. No. A-85, Surya Vihar, Opposite Sector-
4, Gurugram

Complainant

Versus

M/s Sidhartha Build Home Pvt. Ltd.
Registered Office: 168-169, Amar Colony,
Lajpat Nagar, New Delhi-24

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Ashok Kumar Advocate for the complainant
Shri Sunder CRM Manager on Advocate for the respondent
behalf of respondent company
with Shri Prashant Sheoran



ORDER

1. A complaint dated 09.10.2018 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 Mr. Savita Sharma, against the promoter M/s. Sidhartha Build Home Pvt. Ltd, in respect of apartment/unit described below in the project 'Estella', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 21.04.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 are as under: -

1.	Name and location of the project	"Estella", Sector-103, Gurugram
2.	Unit no.	STILT-6, Tower-H, Ground floor
3.	Registered/ un registered	un registered
4.	DTCP License no.	17 of 2011
5.	Nature of real estate project	Groups housing
6.	Total area of the allotted unit no.	1245 sq.ft.
7.	Payment Plan	Construction Linked



		Payment Plan
8.	Date of apartment buyer's agreement	21.04.2012
9.	Total consideration amount as per statement of account dated 22.10.2018	Rs. 50,75,322 /-
10.	Total amount paid by the complainant statement of account dated 22.10.2018	Rs. 50,73,240/-
11.	Date of delivery of possession from the date of execution of apartment buyer's agreement	20.08.2018 Clause 12- 36 months plus 6 months grace period, which will be intimated to the buyer from the date of receipt of all statutory approvals Note: Due date calculated from Environment Clearance i.e. 20.02.2015
12.	Delay for number of months/ years upto date	5 months 25 days
13.	Penalty clause as per apartment buyer's buyer agreement dated 21.04.2012	Clause 13.2 i.e. Rs. 5/- per sq.ft of the apartment per month for the period of delay



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement dated 21.04.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 20.08.2018. The promoter has neither fulfilled his committed liability by not giving possession as per the terms of the apartment buyer agreement.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on . The case came up for hearing on 02.01.2019 and 14.02.2019.

Facts of the complaint

6. Briefly stating the facts of the complaint, the complainant booked a residential dwelling unit in the project "Estella". The complainant applied for loan for the said flat to India Bulls Housing Finance Ltd. and as per 1st loan application for Rs. 10,00,000/- and as per 2nd loan application Rs. 9,00,000/- which has been sanctioned by India Bulls.



7. The possession of the said property has not been provided by the developer within time to the allottee as per the agreement. The complainant corresponded to the developer for possession since then through e-mails as well as telephonic.
8. The complainant is staying in a residential house on rent since then and paying house rent of Rs. 11,000/-.
9. The complainant submitted that the project is not ready and the possession is delayed.

10. Issues raised by the complainant

- I. Whether there is any reasonable justification for delay to give possession of flat as per the specification set out in the agreement dated 21.04.2012?

11. Relief sought

- I. Direct the respondent to refund of Rs. 50,73,240/- along with prescribed rate of interest for not providing the possession within time.



Respondent's reply

12. The respondent submitted that the complainant is not maintainable in the eyes of law. The complainant is herself at fault, having defaulted while making payments against

demands raised by the respondent. At the time of booking, till now, the respondent has raised several demand letters and the complainant persistently failed to pay the amount on time.

13. In the present case as the allottee herself delayed payments and the total number of days which the complainant took to make payment, over a period of time, against several demands comes to more than 4 years. Thus, legally the respondent is entitled to add above stated time period in delivery of possession. If above time period is added to the date of signing of apartment buyer's agreement even the date of delivery of possession will be in the year 2020 only which is yet to arrive.

14. The respondent submitted that it is clear from the date of possession will not be from the date of signing of the agreement rather than the date when all the approvals against the project were granted to the respondent. The last and most important approval for the project i.e. environmental clearance was granted in the year 2015. That legally as well as per the agreement, the date of commencement of construction will only be deemed to start from the date of approval of environmental clearance i.e 20.02.2015, as per the date of environmental clearance the date of possession will be deemed to be upto 20.08.2018. The structure of the concerned



tower was already completed in the year 2016 and thereafter brick and plaster work started. The photographs annexed show that the respondent has bonafide intentions to complete the project within the agreed time limit which is yet to arrive.

15. The respondent submitted that no such telephonic conversations were ever occurred between the complainant and the respondent and in regard to mails which were annexed by the complainant are all pertains to year 2017 onwards. The complainant has manipulated the mails annexed with the complaint just in order to show that she was in a tremendous pain as the respondent has failed to deliver possession.

16. The respondent submitted that even the respondent over a period of time kept on assuring the complainant that the possession will be delivered within the time period.

17. The respondent submitted that the complainant has no right to burden or blame of the said loan upon respondent. The respondent is ready to give possession as and when it will complete and subjected to all statutory approvals.

The respondent submitted that the respondent has not violated any provision of the RERA as mentioned in the declaration filed by



the respondent. There is no such act or conduct on the part of the respondent which led to file the present complaint under section 31 of RERA.

Determination of issues

18. In regard to the **first issue** raised by the complainant, the promoters have violated the agreement by not giving the possession on the due date i.e 20.08.2018 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016

19. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate as delayed possession charges, for every month of delay till the handing over of possession. Section 18(1).

20. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



“34 (f) Function of Authority –

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.”

21. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

“37. Powers of Authority to issue directions-

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”

Findings of the authority

22. The respondent admitted the fact that the project Estella is situated in Sector-103, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

23. **Jurisdiction of the authority-** 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 complainants at a later stage.

24. The complainant by an application for amendment of complaint reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

25. The last and important approval of the project i.e environment clearance was granted on 20.02.2015, as such, the date of commencement of construction will only be deemed to start from the date of approval of environment clearance i.e 20.02.2015 as such, the due date of delivery comes out to be 20.08.2018.



Decision and directions of the authority

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

- (i) The respondent is directed to pay the complainant delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 20.08.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession.
- (ii) The arrears of interest so far shall be paid to the complainant within 90 days from the due date of the order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- (iii) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.



27. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and

for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

28. The complaint is disposed of accordingly.

29. The order is pronounced.

30. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date:14.02.2019

Judgement uploaded on 19.03.2019

HARERA
GURUGRAM

