

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

**Complaint no. : 1719 of
2018**
**Date of First
hearing : 10.04.2019**
Date of decision : 10.04.2019

Mr. Shakti Kumar,
R/o. 1854, Sector-10A, Gurugram, Haryana-
122001

Complainant

M/s Apex Buildwell Pvt. Ltd. (Through its
directors)
Regd. Office: 14A/36, WEA,
Karol Bagh, New Delhi-110005

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Karan Govel Advocate for the complainant
None for the respondent Advocate for the respondent

EX-PARTE ORDER

1. A complaint dated 10.12.2018 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. Shakti

Kumar, against the promoter M/s Apex Buildwell Pvt. Ltd. in respect of apartment described below in the project 'Our Homes', on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement has been executed on 07.09.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 are as under: -

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Nature of the real estate project	Low cost/Affordable group housing project
3.	RERA registered/ un registered.	un registered
4.	Apartment/unit no.	599C, 5 th floor, tower IRIS
5.	Apartment measuring	48 sq. mtr. of carpet area
6.	Date of booking	31.08.2013
7.	Date of execution of apartment buyer's agreement	07.09.2013
8.	DTCP License no.	13 of 2012 dated 22.02.2012. License

		expired on 22.02.2016. Renewal fees submitted but not renewed
9.	Payment plan	Construction linked payment plan
10.	Basic sale price	Rs.16,00,000/- + all taxes As per the clause 1.2 of the agreement
11.	Total amount paid by the complainant till date	Rs. 14,40,000/- (As alleged by the complainant)
12.	Date of delivery of possession as per clause 3(a) of the apartment buyer's agreement dated 07.09.2013 (Clause 3(a)- 36 months with a grace period of 6 months from the date of commencement of construction of the complex upon the receipt of all project related approvals)	02.06.2017 Due date calculated from consent to establish Consent to establish - 02.12.2013
13.	Consent to establish granted on	02.12.2013
14.	Delay of number of years/months upto 10.04.2019	1 year 10 months approx..
15.	Penalty clause 3(iv) as per apartment buyer's agreement dated 07.09.2013	Rs. 10/- per sq.ft. per month of the carpet area for the period of delay
16.	Status of the project	Last floor roof completed (as per last demand)

4. The details provided above have been checked on the basis of the record available in the case file. An apartment buyer agreement dated 07.09.2013 is placed on record for the aforesaid unit according to which the possession of the same

was to be delivered by 02.06.2017. 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 for appearance. The case came up for hearing on 10.04.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent. Written submissions have been filed by the complainant wherein he has reciprocated the facts stated in the complaint.

Facts of the complaint

6. Briefly stated the facts of the case the complaint, that the complainant had applied in affordable housing project under Govt. of Haryana Affordable Housing Scheme and thus was allotted apartment no. 599C, 5th floor, tower Iris, having a carpet area of approximately 48 sq. meters with an exclusive right to use together with the proportionate undivided, unidentified, impartible interest in the land

underneath, the said housing complex with the right to use the common areas and facilities in the said housing complex vide apartment buyers' agreement dated 07.09.2013.

7. The complainant submitted that the basic sale price of the apartment was of Rs.16,00,000/-, payable by the apartment complainant as per payment plan and consequently the complainant has paid the amount of Rs. 14,40,000 till date.
8. It is submitted that as per the apartment buyer's agreement, the respondent had promised the complainant to handover the physical possession of the dwelling apartment within a period of thirty six months, with a grace period of 6 months.
9. It is submitted that since the date of booking , the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

10. The complainant submitted that he requested the respondents several times telephonically as well as through personal visits at the office for delivering the possession of the apartment and met with the officials of respondents in this regard and completed all the requisite formalities as required by the respondents but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and lingered the matter on one pretext or the other and refused to deliver the possession of the above said flat.
11. The complainant submitted that the respondent by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondents gained wrongfully , which is purely a criminal act.

12. The complainant submitted about his concerns regarding the construction quality as when he had checked the internal wall plaster of his allotted unit, its sand came to his hand and it seemed as if sand was not mixed with the right proportion of cement. The complainant requested the some concerned authority which issued license to the builder, be accountable and there should be adopted some mechanism to check the basic construction quality as otherwise there will be a risk of life of more than 1100 families who will start living there. It is thus requested to check the 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.
13. The complainant submitted that, thereafter he had tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed

the respondent about his financial hardship of paying monthly rent and extra Interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

14. Some buyer of this projects have filed complaint about this delay in CM Window & one of the complaint has been forwarded to DTP Office, Sec-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 got to know that the builder's license has been expired and not renewed. 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.

15. The funds collected from the project buyers moved outside in buying other assets for their own interest. The new office building of respondent at Sec-32, Gurugram has been commenced in the year of 2014.

16. Issues raised by the complainant

The relevant issues as culled out from the complaint are as follows:

- I. Whether there has been failure on the part of the respondent in the delivery of the apartment to the complainant within the stipulated time period?
- II. Whether 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 delayed period?

17. Relief sought

- I. Direct the respondent to pay the complainant interest charged by the builder @ 18% p.a. on delayed

payment. The 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 be 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 flat in the most efficacious and time bound manner.

Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

18. With respect to the **first issue raised** by the complainant, as per clause 3(a) of the apartment buyer agreement dated 07.09.2013, the possession was to be handed over to the complainant within a period of 36 months from the date of

consent to establish was granted on 02.12.2013. Therefore, the due date comes out to be 02.06.2017. The promoters have violated the agreement by not giving the possession on the due date, 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. With respect to the second issue, the complainant has provided no proof but only assertion with respect to sub-standard quality of construction.
20. 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 interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession under section 18(1).
21. 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 to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Findings and directions of the authority

22. The respondent admitted the fact that the project “Our Homes” is situated in Sector-37-C, 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, 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. 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.

24. The respondent has to file reply within 10 days from the date of service of notice and further time period of 10 days was given but no reply was filed. Subsequent to this, last opportunity to file reply was also given.

25. Such notices were issued to the respondent on 13.12.2018, 01.01.2019 and on 18.01.2019. A final notice dated 20.03.2019 by way of email was sent to both the parties to appear before the authority on 10.04.2019.

26. However, despite due and proper services of notices, the respondent neither filed the reply nor was present before the authority. As such, the authority has no option but to proceed ex parte against the respondent and to decide the matters on merits by taking into a count legal/factual; propositions, as raised, by the complainant in his complaint

27. The ex-parte final submissions have been perused at length. As per clause 3(a) of the agreement dated 07.09.2013, the possession was to be handed over to the complainant by

02.06.2017. thus, the respondent has not delivered the unit in time.

28. The complainant has already paid Rs. 14,40,000/- to the respondent against the total sales consideration of Rs. 16,00,000/-. As such the complainant is entitled for delayed possession charges at prescribed rate w.e.f 02.06.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the date of offer of possession.

Decision and directions of the authority:

29. 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:

- (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 02.06.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession.

- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The promoter shall not charge anything from the complainant which is not the part of the BBA.
- (iii) The interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e 10.75% by the promoter which is the same as being granted to the complainant in case of delayed possession.
- (iv) 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 the offer of possession shall be paid on or before 10th of subsequent month.

30. 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 by the registration branch

31. The complaint is disposed of accordingly.

32. The order is pronounced.
33. Case file be consigned to the registry.
34. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10

.04.2019

Judgement uploaded on 09.05.2019

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