

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

Complaint no. : 1517 of 2018
Date of First hearing : 26.02.2019
Date of decision : 02.04.2019

Smt. Vandana Bhatnagar
R/o C-9/9153, Vasant Kunj, New Delhi **...Complainant**

Versus

M/s Sana Realtors Private Limited (through
its Managing Director)
Office at: 12/15, East Patel Nagar, New Delhi **...Respondent**

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for the complainant
Shri Samrat Jasra Advocate for the respondent

ORDER

1. A complaint dated 30.10.2018 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 Smt. Vandana Bhatnagar against the promoter M/s Sana Realtors Private

Limited (through its Managing Director), in respect of unit described below in the project 'Precision Soho Tower', on account of violation of section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer agreement has been executed on 14.05.2010, 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	"Precision Soho Tower" in Badshahpur, Gurugram
2.	Unit no.	55, ground floor
3.	Unit area	759 sq. ft.
4.	Registered/ not registered	Not registered
5.	DTCP license	72 of 2009
6.	Date of booking	03.03.2010
7.	Date of flat buyer agreement	14.05.2010
8.	Total consideration	Rs.51,39,478/- (as per agreement, pg 22 of the complaint)
9.	Total amount paid by the	Rs. 47,93,952/- (as per

	complainant	applicant ledger dated 01.10.2018, pg 35 of the complaint)
10.	Payment plan	Construction linked plan
11.	Due date of delivery of possession	14.05.2013 Clause 15- 3 years from execution of agreement
12.	Occupation certificate granted on	18.07.2017
13.	Delay of number of months/ years up to 26.02.2019	5 years 9 months

4. The details provided above have been checked on the basis of the record available in the case file. A flat buyer agreement dated 14.05.2010 is available on record, according to which the possession of the same was to be delivered by 14.05.2013. The promoter has failed to deliver the possession of the said unit to the complainant. 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 26.02.2019. Counsel for the respondent submitted that complaint has not been received, so he failed to file reply. Ex-parte proceedings set aside subject to payment of cost. After that the respondent filed reply which has been pursued.

Facts of the complaint

6. The complainant submitted that on the assurance that the construction shall be complete in time and possession would be handed over in time, on 03.03.2010, the complainant booked a commercial unit (office space) in the project named “Precision Soho Tower” in Badshahpur, Gurugram by paying an advance amount of Rs 4,33,540/- to the respondent, out of which Rs.2,50,000/- was paid towards one car parking space. Accordingly, the complainant was allotted a unit bearing no. 55 on ground floor admeasuring 759 sq. ft.
7. The complainant submitted that a flat buyer agreement dated 14.05.2010 was executed between both the parties on the terms and conditions as laid down by the company as per which agreement shop / office / unit no. 55 admeasuring a super area of 759 sq. ft situated on the ground floor was sold to the complainant for a total sale consideration of Rs.51,39,478/-.
8. The complainant submitted that as per the flat buyer agreement, the possession of the unit in question was to be handed over within 36 months from the date of the said agreement as provided under clause 15 of the agreement i.e.

possession of the unit in question was to be handed over lastly by May 2013.

9. The complainant further submitted that having paid the instalments as demanded the unit in question was far away from completion on the scheduled date of possession i.e. in May 2013.

10. The complainant submitted that after an exorbitant delay of almost 5 years, she received letter dated 27.07.2017, in which the respondent admitted that the unit in question was still not ready which is evident from the fact that the construction work was still undergoing and thus, the respondent demanded Rs.6,62,050/- from the complainant being the pending balance toward the total sale consideration. However though the respondent offered the possession of the unit in question after a delay of almost 5 years, however no interest for the delayed period was offered by the respondent to the complainant and aggrieved of which the complainant visited the office of the respondent with the request to pay interest for the delayed possession but the same were in vain. That till date the complainant has made the payment of Rs.47,93,952/- to the respondent.

11. The complainant submitted that being aggrieved of the fact that the respondent caused exorbitant delay in handing over the possession of the unit in question to the complainant by almost 6 years and now not offering any interest for the delayed possession, the complainant has approached this hon'ble authority.

12. Issues raised by the complainants

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

- I. Whether the promoter is liable to get itself registered with this hon'ble authority under the RERA Act, 2016?
- II. Whether section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 is a direct contradiction of section 3 of the RERA, 2016 and if so, whether the provision of the Act would prevail over the rules and regulations made thereunder?
- III. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant and for which the respondent is liable to pay interest @ 18 % p.a (i.e. at the same rate of interest which the respondents use to charge on delay in

payments by the allottees) to the complainant on amount received by the respondent from the complainant and which interest should be paid on the amount from the date when the respondent received the said amount?

- IV. Whether open parking space and parking in common basements be sold to the allottees as separate unit by the promoter, which the respondent has sold as separate unit at a cost of Rs. 2,50,000/- and if not than the amount so collected be returned back to the allottees from whom charged?
- V. Whether the respondent can legally sell super area instead of carpet area?
- VI. Whether the respondent is liable to refund the monies so collected by it from the complainant toward the goods and service tax which came on statute and implemented from 1st of July 2017 as the said tax became payable only due to delay in handing over the possession by the respondent, as if the possession was given by the respondent on time then the question of GST would never have arose?

- VII. Whether possession of the common area alongwith interest free maintenance security received by the respondent be handed over to the registered association of allottees through registered conveyance deed required as per the Act and that the respondent should not install any moveable or immoveable structures in the common areas for gain and any gain if so received from the moveable or immoveable structures so installed in the common areas be transferred to registered association of allottees?
- VIII. Whether the act of the respondent to get the plain application format signed from the allottees to join the association of owners / allottees formed by the respondent legal?
- IX. Whether actions should be taken against the respondent for their failure of not obtaining insurances as prescribed under section 16 of the Act?

13. Relief sought

- I. That the respondent/ promoter be ordered to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to

the complainant which also includes the common areas and which sale of common area is in total contradiction of the Act, for the reason as per the Act the monetary consideration can only be for the carpet area.

- II. The respondent/promoter be ordered to make payment of interest accrued on amount collected by the respondent from the complainant on account of delayed offer for possession and which interest should be @18% p.a from the date as and when the amount was received by the respondent from the complainant.
- III. Direct the respondent to refund the amount of GST service tax etc if collected from the complainant, which had to be paid by the complainant only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST service tax would have arise as on such date GST service tax was not in existence.
- IV. Any common area car parking including basement car park, which is not garage if sold than the money collected on such account shall be refunded along with interest.
- V. That orders may be passed against the respondent in terms of section 59 of the RERA Act, 2016 for the failure on part of the

respondent to register itself with this hon'ble authority under the RERA Act, 2016.

Respondent's Reply

14. The respondent submitted that the present complaint filed by the complainant is liable to be dismissed as the present project does not fall within the purview of RERA and the occupation certificate in respect of the present project i.e. "Precision SOHO Tower" is already being issued by the competent authority. Further it is submitted that vide memo No. ZP-589/SD (BS)/2017/17063 dated 18/07/2017 In Form BR-VII, DTCP had granted occupation certificate in respect of the aforesaid project. The occupation certificate was also containing the description of the building of the aforesaid project As "License No. 72 of 2009 dated 26/11/2009 Total Area measuring 2.456 Acres Sectors 67, Gurugram developed by M/s. Sana Realtors Pvt. Limited.
15. The respondent submitted that the present complaint filed by the complainant is liable to be dismissed as the complainant has made wrong averments in the complaint and had made wrong allegations against the respondent without any

substantial evidence, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.

16. The respondent submitted that the present complaint filed by the complainant is not maintainable as not filed before the competent authority i.e. adjudicating officer as the relief sought by the complaint shall not be fall within the jurisdiction of this hon'ble regulatory authority, hence the present complaint is not maintainable and is liable to be dismissed.

17. The respondent submitted that the present complaint filed by the complainant is not maintainable as the occupancy certificate is already issued and even the complainant is offered the possession of the property in question. Further the complainant was also intimated that the sale deed of the property in question is ready for execution but the complainant is deliberately not coming forward to take the possession and to get the conveyance deed executed.

18. The respondent submitted that the present complaint is not maintainable as the provision of Section 19 (6) of real estate (regulation and development) act 2016 was not complied by the complainant, which says every allottee, who has entered

into an agreement to take or sale the apartment, plot or building shall be responsible to pay the necessary payments including registration charges, municipal taxes water and electricity charges, maintenance charges, ground rent and other charges etc, but no necessary payments were made by the complainant after the receipt of occupancy certificate of the project, hence the present complaint is not maintainable and is liable to be dismissed.

19. The respondent submitted that as per the terms of the agreement the complainant was liable to pay as and when demanded by the respondent the stamp duty, registration charges and other legal and incidental charges for execution and registration of conveyance deed. It is also submitted that the complainant is also liable to pay any loss or damages suffered by respondent for non-payment or delay in payment, non-performance of the terms and conditions of the agreement. Hence the present complaint is not maintainable and is liable to be dismissed.

20. The respondent submitted that it is pertinent to mention here that the complainant was time and again asked to make the outstanding payment and to execute the buyer agreement but the complainant preferred not to sign the agreement, despite

of the fact that the property in question was ready was possession. The complainant is attempting to reap benefits of his own wrong, hence the present complaint is not maintainable and is liable to be dismissed.

21. The respondent submitted that it is further submitted that the complainant since inception was not interested in purchasing the property in question and hence preferred not to sign the buyer agreement. The said contention of the respondent also finds force from the fact that complainant till date is not taking the possession despite of the fact that the respondent had on numerous occasions have asked the complainant to pay the balance consideration and to execute the buyers agreement. The memorandum of understanding as relied upon by the complainant in itself does not confirm any right on the complainant unless the buyer agreement is signed.

22. The respondent submitted that further it is not out of place to mention here that the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented. It is worth to note here that initially there were high tension wires passing through the project land and the

work got delayed as the agencies did not remove the same within time promised and since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start. Initially there was a 66 KV electricity line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL for shifting of the said electricity line. HVPNL subsequently demanded a sum of Rs. 46,21,000/- (Forty Six Lakh Twenty One Thousand Only) for shifting the said electricity line and lastly even after the deposit of the said amount HVPNL took about one and half years for shifting the said electricity line. It is pertinent to mention here that until the electricity line was shifted the construction on the plots was not possible and hence the construction was delayed for about two years. It is pertinent to note here that the diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the removal of high tension wires in the year 2008 i.e. a year even before the license was granted to the respondent so that the time can be saved and project can be started on time. It is

submitted that the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. It is submitted that in the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent, which further was duly noted by various media agencies and documented in the government department. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the Respondent also refused to work in December, 2012 and the dispute was settled by the Respondent by paying more to the earlier contractor and thereafter appointing a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January, 2013 immediately to resume the work at the site without delay. Further, the project is complete since 2015 and the

respondent has also applied for the occupancy certificate in May 2015. Lastly in July 2017 occupancy certificate was issued and the delay of two years was on account of delay in compliances by the authorities and as such the respondent is not responsible for any delay. The development and construction has been diligently done by the respondent and the obligations which the respondent was to discharge have been onerously discharged without fail and the reasons for delay are stated herein for the kind consideration of this hon'ble commission. It is submitted that the respondent has complied with its part of the obligation and the conditions afore stated were not in control of the respondent. The respondent could diligently do his part, which has been done and requisite documents to prove its diligence are annexed herewith, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

23. The respondent submitted that it is further submitted as per the provisions of Section 19 (7) real estate regulation and development act 2016 the respondent is liable to pay the compensation and interest if any delay cause on the part of the respondent, whereas there is no delay on the part of the respondent.

24. The respondent submitted that the respondent deliberately is not taking the possession of the property in question and have filed the present complaint with the sole purpose to harass the respondent and to create undue pressure and to extort illegal money from the respondent, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.
25. The respondent submitted that the complainant has filed the present complaint, after concealing material and true facts with sole aim to mislead the hon'ble authority and to harass the defendant, therefore the complainant is not entitled to get any relief from the hon'ble authority as the occupancy certificate had been issued by the concerned department and the delay in taking possession and registration process was done only by the complainant himself hence it is liable to be dismissed.
26. The respondent submitted that the present petition filed by the plaintiff is nothing other than the abuse of process of law, hence the present petition is liable to be dismissed.

27. The respondent submitted that the present suit is neither properly filed nor verified as per the provision of the hon'ble High Court Rules, hence the same is liable to be dismissed.
28. The respondent submitted that the Ld. Tribunal / Authority is having no jurisdiction as the dispute resolution mechanism as per the Understanding is Arbitration & Conciliation Act, 1996

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:

29. With respect to **first and second issue**, regarding this conflict between rule 2(1)(o) of the said rules and section 3 of the said Act and requirement of registration the same has already been decided by the hon'ble authority in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (7 of 2018), on 21.08.2018.***
30. With respect to the **third issue**, as per clause as per clause 15 of the flat buyer agreement dated 14.05.2010 for unit No.55, ground floor, in project "Precision SOHO Tower" Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of

execution of BBA which comes out to be 14.05.2013. Occupation certificate has been received by the respondent on 18.7.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.47,93,952/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 14.05.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

31. With respect to **fourth issue**, the authority is of the opinion that open parking spaces cannot be sold/ charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the flat buyer agreement as the said agreement has been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016. As per clause 1 of the agreement, the buyer has undertaken to pay an amount of Rs.8,04,070/- towards EDC, IDC and one car parking. Thus, this issue cannot be raised at this stage when the complainant signed the said agreement with wide open eyes. Further, as per clause 2 and clause 2.4 of the said

agreement, the respondent reserved absolute right to deal with basement parking area.

32. With respect to **fifth issue**, as per RERA, 2016, the builder shall disclose the carpet area and super area and as per the specimen agreement annexed in the said rules, the sale has to be executed on the basis of carpet area. However, the flat buyer agreement in question was executed on 14.05.2010, much prior to coming into force of the said Act and the complainant purchased the unit in question on the basis of super area. Thus, this issue becomes infructuous.
33. With respect to **sixth issue**, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
34. With respect to **seventh issue**, as per clause 28 of the agreement in question, it has been mutually agreed that the possession of the common areas shall remain with the developer who shall be responsible to maintain and upkeep the same during construction stage and till the same is handed over to association of apartment owners. Further, as per section 11(4)(d) and 11(4)(e) of the RERA, 2016, the promoter shall be responsible for providing and maintaining

essential services, on reasonable charges, till the taking over of maintenance of the project by the association of allottees and the promoter shall enable the formation and association or society or cooperative society. However, the complainant has failed to furnish any documentary proof in order to establish the existence of any registered association of allottees or whether the possession of common areas has been handed over to any such association by the respondent.

35. With respect to **eighth issue**, the complainant has failed to prove that respondent got plain application form signed from the allottees to join the association of allottees formed by the respondent.
36. With respect to **ninth issue**, the agreement in question was executed on 14.05.2010, prior to coming in force of the said Act. Thus, section 16 of the Act does not apply to retrospective transactions.

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

The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

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

Findings and directions of the authority

38. **Jurisdiction of the authority-** The project “Precision Soho Tower” is located in Badshahpur, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. 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.

39. As per clause 15 of the flat buyer agreement dated 14.05.2010 for unit No.55, ground floor, in project “Precision SOHO Tower” Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA which comes out to be 14.05.2013. Occupation certificate has been received by the respondent on 18.7.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.47,93,952/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 14.05.2013 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Decision and directions of the authority

40. 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:

41. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession till the actual offer of possession.
42. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
43. The promoter shall not charge anything from the complainant which is not part of the BBA.
44. Interest for the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is same as is being granted to the complainant in case of delayed possession.
45. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
46. Thereafter, the monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
47. The complaint is disposed of accordingly.

48. The order is pronounced.

49. Case file be consigned to the registry.

(Dr. K.K. Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.04.2019

Judgement uploaded on 16.05.2019



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