

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

**Complaint no. : 1639 of
2018**
First date of hearing : 27.02.2019
Date of decision : 02.04.2019

Mr. Abhay Narayan Sapru
Address: 7A EG3, Orchid Gardens, Suncity
Comple, Golf Course Road,
Gurugram-122002.

Complainant

Versus

M/s Sana Realtors Pvt. Ltd.
Regd. office: H-69, upper ground floor,
Connaught Circus, Connaught Place, New Delhi-
110001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Ms. Priyanka Agarwal Representative on behalf of the
complainant
Shri Samrat Jasra Advocate for the respondent

ORDER

1. A complaint dated 26.11.2018 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. Abhay Narayan Sapru against the promoter M/s Sana Realtors Pvt. Ltd., on account of violation of clause 5 of memorandum of



understanding executed on 08.07.2010 in respect of unit described below for not handing over possession by the due date and for non-payment of assured return in accordance with said MOU which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the memorandum of understanding has been executed on 08.07.2010 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 are as under: -

1.	Name and location of the project	"Precision Soho Tower", Sector 67, Gurugram, Haryana.
2.	Nature of the project	Commercial colony
3.	Project area	2.456 acres
4.	Registered/not registered	Not registered
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	Occupation certificate granted on	18.07.2017



8.	Due date of execution of memorandum of understanding	08.07.2010
9.	Office space/unit no.	712, 7 th floor
10.	Unit area admeasuring	525 sq. ft.
11.	Payment plan	Similar to down payment plan
12.	Assured/Investment return clause	Rs. 47/- sq. ft per month i.e. Rs. 24,675/- with effect from 09.07.2010 on or before 10th of every month for which it is due till the possession of the said property is offered to the buyer which shall be tentatively within three years from the date of the agreement
13.	Total consideration amount as per clause 1 of the MOU	Rs.21,00,000/-
14.	Total amount paid by the complainant till date as per the MOU	Rs. 18,90,000 /-
15.	Date of delivery of possession as per clause 5 of MOU	31.05.2014 Clause 5: 36 months from May 2010 subject to a grace period of 12 months
16.	Letter of offer of possession	09.07.2018
17.	Delay in handing over possession from due date of possession till date of offer of possession	4 years 1 month approx.



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. A memorandum of understanding dated 08.07.2010 is available on record for the aforesaid unit. As per clause 5 of the memorandum of understanding, the due date of handing over possession was 31.05.2014 and the possession was offered to the complainant on 09.07.2018. Further no assured return was paid in accordance with the said memorandum of understanding after April 2015. Therefore, the promoter has not fulfilled their 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 respondent through his counsel appeared on 27.02.2019. The case came up for hearing on 27.02.2019, 13.03.2019 and 02.04.2019. The reply has been filed by the respondent on 20.12.2018 and the same has been perused.

Brief facts

6. Briefly stated, the facts of the complaint are that the complainant based on promises and commitment made by the respondent, booked an apartment admeasuring 525 sq ft, unit No 712 in project "Precision Soho Tower" at Sector 67, Gurugram, Haryana.



7. The complainant submitted that the respondent executed MOU between M/S Sana Realtors Pvt Ltd. and Mr Abhay Narayan Sapru on 08.07.2010, just to create a false belief that the respondent will pay investment return on down payment of Rs 18,90,000/- @ rate of Rs 47/ Sq ft per month i.e. Rs 24,675/- month till possession and the project shall be completed in time bound manner
8. It is submitted that the respondent was liable to pay investment amount of Rs 24,675/ month till possession but the respondent discontinue to pay after April, 2015.
9. The complainant submitted that he has repeatedly been seeking an update on the progress in the development of the project and investment return which was stopped by builder in April 2015. The complainant visited the respondent's CP office and raised his issues about progress of project and unpaid monthly investment return on 14.09.2016. However, the queries of the complainant were never responded. The complainant visited the site in September 2017 to ascertain the status of the project site and was shocked to find that the project was lying in a raw, desolate state. Again on 08.09.2017, the complainant sent a mail to the respondent raising all the issues. As per the terms of the clause 5 of the



MOU, the respondent was liable to give possession within 36 months from May, 2010.

10. The respondent at no stage informed the complainant on the status and development of the project, but demanded timely payments on account of completion of the project. To meet the huge demands raised by the respondent, the complaint had to not only liquidate their investments, but had to borrow money through unsecured loan at high rate of interest.

11. The complainant submitted that he has with good intentions paid all demands raised by respondent amounting to more than 92 % of the project cost; however respondent has failed to meet their obligations and commitments. This undue delay in handing over the possession of the unit for more than 5 years from committed date as per agreement is not only a breach of trust, but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainant.

12. **Issues to be decided:**

I. Whether the respondent was liable to pay an investment amount of Rs 24,675/ month till possession but was discontinued after April 2015?



- II. Whether the respondent has violated the terms of the MOU and failed to deliver the possession of the unit?

13. **Relief sought:**

The complainant is seeking the following relief:

- I. Direct the respondent to pay commitment amount of Rs 24,675/- per month from April 2015 till actual possession which was committed by builder.

Respondent's reply:

14. The respondent submitted that the present complaint is liable to be dismissed as the present project does not fall within the purview of the Act *ibid*. The occupation certificate in respect of the project in question was issued by the competent authority vide memo no. ZP-589/SD(BS)/2017/17063 dated 18.07.2017. The occupation certificate also contains the description of the building with license no.72 of 2009 dated 26.11.2009 for total area measuring 2.456 acres developed by M/s Sana Realtors Pvt. Ltd.

15. The respondent submitted that the present complaint is liable to be dismissed as the complainant has made wrong averments in the complaint and has made wrong allegations



against the respondent without any substantial evidence.
Hence, the present complaint is not maintainable.

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

17. The respondent submitted that the present complaint is not maintainable as the possession of the property in question was offered to the complainant after receipt of the occupation certificate. 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 section 19(6) of the Act ibid was not complied by the complainant, which says that every allottee who has entered into an agreement for sale to take an apartment, plot or building shall be responsible to make 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 completion 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 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.
21. The respondent submitted that since inception the complainant was not interested in purchasing the property in question and preferred not to sign the buyer agreement. The



respondent also points out that the complainant till date is not taking the possession despite of the fact that the respondent had on numerous occasions asked the complainant to pay the balance consideration and to execute the agreement. The MOU 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 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. 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.

23. The respondent submitted that 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/- 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.

24. The respondent 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. Thereafter, 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. 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 appointed a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January 2013 immediately to resume the work at the site without delay.

25. The respondent submitted that the project was complete in all respect in the year 2015 when the occupation certificate was applied. Lastly in July 2017, occupation certificate was issued, and the delay of two years was on account of the 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 failure. The respondent has diligently done his part and requisite documents to prove its diligence are annexed with reply, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.



26. The respondent submitted that the complainant deliberately is not taking possession of the property in question and has

filed the present complaint with the sole purpose to harass the respondent and to create undue pressure to extort illegal money from the respondent. Hence, the present complaint is not maintainable and is liable to be dismissed with heavy cost.

Determination of issues

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:

27. The **first issue** raised by the complainant, the authority is of the view that In this case, BBA has not been executed and an MoU was signed on 8.7.2010 and as per clause 5 of MOU, possession was to be handed over to the complainant by the respondent within a period of 36 months from May 2010 subject to further grace period of 12 months. Accordingly, due date of possession comes out to be 31.5.2014. The offer of possession as per record was given to the complainant by the respondent on 09.07.2018. The penalty to be paid by promoter for such delay is very nominal in most of the cases, but here is a case where the promoter has agreed to pay Rs.47/- per square feet per month i.e Rs.24675/- w.e.f. 9.7.2010 on or before for 10th of every month till the



possession of the said property is offered to the buyer. For the period from 9.7.2010 till April 2015, the complainant has been receiving the monthly payment as agreed by the respondent. The provisions of MOU is more beneficial to the allottee than the provisions contained in proviso to section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 i.e. interest at the prescribed rate of 10.75% per annum for every month of delay. The provisions of section 18 (1) of the Act ibid are meant to safeguard the interest of allottee against one sided agreement. Keeping in view the interest of the allottee and failure of the promoter to hand over possession by due date, the authority decides that payment of due amount from April 2015 onwards till date of possession be given to the allottee and same may be adjusted, if some amount is due to be paid by the allottee to the promoter.

28. With respect to the **second issue**, as per clause 5 of the MOU, the possession of the said unit was to be handed over within 36 months from May 2010 subject to a grace period of 12 months i.e. by 31.05.2014. However, the respondent failed in delivering possession of the unit.



Findings of the authority

29. 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.
30. 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.



31. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
32. The Haryana Real Estate (Regulation & Development) Rules, 2017 is a welfare legislation to safeguard the rights of the real estate stakeholders and balancing their interest. In many cases, the hard earned money of the allottees were used by the promoters for years together and possession have been inordinately delayed. The penalty to be paid by promoter for such delay is very nominal in most of the cases, but here is a case where the promoter has agreed to pay Rs.47/- per square feet per month i.e Rs.24675/- w.e.f. 9.7.2010 on or before for 10th of every month till the possession of the said property is offered to the buyer. For the period from 9.7.2010 till April 2015, the complainant has been receiving the monthly payment as agreed by the respondent. The provisions of MOU is more beneficial to the allottee than the provisions contained in proviso to section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 i.e. interest at the prescribed rate of 10.75% per annum for every month of delay. The provisions of Section 18 (1) of the Act ibid are meant to safeguard the interest of allottee against one sided agreement.



33. Keeping in view the interest of the allottee and failure of the promoter to hand over possession by due date, the authority decided that payment of due amount from April 2015 onwards till date of possession be given to the allottee and same may be adjusted, if some amount is due to be paid by the allottee to the promoter upon due payments, complainant shall be charged prescribed rate of interest i.e 10.75% per annum.

Directions of the authority

34. 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 payment of due amount from April 2015 onwards till date of possession be given to the complainant and same may be adjusted, if done amount is due to be paid by the complainant.
- ii. The promoter is directed not to charge anything from the complainant which is not part of the BBA.



- iii. 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 is 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.
35. 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.
36. The complaint is disposed off accordingly.
37. The order is pronounced.
38. Case file be consigned to the registry.

(Dr. K.K.
Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram



Date: 02.04.2019

Judgement uploaded on 16.05.2019