

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

**Complaint no. : 1781 of  
2018**  
**First date of hearing : 02.04.2019**  
**Date of decision : 02.04.2019**

1. Mr. Navneet Trikha
2. Mrs. Anupama Trikha

Both r/o 774, Sector 29, Gurugram,  
Haryana.

**Complainants**

M/s Sana Realtors Pvt. Ltd.  
Regd. office: H-69, Upper Ground Floor,  
Cannaught Circus, Connaught Place,  
New Delhi-110001.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman  
Member**

**APPEARANCE:**

Ms. Priyanka Agarwal Advocate for complainants  
Shri Samrat Jasra Advocate for respondent

**HARERA  
ORDER  
GURUGRAM**

1. A complaint dated 07.12.2018 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 complainants Mr. Navneet Trikha and Mrs. Anupama Trikha, against the promoter M/s Sana Realtors Pvt. Ltd., on account of violation of the clause

15 of flat buyer agreement executed on 07.08.2010 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer agreement has been executed on 07.08.2010 i.e. prior to the commencement of the Act *ibid*, therefore, penal proceedings cannot be initiated retrospectively. Hence, the Authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on 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	<b>Not registered</b>
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	<b>Occupation certificate granted on</b>	<b>18.07.2017</b>
8.	Date of execution of flat buyer agreement	07.08.2010
9.	Office space/unit no. as per the said agreement	641, 6 <sup>th</sup> floor
10.	New unit no (as per page 32 of	632

	reply )	
11.	Unit admeasuring as per the said agreement	525 sq. ft.
12.	New unit area (annexure R5, page 32)	546 sq. ft.
13.	Payment plan	Construction linked payment plan
14.	Total consideration amount as per statement of account annexed with demand letter (page 37 of reply)	Rs. 25,88,817/-
15.	Total amount paid by the complainants till date as per applicant ledger dated 29.01.2019 (page 3)	Rs. 21,40,196/-
16.	Offer of possession	05.12.2018
17.	Date of delivery of possession as per clause 15 of flat buyer agreement i.e. 3 years from the date of execution of buyer agreement i.e. 07.08.2010	07.08.2013
18.	Delay in handing over possession from due date of possession till date of offer of possession i.e. 05.12.2018	5 years 3 months 28 days
19.	Penalty clause as per flat buyer agreement	Not given in the agreement

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer agreement dated 07.08.2010 is available on record for the aforesaid unit. As per clause 15 of the flat buyer agreement dated 07.08.2010, the due date of handing over possession was 07.08.2013. The respondent has not paid any interest for the period it delayed in handing over the possession. Therefore,

the promoter has not fulfilled its 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 02.04.2019. The case came up for hearing on 02.04.2019. The reply filed on behalf of the respondent was been perused.

**BRIEF FACTS:**

6. Based on promises and commitment made by the respondent, complainants booked a 2BHK apartment admeasuring 525 sq. ft. unit no 641 in project "Precision SOHO Tower" at Sector 67, Gurugram 122102, Haryana.
7. The respondent to dupe the complainants even executed flat buyer agreement, and the same was between M/s Sana Realtors Pvt Ltd. and Mr. Navneet Trikha and Mrs. Anupama Trikha on 07.08.2010, just to create a false belief that the project shall be completed in time bound manner.
8. The complainants have paid Rs. 21,19,361/- and the respondent in an endeavor to extract money from allottees devised a payment plan under which respondent citing milestone for construction progress stages, or development of the site, and after taking the same respondent has not

bothered to committed development of the project in time bound manner.

9. The total value of unit is Rs. 22,99,500/- as per flat buyer agreement and out of that respondent extracted total amount of Rs. 21,19,361/- This is more than 90% of total sales consideration before March 2013.

10. The complainants have repeatedly been seeking an update on the progress in the development of the project. However, the queries of the complainants were never replied to. Finding their repeated efforts thwarted, the complainants became suspicious of the motives and intentions of the respondent and decided to visit the site themselves and assess the state of development. The complainants, as a result, visited the site many times to ascertain the status of the project site.

11. The complainants were shocked and surprised beyond comprehension to find that the project was lying in a raw, desolate state and in a state of utter neglect and abandonment. As per clause 15 of flat buyer agreement, the respondent was obliged and liable to give possession of said unit within 36 months from execution of flat buyer agreement. Accordingly, the unit should have been delivered way back before 07.08.2013.

12. The respondent at no stage informed the complainants about the status and development of the project, but kept on demanding payments in the garb of development which was never carried out.

13. The respondent had raised the demand for offer of possession dated 27.07.2017 and increased the area of unit from 525 to 546 sq. ft. without any consent of the complainants.

14. The complainants with good intentions have paid all demands raised by respondent amounting to more than 90% 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 complainants.

**ISSUES TO BE DECIDED:**

15. The complainants have raised the following issues:

- a. Whether or not the respondent has completed the construction as per plan and has not handed over the possession to the complainants as on date?

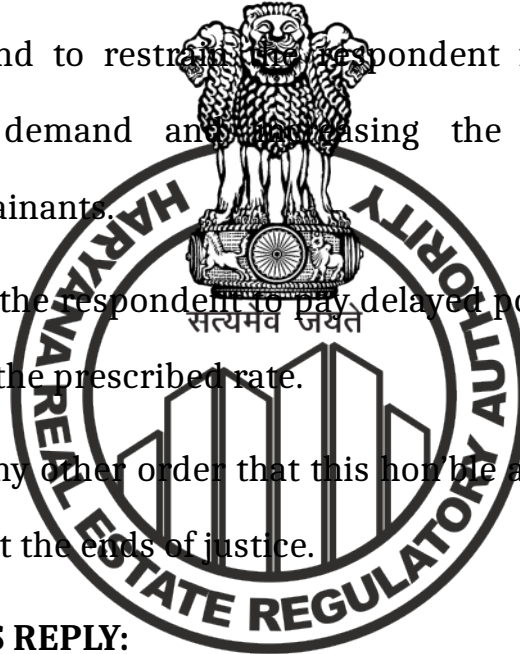


- b. Whether or not the demand raised by the respondent for the increase of area from 525 sq. ft. to 546 sq. ft. is justified?

**RELIEF SOUGHT BY THE COMPLAINANTS:**

16. The complainants are seeking the following reliefs:

- i. Direct the respondent to immediately give possession of unit and to restrain the respondent from raising any fresh demand and increasing the liability of the complainants.
- ii. Direct the respondent to pay delayed possession charges at per the prescribed rate.
- iii. Pass any other order that this honorable authority deem fit to meet the ends of justice.



**RESPONDENT'S REPLY:**

- 17.** 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.

**18.** The respondent submitted that the present complaint is liable to be dismissed as the complainants have 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.

**19.** 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 complainants does not fall within the jurisdiction of this hon'ble authority. Hence, the present complaint is liable to be dismissed.

**20.** The respondent submitted that the present complaint is not maintainable as the possession of the property in question was offered to the complainants after receipt of the occupation certificate. Further, the complainants were also intimated that the sale deed of the property in question is ready for execution, but the complainants are deliberately not coming forward to take the possession and to get the conveyance deed executed.



**21.** The respondent submitted that section 19(6) of the Act ibid was not complied by the complainants, 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 complainants after the completion of the project. Hence, the present complaint is not maintainable and is liable to be dismissed.

**22.** The respondent submitted that as per clause 41 and 42 of the flat buyer agreement, the complainants shall be 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 complainants are 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.

**23.** The respondent submitted that clause 8 of the flat buyer agreement incorporates that “the time of payment of installments as stated in schedule of payment (annexure –I) and applicable stamp duty, registration, fee, maintenance and other charges payable under this agreement as and when demanded is the essence of this agreement”.

**24.** The respondent submitted that the delay in handing over possession of the project was beyond the control of the respondent. It is submitted that clause 15 of the said agreement, relied upon by the complainants, also provide for the exemption for delay, if any, caused is beyond the control of the respondent, the same shall be excluded from the time period so calculated. 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. 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.

- 25.** 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 deposited 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 up to 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.

- 26.** 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.

- 27.** 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.

- 28.** The respondent submitted that the payments to be made till date are outstanding (Rs. 4,49,736/-) and the complainants were to take the possession after the offer of possession was made on 27.07.2017 and to get the sale deed registered after making the payment of outstanding amount. Initially the unit no 641 was allocated and subsequently after the exact construction was raised the unit no 641 was changed/renamed as unit no 632 on the same floor. However, the complainants deliberately are not making payment of outstanding amount of Rs. 4,49,736/-.

**29.** The respondent submitted that the complainants deliberately are 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 complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

**30.** With respect to the **first issue**, as per clause 15 of the flat buyer agreement, the possession of the said unit was to be handed over within 3 years from the date of this agreement i.e. 07.08.2010. Therefore, the due date shall be computed from 07.08.2013. The relevant clause is reproduced as under:

*“15. That the possession of the said premises is proposed to be delivered by the developer to the allottee within 3 years from the date of this agreement.”*

**31.** Accordingly, the due date of possession was 07.08.2013 and the respondent has received occupation certificate on 18.07.2017, thereafter the respondent has offered possession to the complainant on 05.12.2018 Therefore, delay in handing



over possession shall be computed from due date of handing over possession till letter of offer of possession. The possession has been delayed by 05 years 03 months 28 days from due date of possession till offer of possession, thereby violating the terms of the said agreement. As the promoter has failed to fulfil his obligation under section 11(4)(a) of the Act *ibid*, the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 17 of the rules *ibid*, to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

32. With respect to the **second issue**, as per clause 14 of the flat buyers agreement the authority is of the view that the complainants had agreed that no future consent of them shall be required for any additions, alterations, deletions and modification in the layout and building plans. Alterations may *inter alia* involve all or any of the changes in the said premises such as change in position of the said premises, change in its dimensions, change in its area or change in its number or change in the height of the building. Thus the change in the area of the unit is justified on the part of the respondent.

**FINDINGS OF THE AUTHORITY:**

33. 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 complainants 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 the 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.

34. The complainants 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.

35. The facts as mentioned in the complaint were agreed to by both the parties. The authority observed that as per clause 15 of flat buyer agreement dated 07.08.2010 for the said flat in "Precision SOHO Tower", Sector 67, Gurugram possession was

to be handed over to the complainants within a period of three years from the date of the agreement i.e. 07.08.2010 which comes out to be 07.08.2013. However, respondent has not delivered the apartment in time and has offered possession on 05.12.2018. Complainants have already paid Rs. 21,40,196/- to the respondent against a total sale consideration of Rs. 25,88,817/-. As the promoter has failed to fulfil his obligation of handing over the possession within the stipulated time, therefore, the promoter is liable under section 18 of the Act read with rule 15 of the rules to pay interest to the complainants, at the prescribed rate, for every month of delay till the offer of possession.

**DIRECTIONS OF THE AUTHORITY:**

36. 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 in the interest of justice and fair play:

- i. The respondent is directed to supply a copy of deed of declaration submitted to DTCP under the Apartment Ownership Act to the complainants. In case any discrepancy comes to the notice of complainants, they

will have the right for adjustment of sale consideration accordingly.

- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 07.08.2013 till offer of possession i.e. 05.12.2018.
- iii. The arrears of interest accrued so far shall be paid to the complainants within 10 days from the date of decision.
- iv. Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The promoter shall not charge anything from the complainant which is not a part of the flat buyer agreement.
- vi. Interest on 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.

37. The order is pronounced.

38. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent.

A copy of this order be endorsed to registration branch for further action in the matter.

39. 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

**HARERA**  
**GURUGRAM**