

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

Complaint no. : 1896 of 2019  
First date of hearing : 21.11.2019  
Date of decision : 05.11.2020

Atul Joshi

**Address:-** X-217, Regency Park 2,  
Galleria DLF-IV, Farrukh Nagar, Gurgaon

**Complainant**

Versus

M/S Magnum International Trading Company  
Pvt. Ltd. through its Managing Director  
**Registered Office:-** 48/1, Commercial Centre,  
Malcha Marg, Chanakyapuri, New Delhi-  
110021

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Rahul Rathore  
Shri Praveen Kumar

Advocate for the Complainants  
Advocate for the Respondent

**ORDER**

1. The present complaint dated 27.05.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	Gurgaon One-84, Sector-84, Sihi-Sikandarpur Road, Gurgaon
2.	Project area	12.515 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	61 of 2009 dated 28.10.2009 valid upto 27.10.2019
5.	Name of licensee	Magnum International Trading Company Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	F1402, Tower-F
8.	Unit measuring	3194 sq. ft. (revised area 3434 sq. ft.)
9.	Increase area	7.5% (page 90 of the complaint)



10.	Date of execution of apartment Buyers Agreement	29.06.2011 (page 57 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration	1,32,53,641/- (as per schedule of payment, page 83 of the complaint)
13.	Total amount paid by the complainant	Rs. 26,05,067/- (page 147 and 148 of the complaint)
14.	Due date of delivery of possession as per clause 12.1 -36 months from the date of start of ground floor roof slab of the tower in which the booking has been made plus 6 months grace period	06.05.2016 [start of ground floor slab was laid on 06.11.2012 as stated by complainant]
15.	Offer of possession	13.10.2017 (page 90 of the complaint)
16.	Delay in handing over possession till offer of possession	1 years 5 months 7 days
17.	OC received on	09.10.2017 [page 88 of the complaint]
18.	CC received on	13.12.2019

3. As per clause 12.1 of the apartment buyers agreement, the possession was to be handed over within a period of 36 months from the date of start of ground floor roof slab of the particular tower in which booking has been made plus 6 months grace period which comes out to be 06.05.2016 (calculated from the date of start of ground floor slab of the





particular tower as alleged by the complainant) Clause 12.1 of the Flat Buyers Agreement is reproduced below.

**12. COMPLETION OF CONSTRUCTION AND POSSESSION**

*12.1 The construction of the apartment is proposed to be completed by the Owners/ Company within 36 (thirty six) months (plus 6 months grace period) from the date of start of ground floor roof slab of the particular tower in which the booking is made, subject to timely payment by the Allottee(s) of sale price, stamp duty and other charges due and payable according to the Payment Plan applicable to him/her/them or as demanded by the owners/company and subject to force majeure provisions.....”*

4. The complainant submitted that original allotment letter dated 30.04.2011 and an Apartment buyer's agreement dated 29.06.2011 was endorsed in favour of complainant on or around 23.08.2012. The complainant in its complaint has submitted that the ground floor slab was laid on 06.11.2012 which was the start of completion timeline of 36 months as specified in the apartment buyers agreement. This timeline expired on 06.11.2015 and thereafter grace period has also expired on 06.05.2016 but the respondent failed to complete the construction within the stipulated time frame. That, conditional OC was issued on 09.10.2017 which was premature as mandatory second staircase had not been constructed for the tower containing the flat/unit and even



after the lapse of one and half years the respondent has not even started construction of the second staircase. The Respondent has prematurely issued offer of possession to complainant even though his flat being fire unsafe and not fit for occupation. The final statement of demands also contains illegal additional demands on the pretext of area and escalation charges.

5. That the complainant did not wish to take possession of fire unsafe flat and furthermore did not agree to pay the illegal additional demands. Respondent has prematurely offered possession of flat which is not fit for occupation being fire unsafe. Furthermore, the respondent is not giving possession until its illegal demands are paid.

Hence, this complaint inter-alia for the following reliefs:

- i. respondent should be directed to deliver legal possession of flat forthwith, complete with second staircase required for fire-safety as per NBC, together with execution of registered conveyance deed of apartment as per law;
- ii. respondent should pay interest on delay in completion and possession of flat from 06.05.2016 till the possession is delivered;





- iii. respondent should revoke and cancel the demand of interest for alleged delay in payment;
  - iv. respondent should cancel and revoke demands (comprised in BSP, PLC AND IFMS) which are based on the alleged increase of super area from 3194 sq. ft. TO 3434 sq. ft.;
  - v. respondent should cancel and revoke demands under the head escalation in cost, to the extent it includes escalation in service and escalation after promised date of completion;
  - vi. respondent should revoke parking charges of Rs. 5,00,000/- recovered from the complainant.
6. On the date of hearing, the Authority explained to the respondents/allottees about the contravention as alleged to have been committed in relation to section 19 (6) (7) and (10) of the Act to plead guilty or not to plead guilty.
7. The respondent contests the complaint on the following grounds:-
- i. that the instant complaint is not maintainable, especially in view of the fact that since the project "Gurgaon One" is not registerable with RERA accordingly no complaint would be maintainable in relation to projects which are not registerable under the said act;

- ii. that the agreement that has been referred to for the purpose of getting the adjudication of the complaint is the apartment buyers agreement dated 29.06.2011 executed much prior to coming into force of the said act. Despite the stay from the NGT the respondent has successfully completed the construction of the said project and offered possession of the said unit vide offer of possession dated 13.10.2017. However, the complainant failed to take physical possession of the said unit after making the balance payment to the respondent and continued to delay in taking the physical possession of the said unit;
- iii. that the complainant knowingly has defaulted in making payments and instead of taking physical possession of the said unit filed this frivolous complaint not only to escape the liability but also to shift the liability upon the respondent.
- iv. that the complainant never raised any objection with respect to the terms and condition of the agreement and no dispute raised in respect to the terms and conditions of the agreement especially with regard to the payment of interest amount for delay in handover of the possession.

- v. That the relief of compensation and interest raised in the complaint is required to be filed before the AO.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
9. The Authority, on the basis of information and other submission made and the document filed by the complainant and the respondent, is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. On consideration of the circumstances, the evidence and other record and submissions made by the parties and based on the findings of the authority regarding contravention of the provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of Apartment Buyers Agreement executed between the parties on 29.06.2011, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the start of date of ground floor slab of the particular tower. In the present case, the due date of handing over of possession has been calculated from the start of date





of ground floor slab i.e. 06.11.2012. Therefore, the due date of handing over possession comes out to be 06.05.2016.

12. The possession was offered by the complainants only on 13.10.2017. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f 06.05.2016 till handing over of physical possession of the allotted unit after obtaining of occupation certificate. As per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules.
13. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
  - (i) The respondent is directed to pay interest at the prescribed rate i.e. @ 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 06.05.2016 till handing over of physical possession of the allotted unit;
  - (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on or before 10<sup>th</sup> of every month;



- (iii) The respondent is directed not to charge any escalation charges from the complainant. Charges for super area shall be calculated as per the provision of RERA Act;
- (iv) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (v) The respondent shall not charge anything from the complainant which is not the part of the agreement.

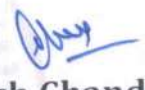
14. Complaint stands disposed of.

15. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Subhash Chander Kush)**

Member

Dated:05.11.2020

**Judgement Uploaded on 23.11.2020**