

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

Complaint no. : 2371 of 2018
First date of hearing : 26.03.2019
Date of decision : 24.04.2019

Mrs. Chander Kanta
R/o: C1-1204, Mapsko Casabella, Sector-82,
Gurugram-122004

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Priyanka Agarwal
Shri Samrat Jasra

Advocate for complainant
Advocate for respondent

ORDER

1. A complaint dated 18.12.2018 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 Mrs. Chander Kanta, against the promoter M/s Sana Realtors Pvt. Ltd., on account of violation of the clause 15 of flat buyer agreement executed on 01.02.2011 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 01.02.2011 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 statutory 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: -
 - **Nature of project:** Commercial colony
 - **DTCP license no.:** 72 of 2009 of 26.11.2009
 - **Registered/not registered:** Not registered

1.	Name and location of the project	"Precision SOHO Tower", Sector 67, Gurugram, Haryana.
2.	Nature of the project	Commercial colony
3.	Current status of the project	Occupation certificate granted on 18.07.2017
4.	Registered/not registered	Not registered
5.	DTCP license no.	72 of 2009 of 26.11.2009

6.	Date of execution of flat buyer agreement	01.02.2011
7.	Unit/Office no	838, 8 th floor
8.	Offered unit (as per payment demanded at the time of possession dated 18.07.2017)	827
9.	Unit/Office area	525 sq. ft.
10.	Payment plan	Construction linked payment plan
11.	Total consideration amount as per flat buyer agreement (page no. 27)	Rs.25,88,250/-
12.	Total amount paid by the complainant	Rs. 17,11,319/- [as per applicant ledger page no.21]
13.	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. 01.02.2011	01.02.2014
14.	Delay in handing over possession from due date of possession till the date of actual offer of the possession by the respondent.	5 years 2 months 23 days
15.	Penalty clause as per flat buyer agreement	Not given in the agreement

4. The details provided above have been checked based on record available in the case file which has been provided by the complainant and the respondent. A flat buyer agreement dated 01.02.2011 is available on record for the aforesaid unit. As per clause 15 of the flat buyer agreement dated 01.02.2011,

the due date of handing over possession was 01.02.2014, however the respondent has failed to deliver the possession till date and has also not paid any interest for the period he delayed in handing over the possession. 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 26.03.2019. The case came up for hearing on 26.03.2019. The reply filed on behalf of the respondent on has been perused.

BRIEF FACTS

6. The complainant submitted that complainant is a law abiding citizens and consumers who have been cheated by the malpractices adopted by the respondent being a developer and promoter of real estate since long time. Based on the advertisement and the brochure circulated complainant showed interest in purchasing a SOHO Space in project "Precision SOHO Tower" being developed by respondent.
7. The complainant submitted that based on promises and commitment made by the respondent, complainant booked a SOHO apartment admeasuring 525 sq. ft., unit no. 838 in project "Precision SOHO Tower" at Sector 67, Gurugram, and

Haryana-122102. The initial booking amount of Rs. 4,85,494/- was paid through cheque dated 16th December,2010.

8. The complainant submitted that the respondent to dupe the complainant in their nefarious net even executed flat buyer agreement signed between M/s Sana Realtors Pvt. Ltd. and Mrs. Chander Kanta on dated 01.02.2011, just to create a false belief that the project shall be completed in time bound manner.
9. The complainant submitted that the complainant has paid Rs. 23,26,074/- 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.
10. The complainant submitted that the total value of unit is Rs. 25,88,250/- as per flat buyer agreement and out of that respondent extracted total amount of Rs. 23,26074/- This is more than 85% of total sales consideration before April,2013 and builder offered the possession in 2018.
11. The complainant submitted that the complainant has repeatedly been seeking an update on the progress in the

development of the project. However, the queries of the complainant was never replied to. Finding his repeated efforts being thwarted, the complainant became suspicious of the motives and intentions of the respondent and decided to visit the site himself and assess the state of development. The complainant, as a result, visited the site many times (2010 to 2018) to ascertain the status of the project site.

12. The complainant submitted that the complainant was 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 term of flat buyer agreement builder had committed in the agreement clause no. 15 and was accordingly 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 01.02.2014.
13. The complainant submitted that the respondent at no stage informed the complainant on the status and development of the project, but kept on demanding payments in the garb of development which was never carried out.
14. The complainant submitted that the respondent has failed to meet the obligations and with mala-fide intentions have

collected huge amount of money from the complainant. This act on part of the respondent has not only caused huge financial losses but have also offset the family life.

15. The complainant submitted that the complainant with good intentions have paid all demands raised by respondent amounting to more than 85% 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 4 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.

ISSUE TO BE DECIDED:

- i. Whether the respondent has breached the term of Agreement, as per flat buyer agreement builder had committed in the flat buyer agreement clause no.15 and was accordingly obliged and liable to give possession of said unit within 36 months from execution of flat buyer agreement?
- ii. Whether the respondent has unjustly enriched them by misusing the hard-earned money of the complainant for 8

years without paying any interest or penalty for the delay in delivery of the said unit?

RELIEF SOUGHT BY THE COMPLAINANT:

The complainant is seeking the following reliefs:

- i. Direct the respondent to immediately give possession of unit in habitable condition with all amenities mentioned in brochure.
- ii. Direct to restrain the respondent from raising any fresh demand and increasing the liability of the complainant.
- iii. Direct the respondent to pay interest on paid amount of Rs. 23,26,074/- delayed period 1st Feb, 2014 to till actual possession as per prescribed rate in RERA Act.

RESPONDENT'S REPLY:

16. 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.

17. 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.
18. 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.
19. 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.
20. 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.

21. The respondent submitted that as per clause 41 and 42 of the flat buyer agreement, the complainant 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 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.

22. 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 and applicable stamp duty, registration, fee, maintenance and other charges payable under this agreement as and when demanded is the essence of this agreement".

23. 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 complainant, 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.

24. 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.

25. 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.

26. 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 have 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.

27. 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:

- i. 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. 01.02.2011. Therefore, the due date shall be computed from 01.02.2011. The relevant clause is reproduced as under:

Accordingly, the due date of possession was 01.02.2014. However, the respondent has failed to deliver the possession of the booked unit. The possession has been delayed by 5 years 2 months 23 days from the due date of possession till the date of decision i.e. 24.04.2019, thereby violating the terms of the flat buyer agreement. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the rules ibid, to pay interest i.e. 10.70% per annum w.e.f.

01.02.2014 to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

- ii. With respect to the **second issue**, as per clause 15 of the flat buyer agreement, the authority came to know that the respondent is liable to pay for the delayed possession of the unit/office as the possession has been delayed by 5 years 2 months 23 days from the date of flat buyer agreement dated 01.02.2011. Also, it is observed that the respondent unjustly drafted the agreement for own benefit as there is no clause for respondent to pay at an appropriate rate of interest for delayed possession.

FINDINGS OF THE AUTHORITY:

28. 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. 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.

29. 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.
30. The authority observed that as per clause 15 of flat buyer agreement dated 01.02.2011 for the said flat in “Precision SOHO Tower”, Sector 67, Gurugram possession was to be handed over to the complainant within a period of three years from the date of the flat buyer agreement i.e. 01.02.2011 which comes out to be 01.02.2014. However, respondent has not delivered the apartment in time. Complainants have already paid Rs. 23,26,074/- (as alleged by complainant) to the respondent against a total sale consideration of Rs. 25,88,250/-. However, the refund cannot be allowed in the present case, as the respondent has completed the project and has obtained occupation certificate dated 18.07.2017 from the competent authority. As the promoter has failed to fulfil his obligation by not handing over the possession within the

stipulated time, the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the rules ibid, to pay interest to the complainants, at the prescribed rate, for every month of delay till the offer of possession.

31. As the project is registrable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for getting the project registered and for that separate proceedings will be initiated of this order be endorsed to registration branch for further action in the matter.

32. As per clause 15 of the flat buyer agreement dated 01.02.2011 for unit no. 838, 8th floor, in project " Precision SOHO tower", sector-67, Gurugram, possession was to be handed over to the complainant within the period of 3 years from the date of execution of flat buyer agreement which comes out to be 01.02.2011. However, the respondent has not delivered the unit in time.

33. Arguments heard: Complainant has come forward with a grievance that original unit no.838 allotted to him has unilaterally been changed by the respondent and now the respondent has offered unit no.827 in place of 838 which is a high handedness on the part of the respondent. The

respondent has placed on record a copy of occupation certificate dated 18.07.2017 alongwith a copy of offer letter which is for a separate unit no. i.e. 827 and the same is not tenable in the eyes of law and the flat buyer agreement executed inter-se the parties.

DIRECTIONS OF THE AUTHORITY:

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 respondent is directed to pay delayed possession charges at the prescribed rate of interest of 10.70% per annum from the due date of delivery of possession till the actual offer of possession to the complainant.
- ii. The interest so accrued from the due date of delivery of possession till the date of order to be paid at the prescribed rate within 90 days from the date of this order and thereafter monthly interest be paid on or before 10th of each subsequent one.

34. The order is pronounced.

35. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.04.2019

Judgement uploaded on 28.05.2019



HARERA
GURUGRAM