

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

Complaint no. : 1605 of 2018
First date of hearing: 13.03.2019
Date of decision : 13.03.2019

Mr. Rajiv Kohli, s/o. Sh. Wazir Chand Kohli.
R/o. B-38, Ashoka Avenue, Sainik Farms,
New Delhi- 110062.

Complainant

Versus

1.M/s. Nimai Developers Pvt. Ltd. (through its
A.R.)
2.M/s. YB Builders P. Ltd. (through its A.R.)
Both having office at address: 48, Vasant Lok,
Vasant Vihar, Delhi- 110057.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri S. P Sawhney Advocate for the complainant
Shri Chnader Prakash Advocate for the respondents

ORDER

1. A complaint dated 20.11.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Rajiv Kohli, against the respondents, M/s. Nimai Developers P. Ltd. and M/s. YB Builders P. Ltd. (through its Director), in respect of buyer's agreement dated 02.05.2015 for studio/unit no. 602,



6th floor of the project “nimai place” located at sector 114, Gurugram being developed by the respondent on account of delay in delivery of possession which is in violation of section 11(4)(a) of the Act.

2. Since the buyers agreement 02.05.2015 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligations on the part of the respondents/complainant, as the case may be under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	“Nimai place” at Sector 114, Gurugram
2.	Nature of real estate project	Commercial project
3.	Total area of the project	3.0125 acres
4.	DTCP license no.	126 of 2012 dated 20.12.2012
5.	Date of execution of buyer’s agreement	02.05.2015 (Annx P 3)
6.	Allotted studio/unit no.	602, 6 th floor.
7.	Measuring area of the allotted unit	581 sq. ft.
8.	RERA registered / not registered	RC/REP/HARERA/GGM/2018/07 dated 13.07.2018
9.	Due date of delivery of possession as	02.05.2018



	per clause-26 : 36 months from the date of sanction of building plan or date of execution of agreement, whichever is later	Note – Due date has been calculated from the date of execution of agreement.
10.	Total consideration as per demand letter dated 04.04.2017	Rs. 30,79,677/-
11.	Payment plan	Construction linked payment plan
12.	Total amount paid by the complainant till date as per demand letter dated 01.08.2018	Rs. 25,49,955/- (Annx P8)
13.	Revised date of delivery of possession as per RERA certificate	30.09.2019
14.	Delay in delivery of possession till date	10 months and 11 days

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 buyer's agreement dated 02.05.2015 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 02.05.2018. But the respondent has failed to fulfil its obligation till date, which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 13.03.2019. The case came up for hearing on 13.03.2019. The reply filed by the respondent which has been perused by the authority. Written arguments



on behalf of the complainants was submitted on 01.03.2019 wherein the complainant has reasserted.

Facts of the complaint: -

6. Briefly stated, facts relevant for the disposal of the present complaint are that complainant booked a studio/commercial unit in the respondent no. 1's project, namely 'nimai place' located at sector 114, Gurugram. In pursuance to the aforesaid booking of the complainant, respondents have allotted unit no. 602 on 6th floor, measuring 581 sq. ft. in favour of the complainant. On 02.05.2015, buyer's agreement for the allotted unit was executed between the parties. The agreed consideration of the unit was fixed at Rs. 53,72,164/- out of which the complainant has made total payment of Rs. 25,49,955/- on various dates under construction linked payment plan.
7. It was alleged by the complainant that the respondent has given false assurance at the time of booking that the possession of the unit was to be delivered within 36 months from the date of booking. It was further alleged by the complainant that the agreement was executed by the respondent after a delay of more than one and a half years.



8. As per clause 26 of the agreement dated 02.05.2015, possession of the unit was to be delivered within a period of 36 months from the date of sanction of building plan or execution of agreement whichever is later which comes to be 02.05.2018. The complainant alleged that he has received a demand letter dated 11.10.2018 as per which the construction upto 3rd floor has been completed till date.
9. Despite lapse of more than 62 months from the date of booking, the respondent has failed to complete the construction and deliver the possession till date. Losing all its faith from the respondents in getting the project complete, the complainant has approached the authority by filing the present complaint.

Issues to be determined -

- i. Whether the respondents have breached the terms and conditions of buyer's agreement dated 02.05.2015 by failing to deliver the possession of the allotted unit on time?
- ii. Whether the respondents have misrepresented to the complainant regarding the timeframe of delivery of the unit as well as the status of the project?



- iii. Whether the respondents are liable to refund the entire amount of Rs. 25,49,955/- alongwith interest as prescribed under the Act?

Relief sought:-

Direct the respondent to refund the entire amount of Rs. 25,49,955/- to the complainants alongwith interest as prescribed under the Act.

Respondent's reply:-

10. The complaint filed by the complainant is not maintainable and this hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint.
11. In the present complaint, the complainant has asked for the refund along-with the interest and penalty from promoter, in case the complainant wants any compensation from respondent, then they have to necessarily file a complaint only before the adjudicating officer, who alone empowered to grant the compensation, therefore, the present complaint is liable to be dismissed on this score alone. The complaints pertaining to compensation and interest for a grievance under section 12, 14,18 and 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating



officer under rule-29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section-31 and section-71 of the said Act and not before this authority under rule-28, section-31, section-71, rule-28 and rule-29

12. This authority has no jurisdiction to entertain the present complaint as the complainant have not come with clean hands and have concealed the material facts and wilfully concealed the fact of their actual status as complainant and have presented fabricated story before the authority to unsuccessfully convince the authority to believe on their false and derogatory allegations.
13. It is a submission of the respondent that a bare perusal of the complaint will sufficiently elucidate that the complainant has miserably failed to make a case against the respondent. It is submitted that the complainant has merely alleged that respondent gave advertisement in various leading newspapers about their forthcoming project promising various advantage, like world class amenities and timely completion/execution of the project etc. The complainant had miserably failed to place any substantive proof in support of their allegations made in the present complaint and have



relied only upon the allegations which are based only on the imagination and fantasies. The complainant failed to provide any communication on document or otherwise or any other proof in black and white in support of their frivolous allegations made against the respondent that he had represented to the complainant to be a renowned developer having expertise in new projects and the proposed project would be completed in three years. It is submitted that the respondent never persuaded or asked the complainant to purchase any of the product of the respondent whether commercial or residential and the allegations made by the complainant against answering respondent are false and frivolous, therefore, the present complaint is liable to be dismissed on this score alone.

14. The complainant himself is falsely representing the fact that the respondent presented a rosy picture of the project. The entire story of complainant is concocted in the present complaint proved to be false as the complainant being an expert know about all the minor details of all the project of real estate available in the market and it is difficult to believe that one real estate expert can misrepresent about a real estate



project, as mentioned in the present complaint. Therefore, the present complaint has been filed by the complainant only to harass and humiliate the respondent unnecessarily by abusing the Real Estate (Regulation and Development) Act, 2016 passed by the Parliament as welfare legislation the complainant is trying to destroy the career of respondent as a real estate developer.

15. The complainant has made false and baseless allegations with a mischievous intention to extort money from respondent in an illegal and unlawful manner by filing such merit-less complaint. In view of the same, it is submitted that there is no cause of action in favour of the complainant to institute the present complaint.

16. It is submitted that the complainant invested monies in the project of the Respondent after making a due diligence of the investment potential of the project and respondent had not played any role in the same. Therefore, it is from the averments mad herein above, it is clear as crystal that the answering respondent is not liable to pay compensation, refund, interest or penalty to the complainant in the present case. It is further submitted that the complainant has



approached this authority with malafide intentions of making unlawful gains and therefore, no permission shall be given to file the present complaint on this short ground alone and the complaint ought to be dismissed.

17. In the present project payment received till date is Rs. 42,41,238/- (including tax) in percentage 50% whereas the payment terms were as per the construction link plan as executed in the buyer's agreement. On the contrary the demand of the further money has been sent on several occasions and till date the payment should have been deposited upto 70% but neither the complainant bothered to pay the same nor did averred in the present complaint, the present conduct perhaps speaks volumes of the intent of the complainant.

18. The respondent is not liable to pay any interest along-with compensation, refund and penalty being claimed by the complainant. The respondent had never made any statement whether orally or in writing or by visible representation to falsely represent his services of a particular standard or grade. The respondent never ever represented about any licence or approval or sanctions or permissions of respondent for the



said project and never made any false or misleading representation regarding the services or product of the respondent and always discharged his duties and functions as per the provisions of the said Act, therefore, the allegations of deficiency of services, cheating or fraud on the part of respondent played with complainant is false and frivolous, thus, the present complaint deserves to be dismissed summarily.

19. It is submitted that initially construction of two basements was hampered by the high water table (instead of 3 basements respondent was restricted to 2 only). It is further submitted that the construction technique of PT beam, adopted as the state of art technology also added to the slowdown of the progress. It is further submitted that the construction of the project is almost completed upto 50% and it shall be completed by end of 2019. It is also submitted that the construction of the project over the site is going in full swing and in speedy manner, which is expected to be completed by the end of year 2019.



Determination of Issues–

20. After considering the facts submitted by the complainant, respondent and perusal of record on file, issue wise determination are as follow:-

21. As regards **the issue no. i and iii** raised by the complainant, it is to be noteworthy from the perusal of record and the submissions made by the parties, as per clause 26 of the buyer's agreement dated 02.05.2015, possession of the unit in question was to be delivered within a period of 36 months from the date of sanction of building plans or date of execution of agreement, whichever is later. Relevant portion of the clause is reproduced below –

“27. The developer shall offer possession of the unit anytime within a period of 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later, subject to force majeure circumstances.....”

Hence on calculation the due date of delivery of possession from the date of execution of buyer's agreement comes out to be 02.05.2018. However, the respondents have failed to deliver the possession till date even after a delay of 10 months and 1 months which is in violation of section 11(4)(a) of the Act *ibid*. It is pertinent to note that the project is registered



with the authority vide registration no. 7 of 2018 and wherein the revised date of delivery of possession is mentioned as 30.09.2019.

22. With respect to **second issue** raised by the complainant, the authority is of the view that order for refund of paid amount at this belated stage would not serve the ends of justice and also hamper the interest of other allottees as well who wishes to continue with the project. Thus, refund shall not be granted. Therefore, the complainant is entitled for delayed possession charges at prescribed rate of interest 2 10.75% p.a. on the deposited amount in terms of section 18 of the Act.
23. With respect to **third issue** raised by the complainant, the complainant has failed to produce any documentary evidence to prove that there is any kind of alleged misrepresentation made by the respondents regarding the timeframe of delivery of unit as well the status of the project. Hence, this issue cannot be decided in favour of complainant for the want of documentary evidence.

Findings of the authority-

24. 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.

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

26. As per clause 26 of the buyer's agreement dated 02.5.2015 for unit no. 602, in project "Nimai Place" Sector-114, 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 2.5.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 25,49,955/- to the respondent against a total sale consideration of Rs. 30,79,677/-. As such, complainant is entitled for delayed possession charges at prescribed rate of



interest i.e. 10.75% per annum w.e.f 2.5.2018 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Decision and directions of the authority -

27. After taking into consideration all the material facts produced by 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:-

1. The respondent is liable to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 2.5.2018 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
2. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid on or before 10th of subsequent month.



28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)

(Subhash Chander Kush)

Member

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:- 13.03.2019

Judgement uploaded on 29.05.2019



HARERA
GURUGRAM

