

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

Complaint no. : 2525 of 2018
Date of first hearing : 27.03.2019
Date of decision : 27.03.2019

1. Mrs. Sunita Budhiraja

R/o flat no. E-1 Surbhi Apartment, GH-10,
Sector-43, R-18B, Gurugram -122002
Haryana

Complainant

Versus

M/s Parsvnath Hessa Developers Ltd.
Registered office at: Parsvnath Metro
Tower, Near Shahdara metro station,
Shahdara, 110032, Delhi-

Respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Shri Sukhbir Yadav and Advocate for the complainant
Abhinav Sharma

Shri Yash Verma

Advocate for the respondent

ORDER

1. A complaint dated 02.01.2019 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 Mrs. Sunita Budhiraja, against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd., on account of violation of clause 10(a) of the flat buyer agreement executed on 22.05.2012 for unit no. B6-702 in the project “Parsvnath Exotica” for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	“Parsvnath Exotica”, Sector-53, Wazirabad, Gurugram
2.	Unit no.	B6-702, 7 th floor, tower B6
3.	Project area	27.765 acres
4.	DTCP licences nos.	69 to 74 of 1996 (pg. 30 of flat buyer agreement)
5.	Nature of project	Group housing colony
6.	Registered/ not registered	Not registered
7.	Date of flat buyer agreement	22.05.2012
8.	Basic sale price as per clause 2(a) of the flat buyer agreement	BSP- Rs. 2,94,93,000/- (as per customer ledger statement annexed at P5)
9.	Total amount paid by the complainant (as per customer ledger dated 06.12.2018)	Rs.2,81,40,000/-
10.	Payment plan	Construction link plan
11.	Due date of delivery of possession as per clause 10(a)-	16.03.2014

	36 months from the commencement of construction of the particular block in which the flat is located, or 24 months from the date of booking whichever is later with a grace period of 6 months	
12.	Delay in handling over possession till date of decision	5 year 11 days
13.	Penalty as per clause 10(c) of flat buyer agreement	Clause 10(c) of BBA i.e. Rs. 107.60 per sq. meter or Rs.10/- per sq. ft. of the super built area per month for the period of delay

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant. A flat buyer agreement is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 16.03.2014 . As per clause 10(a) of the flat buyer agreement duly executed between the parties. The respondent has failed to fulfil its contracted 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 through its counsel on 27.03.2019.

The case came up for hearing on 27.03.2019. The reply filed on behalf of the respondent has been perused by the authority.

Facts of the complaint

6. The complainant submitted that Parsvnath Exotica project situated at Golf Course Road, Sector 53/54, Gurugram was promoted by reputed M/s Parsvnath Developers Private hereinafter referred to as PDL, later on formed a joint venture namely Parsvnath Hessa Developers Private Limited and transferred the said project to PHDPL i.e respondent party.
7. The complainant submitted that on 16.09.2011, complainant booked one 4 BHK flat admeasuring 3390 sq. ft. bearing flat no. B6-702 in Parsvnath Exotica Flat was purchased under the special construction link payment plan for sale consideration of Rs. 2,94,93,000/- and a flat buyer agreement was executed between complainant and Parsvnath Hessa Developers Private Limited on 22.05.2018.
8. The complainant submitted that as per clause no. 10(a) of flat buyer agreement, respondent had to give the possession of flat within a period of thirty six (36) months of commencement of

construction of particular block in which the flat is located or 24 months from the date of booking of the flat, whichever is later. It is pertinent to mention that construction of said tower started in February, 2010 and date of booking was 16.09.2011, inter alia due date of possession was 16.09.2013.

9. The complainant also submitted that on 03.11.2012, She took a housing loan from State Bank of India to pay the demands of respondent and complainant is paying interest/EMI on housing loan.
10. It is alleged by the complainant that as per the payment schedule of the builder buyer agreement, She has already paid the more than 95% amount i.e Rs. 2,81,40,000/- till 29.04.2013. The said amount was inclusive of car parking and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, she raised the grievance to respondent. Though complainant was always ready and willing to pay the remaining instalments provided that there is progress in the construction of flat.

11. The complainant submitted that though towers seem to be built up but no progress is observed on finishing and landscaping work.
12. The complainant submitted that on 04.02.2017, the respondent sent a letter to complainant informing that the likely time frame to complete all the construction activities at site was within six to eight months and thereafter the physical possession will be offered. However, the respondent has again failed to honor the commitment to complete the construction.
13. The complainant submitted that the work of other amenities, like external, internal MEP (services) are not yet not completed. Now it is more than 7 years from the date of booking and even the constructions of towers are not complete. It clearly shows the negligence on the part of builder. As per project site conditions it seems that project will further take more than one year to complete the project.
14. The complainant submitted that as per section 19 (4) of the RERA Act , the promoter is entitled to refund the amount paid along with interest and also to pay compensation to the

complainant for a delay or failure in handing over of such possession as per the terms of flat buyer agreement.

15. The complainant submitted that she does not want to withdraw from project. Promoter has not fulfilled its obligation under section 18(1) proviso. Therefore, the promoter is obligated to pay her interest at the prescribed rate for every month of delay till the handing over the possession.
16. The complainant submitted that the project of respondent comes under the definition of “ongoing projects” and it is still unregistered with RERA. It is pertinent to mention here that as per section 3(1) first proviso of Real Estate (Regulation and Development) Act, 2016, respondent has to get the project registered within three months from the date of commencement of the Act.
17. The complainant submitted that she is entitled to get interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession. This authority may pass an order for refund of paid money with prescribed interest.

Issues raised by the complainant

18. The relevant issues raised by the complainant are as follows:

- i. Whether the complainant is entitled for refund of the entire deposited amount?
- ii. Whether the respondent has delayed the delivery of possession of the booked unit and whether the complainant is entitled for interest at prescribed rate for every month of delay from due date of possession till actual handing over of possession?
- iii. Whether respondent are guilty under section 12 of RERA act for wrong /misappropriation?
- iv. Whether the respondent may be directed to provide access for third party audit to ascertain the actual area of flat?
- v. Whether the foreign direct investment i.e. FDI is return to investor or not and what is the status of FDI in present project ?

Relief sought by the complainant

19. The relief sought by the complainant are as follows:

- (i) Pass an appropriate award directing the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession, on paid amount.
- (ii) Any other order as this hon'ble authority deems fit in the interest of justice.

Reply by respondent

20. The respondent submitted that the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complainant deserves to be dismissed at the threshold.

21. The respondent submitted that the project construction is already complete and for that part of the project an occupation certificate is received and for remaining part it is awaiting the occupation certificate.

22. It is further submitted by the respondent that respondent company under various collaboration agreement/development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. The respondent submitted that out of the 18 towers, 11 towers were duly developed and completed and the occupancy certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. The respondent further stated it has already applied for occupancy certificate with respect to remaining 5 towers i.e. D4, D5, D6 on 01.11.2011 for which the review were also filed by the respondent company on 24.11.2017 and with respect to towers no B1 and C4 on 13.08.2013 before the competent authority DTCP, Chandigarh, Haryana. The respondent further submitted that appropriate and relevant reports from office of DTP, STP, PHE and external services have been forwarded to Department of Town and Country Planning (HQ), Chandigarh, Haryana. The Fire No Objection Certificate has been already granted by the competent authority for this tower.

23. It is submitted by the respondent that occupancy certificate is not being granted by DTCP for want of beneficiary interest in favour of the developer under the policy dated 18.02.2015. It is pertinent to state that in principal DTCP has accorded his approval on the transfer of the beneficiary interest in favour of the developer. However the formal approval is in process.
24. It is further submitted by the respondent that the respondent company has applied for registration of the part of the said project with respect to tower no B5, B6 and EWS with Haryana RERA wherein the revised declaration date of handing over the possession of the project is stipulated as 31.12.2019 as also confirmed in the RERA registration affidavit cum declaration.
25. It is contended by the respondent that the super structure of tower no. B6 in which the flat of the complainant is located, has been completed. It is submitted that the respondent has duly completed all the construction work in part of the project and tower B6.
26. It is contended by the respondent that delay if any is caused by the appropriate govt. authorities in granting the requisite

approvals, which is beyond the control of the respondent. It is submitted by the respondent that due to non-payment of the due amount of the cost of the flat as called for in accordance with the construction achieved at the site, the respondent company sent various demand letters to the complainant requesting him to clear the due amount. However the complainant failed to make the single payment against the due amount.

27. It is submitted by the respondent that as per the terms of the flat buyers agreement under clause 5(a) the company is not liable to pay any interest to the complainant in present case.
28. It is further submitted by the respondent that the complainant has also availed a housing loan from Bank of India and the lending institution has a lien over the said plot.
29. The respondent further submitted that the complainant was well aware about the status of the construction at the time of purchasing the said flat. The complainant has purchased the said flat in question for investment purpose only and hence, they cannot be treated as real consumers.

30. The respondent further submitted that due to non- payment of the due amount of the cost of the flat as called for in accordance with the construction achieved at the project site, the respondent company sent various demand letter/reminders to the complainant requesting him to clear the due amount. However, the complainant failed to make the single payment against the due amount.

31. The respondent further submitted that the following aspects need to be considered for the purpose of adjudicating the issues in the present complaint:

- i. part project has been completed and he is in process of applying the occupation certificate of tower B6.
- ii. the approval regarding the transfer of beneficial interest and marketing rights were formed on 18.02.2015 being under suspension till 31.01.2017 is pending. Hence, awarding the interest at this advance stage of the entire project will be jeopardized and adversely affected. So, this relief sought is neither tenable nor justifiable.

iii. the interest of the complainant is duly protected in terms of clause no. 10(c) of the flat buyer agreement for the delay in delivering the possession of the flat.

32. The respondent submitted that his liability on account of delay is specified in the clause 10(c) of the said flat buyer agreement and as such the complainant cannot claim relief which are beyond the compensation agreed upon by them.

33. The respondent further submitted that the complainant has also availed a housing loan from State Bank of India and the lending institution has a lien over the said plot.

34. The respondent further submitted that the complaint is bad for non-joinder of necessary party as the complainant has not made the lending institution i.e. State Bank of India as a party to the present complaint. The State Bank of India has a lien over the said plot. Hence, the present complaint is liable to be dismissed on this ground alone.

Determination of issues

35. With respect to the **first issue** raised by the complainant, keeping in view the status of the project and the interest of other allottees, the authority is of the consistent view that refund cannot be allowed at this stage. However, the complainant is entitled to delayed possession charges at 10.75% per annum to the complainant w.e.f. 16.03.2014 as per the provision of section 18(1) of the Real Estate Regulation and Development) Act, 2016 till offer of possession.

36. With respect to the **second issue** raised by the complainant, the authority came across from the perusal of record and submission made by the parties that as per clause 10(a) of the flat buyer agreement dated 22.05.2012, the respondent was under obligation to deliver the possession of the unit within a period of 36 months of commencement of construction of the particular block in which the flat is located or 24 months from the date of booking of flat, whichever is later, with a grace period of 6 months. Grace period of 6 months is given to respondent due to exigencies beyond the

control of the respondent. The date of commencement of construction is not available thus due date of possession is calculated from the date of booking i.e. 16.09.2011.

However the complainant is entitled for delayed possession charges at the prescribed rate i.e. @ 10.75% p.a. w.e.f. 16.03.2014 as per the provision of section 18(1) of the Real Estate Regulation and Development Act, 2016 till offer of possession.

As far as the penalty clause in case of delay in possession is concerned which is Rs. 10/sq. ft. of the super area per month, it is held in para 181 of the judgment in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers

had no scope or power to negotiate and had to accept these one-sided agreements.”

37. With respect to **third issue** raised by the complainant, the authority came across from the perusal of record that there is no documents annexed by the respondent And respondent has merely assert this. Hence, the issue become infructuous.

38. With respect of **fourth and fifth issue** raised by the complainant, as the authority doesn't have jurisdiction in respect of this issue. So, complainant is directed to approach to concerned authority.

Finding of the Authority

39. As per clause 10(a) of flat buyer agreement dated 22.05.2012 for unit no. B6-702, in project “Parsvnath Exotica”, Sector 53, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the commencement of construction of the block in which flat is located or 24 months from the date of booking whichever is later with a grace period of 6 months which comes out to be 16.03.2014. However, the respondent has not delivered the

unit in time. It was a construction linked plan. Complainant has already paid Rs. 2,81,40,000/- to the respondent against a total sale consideration of Rs. 2,94,93000/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 16.03.2014 as per the as per the provision of section 18(1) of the Real Estate Regulation and Development) Act, 2016 till offer of possession.

Jurisdiction of the Authority -

The authority has complete jurisdiction to decide the complaint with 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 Town & 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.

40. The complainant made a submission before the authority u/s 34(f) to ensure compliance/obligations cast upon the promoter as per section 1 of the Act *ibid*. And the complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligations.

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

Decision and directions of the authority

41. After taking into consideration all the material facts as adduced and produced by both 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 pay delayed possession charges to the complainant at the prescribed rate of 10.75% per annum w.e.f. 16.03.2014 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
 - ii. 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.
 - iii. As the project is not registrable and has not been registered by the promoter, the authority has decided to take suo moto cognizance for not getting the project registered and for that separate proceedings will be initiated against the respondent by the registration branch. A copy of this order be endorsed to registered branch.
42. The order is pronounced.
 43. Case file be consigned to the registry.
 44. A copy of this order to be endorsed to the registration branch.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Dated : 27.03.2019

Judgement Uploaded on 29.05.2019