

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

**Complaint No. : 1945 of 2018**  
**First date of hearing: 20.03.2019**  
**Date of Decision : 20.03.2019**

1. Mr. Karan Singh Chettri
  2. Mrs. Pratima Chettri
- Both R/o House No. R-18B, Windsor **Complainants**  
Court, DLF Phase -4, Gurgaon, Haryana-  
122001.

Versus

1. M/s Parsvnath Developers Ltd. (through  
its managing director/Authorized  
Representative)
  2. M/s Parsvnath Hessa Developers Ltd.  
(through its managing director  
/Authorized Representative)
- Both Registered office at : Parsvanath  
Metro Tower, Near Shahdara Metro  
Station, Shahdara Metro Station, Shahdar  
Delhi-110032 Corporate Office- 6<sup>th</sup> Floor, **Respondents**  
Arunachal Building 19, Barakhamba  
Road, New Delhi-110001

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri S.M Ansari

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. A complaint dated 30.11.2018 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. Karan Singh Chettri, and Mrs. Pratima Chettri against the promoters, M/s Parsvnath Developers Pvt. Ltd. and M/s Parsvnath Hessa Developers Ltd., in respect of the project “Parsvnath Exotica” located at sector 53/54, 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 *ibid* .
2. Since the flat buyer agreement 08.03.2007 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 obligation 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	“Parsvnath Exotica” Sector 53/54, Gurugram.
2.	Nature of real estate project	Group housing colony.
3.	Total area of the project	26.905 acres

4.	DTCP license no.	69 to 74 of 1996,52 to 57 of 1997,1079 of 2006, 1080 of 2006
5.	Allotted apartment/unit no.	B5-801, Block-B, 8 <sup>th</sup> floor
6.	RERA Registered / not registered	<b>Not registered</b>
7.	Date of execution of flat buyer agreement (between original allottee and the respondent)	08.03.2007
8.	Payment plan	Construction linked payment plan
9.	Unit area	3390 sq.ft.
10.	Total consideration as per the payment schedule	Rs. 1,80,85,650/-
11.	Total amount paid by the complainant till date as per agreement	Rs.1,79,28,453/-
12.	Date of commencement of construction	17.02.2010
13.	Due date of delivery of possession as per clause 10(a)of the flat buyer agreement(construction to be completed within a period of 36 months of commencement of construction of the particular block in which flat is located with a grace period of 6 months, on receipt of sanction of building plans and approvals of all concerned authorities)	<b>17.08.2013</b>
14.	Delay in offer of possession	5 years and 8 months approx.
15.	Penalty clause (as per clause 10(c) of the flat buyer agreement)	Rs.10/- per sq. ft. of the super area of the flat per month

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 respondents. The flat buyer

agreement dated 08.03.2007 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by 17.08.2013 which is in violation of section 11(4)(a) of the Act ibid.

5. Taking cognizance of the complaint, the authority has issued notice to the respondents for filing reply and for appearance. The respondents appeared on 20.03.2019 The case came up for hearing on 20.03.2019. The reply has been filed by the respondents and the same has been perused by the authority.

**Facts of the complaint: -**

6. The complainants submitted that the respondents parties, Parsvnath Developers Limited (PDL) & Parsvnath Hessa Developers Private Limited (PHDPL), are companies incorporated under the Companies Act, 1956 having registered office at: Parsvnath Metro Tower, near Shahdara metro station, Shahdara, Delhi - 110032, corporate Office : 6<sup>th</sup> Floor, Arunachal building, 19, Barakhamaba Road, New Delhi - 110001(hereinafter called the **Developer/ Builder / Respondent**) and the project in question is known as Parsvnath Exotica, Sector -53/54, Gurugram, Haryana (hereinafter called the **Project**)
7. The complainants submitted that as per Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the Respondent falls under the category of “promoter” and is

bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this hon'ble regulatory authority.

8. The complainants submitted that as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the Complainants falls under the category of "allottee" and have rights and obligations under the Act.
9. The complainants submitted that the said flat bearing flat no. B5-801 was booked by Mr. Shuk Dev Bhardwaj and Mr. Amit Bhardwaj, on 25.08.2006 under construction link payment plan for sale consideration of Rs. 1,80,85,650/-.
10. The complainants submitted that a pre-printed flat buyer agreement was executed between original allottee and Parsvnath Developers Limited. As per clause no. 10(a) of flat buyer agreement, respondent has 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". It is pertinent to mention here that construction of said tower was started in February, 2010, inter alia due date of possession was February, 2013.
11. The complainants submitted that on 17.02.2010, respondent raised the demand of 2<sup>nd</sup> installment as per payment plan on stage "on start of foundation". Complainants paid the said demand on 25.02.2010.

12. The complainants submitted that on 22.03.2012, complainants Mr. Karan Singh Chettri and Mrs. Pratima Chettri purchased the above said flat from original allottee with permission of respondents and become allottee of flat no. B5-801.
13. The complainants submitted that on 17.09.2013, respondent raised a demand of Rs. 15,00,501/- as per payment plan on stage “on start of internal plaster”. Complainants paid the said demand vide four cheques and respondents issued payment receipts.
14. The complainants submitted that as per the payment schedule of the builder buyer agreement, allottee has already paid the more than 95% amount i.e Rs. 1,79,28,453/- till 05.10.2013 along with car parking and other allied charges of actual purchase price, but when complainants observed that there is no progress in construction of subject flat for a long time, they raised their grievance to respondents. Though complainants was always ready and willing to pay the remaining instalments provided that there is progress in the construction of flat.
15. The complainants submitted that on date 22.03.2018, respondents send a letter “offer for fit outs” with increase in super area by 105 sq. ft. In this letter respondents acknowledge delay in possession from September, 2013.

16. The complainants submitted that the complainants do not wants to withdraw from project. Promoters have not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoters obligated to pay me interest at the prescribed rate for every month of delay till the handing over the possession.

**17. Issues to be determined -**

- i. Whether the developers have violated the terms and conditions of flat buyer agreement?
- ii. Whether complainants are entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act.?

**18. Reliefs sought:-**

- i. Pass an appropriate award directing the respondents parties 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 (complete in all respect) (as per section 18 of Real Estate (Regulation and Development) Act, 2016). Direct the respondents to complete all the pending work and provide all amenities as per promise made in the flat buyer agreement.

- ii. Respondent may be directed to hand over the possession of flat to the allottee immediately and not later than six months from the date of judgment, complete in all respects and execute all required documents for transferring / conveying the ownership of the respective flats.

**Respondent's reply(Reply filed by both respondents):-**

19. The respondents submitted that the respondent no.1 company Parsvnath Developers Ltd. is not a necessary party in the present complaint and hence the complaint is bad for misjoinder of parties. Respondent no.1 has brought foreign direct investment (FDI) in the project in question "Parsvnath Exotica" project at Gurugram, so as to ensure fast completion and delivery of the project. As such an agreement has been executed between the respondent no.1 and respondent no.2, a joint venture company of respondent no.1. Under the terms of the said agreement, development, construction and marketing of built up areas in towers B 1, B2, B3, B5, B6 and C4 have been transferred to respondent no. 2 company. In this regard an intimation letter was sent to all the allottees of the project by the respondent no.1 and in the said letter, it was specifically



stated that the respondent no.1 shall be remained only as a confirming party and all other responsibilities were already transferred to respondent no. 2. In view of the above reasons, respondent no.1 company is not a necessary party in the present case and hence the name of the respondent no.1 is liable to be deleted from the party array.

20. The respondents submitted that the project construction is already completed. The competent authority has already granted occupancy certificate for the part of the project and for remaining part is awaiting for getting occupancy certificate. Respondent further, submitted that out of the said 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 no.1 M /s Parsvnath Developers Ltd. has already applied for the occupancy certificate with respect to remaining 5 towers i.e. D4, D5, D6 on 01.11.2011 for which review were also filed by the respondent no.1 on 24.11.2017 and with respect to towers no. B1, and C4 on 13.08.2013 before the competent authority DTCP, Chandigarh, Haryana. It is further submitted that appropriate and relevant

reports from the office of DTP; STP; PHE, and external services have been forwarded to Department of Town & Country Planning, Chandigarh, Haryana. The fire no objection certificate (NOC) has been already granted by the competent authority for this tower.

21. The respondents submitted that tower no. B5 in which the flat of the complainant is located has been completed. The respondent has duly completed all the construction work/development work in the part of the project and tower B5.
22. The respondents submitted that the complainants are only subsequent purchasers who purchased the said flat from the open or secondary market in the year 2012 only. They have purchased the allotment from the original allottee Mr. Amit Bhardwaj in the year March 2012 and the complainants were well aware about the status of the construction at the time of purchasing the said flat from the open market or secondary market. The complainants have purchased the said the flat in question for investment purpose only and hence they cannot be treated as real consumers.

24. The respondents submitted that the prayer for awarding to pay interest at the prescribed rate from due date of possession till the handing over the possession etc. cannot be considered in the present case for the following reasons:-

- a) Part project has been completed and the respondents are in process of getting the occupation certificate of tower B5.
- b) The approval regarding the transfer of beneficial interest & marketing rights were framed 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 approved as the last nail in the coffin. So, this relief sought is neither tenable nor justifiable. This is going to be created an additional burden on the health of the entire project and leads to destruction.
- c) Awarding the interest for every month at this advanced stage of project is not in the interest of the other allottees at large as the same will hamper the completion of the project.
- d) That 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.

25. The respondents submitted that the clause no. 10( c) of the flat buyer agreement wherein the delay compensation has been specifically mentioned and agreed by the complainant and hence contending the date of offering the possession as the contention for payment of interest and other relief sought is incorrect wherein "time is the essence of the contract" stands contravened and hence proviso of section 18 are not applicable in the captioned matter as the respondent have agreed to abide by the obligations made under the flat buyer agreement duly executed between the complainants and the respondents.
26. The respondents submitted that the payment of the interest every month of individual would further jeopardize the project as a whole and simultaneously adversely affect the interest of other allottees as well.
27. The respondents submitted that the global recession hit the economy and is continuing particularly in the real estate sector. The global recession largely affected the real estate sector. It is submitted that the construction of project of the respondent is dependent upon the money being received from

the bookings made and money received henceforth in form of instalments by the allottees.

28. The respondents submitted that the unexpected sudden declaration of demonetization policy by the central government, affected the construction works of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours. It is further submitted that recession in economy also resulted in availability of labour and raw-materials becoming scarce. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM). These problems are beyond the control of the respondents. It may be noted that the respondents had at many occasions orally communicated to the complainants that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the respondents.

29. The respondents submitted that the complainants have sought the interest for every month of delay from due date of possession till the handing over the possession by him qua

subject apartment etc. It is stated that the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence and cross examination. The issues raised by the complainants cannot be addressed before this hon'ble authority, which follows a summary procedure. In view of the same, the subject matter cannot be adjudicated without going into the facts of each case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this hon'ble authority. The complaint is liable to be dismissed on this ground alone.

#### **Determination of Issues-**

30. As regards the **first and second issue** raised by the complainants, it is to be noteworthy from the perusal of record and the submissions made by the parties, as per clause 10(a) of the flat buyer agreement, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction of the block in which the flat of the complainant is located i.e. 17.2.2010 + 6 months grace period which comes out to be 17.8.2013. However, the

respondent has not delivered the unit in time. Relevant portion of the clause is reproduced below –

“10(a) construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular block in which flat is located. With a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service deptt., civil aviation deptt., traffic deptt., pollution control deptt. as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the developers and subject to timely payments by the flat buyers in the scheme.”

As per statement of account, the construction was commenced on 17.02.2010, hence on calculation the due date of delivery of possession comes out to be 17.08.2013, However, the respondents has failed to deliver the possession till date even after a delay of 5 years and 8 months which is in violation of section 11(4)(a) of the Act *ibid*. Thus, the complainants are entitled for delayed possession charges at prescribed rate of interest i.e 10.75% p.a. on the deposited amount in terms of section 18 of the Act.

#### **Findings of the authority-**

- 31. Jurisdiction of the authority-** The preliminary objection raised by the respondent regarding the jurisdiction of the authority stands dismissed. 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. 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.

32. As per clause 10 of the flat buyer agreement dated 8.3.2007 for unit No.B5-801, in project "Parsvnath Exotica" Sector 53-54, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction of the block in which the flat of the complainant is located i.e. 17.2.2010 + 6 months grace period which comes out to be 17.8.2013. However, the respondents have not delivered the unit in time. It was a



construction linked plan. Complainants have already paid Rs. 1,79,28,453/- to the respondents against a total sale consideration of Rs. 1,80,85,650/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 17.8.2013 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 -**

33. 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 issue the following directions:-

- i. The respondents are liable to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 17.8.2013 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 complainants within 90 days from the date of his order and

thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

iii. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainant, if any The order is pronounced.

iv. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

34. Complaint stands disposed of.

35. File be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -20.03.2019

Judgement Uploaded on 29.05.2019

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram