

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

**Complaint No. : 937 of 2018**

**First date of Hearing : 09.04.2019**

**Date of Decision : 02.05.2019**

1. Shri Mannil Sudhir Nair
2. Shri Lokender Singh
3. Shri Pramod Kumar Tyagi

All R/o House no. – D147, Sector-105,  
Noida, Gautam Budh Nagar, Uttar  
Pradesh – 201304

**Complainants**

Versus

M/s Kashish Developers Limited  
87, Old A.G. Colony, Kadru, Ranchi,  
Jharkhand 834002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Lokender Singh

Complainant No.2 in person

Shri Ashok Kumar Sharma

Authorised Representative on  
behalf of respondent company

Smt. Neeta Sinha

Advocate for the respondent

## ORDER

1. A complaint dated 26.09.2018 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 Shri Mannil Sudhir Nair, Shri Lokender Singh and Shri Pramod Kumar Tyagi, against the promoter M/s Kashish Developer Ltd., on account of violation of clause 3(a) of apartment buyer's agreement executed on 14.05.2013 in respect of unit no. A-11G, 11<sup>th</sup> floor, tower A, admeasuring 895 sq. ft. in the project 'Manor One' located at Sector 111, Gurugram for not handing over possession of the subject plot by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid.*
2. Since the apartment buyer's agreement dated 14.05.2013 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 noncompliance of contractual obligation on the part of the

respondent in terms of the provision of section 34(f) of the Act  
ibid.

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

1.	Name and location of the project	Manor One, Sector 111 Gurugram
2.	Nature of real estate project	Group housing colony
3.	Project area	14. 843 acres
4.	DTCP license no.	110 of 2011
5.	Registered/unregistered	<b>Not registered</b>
6.	Date of booking	<b>21.08.2012</b> (as alleged by the complainant)
7.	Date of execution of apartment buyer's agreement	14.05.2013
8.	Date of letter of allotment	22.08.2012
9.	Unit no.	A-11G, 11 <sup>th</sup> floor, tower A
10.	Unit measuring	895 sq. ft.
11.	Payment plan	Construction linked plan
12.	Total consideration amount	Rs 73,95,270/- (as per flat holder annexed with the complaint book)
13.	Total amount paid by the complainants	48,79,886/- (as alleged by complainant)
14.	Due date of delivery of possession (As per clause 3(a) – 36 months + 6 months from the execution of agreement)	<b>14.11.2016</b>

15.	Delay in handing over possession till 02.05.2019	2 Years 5 months 18 days (approx.)
16.	Penalty clause (as per clause 3 (c) (iv) of flat buyer's agreement)	Rs. 10/- per sq. ft per month of super area for the period of delay

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement is available on record for unit no. A-11G, 11<sup>th</sup> floor, tower A admeasuring area of 895 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 14.11.2016. However, the respondent has failed to fulfil his contractual liabilities as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 09.04.2019 and 02.05.2019. The reply has been filed on behalf of the respondent has been perused.

### Facts of the case

6. The complainants submitted that they had booked a flat no. A-11G, admeasuring 895 sq. ft. in tower-'A' of the project 'Manor One' in Sector-111, Gurugram at total cost of Rs. 73,95,270/- against which the complainants till date have made a payment of Rs. 48,79,886/-, and payments made have been received and acknowledged by the respondent company.
7. The complainants submitted that the allotment letter in respective unit was issued on 22.01.2013 confirming the allotment in favour of complainants. That a detailed apartment buyers' agreement was executed on 14.05.2013 in complainants favour and as per one of the terms and conditions of the allotment letter, the possession of the unit was to be made within a period of 42 months (including 6 months grace period) from the date of agreement which period has already expired on 13.11.2016. However, it has been noticed and also a matter of record that the completion of the project is far from over and construction is already delayed by 24 months, and therefore possession of the same seem to be a very remote possibility.

8. The complainants submitted that since the project has been delayed for a long period by the respondent company and work has not progressed over a long period of two years and the respondent company is not responding to any communication in this regard from the complainants, the complainants are not sure when and whether they will get the possession of the subjected flat or not.
9. It is submitted that as such, the objective of taking the flat in question is therefore defeated and the complainants do not wish to continue any longer with the booking and desire refund of paid amount of Rs 48,79,886/-, with the interest rate of 24% per annum and request authority to direct respondent to immediately effect the cancellation of the unit in question.

**Issues to be decided**

10. The relevant issues as per the complaint:-
- Whether the respondent company had erred in its contractual obligation in failing to deliver the unit in question within the stipulated time as per its own

commitment and causing irreparable losses to the complainants?

- ii. Whether the developer changed the site development plan without any notice to the complainants.
- iii. Whether the complainants are entitled to the relief of refund.

### Relief sought

11. The relief sought by the complainant are as follows: -
  - i. In view of the brief facts and events, the complainants respectfully pray that the respondent company may directed to immediately effect the cancellation of the unit in question and refund the total paid amount of Rs. 48,79,886/-, along with interest of 24% p.a from the date of booking (21.08.2012) till the date of refund of the mentioned amount.

### Respondent Reply

12. The respondent submitted that the respondent is a real estate company developing a residential group housing project named "Manor One" at Sector-111, Gurugram on an area of 14.843 acres.



13. The respondent submitted that the complainants approached them as they wanted to buy a flat admeasuring 895 sq. ft. in the said project. The complainants have booked flat no. A-11G admeasuring 895 Sq. ft. in tower-A in project” Manor One” situated in Sector-111, Gurugram The complainants have paid only Rs. 48,79,886/- out of total cost of Rs. 73,95,270/-.
14. The respondent submitted that they have already completed construction up to 11<sup>th</sup> floor out of total G+15 floors in tower A in which the complainants have booked their unit. Brick work is completed up to G+8 in this tower and plaster is completed up to 0+3 in this tower. Construction in other towers of the project is also progressing very fast and construction of civil structure is complete up to various levels from G+15 to G+15 out of total G+18. Brick work is complete up to various levels from G+8 to G+13. Plaster is complete up to various levels from 0+3 to 0+4. Work in the project is progressing fast and the project is scheduled to be handed over by 30<sup>th</sup> Sep 2019 after getting the OC for Phase-1(total 5 towers).



15. The respondent submitted that it is denied that the respondent has failed to deliver the unit in question within stipulated time and it is denied that irreparable loss has been caused to the complainants. On the other hand, respondent is ready to honour its contractual commitment of delivering the unit to the complainants as per the terms and conditions of apartment buyer agreement.
16. The respondent submitted that it is denied that objectives of complainants have been defeated just because completion of project has got delayed. Moreover, project got delayed due to reason beyond reasonable control of respondent like default in payments of due instalments by existing buyers, very few new sales due to slump in real estate market, shortage of supply of material due to remote location site, delay in getting approvals from govt. authorities etc.
17. The respondent submitted that it is denied that respondent company has changed the site development plan without any notice to the complainants.

18. The complainant made a submission before this authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
19. 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.

### **Determination of issues**

16. With respect to the **first issue** raised by the complainants, the respondent as per clause 3 (a) of the builder buyer agreement dated 14.5.2013 for unit No.A-11G, 11th floor, tower-A, in project "Manor One", Sector-111, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of execution of BBA plus 6 months grace period which comes out to be 14.11.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.48,79,886/- to the respondent against a total sale consideration of Rs.73,95,270/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f. 14.11.2016 as per the provisions of section 18 (1) of the Real

Estate (Regulation & Development) Act, 2016 till the date of offer of possession.

17. With respect to the **second issue** raised by the complainants, they have failed to provide any relevant evidence on the case file in respect of the issue raised by him. Hence, this issue is decided is negative.

18. With respect to the **third issue** raised by the complaint, Local commissioner report dated 30.4.2019 has been received and placed on record. The relevant portion of the LC report is as under: -

“During site inspection, the overall progress of the project being developed by M/s Kashish Developers Ltd. has been accessed on the basis of actual construction at site and it is concluded that:-

D. The physical progress of overall project is about 25 per cent.

E. The physical progress of tower-A is nearly 40 per cent

F. The physical progress of complainant's unit is about 45 percent.

At present the work is progressing at site”,

So, refund at this stage is not allowed.

## Findings and directions of the authority

19. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

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.

20. Local commissioner report dated 30.4.2019 has been received and placed on record. The relevant portion of the LC report is as under:-

“During site inspection, the overall progress of the project being developed by M/s Kashish Developers Ltd. has been assessed on the basis of actual construction at site and it is concluded that:-

D. The physical progress of overall project is about 25 per cent.

E. The physical progress of tower-A is nearly 40 per cent

F. The physical progress of complainant’s unit is about 45 percent.

At present the work is progressing at site”.

All the complainants have raised an issue that the tower- A in which the flat of complainants is situated, only structure part is complete.

As per LC report only 25% work of the project is complete even after lapse of six years. The project is badly delayed, as it was to be handed over/completed by 14.11.2016.

21. As per clause 3 (a) of the builder buyer agreement dated 14.5.2013 for unit No. A-11G, 11th floor, tower-A, in project “Manor One”, Sector-111, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA plus 6 months grace period which comes out to be 14.11.2016. However, the respondent has not delivered the unit in time. Counsel for the respondent

stated at bar that the respondent shall complete the project tentatively by September 2019. Since the project is not registered as such no credence w.r.t. the statement made at bar can be given. The complainants are advised to wait till September 2019 failing which shall be eligible for refund of their deposited amount along with interest @ 10.70% per annum. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f. 14.11.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the date of offer of possession.

#### **Decision and direction of authority**

22. 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:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f. 14.11.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for delayed period.
- iii. Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- iv. 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 before 10<sup>th</sup> of subsequent month.
- v. The promoter shall not charge anything from the complainant which is not part of builder buyer agreement.
- vi. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

23. The order is pronounced.



24. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

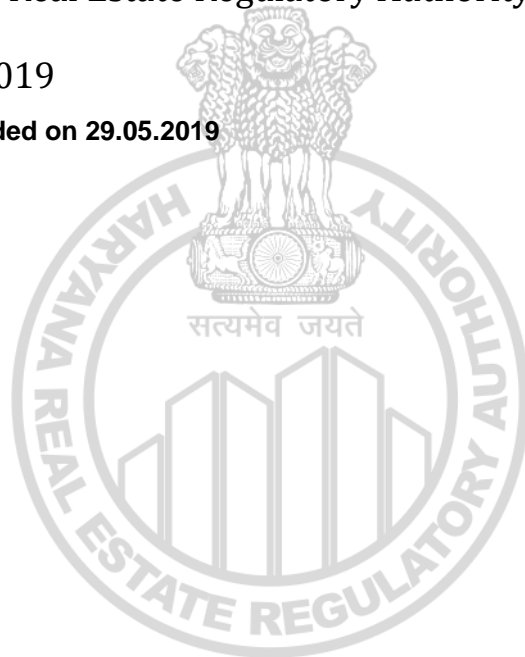
**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:02.05.2019

Judgement Uploaded on 29.05.2019



**HARERA**  
GURUGRAM