

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

Complaint no. : 1700 of 2018
First date of hearing : 10.04.2019
Date of decision : 10.04.2019

Mr. Manish Kumar Verma

**R/o : House no 549, 1st Floor, Sector 22A,
Gurugram-122001**

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd. (through its
director)

**Regd. Office : 14A/36, WEA, Karol Bagh, New
Delhi-110005.**

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Karan Govel Advocate for the complainant
None for the respondent Proceeded ex-parte on
10.04.2019

EX-PARTE ORDER

1. A complaint dated 10.12.2018 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 Mr. Manish Kumar Verma against the promoter M/s Apex Buildwell Pvt.

Ltd., on account of violation of clause 3 (a) of the apartment buyer's agreement executed on 04.03.2013 in respect of unit described below in the project "Our Homes" for not handing over possession on the due date which is an obligation under section 11 (4) (a) of the Act *ibid*.

2. Notices w.r.t. filing of reply were issued to the respondents on 13.12.2018, 28.12.2018 for making his appearance and a final notice dated 20.03.2019 by way of email was sent to both the parties to appear before the authority on 10.04.2012. However despite due and proper service of notices, the respondent failed to file the reply before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint

3. Since, the apartment buyer's agreement has been executed on 04.03.2013 i.e. prior to the commencement of the Act ibid, 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 contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Nature of real estate project	Low cost/Affordable group housing project (Multi storey apartment)
3.	RERA registered/ not registered	Not registered
4.	Project area	10.144 acres
5.	DTCP License	13 of 2012 dated 2202.2012 Note: License expired on 22.02.2016 and renewal fees submitted but not renewed
6.	Apartment/unit no.	925, 9 th floor, tower 'Rose'
7.	Apartment measuring	48 sq. m carpet area
8.	Booking date	07.09.2012
9.	Date of execution of apartment	04.03.2013

	buyer's agreement	
10.	Payment plan	Construction linked payment plan
11.	Basic sale price	Rs 16,00,000/- (as per clause 1.2 of agreement)
12.	Total amount paid by the complainant till date	Rs 1566448/- (as per receipts attached in complaint pg. 49-57)
13.	Consent to establish granted on	02.12.2013
14.	Due date of delivery of possession as per clause 3 (a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all project related approvals) (Consent to establish granted on 02.12.2013)	02.06.2017
15.	Delay in handing over possession till date of decision, i.e. 10.04.2019	1 year 10 months 8 days
16.	Penalty clause as per apartment buyer's agreement	Clause 3(c)(iv) of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the said flat.

5. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant. An apartment buyer's agreement dated 04.03.2013 is available on for the aforesaid unit, according to which possession was to be delivered by 02.06.2017. Neither

the respondent delivered possession till date nor they have paid any compensation in accordance with the clause 3(c)(iv) of the said agreement. Therefore the promoter has not fulfilled his committed liability as on date.

6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor filed their reply to the complaint therefore their right to file reply has been struck off and case is being proceeded ex-parte against the respondents. Written submission have been filed by the complainant reiterating the facts stated in the complaint reflecting the assertion of respondent.

Facts of the complaint

7. The complainant submitted that relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under govt. of Haryana Affordable Housing Scheme and thus allotted apartment no. 925, 9th floor, tower 'Rose' having a carpet area of approximately 48 sq. meters (where the carpet means the area enclosed under the exterior walls of the said apartment) with an exclusive right to use of on Village Gadoli-Khurd, Sector-37, Tehsil & District

Gurugram together with the proportionate undivided, unidentified, impartible interest in the land underneath, the said housing complex with the right to use the common areas and facilities in the said housing complex vide apartment buyers' agreement dated 04.03.2013

8. The complainant submitted that the basic sale price of the apartment was of Rs.16,00,00/-, payable by the apartment allottee /complainant as per payment plan and consequently the complainant had paid the amount of Rs 15,66,468 till date.
9. The complainant submitted that as per the apartment buyer's agreement, the respondent had promise the complainant to handover the physical possession of the dwelling apartment /unit within a period of 36 months, with a grace period of 6 months.
10. The complainant submitted that Facts leading to delay in possession are as under:-
 - a. That at the time of booking of aforesaid unit it was duly assured, represented and promised by the respondent that the said unit and real estate project will be ready for occupation by the complainant within a period of 36 months from the date of

commencement of construction of the complex with a grace period of six (6) months.

b. That since the date of booking, the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

c. That the respondent failed to develop so called project within the period of thirty six months with grace period of 6 months.

11. The complainant submitted that he several times requested the respondents telephonically as well as by personal visits at the office for the delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondent but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and the lingered on one pretext or the other and refused to deliver the possession of the above said flat.

12. The complainant submitted that the respondent by providing false and fabricated advertisement, thereby,

concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondent gained wrongfully, which is purely a criminal act

13. The complainant submitted that he is concerned about the construction quality as when he checked the internal wall plaster of the allotted unit, its sand is came to his hand and it seems that it was not mixed with the right proportion of cement. The complainant requested that some concerned authority which issued license to the builder be held accountable and there should be some mechanism in order to check the basic construction quality as otherwise there will be a risk of life for more than 1100 families (approx. 5000 lives) who will start living there. It is requested to check the basic construction quality of the structure built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent might try to use/ deploy cheapest and lowest category material in absence of any such

14. The complainant submitted that thereafter, he tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying monthly rent and extra interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.
15. The complainant submitted that some buyer of the project in question have filed complaint about this delay in CM window & one of the complaints has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15.01.2018 and at that point the complainant came to know that builder license has been expired and not renewed. Thereafter, many buyers requested Mr. R.S. Batt to please take some action & help them to get this project complete as early as possible. This is respondent

responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.

16. The complainant submitted that it seems that the funds collected from this project buyers has been moved outside in buying other assets for their own interest . Even the new office building of respondent at Sec-32, Gurugram has been commenced in the year of 2014.

Issues to be determined

17. The relevant issues as called out from the complainant are:
- i. Whether the respondent delayed in handing over the possession of the unit to the complainant?
 - ii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?
 - iii. Whether the quality of construction/building material is of sub-standard?

Relief sought

18. The complainant is seeking the following relief :
- i. To direct the respondent to pay delay interest at the rate of 18% per annum on total consideration paid by the complainant from the due date of possession.

Determination of issues:

After considering the facts submitted by the complainant, and perusal of record on file, the issues wise findings of the authority are as under:

19. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction upon receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent on 02.12.2013. therefore, the due date of handing over possession will be computed from 02.12.2013.
20. Accordingly, the due date of possession was 02.06.2017 and the possession has been delayed by one year ten months and eight days till the date of decision.

21. As the possession of the flat was to be delivered by 02.06.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016
22. With respect to **second issue**, on account of failure in handing over possession by the due date, the promoter is liable under section 18(1) proviso to pay to the complainant, interest at prescribed rate of 10.75% p.a. for every month of delay from the due date of possession till the offer of possession.
23. With respect to the **third issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint. However, the authority has issued directions in succeeding paras.

Findings of the authority

25. 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.

26. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Territorial Jurisdiction

27. 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 complainants.

28. Report of local commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

“Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower

in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%”

29. As per clause 3(a) of the agreement dated 04.03.2013 for the unit no. 925, tower-Rose in the project “Our Homes” Sector 37C, Gurugram, possession was to be hand over to the complainant within a period of 36 months from the date of start of construction plus 6 months grace period. The due date comes out to be 02.06.2017. However, the respondent has not yet delivered the unit in time.

Decision and 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 in the interest of justice and fair play:

- i. The respondent is liable to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **02.06.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The promoter shall not charge anything from the complainant which is not part of the agreement.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- v. 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 10th of subsequent month.

30. As the project is 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 and by the registration branch for further action in the matter.

31. The order is pronounced.

32. Case file be consigned to the registry.

33. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 10.04.2019

Judgement Uploaded on 29.05.2019

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