

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

**Complaint no.** : 1209 of  
2018  
**Date of First  
hearing** : 27.03.2019  
**Date of decision** : 27.03.2019

Mr. Vijay Kumar Suri  
Mrs. Perveen Suri  
R/o. H.no. 115, Pocket A-8, Kalka Ji  
Extension, New Delhi-110019

**Complainants**

M/s Earth Buildrop Pvt. Ltd  
(through its Directors)  
Regd. Office: B-100, 2<sup>nd</sup> floor, Naraina,  
Industrial Area Phase-1, New Delhi-110028

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Mr. Vijay Kumar Suri Complainant no. 1 in person

None for the respondent Advocate for respondent



**EX-PARTE ORDER**

1. A complaint dated 26.10.2018 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. Vijay Kumar Suri and Mrs. Perveen Suri, against the promoter M/s Earth Buildrop Pvt. Ltd. (through its Directors), in respect of said unit described below in the project Elacasa on account of non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act *ibid.*

2. Since the apartment buyer's agreement has been executed on 10.03.2015, 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.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Elacasa", Sector 107, Gurugram
2.	Project area	10.218 acres
3.	DTCP license no.	23 of 2012 dated 27.03.2012
4.	Apartment/unit no.	1001, tower-F, 10 <sup>th</sup> floor
5.	Unit area measuring	1890 sq.ft.
6.	RERA registered/ not registered.	<b>Not registered</b>
7.	Nature of real estate project	Group Housing colony
8.	DTCP License No.	69 of 2017 dated 25.07.2014



9.	Date of execution of apartment buyer's agreement	<b>10.03.2015</b>
10.	Payment plan	Construction linked payment plan
11.	Date of allotment letter	04.04.2013
12.	Date of booking	18.04.2012
13.	Total Consideration	Rs. 74,59,770/-
14.	Total amount paid by the complainants	Rs. 43,69,668/- (as alleged by the complainants)
15.	Due Date of delivery of possession as per <b>clause 11: 36 months computed from the receipt of all approvals viz but not limited to sanction of layout plan, height clearance etc. by the company and execution of the agreement+ 6 months grace period</b>	<b>10.09.2018</b> <b>No approval documents have been annexed with the paper book. Therefore, due date calculated from the date of execution of the agreement.</b>
16.	Penalty clause (Clause 17)	Rs. 7/- per sq.ft. of super area of unit per month for the period of delay.

3. The details provided above have been checked on the basis of the record available in the case file provided by the complainants and respondent. An apartment buyer's agreement dated 10.03.2015 where the possession of the unit was to be delivered by 10.09.2018, thus the promoter has not fulfilled his liability.

4. 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 27.03.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

### Facts of the complaint

5. Briefly stated, the facts of the case, are that the complainant that in 2012 the respondent approached to the complainants for booking of a flat in the residential project pre launched by them as "Earth Copia" Gurgaon, Haryana. The complainants after repeated requests and offers made by the respondent, agreed to book a flat in the said project.
6. The complainants submitted that they agreed with the payment plan offered by the respondent and in April 2012, booked a flat in the project of the respondent keeping in mind that possession of unit will be given in 36 months from the date of agreement and paid a sum of Rs. 6,50,000/- as booking amount which was duly credited in the account of the respondent on 01.05.2012 and the complainants submitted provisional application form to the respondent.



7. The complainants submitted that after the above said booking and payment the respondent kept silent about the further process and update about the project and the complainants made many follow up for the further step but nothing happened till February 2013 and the respondent made further demand of Rs. 9,56,500/- and Rs. 1,47,061/- in February 2013 and same has been paid by the complainants dated 19.03.2013.
8. The respondent after the above said payment allotted a 3bhk unit/ apartment no. 1001 in tower-F on 10<sup>th</sup> floor, admeasuring 1890 sq. ft. in the prestigious project “Elacasa” Sector-107, Gurgaon, vide allotment letter dated 04.04.2013, whereas, the complainants booked his flat in other project as “Earth Copia”. The complainants inquired about this change without their consent and the respondent informed that there is some issue the old project hence they are allotted flat in this project only. The complainants were left with no choice became agreed to continue in the said new flat.
9. The complainants submitted that after the above said allotment in the said project they made further payment of Rs. 14,68,530/- dated 26.03.2014 and after that the respondent took an affidavit/ application dated 05.02.2015



from the complainants for the transferring of their payment in the project “Elacasa” developed by the respondent i.e. Earth Buildprop Pvt. Ltd. because old booking was with Earth Infrastructures Limited.

10. After the above said transfer the respondent executed apartment buyer’s agreement with the complainants on 10.03.2015 for the unit where total cost of apartment is Rs. 74,59,770/- in the project “Elacasa” and according to the agreement clause 11 the respondent will offer the possession of the said flat within 36 months from the date of execution of apartment buyer’s agreement and according to the possession clause, possession time has been over in March 2018 but the project is not yet complete.
11. The complainants submitted that after execution of the agreement received demand from the payment of Rs. 6,22,615/- in August 2015 and Rs. 5,24,962/- in November 2015 and same has been paid by the complainants dated 04.08.2015 dated 17.11.2015.
12. The complainants submitted that the respondent issued a letter dated 09.03.2017 to the complainants regarding the opening of escrow account for the purposes of completing the





project and requested to make all further payment in the said account only. After the above said letter the complainants visited the project site and it was very shocking that construction work was stopped on the said project and it was informed by the site staff that the construction work has stopped since November 2015 and the director of the company is behind the bar.

13. The complainants submitted that the after paying a huge amount Rs. 43,69,668/- which is more than 60% of the total cost of the apartment to the respondent for a house the complainants are running from pillar to post for the possession of their apartment as per agreement but from the current status complainants are very disappointed and approaching the hon'ble authority for taking appropriate action.

14. **Issues to be decided:**

The relevant issue as culled out from the complaint are as follows:

- I. Whether the respondent has delayed in delivering the possession within the stipulated period?



## 15. Relief sought

- I. Direct the respondent to provide the possession of the above said apartment in the project “Elacasa” Sector-107, Gurgaon, Haryana to the complainants in fully habitable condition with all amenities as per the agreement and brochure.

## Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

16. With respect to the **sole issue** raised by the complainants, as per clause 11 of the agreement the construction was to be completed within 36 months from the receipts of all approvals but not limited to sanction of layout plan along with grace period of 6 months. however, no approval documents have been annexed with the paper book. Thus, the due date is calculated from the date of execution of agreement. Further, grace period is allowed to the promoter on account of various exigencies. Accordingly , due date comes out to be 10.09.2018. The respondent have violated





the agreement by not giving the possession on the due date i.e 10.09.2018 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate, for every month of delay till the handing over of possession.

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

The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

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

### **Findings and directions of the authority**

19. **Jurisdiction of the authority-** The project “Elacasa” is located in Sector 107, Gurugram, thus 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. The respondent has to file reply within 10 days from the date of service of notice and further time period of 10 days was given but no reply was filed. Subsequent to this, last opportunity to file reply was also given.
21. Such notices were issued to the respondent on 29.10.2018, 22.11.2018 and on 04.12.2018. A final notice dated



11.03.2019 by way of email was sent to both the parties to appear before the authority on 27.03.2018.

22. However, despite due and proper services of notices, the respondent neither filed the reply nor was present before the authority. As such, the authority has no option but to proceed ex parte against the respondent and to decide the matters on merits by taking into a count legal/factual; propositions, as raised, by the complainant in his complaint

23. The ex-parte final submissions have been perused at length. Details regarding the status of the project have not been supported by relevant documents, as already stated above. In view of the facts and circumstances of the case, the authority is of the considered opinion that that the refund cannot be allowed at this stage since it will hamper the construction of the project.

24. The possession of the unit was to be handed over to the complainants within a period of 36 months from the receipt of all approvals vis but not limited to sanction of layout plan, height clearance etc. by the company and execution of agreement plus 6 months grace period which comes out to be



10.09.2018. However, the respondent has not delivered the unit in time.

25. The authority is of the view that the complainants are entitled for delayed possession charges at prescribed rate of interest i.e 10.75% per annum.

**Decision and directions of the authority:**

26. 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 the complainants delayed possession charges at prescribed rate of interest i.e 10.75% per annum w.e.f 10.09.2018 as per the provisions of sections 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the 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 till offer of possession shall be paid before 10<sup>th</sup> of every subsequent month.



(iii) The complainants are directed to clear dues on their part, if any.

27. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch

28. The complaint is disposed of accordingly.

29. The order is pronounced.

30. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.03.2019

Judgement uploaded on 26.04.2019

