

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

Complaint no. : 538 of 2018
First date of hearing: 13.09.2018
Date of decision : 14.02.2018

Mr. Nitin Garg,
R/o Parsvnath Green Ville, Sohna road,
Gurugram -122001

Complainant

Versus

M/s Vatika Ltd.
Vatika Triangle, 4th floor, Sushant Lok, Phase 1
block A, MG Road, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Mr. Nitin Garg
Shri Sanjeev Sharma
Shri Venkat Rao
Ms. Radhika verma

Complainant in person
Advocate for complainant
Advocate for respondent
Senior executive litigation in
person on behalf of respondent
company

ORDER

1. A complaint dated 18.07.2018 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. Nitin Garg, against the promoter M/s Vatika Ltd. on account of violation





of clause 11.1 of the buyer's agreement executed on 25.02.2010 in respect of villa no. 43/240/simplex/BR in the project 'Vatika India Next', for not handing over the possession on the due date i.e. by 25.02.2013 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 25.02.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, and, the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation on the part of the promoters/respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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

1.	Name and location of the project	Signature Villa 2 in Vatika India Next, sector 82, gurugram
2.	Nature of the project	Residential
3.	RERA registered/ unregistered.	unregistered
4.	Villa no.	43/240/Simplex/BR
5.	Date of booking	04.01.2010 (as alleged by complainant)
6.	Villa measuring	240 sq. yds.
7.	Payment plan	Construction linked payment plan





8.	Date of execution of buyer's agreement	25.02.2010
9.	Total consideration a	Rs.79,24,650/-(as per builder buyer agreement)
10.	Total amount paid by the complainant till date as per the receipts attached with the complaint	Rs. 86,62,059.58 /-
11.	Date of delivery of possession Clause 11.1 (3 years from the execution of agreement)	25.02.2013
12.	Penalty clause (clause 12.5)	Rs. 5 per sq. ft. of the built-up area

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement is executed no.25.02.2010, therefor the due date of possession was 25.02.2013. Thus, the respondent has failed to fulfil its obligations.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 07.12.2018,16.01.2019 and 14.02.2019. The reply filed on behalf of the respondent on 19.09.2018 has been perused.



Facts of the case

6. The complainant submitted that he booked a villa by transfer from original allottee no. 43/240/simplex/BR, plot size -240



sq. yds with a built-up area 1527 sq. ft. for a total sale consideration of Rs. 79,24,650. Later on, the builder has changed the location by addendum and allotted another unit having HSG-008/plot no.-7/ST at Signature Villa-2 in Vatika India Next. The project was financed by Punjab National Bank, Gurugram. Complainant had made all the payments to the builder as per their demand and paid Rs. 86,62,059.58/- as per construction linked payment plan.

7. The complainant submitted that builder abruptly has raised a demand of Rs. 38,01,990/- as an installment for an increase in area of 438 sq. ft. without increasing the plot size. Builder has also charged Rs. 1,16,188,72/- as interest wrongly on our credit balance. It is further submitted that they mailed to the builder for the justification of this demand but got no satisfactory reply. After that complainant also visited the office of Vatika Limited in Vatika Triangle where he was told that the built-up area has been increased to 1965 sq. ft. (approx. increase of 28%) without any increase in the plot size and this increase in area is without complainant consent. This demand is unjustified and without any base. The cost of





construction at that time was not more than Rs. 1000 per sq. ft. as per market rate that comes to Rs. 4,38,000/- which has been adjusted against the complainant credit balance as per accounts statement.

8. The complainant submitted that agreement was entered on 25-02-2010 and possession has to be given after 3 years from date of execution of the agreement i.e 25-02-2013. The builder has delayed the project for 4 years and given the first letter intimation of possession on 02-03-2017.

9. It is further submitted that complainant has made all the payments as per their demands and also the installment for increase in area of 438 Sq. ft. it is further submitted that the possession be offered and the villa be handed over along with interest for delay in possession.

Issue to be decided:



- i. Whether the promoter has failed to give possession of the villa in signature villa 2, sector 82 D 1, Gurugram as per builder buyer agreement in time and rather forcing the complainant to pay its unreasonable demand of Rs. 38,01,990/- for the increase in area?

- ii. Whether the promotor is liable to pay interest for the delay in handing over the possession?

Reliefs sought:

The complainant is seeking the following reliefs:

- i. The complainant should not be forced to pay the unreasonable demand for an increase in area in signature villa- 2.
- ii. As per buyer's agreement complainant made the full payment including an increase in area as per the market rate. possession may be handed over to the complainant.
- iii. Interest for delay in possession be given as the project has been delayed for more than 4 years.

Respondent's reply

10. The respondent submitted that present complaint is abuse of the process of this hon'ble authority and is not maintainable. The complainant has not approached this authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the



respondent with malicious intent and sole purpose of extracting un lawful and gains from the respondent.

11. It is submitted that the complaint is devoid of merits and should be dismissed with costs. The complaint pertaining, to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "said Act") are required to be filed before the adjudicating officer under Rule-29 of the Haryana Real Estate (Regulation and Development) rules, 2017 (hereinafter referred to as the "said Rules") read with section 31 and section 71 of the said Act and not before this hon 'ble authority under rule-28, section 31, section 71, rule-28 and rule-29.

12. It is also submitted that the complaint is not supported by any proper affidavit supporting the complaint, so the complaint is liable to be rejected.

13. The respondent submitted that the unit was originally booked by Mr. Amit Kumar Rana admeasuring 24 sq. yards, total built up area 1525 sq. ft. in Bullevue Residences- Vatika India Next for total consideration of Rs. 79,24,650/- and paid





Rs. 8,00,000/-towards booking amount through two cheques bearing no. 000136 & 000137 for amount of Rs. 5,00,000/- and 3,00,000/- respectively. Thereafter, the complainant made an application to the respondent on 07.07.2017 for allotment/transfer/assignment of the unit allotted to the original allottee i.e. Mr. Amit Kumar Rana in his favour and on the same day respondent also received a letter and other documents from Mr. Amit Kumar Rana requesting reassignment/transfer of the unit allotted to him in favor of the complainant.

14. It is submitted that the on the request from the complainant and original allottee, the respondent transferred/assigned the unit no. 43/240/simplex/BR, in favor of the complainant on 09.08.2010 with all rights, liabilities and on terms & conditions as agreed upon with the original allottee. It is submitted that the builder's buyer agreement was executed on 25.02.2010, between original allottee Mr. Amit Kumar Rana and respondent.

15. The respondent submitted that subsequently, an addendum too builder buyer agreement was executed between the





complainant and respondent on 15.03.2012, whereby the earlier unit allotted to the complainant i.e. villa no. 43/240/simplex/BR was agreed to be changed and a new unit bearing no. 7/240/simplex/ST82D1-6 was allotted to the complainant. It is pertinent to note that all the payments made towards erstwhile unit i.e. villa no. 43/240/simplex/BR were transferred to and adjusted towards the new unit i.e. no. 7/240/simplex/ST82D1-6.

16. The respondent submitted that area of the unit was changed in accordance with the terms and conditions of the builder buyer's agreement which was duly agreed upon the complainant.

17. The respondent submitted that demand raised is due to calculation of final areas built by the respondent, as per the approved plans and accordingly the additional construction is factored, and amounts calculated. It is wrongly stated by the complainant that the builder buyer's agreement was entered on 04.01.2010. It is submitted that the buyer's agreement was executed on 25.02.2010 between the original allottee and respondent. Thereafter, the complainant got the





unit transferred in his own name from the original allottee. Subsequently, in 2012 the complainant was allotted, as agreed and duly accepted by him, a new unit /villa bearing no. 7/240/simplex/ST82DI-6 in the lieu of the old unit. Accordingly, afresh allotment was made through addendum to builder buyer agreement was duly executed on 15.03.2012. Therefore, as per clause 11.1 of the builder buyer agreement the date of possession of the unit will be 36 months from the date of execution. Thus, the due date of possession of the unit would have been on or after 14.03.2015.

18. It is further submitted that the project got delayed due to reasons beyond the control of the respondent. The delay had been caused mainly due to the reasons, firstly execution/alignment of sector roads and internal circulation roads by the authorities i.e. HUDA. There was major alteration in sectoral roads plan due to which the company was initially unable to apply for demarcation of roads, secondly introduction of GAIL corridor in sector 82, due to which the entire planning had to be re-approved by the





authorities leading to delay. The company along with other builders such as DLF, Orris, Bestech etc. had received approvals for layout and construction of residential & commercial complex from HUDA and Town Planner.

19. Thereafter the possession of the unit was offered to the complainant on 02.03.2017 and demand of Rs. 56,90,000/- was raised. Thereafter, the complainant made some part payment of the installments. Thereafter the respondent raised a demand of Rs. 39,28,874.94/- as final instalment. However, complainant gave no heed to the said letter, therefore, respondent issued a reminder dated 11.04.2017 to complete the formalities of the possession but complainant failed to complete the formalities of taking possession. The respondent had been following up with complainant for over a year and half year for its legitimate dues and completion of formalities for taking over of possession of the unit. However, due to utter lack of response from complainant, respondent issued a letter dated 08.06.2018, to the complainant giving him a final opportunity for payment of overdue in installment and for completion of the formalities. But instead of making





payment of instalment and taking possession, the complainant has filed this frivolous complaint against the respondent with malicious intent.

Determination of issue

20. In regard to **first issue** raised by the complainant the promoter has failed to handover the possession of the flat as agreed in the agreement dated 25.02.2010. As per clause 11.1 of the agreement the promoters shall deliver the possession within 3 years from the date of execution of the agreement. Therefore, the due date of the possession is 25.02.2013. Therefore, there is delay of 4 year and 9 months and interest shall be allowed. The clause reproduced below:

".....the developer proposes to hand over the possession of the flat within a period of 3 years from the date of signing of this agreement....."

As per clause 6 of the application form, no increase in area more than 10% plus/minus can be increased by the builder and charge from the buyer on pro rata basis as per agreement of the unit/villa admeasuring 1527 square feet which has been purchased by the complainant for Rs.79,24,650/-.





However, on account of certain addendum (Annexure VI) 10% area i.e. 152.7 sq. ft. area can be added maximum to the covered area for which the respondent is eligible to charge at pro rata base of allotment of the unit which comes out to be Rs.5142/- per square feet.

21. In regard to the **second issue** raised by the complainant, as the promoters has failed to fulfil her obligation under section 11, the promoters are liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the



handing over of the possession, at such rate as may be prescribed.

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

22. As the possession of the flat was to be delivered by 25.02.2013 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 Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be; Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”



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

34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

24. 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 obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Inference drawn by authority

25. The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

26. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observed that Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

27. The main contention inter-se both the complainant as well as that of respondent is w.r.t. increase of the covered area by 345 sq. feet while handing over the possession of villa





No.43/240/Simplex/BR, Signature Villa 2 in Vatika India Next, Sector-82 Gurugram which has been constructed on plot admeasuring 240 square yards. It has been contended on the basis of clause 6 of application form and clause 30 of the agreement as well as clause 1.4 of BBA dated 25.2.2010.

Clause 1.4 of the BBA reads as under:-

"That it is further clarified to the Applicant that the Company has calculated the total price payable for the said Unit on the basis of its built up area of the unit and the area of the plot allotted herein on which the aid unit shall be constructed. It is made abundantly clear and agreed by the Applicant that no other land (s) is/are forming part of this Agreement, and the Applicant shall have no right, no title, no interest of any kind whatsoever on any other land(s) except to the extent of using only such general commonly used areas and facilities within the said Complex/Township subject however, to the timely payment of maintenance charges by the Applicant. However, such general commonly used area and facilities earmarked for common use of all occupants shall not include the exclusive reserved open/covered parking, if any."

As per clause 6 of the application form, no increase in area more than 10% plus/minus can be increased by the builder and charge from the buyer on pro rata basis as per agreement of the unit/villa admeasuring 1527 square feet which has been purchased by the complainant for Rs.79,24,650/-. However, on account of certain addendum (Annexure VI)



10% area i.e. 152.7 sq feet area can be added maximum to the covered area for which the respondent is eligible to charge at pro rata base of allotment of the unit which comes out to be Rs.5142/- per square feet.

Decision and direction of authority

28. 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 directs the respondent

- i. The respondent is directed that he cannot charge more than 10% of the build-up area. The complainant is also entitled for delayed possession charges @ 10.75% per annum *from 25.02.2013 to 02.03.2017 i.e.* If the complainant has not paid the due amounts as agreed upon inter-se both the parties, he is also liable to pay interest to the respondent at the rate of 10.75% per annum which should be adjusted at the time of final payments. In view of the circumstances, no holding charges shall be charged by the respondent from the complainant.

from due date of possession to offer of possession

Corrected vide order dated 24.04.2019



ii. 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.

29. The order is pronounced.

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


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated: 14.02.2019

Corrected Judgement on Uploaded on 27.04.2019



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 14.02.2019
Complaint No.	538/2018 Case Titled As Mr. Nitin Garg V/S M/S Vatika Limited & Ors.
Complainant	Mr. Nitin Garg
Represented through	Complainant in person with Shri Sanjeev Sharma, Advocate for the complainant.
Respondent	M/S Vatika Limited & Ors.
Respondent Represented through	Ms. Radhika Verma, Senior Executive Litigation in person on behalf of the respondent-company with Shri Venkat Rao Advocate
Last date of hearing	16.1.2019
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings**Project is not registered with the authority.**

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

Shri Sanjeev Sharma Advocate appeared on behalf of the complainant and filed power of attorney today.

Arguments heard.

The main contention inter-se both the complainant as well as that of respondent is w.r.t. increase of the covered area by 345 sq. feet while

handing over the possession of villa No.43/240/Simplex/BR, Signature Villa 2 in Vatika India Next, Sector-82 Grogram which has been constructed on plot admeasuring 240 square yards. It has been contended on the basis of clause 6 of application form and clause 30 of the agreement as well as clause 1.4 of BBA dated 25.2.2010. Clause 1.4 of the BBA reads as under:-

“That it is further clarified to the Applicant that the Company has calculated the total price payable for the said Unit on the basis of its built up area of the unit and the area of the plot allotted herein on which the aid unit shall be constructed. It is made abundantly clear and agreed by the Applicant that no other land (s) is/are forming part of this Agreement, and the Applicant shall have no right, no title, no interest of any kind whatsoever on any other land(s) except to the extent of using only such general commonly used areas and facilities within the said Complex/Township subject however, to the timely payment of maintenance charges by the Applicant. However, such general commonly used area and facilities earmarked for common use of all occupants shall not include the exclusive reserved open/covered parking, if any.”

As per clause 6 of the application form, no increase in area more than 10% plus/minus can be increased by the builder and charge from the buyer on pro rata basis as per agreement of the unit/villa admeasuring 1527 square feet which has been purchased by the complainant for Rs.79,24,650/-. However on account of certain addendum (Annexure VI) 10% area i.e. 345 sq feet area can be added maximum to the covered area for which the respondent is eligible to charge at pro rata base of allotment of the unit which comes out to be Rs.5142/- per square feet.

The respondent cannot charge more than 10% of the buildup area. The complainant is also entitled for delayed possession charges @ 10.75% per annum. If the complainant has not paid the due amounts as agreed upon

inter-se both the parties, he is also liable to pay interest to the respondent at the rate of 10.75% per annum which should be adjusted at the time of final payments. In view of the circumstances, no holding charges shall be charged by the respondent from the complainant.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
14.2.2019

Subhash Chander Kush
(Member)

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

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Shri Venkat Rao Advocate for respondent
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Rs. 8,00,000/-towards booking amount through two cheques bearing no. 000136 & 000137 for amount of Rs. 5,00,000/- and 3,00,000/- respectively. Thereafter, the complainant made an application to the respondent on 07.07.2017 for allotment/transfer/assignment of the unit allotted to the original allottee i.e. Mr. Amit Kumar Rana in his favour and on the same day respondent also received a letter and other documents from Mr. Amit Kumar Rana requesting reassignment/transfer of the unit allotted to him in favor of the complainant.

14. It is submitted that the on the request from the complainant and original allottee, the respondent transferred/assigned the unit no. 43/240/simplex/BR, in favor of the complainant on 09.08.2010 with all rights, liabilities and on terms & conditions as agreed upon with the original allottee. It is submitted that the builder's buyer agreement was executed on 25.02.2010, between original allottee Mr. Amit Kumar Rana and respondent.

15. The respondent submitted that subsequently, an addendum too builder buyer agreement was executed between the



complainant and respondent on 15.03.2012, whereby the earlier unit allotted to the complainant i.e. villa no. 43/240/simplex/BR was agreed to be changed and a new unit bearing no. 7/240/simplex/ST82D1-6 was allotted to the complainant. It is pertinent to note that all the payments made towards erstwhile unit i.e. villa no. 43/240/simplex /BR were transferred to and adjusted towards the new unit i.e. no. 7/240/simplex/ST82D1-6.

16. The respondent submitted that area of the unit was changed in accordance with the terms and conditions of the builder buyer's agreement which was duly agreed upon the complainant.
17. The respondent submitted that demand raised is due to calculation of final areas built by the respondent, as per the approved plans and accordingly the additional construction is factored, and amounts calculated. It is wrongly stated by the complainant that the builder buyer's agreement was entered on 04.01.2010. It is submitted that the buyer's agreement was executed on 25.02.2010 between the original allottee and respondent. Thereafter, the complainant got the



unit transferred in his own name from the original allottee. Subsequently, in 2012 the complainant was allotted, as agreed and duly accepted by him, a new unit /villa bearing no. 7/240/simplex/ST82DI-6 in the lieu of the old unit. Accordingly, afresh allotment was made through addendum to builder buyer agreement was duly executed on 15.03.2012. Therefore, as per clause 11.1 of the builder buyer agreement the date of possession of the unit will be 36 months from the date of execution. Thus, the due date of possession of the unit would have been on or after 14.03.2015.

18. It is further submitted that the project got delayed due to reasons beyond the control of the respondent. The delay had been caused mainly due to the reasons, firstly execution/alignment of sector roads and internal circulation roads by the authorities i.e. HUDA. There was major alteration in sectoral roads plan due to which the company was initially unable to apply for demarcation of roads, secondly introduction of GAIL corridor in sector 82, due to which the entire planning had to be re-approved by the



authorities leading to delay. The company along with other builders such as DLF, Orris, Bestech etc. had received approvals for layout and construction of residential & commercial complex from HUDA and Town Planner.

19. Thereafter the possession of the unit was offered to the complainant on 02.03.2017 and demand of Rs. 56,90,000/- was raised. Thereafter, the complainant made some part payment of the installments. Thereafter the respondent raised a demand of Rs. 39,28,874.94/- as final instalment. However, complainant gave no heed to the said letter, therefore, respondent issued a reminder dated 11.04.2017 to complete the formalities of the possession but complainant failed to complete the formalities of taking possession. The respondent had been following up with complainant for over a year and half year for its legitimate dues and completion of formalities for taking over of possession of the unit. However, due to utter lack of response from complainant, respondent issued a letter dated 08.06.2018, to the complainant giving him a final opportunity for payment of overdue in installment and for completion of the formalities. But instead of making



payment of instalment and taking possession, the complainant has filed this frivolous complaint against the respondent with malicious intent.

Determination of issue

20. In regard to **first issue** raised by the complainant the promoter has failed to handover the possession of the flat as agreed in the agreement dated 25.02.2010. As per clause 11.1 of the agreement the promoters shall deliver the possession within 3 years from the date of execution of the agreement. Therefore, the due date of the possession is 25.02.2013. Therefore, there is delay of 4 year and 9 months and interest shall be allowed. The clause reproduced below:

“.....the developer proposes to hand over the possession of the flat within a period of 3 years from the date of signing of this agreement.....”



As per clause 6 of the application form, no increase in area more than 10% plus/minus can be increased by the builder and charge from the buyer on pro rata basis as per agreement of the unit/villa admeasuring 1527 square feet which has been purchased by the complainant for Rs.79,24,650/-.

However, on account of certain addendum (Annexure VI) 10% area i.e. 152.7 sq. ft. area can be added maximum to the covered area for which the respondent is eligible to charge at pro rata base of allotment of the unit which comes out to be Rs.5142/- per square feet.

21. In regard to the **second issue** raised by the complainant, as the promoters has failed to fulfil her obligation under section 11, the promoters are liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the



handing over of the possession, at such rate as may be prescribed.

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

22. As the possession of the flat was to be delivered by 25.02.2013 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 Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”



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

34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

24. 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 obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Inference drawn by authority

25. The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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!

26. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observed that Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

27. The main contention inter-se both the complainant as well as that of respondent is w.r.t. increase of the covered area by 345 sq. feet while handing over the possession of villa



No.43/240/Simplex/BR, Signature Villa 2 in Vatika India Next, Sector-82 Gurugram which has been constructed on plot admeasuring 240 square yards. It has been contended on the basis of clause 6 of application form and clause 30 of the agreement as well as clause 1.4 of BBA dated 25.2.2010.

Clause 1.4 of the BBA reads as under:-

“That it is further clarified to the Applicant that the Company has calculated the total price payable for the said Unit on the basis of its built up area of the unit and the area of the plot allotted herein on which the aid unit shall be constructed. It is made abundantly clear and agreed by the Applicant that no other land (s) is/are forming part of this Agreement, and the Applicant shall have no right, no title, no interest of any kind whatsoever on any other land(s) except to the extent of using only such general commonly used areas and facilities within the said Complex/Township subject however, to the timely payment of maintenance charges by the Applicant. However, such general commonly used area and facilities earmarked for common use of all occupants shall not include the exclusive reserved open/covered parking, if any.”

As per clause 6 of the application form, no increase in area more than 10% plus/minus can be increased by the builder and charge from the buyer on pro rata basis as per agreement of the unit/villa admeasuring 1527 square feet which has been purchased hby the complainant for Rs.79,24,650/-. However, on account of certain addendum (Annexure VI)



10% area i.e. 152.7 sq feet area can be added maximum to the covered area for which the respondent is eligible to charge at pro rata base of allotment of the unit which comes out to be Rs.5142/- per square feet.

Decision and direction of authority

28. 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 directs the respondent

- i. The respondent is directed that he cannot charge more than 10% of the build-up area. The complainant is also entitled for delayed possession charges @ 10.75% per annum. If the complainant has not paid the due amounts as agreed upon inter-se both the parties, he is also liable to pay interest to the respondent at the rate of 10.75% per annum which should be adjusted at the time of final payments. In view of the circumstances, no holding charges shall be charged by the respondent from the complainant.



- ii. 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.

29. The order is pronounced.

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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 14.02.2019

Judgment Uploaded on 02.03.2019

