

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

**Complaint no. : 126 of 2019**  
**First date of hearing: 25.04.2019**  
**Date of decision : 25.04.2019**

Ms. Sarika Arora  
R/o B-24, Sector 26, Noida,  
Uttar Pradesh – 201301.

**Complainant**

**Versus**

M/s. Tata Housing Development Co. Ltd.  
Registered office at: 3 Ground floor,  
Naurang House, 21 K.G. Marg,  
New Delhi: 110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Ms. Sarika Arora  
Ms. Shreya Sircar

Complainant in person  
Advocate for the respondent

**ORDER**

1. A complaint dated 21.01.2019 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 Mrs. Sarika Arora against the promoter M/s. Tata Housing Development

Co. Ltd. in respect of the apartment buyer’s agreement dated 07.01.2016 for unit no.1401 in Tower 5 in the project “Tata Primanti” located at Sector 72, Gurugram for not accepting the surrender of booking and refund the paid amount of the complainant which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the apartment buyer’s agreement has been executed on 07.01.2016 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 case are as under: -

1.	Name and location of the project	Tata Primanti, Sector 72, Gurugram
2.	DTCP license no.	155 of 2008 dated 14.08.2008 and 200 of 2008 dated 08.12.2008
3.	RERA registered/ Not registered	<b>Registered vide no. 98 of 2017 (Phase 2 Tower 5,6,7, executive apartment 7,8, executive floors 16 to 31)</b>

4.	Total real estate project area registered with RERA	104717 sq. mtrs.
5.	Revised date of completion of project	30.06.2020
6.	Nature of real estate project	Residential group housing colony
7.	Total area of the project	36.25 acres
8.	Apartment/unit no.	1401, 13 <sup>th</sup> floor, Tower 5
9.	Apartment measuring area	2,550 sq. ft.
10.	Date of execution of apartment buyer's agreement	07.01.2016 <b>(Annx 7)</b>
11.	Payment plan	Time linked payment plan <b>(Annx 9)</b>
12.	Total consideration as per payment plan	Rs 2,93,58,150/- <b>(Annx 8)</b>
13.	Total amount paid by the complainant till date	Rs. 75,91,098/- <b>(Annx 14)</b>
14.	Due date of delivery of possession as per clause 4.2 of apartment buyer's agreement i.e. November, 2017+ grace period of 6 months as per clause 4.3	30.05.2018
15.	Delay in handing over possession till 25.04.2019	No delay
16.	Offer of possession letter	19.03.2018 <b>(Annx R/4)</b>
17.	Letter for refusal of acceptance of possession	26.05.2018 <b>(Annx 15)</b>
18.	Date of receipt of occupation certificate	09.03.2018 <b>(Annx R/4)</b>

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 respondent. An apartment buyer's agreement dated 07.01.2016 is available on record for the

aforesaid apartment according to which the possession of the same was to be delivered by 30.05.2016. The respondent has failed to accept the surrender of allotment of unit and refund the paid amount of the complainant till date.

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 25.04.2019. The reply filed on behalf of the respondent on 14.02.2019 which has been perused by the authority.

**Facts of the complaint: -**

6. Briefly put facts relevant for the disposal of present complaint in the complainant's version are given below -

“ I wish to file a complaint against Tata Housing Ltd. for not refunding my booking amount that was paid to the company towards booking of a residential unit in their project Tata Primanti in Sector 72, Gurugram.

Tata`s are deducting the amount for cancellation and forcing me to invest the balance amount in their another project hence forming another vicious cycle for me to lose out on the balance amount too.

7. The details regarding the compliant are furnished below:

- **Subject apartment:** apartment no. 1401, Tower 5, Tata Primanti, Sector 72, Gurugram
  - **Total value:** Rs 2,93,58,300/- (Annexure No 8),
  - **Payment plan:** 25%:75% -25% on booking; 75% on possession
  - **Booking Date:** 29.09.2015, paid Rs 10,00,000/- (Annexure No 4)
  - **Balance advance payment:** 28.11.2015, Rs. 65,00,000/- (Annexure no 5)
  - **Apartment buyer's agreement signed on** 07.01.2015 (Annexure No 7)
  - **Agreed date of possession:** November 2017 (As also mentioned in agreement of sale) (Annexure No 7)
  - **Occupation certificate:** Mail information by Tata's/ developer received on 09.03.2018 (Annexure No 12)
  - **Offer of possession:** 23.03.2018 (intimation that letter has been dispatched on 19.03.2018). (Annexure No 13)
  - **First communication for refusal:** 26.05.2018 (I gave my refusal to take the apartment on the grounds that I am not in a position to pay balance amount). (Annexure No 14)
8. **Reason for refusal:** I had become jobless in Dec 2016 and till date have not been able to find another job. I am a single mother bringing up an adult daughter who is pursuing her higher studies abroad, I am under tremendous pressure of meeting my

- day-to-day expenses, leave alone the payment to be made to the Developer.
9. However, in 2017 I had been (through various sources) had kept arrangements for taking the apartment's possession, however that could not happen as the offer for possession came only on 23<sup>rd</sup> March 2018 – a delay of approx. six months from the agreed date of possession.
10. The only reason that I had dared to venture into such a high-cost purchase decision of buying a unit in Tata Primanti was on the basis of high level of integrity and ethics that the TATA Group is always known for. The only emotion that gets revoked in the mind about the Tata brand is simply TRUST. However, I am feeling now completely let down by Tata Housing on the following grounds:
- a. They are failing to understand the plight of a single mother in major financial distress;
  - b. For their delay in delivery they are only claiming it to be force majeure, which is not acceptable under RERA Rules and are also not compensating in any way on their default in delivery;

- c. They continue to force me into another project yet still deduct the entire penalty payable on the first unit booked – ideally the entire amount should have been transferred to the new project;
- d. They are charging GST also in excess of than due, as is visible from the table (annexure 12)
- e. They are trying to take benefit of funds with them by not giving any benefit to me for the period the funds are going to be with them as advance but not going into La Vida account.

**Issues to be determined:-**

- i. Whether the respondent is entitled to deduct more than 10% of the total consideration as earnest money?
- ii. Whether the respondent is justifiable in deducting 50% of the paid amount on cancellation of allotment of unit?
- iii. Whether the respondent is entitled to compel the complainant to invest the paid amount in another project?

**Reliefs sought:-**

- Direct the respondent to refund the entire paid amount of the complainant alongwith interest from the date of making request till its realisation.

**Respondent's reply:-**

11. At the outset the respondent denied each and every averment, contention and allegation made by the complainant in entirety, save and except what is expressly admitted in the reply.
12. The respondent submitted that the captioned complaint filed by the complainant is not maintainable and does not disclose any cause of action, prima facie or otherwise and the same is misconceived and filed out of sheer greed. By way of the present complaint, the complainant has made an attempt to arm twist and coerce the respondent to give in to the complainant's illegal, unjustified and wholly unsubstantiated demands. The complaint deserves to be dismissed on this ground alone.
13. The respondent submitted that the complainant booked an apartment bearing no. T5-1401, 13<sup>th</sup> floor in the Primanti residential complex, situated at Sector 72, Gurugram being developed by the respondent. The complainant booked the apartment by way of booking application form dated 22.09.2015 and paid advance booking amount of Rs. 10,00,000/- towards the apartment. As against the said advance



- payment, the booking application form was executed and allotment letter was issued on 06.10.2015.
14. The respondent further submitted that pursuant to the issuance of allotment letter, the respondent alongwith the complainant executed the apartment buyer's agreement on 07.01.2016. the total value of the apartment in Rs. 2,93,58,150/- against a payment plan of 25% : 75% which is exclusive of taxes and other charges. The complainant has not annexed the complete copy of agreement with the complaint.
15. The respondent submitted that the apartment was offered to the complainant at a special 25:75 subvention scheme, which was fully sponsored by the developer i.e. the respondent proceeded to complete construction of the apartment without demanding any sum from the complainant in excess of 25% with the respondent financing the balance 75% entirely.
16. The respondent submitted that in terms of clause 7(b) of the application form, the expected date of possession of the apartment was November, 2017, subject to force majeure circumstances and reasons beyond the control of the respondent. Clause 4.4 of the ABA inter alia states that in case of

- force majeure event, the respondent shall be entitled to an extension of 6 months for delivery of possession.
17. Admittedly the respondent from time to time intimated the complainant through its correspondences dated 16.11.2016, 13.10.2017 and 06.06.2018, the progress of construction of the project.
18. The respondent submitted that vide correspondence dated 09.03.2018, the respondent informed the complainant that it had received occupation certificate.
19. The respondent submitted that upon receipt of occupation certificate, it has offered possession of the apartment vide letter dated 19.03.2018 to the complainant with the demand for payment of outstanding amount of Rs. 2,39,56,577/-. The complainant was also intimated of the offer of possession vide email dated 23.03.2018.
20. The respondent submitted that it was only after the offer of possession by the respondent in March,2018 within the committed timelines as per the agreement, the complainant with the malafide intention of extorting money from the

respondent, issued an email dated 26.05.2018 thereby refusing to take possession or pay outstanding amount and instead sought cancellation of the apartment booking.

21. The respondent submitted that the reasons for refusal to take possession cited by the complainant are allegedly purely personal in nature and do not in any manner pertain to any violation and/or breach of the terms and conditions of the agreement or the application form. Accordingly, the complainant's inability to pay the balance sale consideration cannot give rise to a legitimate cause of action against the respondent.

22. The respondent submitted that on 05.06.2018, they informed the complainant that they do not have a buy back policy and in the event of cancellation, terms and conditions of the ABA and the application form will be applicable.

23. The respondent submitted that in case of default on the part of the complainant, as per clause 3.6 of the agreement, the respondent is entitled to forfeit 15 of the sale price, interest paid for delay and all taxes paid till date. However, in good faith and in keeping with the complainant's aforesaid request, on

- 31.07.2018, the respondent offered alternate unit in its project “La Vida” with the terms that in the event of cancellation of unit and shifting of funds to project La Vida 50% of the amount would be forfeited alongwith 7.5% as applicable taxes.
24. The respondent submitted that on 23.08.2018, the complainant refused the aforesaid offer and instead, reverted to her original request of cancellation of the original apartment. Subsequently, in October, 2018 the complainant yet again sought respondent’s offer for units available in different project of which expected delivery was a few years away.
25. Despite the possible efforts of the respondent to arrive at an amicable resolution of the issue, the complainant filed the present complaint before this authority inter alia seeking refund of the paid monies towards the apartment.
26. The respondent submitted that since the complainant has failed to make payment of outstanding dues as per the terms and conditions of the agreement, this authority ought to direct the complainant to take immediate possession of apartment on payment of balance dues amount and execute the sale deed.

27. The respondent submitted that the claims of the complainant are contrary to the terms of contract between the parties.
28. The respondent submitted that there was a minor delay of four months which was still within stipulated time in terms of ANA was due to force majeure circumstances i.e. on 31.04.2012, the Punjab and Haryana High Court in the matter of *Sunil Singh v. Ministry of Environment and Forests (MoEF) and other (CWP no. 20032 of 2008)* passed a restraining order, granting injunction on the usage of underground water for construction activity at the site. Further the hon'ble High Court in its order also directed the Deputy Commissioner, Gurugram and the central ground water board to conduct site inspection at all sites to ensure no ground water was used for construction work, due to which the construction work at the site was suspended from 14.08.2012 to 17.09.2012.
29. The respondent submitted that other factors which leads to delay in construction work was that of installation of sewerage treatment plant at the construction site as per the direction of HUDA, demobilization of labour from the site and sand shortage, etc.

30. The respondent submitted that in the light of foregoing the complainant has not disclosed any cause of action to file the present complaint. Further, the complainant is seeking refund due to alleged financial constraint which does not give rise to a legitimate cause of action under the RERA Act. Therefore, on this ground alone, the present complaint is liable to be dismissed.

**Determination of issues:-**

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

- i. With respect to the **first and second issue** raised by the complainant, the authority came across that as per clause 4.2 of apartment buyer's agreement, the possession of the flat is to be handed over by 30.05.2018, however, the respondent has offered possession of the allotted apartment vide letter dated 23.03.2018, but the complainant instead of accepting the possession had sent a letter dated 26.05.2018 for refusal of taking possession of the apartment due to financial constraint. In this regard, as per regulation no.

11/RERA GGM Regulation 2018 dated 05.12.2018 which is reproduced below –

*“5. Amount of earnest money*

*.....In view of the facts and taking into consideration the judgements of Hon’ble National Consumer Disputes Redressal Commission (**DLF Ltd. v. Bhagwanti Narula- RP no. 3860 of 2014 decided on 06.01.2015**) and the Hon’ble Supreme Court of India(**Maula Bux v. Union of India; Indian Oil Corporation Ltd. v. Niofer Siddiqui & Ors.; Shakti Singh v. M/s. Bestech India Pvt. Ltd. and Balmer Lawrie Co. Ltd. v. Partha Sartha Sen Roy& Ors** ) , the authority is of the view that forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/pot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.”*

Hence, forfeiture of more than 50% of the paid amount alongwith 7.5% as taxes is not justified in the eyes of law and the respondent is entitled to forfeit the amount only as per regulation 5 of regulation no. 11/RERA GGM Regulation 2018 dated 05.12.2018 of the Haryana Real Estate Regulatory Authority, Gurugram.

- ii. With respect to the **third issue** raised by the complainant, the respondent cannot compel the

complainant to invest the amount in their other project.

Hence, this issue is decided in favour of the complainant.

**Findings of the authority:-**

32. 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

33. The complainants 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.



34. Arguments heard. As per clause 4.2 of the apartment buyer's agreement dated 07.01.2016 for unit no. 1401, 13<sup>th</sup> floor, tower 5 in the project "Tata Primanti", located at Sector 72, Gurugram, possession of the unit was to be handed over to the complainant by November, 2017 plus 6 months' grace period which comes out to be 30.05.2018. However, the respondent has offered possession of the unit vide letter dated 19.03.2018 (**Annexure R/4**) after receiving occupation certificate from the concerned authority on 09.03.2018. The complainant has already paid Rs. 75,91,098/- as against the total consideration of Rs. 2,93,58,150/-.
35. Complainant appearing in person submits that due to acute financial constraints and out of job for the last 3 years, she is unable to pay the balance amount to the respondent to get the possession of the apartment in question. She further submits that she has some other domestic as well as social obligations to fulfil for which money is required. Under these circumstances, she intends to wriggle out from the project and seeks refund of the deposited amount alongwith interest.

36. Counsel for the respondent contended that project is already complete and possession has also been offered to the complainant. Under the circumstances, refund of amount as prayed for by the complainant is not admissible.

37. On hearing the rival contentions of the parties and keeping in view the financial constraints as well as other domestic and social obligations of the complainant, the authority is inclined to order refund of the deposited amount after deducting 10% of the total sales consideration plus applicable taxes, if any, paid by respondent to the government.

**Decision and directions of the authority:-**

38. 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:

- The respondent is directed to cancel the allotment of unit and refund the balance paid amount of the complainant after deducting 10% of the total consideration alongwith

applicable taxes, if any paid by the respondent to the government within a period of 90 days from the issuance of this order.

39. The order is pronounced.

40. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram.

Date: 25.04.2019

Judgement uploaded on 02.05.2019

**(Subhash Chander Kush)**

Member



**HARERA**  
GURUGRAM