

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

**Complaint no. : 1936 of 2018**  
**First date of hearing: 23.04.2019**  
**Date of decision : 23.04.2019**

Smt. Deepika Chawla, w/o Sh. Amit Chawla  
R/o. 529, Sector-15, Faridabad,  
Haryana- 121007.

**Complainant**

Versus

M/s Pioneer Urban Land and Infrastructure Ltd.  
(through its Director)  
**Address:** Paras downtown centre, 7<sup>th</sup> floor,  
Golf course road, sector 53, Gurugram.

**Respondent.**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Kailash Pd. Pandey Advocate for the complainant.  
Shri Vijay Ahuja AR on behalf of the respondent.  
Shri Ishaan Dang Advocate for the respondent.

**ORDER**

1. A complaint dated 29.11.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Smt. Deepika Chawla, against the promoter, M/s Pioneer Urban Land and Infrastructure Ltd. (through its Director), in respect of the apartment no. 2302, 23<sup>rd</sup> floor tower A, of the project "Araya"

located at sector 62, golf course extension road, Gurugram being developed by the respondent on account of delay in delivery of possession which is in violation of section 11(4)(a) of the Act.

2. Since the buyer's agreement 01.06.2012 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 non-compliance of obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid*.

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

1.	Name and location of the Project	"Araya" at sector 62, golf course extension road, Gurugram.
2.	Nature of real estate project	Group housing colony.
3.	Total area of the project	24.606 acres
4.	DTCP license no.	268 of 2007 dated 03.12.2007
5.	Date of allotment letter	28.02.2012 <b>(Annx C-1)</b>
6.	Allotted apartment/unit no.	A-2302, 23 <sup>rd</sup> floor in tower A.
7.	RERA Registered / not registered	Registered vide no. 101 of 2017
8.	Date of booking	28.02.2012 <b>(Annx C-1)</b>
9.	Date of execution of an apartment buyer's agreement (between original allottee and the respondent)	01.06.2012 <b>(Annx C-2)</b>
10.	Payment plan	Construction linked payment plan <b>(Pg. 79 of the complaint)</b>

11.	Total consideration as per the payment schedule	Rs. 4,41,69,244/- <b>(Pg.79 of the complaint)</b>
12.	Total amount paid by the complainant till date as per SOA	Rs.4,40,26,596.31/- <b>(Annx R-10)</b>
13.	Date of commencement of excavation	04.06.2012
14.	Due date of delivery of possession as per clause 11.2 of the apartment buyer's agreement. (39 months plus 180 days' grace period from the date of excavation)	<b>04.03.2016</b>
15.	Date of agreement to sell between the complainant and original allottee	07.01.2016 <b>(Annx C-3)</b>
16.	Date of intimation of possession letter	28.08.2018 <b>(Annx C-7)</b>
17.	Date of receipt of occupation certificate	23.07.2018 <b>(Annx R-2)</b>
18.	Date of completion of project as per RERA registration certificate	31.12.2019.
19.	Delay in offer of possession	3 years and 10 days approx.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 01.06.2012 and intimation of possession letter dated 28.08.2018 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by 04.03.2016. But the intimation of possession letter was served to the complainant on 28.08.2018 i.e. after a delay of more than 2 years which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance. The respondent appeared on 23.04.2019. The case came up for hearing on 14.03.2019. The reply has been filed by the respondent on 04.02.2019 which has been perused by the authority.

**Facts of the complaint: -**

6. Briefly stated, facts relevant for the disposal of the present complaint are that an apartment bearing no. A-2302 at 23<sup>rd</sup> floor, in tower A super area 4279 sq. ft. in the project 'Araya' located at sector -62, Gurugram was allotted to M/s. Combined Logistics Solution (original allottee) by the respondent. On 01.06.2012, apartment buyer's agreement for the allotted apartment was executed between the original allottee and the respondent.

7. On 07.01.2016, original allottee (M/s. Combined Logistic Solution) sold out the said apartment to the complainant and an agreement to sell in this regard was executed between the original allottee and complainant. The total price of the apartment was agreed at Rs. 4,41,69,244/- as against which the complainant has made total payment of Rs. 4,40,26,596.31/- on various dates. As per clause 11.2 of the agreement dated 01.06.2012, possession of

the apartment was to be delivered within a period of 39 months plus 180 days' grace period from the date of excavation i.e. by 04.03.2016.

8. On 28.08.2018, the respondent has issued intimation of possession letter to the complainant with a demand of Rs. 79,97,754/- out of which the complainant has paid Rs. 18,41,692/- and is ready and willing to make payments of remaining amount.

9. It was alleged by the complainant that on visiting the site it was noticed that the possession offered was not in habitable condition and the construction work is still going on the site. Moreover, the possession has been offered by the respondent without giving any details as to whether the occupation certificate and completion certificate has been obtained by the respondent for the project or not.

10. Being aggrieved by the aforesaid acts of the respondent the complainant was constrained to file the present complaint before this authority.

**Issues to be determined -**

- i. Whether the complainant is entitled for interest @ 18% p.a. on the deposited amount as per provision of section 18 of the Real Estate (Regulation and Development) Act, 2016?
- ii. Whether the respondent is entitled for receiving the payment as per the demands made vide possession letter dated 28.08.2018 without completing the project as per the approved plan and without obtaining completion certificate and occupancy certificate from the competent authority?

**Reliefs sought:-**

1. Direct the respondent to give the possession of apartment no. A-2302 situated in tower A of the project 'Araya' located in sector 62, Gurugram.
2. Direct the respondent to pay interest for the delayed period as per the provisions of Act to the complainant.
3. Direct the respondent to complete all the pending work and provide all amenities as per promise made in the apartment buyer agreement.
4. Direct the respondent not to raise any demand from the complainant till completion of all the amenities and facilities as per the agreement.

5. Declare the demand letter dated 28.08.2018 sent to the complainant raising final demand be null and void.

**Respondent's reply:-**

1. The present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. It is pertinent to mention that the company has already received the occupancy certificate for the tower in question and also offered possession to the complainant vide letter dated 28.08.2018. The application for issuance of occupation certificate in respect of the said unit was made on 04.04.2018 and a copy of the same is annexure **R1**. The occupation certificate has been thereafter issued on 23.07.2018. Occupation Certificate for tower A of araya had been received on 23.07.2018 vide memo No. ZP-338-C-VOL-I/SD(BS)/2018/21712. A copy of the same is annexure **R2**.
2. The complainant has filed the present complaint seeking refund, interest and compensation for alleged delay in delivering possession of the apartment booked by the Complainant. It is respectfully submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the Act" for read with Rule 29 of the

Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.

3. The complainant has no locus standi or cause of action to file the present complaint. Clause 48 of the buyer's agreement specifically states that, *"If, however the completion of the building is delayed by force majeure circumstances, then the intending allottee agrees that the developer shall be entitled to the extension of time of delivery of the possession of the said apartment."* The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 01.06.2012, as shall be evident from the submissions made in the following paras of the present reply.

4. The project is registered under RERA Act, 2016 and HRERA Rules, 2017 vide no. 101 of 2017 dated 24.08.2017 and the date of completion as per the RERA registration is 31.12.2019. Moreover, the OC of the tower in question has been already received within the timeframe of the RERA registration. Copy of registration certificate dated 24.08.2017 has been appended as **Annexure-R3.**



5. It is pertinent to mention that before executing the aforesaid agreement, the complainant had made detailed and elaborate enquiries with regard to capacity, competence and capability of the respondent to undertake the conceptualization, promotion, construction, development and implementation of the residential group housing project. Only after being fully satisfied in all respects did the complainant take the informed and well thought of decision to purchase the said unit from M/s Combined Logistics Solutions Pvt. Ltd.
6. The complainant was called upon to remit balance payment including delayed payment charges/interest and to complete the necessary formalities/documentation necessary for handover of the said unit to the complainant. However, the complainant did not take any steps to complete the necessary formalities or to pay the balance amount payable by her.
7. The respondent has contended that the complainant was extremely irregular as far as payment of instalments was concerned. The Respondent was compelled to issue demand notices, reminders etc., calling upon the complainant to make payment of outstanding amounts payable by the Complainant

under the payment plan/instalment plan (annexure **R8**) opted by the complainant.

8. It is pertinent to mention that only such allottees, who have complied with all the terms and conditions of the buyer's agreement dated 01.06.2012 including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. In the case of the complainant, the complainant had delayed payment of instalments and is consequently not eligible to receive any compensation from the respondent. Statement of account for the period from 01.09.2011 to 05.02.2019 (annexure **R10**) reflects that the complainant had delayed payments of instalments on multiple occasions.

9. Clause 11.5(i) of the buyer's agreement dated 01.06.2012 provides that compensation for any delay in delivery of possession would only be given to the applicant subject to the applicant having fulfilled his part of the obligations as per the terms of allotment of the buyer's agreement. Clause 11.6 of the buyer's agreement dated 01.06.2012 further provides that under no circumstances shall the possession of the allotted unit be given to the allottee(s) unless and until the allottee(s) has made

full payment of the sale consideration to the respondent and all other dues payable under the agreement dated 01.06.2012 have been remitted to the respondent. Moreover, the respondent is not liable to deliver the possession of the allotted unit to the complainant until all the obligations duly imposed have been fulfilled by the complainant to the complete satisfaction of the developer (respondent). Since, the Complainant has defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner alleged by the Complainant.

10. The time period for handing over the possession of the said unit to the complainant was/is subject to various conditions being fulfilled by the complainant. In fact, the complainant has completely misinterpreted and misconstrued the covenants incorporated in the buyer's agreement. No rigid or fixed timeline for execution of the project and delivery of physical possession of the apartment was incorporated or provided in the aforesaid agreement. The indicated timelines contained in the agreement were subject to occurrence of various eventualities and also to other circumstances mentioned therein which have not been reproduced for the sake of brevity. The respondent craves leave

of this authority to refer to and rely upon the relevant covenants of the agreement during the course of trial/proceedings.

11. The complainant is not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainant has consciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. After issuance of intimation for possession, the buyers/allottees have been approaching the respondent for getting their apartments registered. As on date, conveyance deeds for 4 apartments have already been registered out of a total of 66 apartments in the said project.

12. That the present complaint is bad for non-joinder of PNB housing finance limited as a party. The complainant has availed a housing loan from PNB housing finance limited by mortgaging the unit in question. Tripartite agreement dated 27.06.2016 (**Annexure R9**) had been executed between the complainant, respondent and PNB housing finance limited. Letter dated 23.06.2016 confirming mortgage in favour of the respondent has been appended as **Annexure R11**. The Complainant is

estopped from claiming any amounts from the respondent in view of the tripartite agreement executed between the complainant, respondent and PNB housing finance limited. The complainant has specifically subrogated all her rights for refund/compensation/interest with respect to the apartment in question, in favour of PNB housing finance limited. Therefore, the instant complaint cannot be effectively decided without making PNB housing finance limited a party hereto.

13. It is the complainant who has consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Moreover, the complainant has already been duly compensated as per the terms of buyer's agreement dated 01.06.2012 and has no valid and subsisting ground to claim any more compensation. The present complaint is nothing but an abuse of the process of law.

14. The complainant has assailed clauses of the buyer's agreement after more than 6 years. It is submitted that the complaint in this regard is grossly barred by limitation.

15. That in a completely unforeseeable ruling by the hon'ble Supreme Court of India dated 08.05.2009, the apex court suspended all the mining operations in the aravalli hill range falling in state of Haryana within the area of 448 sq. kms. approx. in the district of Faridabad and Gurugram including Mewat. This ban by the apex court, led to a situation of scarcity of the sand and other materials which were derived from the stone crushing activities, which directly affected the construction schedules and activities of the respondent

16. Such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments, severely affected the real estate and these reasons were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held liable for things that were/are not in control of the respondent.

17. It is pertinent to note that as per clause 51 of the buyer's agreement dated 01.06.2012, any dispute pertaining to the apartment in question should be referred to arbitration under

section 8 of the Arbitration and Conciliation Act, 1996 and the present complaint is not maintainable on this ground itself.

18. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

**Determination of Issues:-**

19. As regards **the issue no. i** raised by the complainant, it is to be noteworthy from the perusal of record and the submissions made by the parties, as per clause 11.2 of the buyer's agreement dated 01.06.2012, possession of the apartment in question was to be delivered within a period of 39 months plus 180 days' grace period from the date of excavation.

Relevant portion of the clause is reproduced below –

*“11.2 Grace Period..... the Developer shall make all efforts to apply for Occupation Certificate of the proposed residential project within thirty-nine (39) months from the date of excavation subject to such limitation including but not limited to obtaining the requisite Govt. approvals, sanctions, permits, etc.....The Intending Allottee agrees and understands that the Developer shall be entitled to a grace period of one hundred and eighty days (180) days, after the expiry of thirty nine (39) months, for applying and obtaining the Occupation Certificate in respect of the said complex.”*

20. As per statement of account, the excavation was commenced on 04.06.2012, hence on calculation the due date of delivery of possession comes out to be 04.03.2016, but the intimation of possession letter was issued by the respondent on 28.08.2018 i.e. after a delay of more than 2 years which is in violation of section 11(4)(a) of the Act *ibid*. Thus, the complainant is entitled for delayed possession charges at prescribed rate of interest @ 10.70% p.a. on the deposited amount in terms of section 18 (1) proviso of the Act *ibid*.

21. As regards **issue no. ii** raised by the complainant, from the perusal of intimation of possession letter dated 28.08.2018 (**Annexure R7**) it is noted that the charges levied by the respondent are more in the nature of statutory dues which the complainant is liable to pay as per the terms and conditions of the apartment buyer's agreement dated 01.06.2012. Moreover, as regards the allegation of incompleteness of construction, the complainant has failed to adduce any evidence in support to prove that the construction was incomplete and that the promised amenities were not provided by the respondent. Hence, this issue becomes infructuous for the want of documentary evidence in support.



### Findings of the authority-

22. The preliminary objection raised by the respondent regarding the jurisdiction of the authority stands dismissed. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

23. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer

Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

24. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the

arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.

This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

25. Arguments heard. Occupation certificate has been received by the respondent on 23.07.2018. The respondent has offered possession of the unit in question to the complainant on 28.08.2018 but the complainant has not accepted the letter of offer of possession.

26. As per clause 11.2 of the buyer's agreement dated 01.06.2012 for unit no. A-2302, 23<sup>rd</sup> floor, tower A in the project "Araya", located at Sector 62, Golf Course Extension Road, Gurugram,

possession was to be handed over to the complainant within a period of 39 months from the date of excavation i.e. 04.06.2012 plus 180 days' grace period which comes out to be 04.03.2016. However, the respondent has not delivered the unit within stipulated period. Complainant has already paid Rs. 4,40,26,596/- to the respondent against a total sale consideration of Rs. 4,41,69,244/-. As such, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.70% per annum as per the provision of section 18(1) proviso of the Real Estate (Regulation and Development) Act, 2016.

**Decision and directions of the authority -**

27. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:-

- (i) The respondent is liable to pay delay possession charges at the prescribed rate of interest @ 10.70% per annum from due date of delivery of possession

i.e. 04.03.2016 till offer of possession i.e. 28.08.2018 within 90 days from the date of this order.

- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. Interest on due payments from the complainant shall also be charged at the prescribed rate of interest i.e. 10.70% per annum by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- (iii) The promoter shall not charge any other charges from the complainant which is not the part of apartment buyer's agreement.

28. The order is pronounced.

29. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -23.04.2019.

**(Subhash Chander Kush)**

Member

Judgement uploaded on 02.05.2019