

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

Complaint no. : 1114 of 2018
First date of hearing : 14.03.2019
Date of decision : 24.04.2019

Mr. Babu Lal Poddar
R/o. E-98, Prem Kutir Apartment, Sector-9,
Rohini, New Delhi-110085

Complainant

Versus

M/s Kashish Developers Ltd.
Regd. office: Vatika Business Park, 5th Floor,
Block-2, Sohna Road, Sector-49, Gurugram-
122001, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Madhur Kumar Gupta Authorized representative on
behalf of the complainant
None for respondent Advocate for the respondent

ORDER

1. A complaint dated 22.11.2018 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. Babu Lal Poddar, against the promoter M/s Kashish Developers Ltd., on

account of violation of the apartment buyer's agreement dated 07.02.2013 in respect of apartment described below in the project 'Manor One' for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 22.11.2018. Notices w. r. t. filling of were issued to the respondent on 26.11.2018, 20.12.2019 and 05.01.2019. However, despite due and proper service of notices, the respondent failed to file reply. A final notice was sent through e-mail on 27.02.2019 for personal appearance but respondent did not appear. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making it personal appearance or by adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint
3. Since, the apartment buyer's agreement has been executed on 07.02.2013 i.e. prior to the commencement of the Act *ibid*,

therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"Manor One", Sector 111, Gurugram, Haryana
2.	Nature of the project	Group housing project
3.	Project area	14.843 acres
4.	DTCP license no.	110 of 2011
5.	RERA Registered/ not registered.	Not registered
6.	Allotment letter	21.09.2012
7.	Apartment/unit no.	B1-5C, Sector-111
8.	Apartment measuring	1455 sq. ft.
9.	Date of booking	07.08.2012
10.	Date of execution of apartment buyer's agreement-	07.02.2013
11.	Payment plan	Construction linked payment plan
12.	Total sale price of the unit	Rs.1,00,17,541.9/-
13.	Total amount paid by the complainant till date	Rs. 78,82,266/-
14.	Due date of delivery of possession as per clause 3(a) of the agreement within period of 36 months plus 6 months grace period from the date of execution of the agreement	07.08.2016 The grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent

15.	Delay in handing over possession till date of decision	2 years, 8 months and 17 days
16.	Penalty clause as per the said apartment buyer's agreement	As per clause 3 (c) (iv) @ Rs. 10/- per sq. ft. per month of the super area of the said apartment for the period of delay in offering of possession

5. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.
6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 14.03.2019 and 24.04.2019. 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

7. The complainant submitted that he has booked a flat in Manor One project in Sector-111, Gurugram. The concerned flat is B1-5C. The date of possession as per our agreement in 07.08.2016 including grace period as per the agreement. However, more than two year elapsed and the possession has still not been provided.
8. The complainant has already made payment of Rs. 78,82,266/- in favour of M/s Kashish Developers Ltd. because of extended delay in construction and possession complainant is forced to backout of the project.

Issues to be decided

9. The complainant has raised the following issues:
 - i. Whether the flat has been handed over to the petitioner with delay and there is no reasonable justification for the delay?
 - ii. Whether the quality of construction is sub- standard and not in accordance with the provision of the agreement?

- iii. Whether the interest cost being demanded by the developer is unreasonable?
- iv. Whether the facilities and amenities as agreed upon in the layout plan have not been provided?
- v. Whether the developer has violated the seniority in allotment of the property etc.?

10. Reliefs sought:

The complainant is seeking refund of the deposit of Rs. 78,82,266/- along with compounded interest @ 24% per annum.

Determination of issues

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

11. With respect to **first issue** raised by the complainant, as per clause 3(a) of the agreement, the possession was to be handed within period of 36 months plus 6 months grace period from the date of execution of the agreement. Therefore, due date of possession comes out to be 07.08.2016. Thus, the respondent

failed in handing over the possession on or before the said due date, nor paid the compensation stipulated under clause **3 (c) (iv)** of the agreement, thereby committing a breach of the said agreement. The complainant has submitted photographs of the project which clearly depict that only structure part has been built as on date and it seems that just 10% work is done by the respondent as on date. Photographs annexed as annexure – A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, and A-12. Keeping in view the dismal state of affair of the project at site and there is no hope and scope that the respondent will be able to complete the project in near future. Considering all the facts of the matter, the authority of the considered view that complainant is entitled to get back the amount deposited by him at the rate of 10.70% per annum.

12. With respect to **third issue** raised by complainant, the authority is of view that interest cost being demanded by the developer is unreasonable
13. With respect to **second, fourth, and fifth issues** raised by the complainant, it seems that issues has been raised just for sake of raising issues as nothing has been placed on record

regarding said issues and even no contention regarding the issue has been raised in the complaint so the same becomes infructuous.

Findings of the authority

14. 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.
15. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.
16. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.

17. 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 of the Act and to fulfil its obligations.
18. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice.
19. Such notices were issued to the respondent on 26.11.2018, 20.12.2019 and 05.01.2019.
20. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondent, it is sufficient to prove that such information was available with the website and an electronic communication (e-mail) was served on the respondent.
21. Since the project is not registered, 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.

22. Complainant had booked a unit no. B1, 5C, in project “Manor One” Sector-111, Gurugram and apartment buyer’s agreement to this effect was executed inter-se the parties on 05.09.2012. complainant has already paid Rs. 78,82,266/- to the respondent against a total sale consideration of rs. 1,00,17,541/-.

23. The complainant has submitted photographs of the project which clearly depict that only structure part has been built as on date and it seems that just 10% work is done by the respondent as on date. Photographs annexed as annexure A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, and A-12. As per section 18(1) of the Act, which is reproduced as under:-

“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) *.....*

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.....”

24. Keeping in view the dismal state of affair of the project at site and there is no hope and scope that the respondent will be able to complete the project in near future. Complainant is pleading for refund of the deposited amount alongwith interest.

25. Considering all the facts of the matter, the authority of the considered view that complainant is entitled to get back the amount deposited by him at the rate of 10.70% per annum within a period of 90 days.

Decision and directions of the authority

26. After taking into consideration all the material facts adduced 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:

(i) The respondent is directed to refund the deposited amount alongwith interest @10.70 per annum to the complainant within period of 90 days.

27. Since the project is not registered, 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.

28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)

(Subhash Chander Kush)

Member

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.04.2019

Judgement uploaded on 02.05.2019

HARERA
GURUGRAM