

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

Complaint no. : 1720 of 2018
First date of hearing: 13.12.2018
Date of decision : 04.07.2019

Mr. Varun Munjal

R/o: House no 530/18, Ravi Dass Nagar, Arya
Nagar Rohtak, Haryana

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.

Regd. Office: 14A/36, WEA, Karol Bagh, New
Delhi-110005.

Respondent

CORAM

Shri Samir Kumar

Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Ishaan Mukherjee

Advocate for the complainant

None for the respondent

EX-PARTE ORDER

1. A complaint dated 10.12.2018 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. Varun Munjal against the respondent M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3 (a) of the apartment buyer's agreement executed on 18.02.2013 in respect of apartment

described below in the project 'Our Homes' for not handing over possession on the due date which is an obligation under section 11 (4) (a) of the Act *ibid*.

2. Notices w.r.t. filing of reply were issued to the respondents on 13.12.2018, 03.01.2019, 18.01.2019. However, despite due and proper service of notices, the respondent failed to file the reply before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance 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 18.02.2013 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

contractual obligation on the 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	"Our Homes", Sector 37-C, Gurugram
2.	Nature of real estate project	Low cost/Affordable group housing project
3.	RERA registered/ not registered	Not registered
4.	Project Area	10.144 acres
5.	DTCP License	13 of 2012 dated 2202.2012 Note: License expired on 22.02.2016 and renewal fees submitted but not renewed
6.	Apartment/unit no.	922, 9 th floor, tower 'Rose'
7.	Apartment measuring	48sq. mtr carpet area
8.	Booking date	31.08.2012 (page 17 of the complaint)
9.	Date of execution of apartment buyer's agreement	18.02.2013 (Annexure A)
10.	Payment plan	Time Linked Plan
11.	Basic sale price	Rs 16,00,000/- as per agreement page no. 18
12.	Total amount paid by the complainant till date	Rs 15,68,000/- (as alleged by complainant in his complaint page no. 06)
13.	Consent to establish granted on	02.12.2013
14.	Date of delivery of possession as	02.06.2017

	per clause 3 (a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals) (Consent to establish granted on 02.12.2013)	(Note: Due date of delivery of possession has been computed from the date of consent to establish as per the considered view of authority in other similar matters)
15.	Delay in handing over possession till date of decision i.e. 04.07.2019	2 years 1month and 2 days
16.	Penalty clause as per apartment buyer's agreement	Clause 3(c)(iv) of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the said flat.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor filed their reply to the complaint so the case is being proceeded ex-parte against the respondent.

Facts of the complaint

6. The complainant submitted that the respondent is a company and working in field of construction and development of residential and commercial projects in Gurugram in the name of M/s Apex Buildwell Pvt. Ltd.

7. The complainant submitted that the respondent company is developing its project namely Our Homes situated at Village Garauli-Khurd, Sector-37C, Gurugram, therefore the authority has the Jurisdiction to try the present complaint.
8. The complainant submitted that the relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under Govt. of Haryana affordable housing scheme and thus allotted apartment 922, 9th floor, tower 'Rose' having a carpet area of approximately 48 sq. meters (where the carpet means the area enclosed under the exterior walls of the said apartment) with an exclusive right to use of on Village Gadoli-Khurd, Sector-37, Tehsil & District Gurugram together with the proportionate undivided, unidentified, impartible interest in the land underneath, the said housing complex with the right to use the common areas and facilities in the said housing complex vide apartment buyers' agreement dated 18.02.2013.
9. That the basic sale price of the apartment was of Rs.16,00,00/-, payable by the apartment allottee

/complainant as per payment plan and consequently the complainant had paid the amount of Rs 15,68,000 till date.

10. That as per the apartment buyer's agreement, the respondent had promised the complainant to handover the physical possession of the dwelling apartment/unit within a period of 36 months, with a grace period of 6 months.

11. Facts leading to delay in possession are as under:-

a. That at the time of booking of aforesaid unit it was duly assured, represented and promised by the Respondent that the said unit and real estate project will be ready to occupy by the complainant within a period of 36 months from the date of commencement of construction of the complex with a grace period of six (6) months.

b. That since the date of booking, the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

- c. That the respondent failed to develop so called project within the period of thirty six months with grace period of 6 months.
12. The complainant submitted that as per clause 3 (a) of the apartment buyer's agreement, the respondent has to hand over the physical possession of the dwelling unit within 36 months with a grace period of 6 months.
13. That thus, the respondent had cheated and played fraud upon the complainant by booking the apartment in the project in question at village Garauli-Khurd, Sector-37C, Gurugram and thus the respondent has committed criminal offence of breach of trust and other offences.
14. That the complainant several times requested the respondents telephonically as well as personal visits at the office for the delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondents but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and the lingered the on one pretext or the

other and refused to deliver the possession of the above said flat.

15. The complainant submitted that they are also concerned about the construction quality as when we had checked the internal wall plaster of my allotted unit, its sand is coming to my hand and it seems that it was not mixed with the right proportion of cement. As we are not from the construction background and did a very basic test but this plaster material itself shows that the intention of respondent is not on quality, but it is just to collect money and spend as low as possible on the construction. So, we request here, that some concerned authority who issued license to the builder (under this Government affordable housing project), should be accountable and have some mechanism to check the basic construction quality at this stage at least. If we don't have any such mechanism at present, we should add it immediately at least when buyers want to check this otherwise there will be a risk of life for more than 1100 families (approx. 5000 lives) who will start living there. This is important to mention here that this is not a private project and the license is issued under

a government affordable housing scheme. Most of the people entered in this project that there should be some Govt authority checks and responsibilities and project will be completed within timeframe with good construction quality. Instead of playing a blame game by the builder and authority after some mis-happening with the lives of approximate 5000 people, we request to please keep a check on its basic construction quality that he has built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent will try to use / deploy cheapest and lowest category material in absence of any such checks from the civic authority. This is the utmost factor of the complaint as this is not related to hard earned money / financial losses of the buyer, but it is directly related to the life of buyer and his family, so we request the entire honourable RERA committee to please record this fact and should impose some quality check mechanism which is also reachable to buyers for their satisfaction.

16. Some buyer of this projects has filed complaint about this delay in CM window & one of the complaint has been

forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15/01/2018 and at that point the complainant came to know that builder license has been expired and not renewed. They all requested Mr. R.S. Batt to take some action & help them to get this project complete as early as possible and the complainant came to know that their request to Mr. R. S. Batt (DTP) helped a lot in the process of getting respondent's license renewed. The reason to mention it here is that the allottees should not be sufferer because of any license expiration as their complaint helped the complainant in this matter and moreover allettees paid all the demands on time even in time of license expiry. This is respondent responsibility to chase for license renewal before enough time of expiry & moreover chase with regular follow up till its renewed.

Issues raised by the complainant

17. Issues raised by the complainant are as follow:
 - i. Whether the respondent delayed in handing over the possession of the unit to the complainant?

- ii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?
- iii. Whether the quality of construction/building material is of sub-standard?

Relief sought

18. The complainant is seeking the following relief:

- i. To direct the respondent to pay delay interest at the rate of 18% per annum on total consideration paid by the complainant from the due date of possession.

Determination of issues:

26. After considering the facts submitted by the complainant, and perusal of record on file, the issues wise findings of the authority are as under:
27. With respect to the **first and second issues** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction upon receipt of all project related approvals i.e. 07.02.2013 along with a grace period of

6 months. The clause regarding the possession of the said unit is reproduced below:

“3(a) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities....”

34. Keeping in view the precedent set up by this authority, the due date of delivery of possession is computed from the date of consent to establish which has been granted on 02.12.2013. Accordingly, the due date of possession comes out to be 02.06.2017 and the possession has been delayed by more than two years till date. The respondent is therefore directed to pay interest at the prescribed rate of 10.65% per annum on the amount deposited by the complainant, from due date of possession i.e. 02.06.2017 till the date of offer of possession as per the provisions of proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

38. With respect to the **third issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint. Thus, this issue is not maintainable.

Findings of the authority

39. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. 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.

40. Arguments advanced on behalf of complainant heard. As per clause 3 (a) of the apartment buyer's agreement dated

18.02.2013 for unit no.922, 9th floor, tower “Rose”, in project “Our Homes”, sector 37C, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of commencement of construction upon receipts of all approvals but the approvals date is not available on record and keeping in view the precedent set up by the authority, the due date to deliver the possession shall be calculated from the date of consent to establish i.e. 02.12.2013, which comes out to be 02.06.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.15,68,000/- to the respondent against a total sale consideration of Rs.16,00,000/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f. 02.06.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Decision and directions of the authority

44. 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 to the respondent in the interest of justice and fair play:

- i. The respondent is liable to pay delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f. 02.06.2017 as per the provisions of proviso section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not part of the apartment buyer's agreement.

45. Since the project is not registered with the authority, so the authority has decided to take suo moto cognizance of this fact

and directed the registration branch to initiate necessary action against the respondent under 59 of the Act. A copy of this order be endorsed to the registration branch.

46. The order is pronounced.

46. Case file be consigned to the registry.

47. Copy of this order be endorsed to registration branch.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Dated: 04.07.2019

Judgement uploaded on 09.07.2019



HARERA
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