

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

**Complaint no. : 1718 of 2018**  
**First date of hearing: 11.04.2019**  
**Date of decision : 04.07.2019**

Mr. Sandeep Grover,  
R/o Grover Niwas, Suglan Dhani,  
Gali no.2, Patram gate,  
Bhiwani, Haryana.

**Complainant**

**Versus**

M/s Apex Buildwell Pvt. Ltd.  
Regd. Office: 14A/36, WEA,  
Karol Bagh, New Delhi-110005.  
Marketing office: Plot no. 25B, 2<sup>nd</sup> floor,  
Sector 32, Gurugram.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Mr. Sandeep Grover Complainant in person  
Shri Ishaan Mukherjee Advocate for the complainant  
None for respondent Advocate 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. Sandeep Grover against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3(a) of the apartment buyer's agreement executed on 20.06.2013 in respect of

apartment number 835,8<sup>th</sup> floor, block/tower 'Lotus' in the project 'Our Homes' for not handing over possession on the due date i.e. 02.06.2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 10.12.2018. Notices w. r. t. hearing of the case were issued to the respondent 13.12.2018, 28.12.2018 and 16.01.2019. However, despite due and proper service of notices, the respondent failed to file reply 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 or 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 buyers agreement was executed on 20.06.2013 i.e. prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016, the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by the complainant, the authority has decided to treat this complaint as an application to issue directions for compliance of obligations by the promoters under 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.	RERA registered/ not registered.	<b>Not registered</b>
3.	Nature of the project	Affordable group housing project
4.	DTCP license	13 of 2012 dated 22.02.2012 <b>(License expired on 22.02.2016. Renewal fees submitted but not renewed)</b>
5.	Project area	10.144 acres
6.	Apartment/unit no.	835 on 8 <sup>th</sup> floor, block/tower 'Lotus'
7.	Apartment measuring	48 sq. mtr. carpet area
8.	Date of execution of apartment buyer's agreement	20.06.2013
9.	Payment plan	Time linked payment plan
10.	Total consideration as per "intimation of due instalment" dated 07.08.2014 (page 57 of complaint)	Rs.16,00,000/-
11.	Total amount paid by the complainant till date "intimation of due instalment" dated 07.08.2014 (page 57 of complaint)	Rs.11,20,000/-
12.	Date of delivery of possession as 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)	02.06.2017
13.	Consent to establish granted on (Taken from similar cases)	02.12.2013
14.	Delay in handing over possession till date	2 years 1 month 2 days
15.	Penalty clause as per apartment buyer's agreement dated 20.06.2013	Clause 3(c)(iv) of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the

	said flat.
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5. 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 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor have paid any compensation @ Rs.10/- per sq. ft. per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 20.06.2013 duly executed between the parties. 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 reply has not been filed by the respondent till date even after service of three notices consecutively for filing reply and the respondent has not appeared before the authority on the date of hearing. Hence, ex-parte proceedings have been initiated against the respondent.

#### **FACTS OF THE COMPLAINT**

7. The complainant submitted that he has applied in affordable housing project under government of Haryana affordable housing scheme and thus allotted apartment no. 835, 8<sup>th</sup> floor, tower Lotus having a carpet area of approximately 48 sq. meters, vide apartment buyer's agreement dated

20.06.2013. The basic sale price of the apartment was of Rs.16,00,00/- and the complainant has paid an amount of Rs. 15,64,984/-

8. The complainant submitted 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 thirty six (36) months, with a grace period of 6 months.
9. The complainant submitted that respondent had cheated and played fraud upon the complainant by booking the apartment in the so called project OUR HOMES in village Garauli-Khurd, Sector-37C, Gurugram and thus the respondent has committed criminal offence of breach of trust and other offences.
10. The complainant submitted that several times requested the respondents telephonically as well as through 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 respondent but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and lingered on one pretext or the other and refused to deliver the possession of the above said flat.
11. The respondent by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory

compliances, wrongfully induced the complainant to deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondents gained wrongfully , which is purely a criminal act.

12. The complainant submitted that when he checked the internal wall plaster of allotted unit, its sand came to his hand and it seems that it was not mixed with the right proportion of cement. As complainant is 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. It is further submitted 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.
13. The complainant submitted that some buyers of this project have filed complaint about this delay in CM window and one of the complainant has been forwarded the complaint to DTP office, sector- 14, Gurugram. On request of the home buyers Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15.01.2018 and at that point the complainant got to know that the builder license has expired and not renewed.



14. The complainant submitted that the respondent should not escape from his legal binding and responsibilities to complete the project on priority and with good construction quality. Hence, the present complaint is filed.

**ISSUES RAISED BY THE COMPLAINANT ARE AS FOLLOW:**

15. The following issues have been raised by the complainant:
- i. Whether the respondent delayed in handing over the possession of the unit to the complainant?
  - ii. Whether the quality of construction/building material is of low quality due to which by touching the wall plaster its sand comes in hand?
  - iii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?

**RELIEF SOUGHT:**

16. The complainant is seeking the following relief:
- i. Direct the respondent to pay the interest charged by the builder @ 18% p.a. on delayed payment.
  - ii. Respondent should pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to be calculated as and when the thirty-six months was completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente -lite.

- iii. Direct the builder to offer immediate possession of the said flat along with any interest as the hon'ble authority may deemed fit.

#### **DETERMINATION OF ISSUES:**

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

- i. With respect to the **first issue** raised by the complainant, as per clause 3(a) of apartment buyer's agreement, the possession of the said flat was to be handed over within 36 plus grace period of 6 months from the date of commencement of construction upon receipts of all approvals but the approval date is not 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. 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...."*



Thus, the possession has been delayed by two years one month two days 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 section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

- ii. With respect to the **second issue**, the complainant has provided no proof but has made only assertions with respect to sub-standard quality of construction in the complaint. Thus, the issue is not maintainable.
- iii. With respect to the **third issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is 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.

#### **FINDINGS OF THE AUTHORITY**

18. **Jurisdiction of the authority-** 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.

19. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. 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 obligations.
20. Amount of Rs. 15,000/- as penalty was imposed upon the respondent on previous date of hearing and has not been paid yet. Vide order dated 11.04.2019, the respondent has already been proceeded ex-parte. Arguments advanced on behalf of the complainant heard. As per clause 3(a) of builder buyer agreement dated 20.06.2013 for unit no. 835, 8<sup>th</sup> floor, block/tower 'Lotus' in project "Our Homes", Sector 37 C, 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 approval date is not 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. 11,20,000/- to the respondent against a

total sale consideration of Rs 16,00,000/-. As such complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% p.a. 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**

21. After taking into consideration all the material facts as adduced and produced, 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:

- i. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
- ii. The promoter shall not charge anything from the complainant which is not a part of the apartment buyer's agreement.
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as being granted to the complainant in case of delayed possession
- iv. The respondent is directed to pay interest at the prescribed rate of 10.65% per annum on the amount deposited by the complainant with the promoter from

the due date of possession i.e. 02.06.2017 up to the date of offer of possession.

- v. 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 on or before 10<sup>th</sup> of each subsequent month.

22. The order is pronounced.

23. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. Copy of this order be endorsed to the registration branch.

24. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 04.07.2019

Judgement uploaded on 09.07.2019