

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

Complaint no. : 803 of 2018  
Date of first hearing : 15.01.2019  
Date of decision : 10.04.2019

1. Mrs. Teena Sood
2. Mr. Varun Sood

Address- Level 15, DLF building,  
14B DLF Phase-III, Cyber City, Gurugram

**...Complainants**

Versus

Cosmos Infra Engineering (India) Pvt Ltd  
Office: Rishi Apartment 4 Battery Lane,  
Rajpur Road, Civil Lines, Delhi-110054

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sushil Yadav

Complainants in person with  
advocate of complainant

Shri Virender Singh

Advocate for the respondent

**ORDER**

1. A complaint dated 05.09.2018 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 complainants Mrs. Teena Sood and Mr. Varun Sood, against Cosmos Infra Engineering



(India) Pvt Ltd. in respect of apartment/unit described below in the project 'Express 99', on account of violation of the section 11(4)(a) of the Act ibid.

2. Since, the flat buyer's agreement has been executed on 02.03.2013 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 are as under: -

1.	Name and location of the project	"Cosmos Express 99" Sector 99, Gurugram
2.	<b>Nature of project</b>	Group housing project
3.	Unit no.	D-403 'Copper', tower-D
4.	Unit area	1310 sq. ft'
5.	<b>RERA Registration</b>	<b>Not Registered</b>
6.	DTCP licence no	70 of 2011 dated 22.07.2011
7.	DTCP licence no valid upto	21.07.2015
8.	DTCP Licence holder	M/s Shivnandan Buildtech Pvt. Ltd.
9.	Date of execution of flat buyer agreement	02.03.2013
10.	Total consideration	Rs. 82,62,185/-





		(Annexure-I, page-43)
11.	Total amount paid by the complainants	Rs. 65,68,596/- (as per Annexure-II, page-50)
12.	Payment plan	Construction linked payment plan
13.	Due date of delivery of possession. Clause 3.1 read with 5.1: construction shall be completed in 4 years from the start of construction or execution of this agreement whichever is later + 6 months grace period	02.09.2017 (Due date is calculated from execution of flat buyer agreement)
14.	Delay of number of months/ years	1 year 7 months 8 days (approx.)
15.	Penalty clause as per flat buyer agreement	Clause 5.1 i.e. Rs. 5 per sq. ft' per month of the super area

4. As per the details provided above, which have been checked as per record of the case file. A flat buyer agreement is available on record for flat no. D-403, 4<sup>th</sup> floor, Sector 99, Gurugram in the project "Express 99" for which the promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.
5. 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 10.04.2019. The reply has been filed on behalf of the respondent.



**FACTS OF THE CASE**

6. The respondent gave advertisement in various leading newspapers about their forthcoming project named **Express 99, sector -99, Gurgaon** promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements Mrs. Teena & Varun Sood, booked an apartment/flat admeasuring 1310 sq. ft. in aforesaid project of the respondent for total sale consideration is **Rs 82,62,185/-** which includes BSP, car parking, IFMS, Club Membership, PLC etc. The complainants made payment of **Rs.65,68,596/-** to the respondent vide different cheques on different dates, the details of which are as Annexed.
7. As per flat buyers' agreement the respondent had allotted a unit no. D - 403 in tower D admeasuring 1310.00 sq. ft' in **Express 99, sector -99, Gurgaon** to the complainants. That as per para no.3.1 of the flat buyer agreement, the respondent had agreed to deliver the possession of the flat within 4 years from the date of signing of the flat buyer's agreement dated 02.03.2013 or approval of building plan.





8. Complainants regularly visited the site but was surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the project without completing the work. The respondent's dishonest motives and intention to cheat and defrauded the complainants is clear from the fact that despite receiving the payment as per demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.
9. It could be seen that the construction of the project in which the complainants flat was booked with a promise by the respondent to deliver the flat by 02.03.2017 but was not completed within time for the reasons best known to the respondent which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.



10. The complainants visited the site but are shocked to see that construction was going on very slow speed then the complainants contacted the respondents through mails and personal visit, about the project but the respondent did not give any satisfactory answer and complainants had paid **Rs.65,68,596/-** by then as and when demanded by the respondent but the construction was going on at a very slow speed and even the respondent did not know that when they would be able to deliver the project.
11. Due to this omission on the part of the respondent, the complainants have been suffering from disruption, mental torture, agony and also continue to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time or refund the money. That as per clause 5.1 of the flat buyer agreement dated 02.03.2013 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq. ft' per month of the super area of the apartment/flat. It is however, pertinent to mention here this is unjust and the respondent has exploited the complainants by neither providing the possession of the flat even after a delay nor refunded the amount paid by the complainants. The respondent cannot escape the liability merely by mentioning





a clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyers' agreement and usurp such a huge amount of the complainants.

12. On the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence, the respondent is liable to pay interest on the amount paid by the complainants @24% per annum to be compounded from the date of amount paid.
13. The complainants have requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to refund the amount along with interest @ 24% per annum on the amount deposited by the complainants, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainants.
14. The complaints have taken loan Amounting Rs.65, 00,000 from IDBI Bank. The complainants visited the site but are shocked to see that no construction was going on and

complainants are paying so much amount to the bank on account of EMI of loan availed by the complainants.

#### **15. ISSUES RAISED BY THE COMPLAINANTS**

- I. Whether the flat buyer's agreement is one-sided and is unjustified?
- II. Whether there is delay in giving possession of the unit to the complainants justified?
- III. Whether the interest cost @24% demanded by the respondent/developer is very high?

#### **16. RELIEF SOUGHT**

In view of the above, complainants seeks the following relief:

- I. Direct the respondents to refund the amount of Rs.65,68,596/- along with interest @ 24% per annum on compounded rate from the date of booking of the flat in question;
- II. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainants.





**RESPONDENT'S REPLY**

17. The present complaint is liable to be dismissed as the complainants are trying to extract compensation from the respondent without any deficiency of service. The complainants have suppressed material facts that they did not make timely payments as per the payment schedule despite various notice and reminders.
18. The complainants are not consumers as they invested in the property to make profit by selling the same at higher price. The complainants have misinterpreted the flat buyer's agreement and as per clause 3.1 the developer shall under normal conditions subject to force majeure, complete the construction of the tower. The construction work has been completed till 70% and possession will be given in short span of time.
19. The present construction work is at an advance stage and all structure work, plaster work has been completed and finishing work is going on. The respondent company has only received Rs.90.46 crores from the flat buyers and have spent Rs.159.19 crores in the project till date.
20. The complainants should be asked for strict proof of the calls and personal visits as alleged by them. The respondent had



applied for registration of its project with RERA vide application dated 25.07.2017 duly received on 31.07.2017 in the office of HRERA. The respondent has taken loan from LIC housing finance and all the receipts and expenditures are strictly monitored by them. They do not allow refund of money to any buyer and if everybody will apply for refund the project wouldn't be completed.

#### **DETERMINATION OF ISSUES**

21. With respect to the **second issue**, as per clause 3.1 of the builder buyer agreement dated 02.03.2013 for unit No.D-403 Copper tower-D, in project "EXPRESS 99", Sector-99, Gurugram, possession was to be handed over to the complainants within a period of 4 years from the date of execution of BBA plus 6 months grace period which comes out to be **02.09.2017**. However, the respondent has not delivered the unit in time. Complainants has already paid Rs.65,68,596/- to the respondent against a total sale consideration of Rs.82,62,185/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **02.09.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.



22. Local commissioner report has been received on 09.04.2019 and placed on record. The operative part of LC report is as under: -

- i. The physical progress of the overall project is approximately 55-60%.
- ii. The physical progress of the tower-D in which unit of complainants is located is approximately 60%.

3. With respect to the **first issue** raised by the complainants the complainants have not specified any particular clause which they think to be one-sided and unjustified. But as per para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

23. Hence this issue is decided in favour of complainant.

24. With respect to the **third issue** raised by the complainants the interest cost demanded by the respondent/developer is very high and cannot be justified. But now after the commencement of RERA Act the respondent is bound to impose interest cost according to prescribed rate.

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

25. The application filed by the respondent for rejection of complaint raising preliminary objection regarding 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 complainants at a later stage.
26. Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to issue show cause notice to the builder-respondent under the Act to show cause as to why a penalty of 10% of the cost of the project may not be imposed.



27. Local Commissioner report has been received on 09.04.2019 and placed on record.

The operative part of LC report is as under: -

- i. The physical progress of the overall project is approximately 55-60%.
- ii. The physical progress of the tower-D in which unit of complainants is located is approximately 60%.

28. As per clause 3.1 of the builder buyer agreement dated 02.03.2013 for unit No.D-403 Copper tower-D, in project "EXPRESS 99", Sector-99, Gurugram, possession was to be handed over to the complainants within a period of 4 years from the date of execution of BBA plus 6 months grace period which comes out to be **02.09.2017**. However, the respondent has not delivered the unit in time. Complainants has already paid Rs.65,68,596/- to the respondent against a total sale consideration of Rs.82,62,185/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **02.09.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

29. Complainants is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



30. The promoter shall not charge anything from the complainants which is not part of the BBA.
31. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as is being granted to the complainants in case of delayed possession.
32. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

#### **DIRECTIONS OF THE AUTHORITY**

33. 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 directs the respondent in the interest of justice and fair play:
- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. ~~10.75%~~ <sup>10.70%</sup> per annum w.e.f 02.09.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

*Corrected vide order  
dated 05/07/19*





- ii. The arrears of interest accrued so far shall be paid to the complainants 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. Complainants 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 complainants which is not part of the BBA.
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as is being granted to the complainants in case of delayed possession.

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.04.2019

**Corrected Judgement uploaded on 10.07.2019**

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12. On the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence, the respondent is liable to pay interest on the amount paid by the complainants @24% per annum to be compounded from the date of amount paid.
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### **RESPONDENT'S REPLY**

17. The present complaint is liable to be dismissed as the complainants are trying to extract compensation from the respondent without any deficiency of service. The complainants have suppressed material facts that they did not make timely payments as per the payment schedule despite various notice and reminders.
18. The complainants are not consumers as they invested in the property to make profit by selling the same at higher price. The complainants have misinterpreted the flat buyer's agreement and as per clause 3.1 the developer shall under normal conditions subject to force majeure, complete the construction of the tower. The construction work has been completed till 70% and possession will be given in short span of time.
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22. Local commissioner report has been received on 09.04.2019 and placed on record. The operative part of LC report is as under: -

- i. The physical progress of the overall project is approximately 55-60%.
- ii. The physical progress of the tower-D in which unit of complainants is located is approximately 60%.

3. With respect to the **first issue** raised by the complainants the complainants have not specified any particular clause which they think to be one-sided and unjustified. But as per para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

23. Hence this issue is decided in favour of complainant.



24. With respect to the **third issue** raised by the complainants the interest cost demanded by the respondent/developer is very high and cannot be justified. But now after the commencement of RERA Act the respondent is bound to impose interest cost according to prescribed rate.

### FINDINGS OF THE AUTHORITY

25. The application filed by the respondent for rejection of complaint raising preliminary objection regarding 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 complainants at a later stage.

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31. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as is being granted to the complainants in case of delayed possession.
32. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

**DIRECTIONS OF THE AUTHORITY**

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**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.04.2019

Judgement uploaded on 30.04.2019