

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

**Complaint no. : 1712 of 2018**  
**First date of hearing: 11.04.2019**  
**Date of decision : 04.07.2019**

Ms. Madhu Tripathi  
R/o H.no. 1134, Sector 10A,  
Near Shantawana,  
Gurugram, Haryana, 122001

**Complainant**

**Versus**

M/s Apex Buildwell Pvt. Ltd.  
Regd. Office: 14A/36, W.E.A,  
Karol Bagh, New Delhi-110005.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Brijesh Dubey Husband of the complainant  
Shri Ishaan Mukherjee Advocate for the complainant  
None for the respondent Proceeded ex-parte vide order  
dated 11.04.2019

**EX-PARTE ORDER**

1. A complaint dated 09.12.2018 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 Ms. Madhu Tripathi, 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 18.06.2014 in respect of apartment number 536, 5<sup>st</sup> floor, block/tower 'Lotus' in the project 'Our Homes' 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. Since, the apartment buyer's agreement has been executed on 18.06.2014 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.

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

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Project area	10.144 acres
3.	Nature of the project	Affordable Group Housing
4.	RERA registered/ not registered.	<b>Not registered</b>
5.	DTCP license	13 of 2012
6.	Apartment/unit no.	536, 5 <sup>th</sup> Floor, block/tower 'Lotus'
7.	Apartment measuring	48 sq. mtr. of carpet area
8.	Date of execution of apartment	18.06.2014





	buyer's agreement	
9.	Basic sale price (as per clause 1.2 (a) of the apartment buyer's agreement	Rs.16,00,000/- (excluding taxes)
10.	Total amount paid by the complainant till date as per receipts annexed at page 48-56	Rs.15,68,930/- <b>Note:</b> The complainant is alleging that she has paid Rs.14,40,000/-.
11.	Consent to establish	02.12.2013 <b>Note:</b> As per precedent set by the authority, the due date is calculated from consent to establish
12.	Due 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.	Delay in handing over possession till date of decision i.e. 04.07.2019	2 years 1 month 2 days
14.	Penalty clause as per clause 3(c)(iv) of apartment buyer's agreement dated 18.06.2014	Rs.10/- per sq. ft. per month of the carpet area of the said apartment for the period of delay.

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant. An apartment buyer's agreement dated 18.06.2014 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

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LEGAL ASSISTANT



the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft. per month of the carpet area of the said apartment for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 18.06.2014 duly executed between the parties. Therefore, the promoter has not fulfilled its committed liability as on date.

5. The complaint was filed on 09.12.2018 Notices w. r. t. filing of reply to the complaint were issued to the respondent 13.12.2018, 01.01.2019 and 18.01.2019 for making his appearance. However, despite due and proper service of notices, the respondent neither filed reply nor appeared before the authority. From the conduct of the respondent, it appears that the respondent does not want to pursue the matter before the authority by way of making his personal appearance, by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte and to decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in her complaint. Amount of Rs.15,000/- as penalty imposed on previous date of hearing upon the respondent has not been paid, thus, the complaint is proceeded ex-parte vide order dated 11.04.2019.





**Facts of the complaint**

6. Briefly stated, the facts of the complaint are that the respondent is developing project namely 'Our Homes' situated at Sector 37-C, Gurugram, therefore the hon'ble authority has the jurisdiction to try the present complaint. Relying on the advertisement, the complainant had applied in an affordable housing project under 'Government of Haryana Affordable Housing Scheme' and was allotted the apartment no. 536, 5<sup>th</sup> Floor, Lotus having carpet area of 48 sq. mtrs. approx. with an exclusive right to use of the apartment together with the proportionate undivided, unidentified, impartial interest in the land underneath with the right to use the common areas and facilities in the said housing complex vide apartment buyer's agreement.
7. The complainant submitted that the apartment buyer's agreement was executed on 18.06.2014 wherein the respondent has promised to handover possession of the apartment within 36 months plus 6 months grace period from the commencement of construction upon receipt of all approvals. However, till date the possession of the said unit has not been handed over to the complainant.
8. The complainant submitted that the basic sale price of the apartment was Rs.16,00,000/- payable by the allottee as per





payment plan and consequently the complainant has paid the amount of Rs.14,40,000/- till date. [Note: as per receipts annexed with the paper book, the complainant has paid Rs.15,68,930/-.]

9. The complainant submitted that he has been visiting the project site and it has been noted that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
10. The complainant submitted about his concerns regarding the construction quality. When she checked the internal wall plaster of her allotted unit, its sand came to her hand and it seemed as if the sand was not mixed with right proportion of cement. The complainant requested that some concerned authority which issued license to the builder be held accountable and there should be some mechanism in order to check the basic construction quality as otherwise there will be a risk of life to more than 1100 families who will start living there. It is thus requested to check the basic construction quality of the structure built till now and also for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent might try to use / deploy cheapest and lowest category material in absence of any such checks from the civic authority.

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11. The complainant submitted that some buyers of the project in question have filed complaint about this delay in CM window and one of the complaints has been forwarded to DTP Office, Sector 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 the DTCP license has expired and the same has not been renewed. Thereafter, many buyers requested Mr. R.S. Batt to please take some action and help them to get this project completed as early as possible. This is respondent's responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till it is renewed.

**Issues to be decided**

12. The issues relevant for the disposal of the complaint are as follows:
- Whether there has been failure on the part of respondent in handing over of the possession to the complainant within the stipulated time?
  - Whether the complainant is entitled to interest at prescribed rate for the period of delay in handing over possession?

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- iii. Why the quality of the construction/ building material is low due to which wall plaster sand comes in hand while just touching the walls. And there should be a timely quality check for work executed till date and for further work by some concerned authority for this project and that should also be accessible to home buyers of this project.

### Reliefs sought

13. The complainant is seeking the following reliefs (as per amendment to the complaint)
- Direct the respondent to hand over the possession of the unit in most efficacious and time bound manner.
  - Direct the respondent to pay interest at prescribed rate for the period of delay in handing over of possession.

### Determination of issues

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

- With respect to the **first issue and second issue** raised by the complainants, as per clause 3(a) of the apartment buyer's agreement dated 18.06.2014, the possession of the unit was to be handed over within 36 months from the date of execution of the apartment buyer's agreement plus 6 months





grace period from the date of commencement of construction of complex upon the receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent on 02.12.2013. Therefore, the due date of handing over possession will be computed from 02.12.2013. 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...."*

14. Accordingly, the due date of possession was 02.06.2017 and the possession has been delayed by 2 years 1 month and 2 days till the date of decision i.e. 04.07.2019. Thus, the respondent has failed in handing over the possession on or before the said due date, thereby breaching the terms and conditions stipulated in the apartment buyer's agreement. Further, the authority is of the view that the promoter has failed to fulfil its obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Therefore,





on account of failure in handing over possession by the due date, the respondent is liable under proviso to section 18(1) of the Act *ibid*, to pay delayed possession interest at the rate of 10.65% per annum.

15. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said apartment as per clause 3(c)(iv) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed in *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."*

16. With respect to the **second issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint. Therefore, the issue is decided in negative.



### Findings of the authority

17. **Jurisdiction of the authority-** 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 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.

18. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned under section 11(4)(a) of the Act *ibid.* 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 obligation.

19. The authority is of the view that as per clause 3(a) of the apartment buyer's agreement dated 18.06.2014 for unit no.





536, 5<sup>th</sup> floor, block/tower Lotus 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 approval 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.15,68,930 /- 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 & Development) Act, 2016 till offer of possession. Complainant is directed to pay outstanding dues, if any after adjustment of interest for the delayed period. 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 is being granted to the complainant in case of delayed possession.





**Decision and directions of the authority**

20. After taking into consideration all the material facts as adduced and produced by the complainant, 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 parties in the interest of justice and fair play:

- (i) The respondent is duty bound to pay interest at the prescribed rate i.e. 10.65% for every month of delay from the due date of possession i.e. 02.06.2017 till the offer of possession.
- (ii) The respondent is directed to pay interest accrued from 02.06.2017 to 04.07.2019 on account of delay in handing over of possession to the complainant within 90 days from the date of decision and subsequent interest to be paid by the 10<sup>th</sup> of every succeeding 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.



21. As the project is registerable and has not been registered by the promoter, 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 under the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.
22. The order is pronounced.
23. Case file be consigned to the registry.



Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement uploaded on 18.07.2019