

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

Complaint no. : 723 of 2019
First date of hearing : 16.05.2019
Date of decision : 16.05.2019

Mr. Pradyumn Kumar Awasthi
R/o house no 41, Salaria Defense Officers
Enclave, sector 21, Dwarka,
New Delhi

Complainant

Versus

M/s Tashee Land Developers
Registered Office: 517 A Narain Manzil, 23
Barakhamba Road, Cannought Place,
New Delhi -110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sushil Yadav Advocate for complainant
None for the respondent Reply on behalf of the respondent
filed by Adv. Gaurav Srivastava

ORDER

1. A complaint dated 18.02.2019 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. Pradyumn Kumar Awasthi, against the promoter M/s Tashee Land Developers, on account of violation of the clause 2 of flat

buyer's agreement executed on 23.04.2013 in respect of unit described as below for not handing over possession by the due date i.e. 07.12.2015 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 23.04.2013 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 noncompliance of statutory 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 case are as under: -

1.	Name and location of the project	"Capital Gateway", Sector-111, Gurugram
2.	RERA registered/ not registered	Registered
3.	Registration number	12 of 2018
4.	Valid till	31.12.2020 for phase I
5.	Unit/flat no.	0403, 4 th floor, tower F
6.	Unit measuring	1760 sq. ft. (later vide letter dated 21.03.2017, 2049 sq. ft.)
7.	Flat buyer's agreement executed on	23.04.2013
8.	Total consideration (As alleged by the complainant)	Rs. 82,80,564/- (increased vide letter dated 21.03.2017, Rs.94,43,616)
9.	Total amount paid by the complainants till date	Rs. 86,43,616/- (Rs.85,61,667/- as per

	(As alleged by the complainant)	receipts annexed)
10.	Payment plan	Construction linked plan
11.	Approval of building plans (As alleged by the complainant) (page 4)	12.07.2012
12.	Due date of delivery of possession (36 months from the date of sanction of building plans + 180 days grace period) clause 2.1	12.01.2016
13.	Delay in handing over possession till date of decision	3 years 4 months 4 days
14.	Penalty clause as per flat buyer's agreement dated 23.04.2013	Clause 2.3 i.e. Rs.5/- per sq. ft' for every month of delay.

4. The details provided above have been checked based on record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 12.01.2016 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed the reply on 12.03.2019 and has been perused. The case came up for hearing on 16.05.2019 and despite service of notice of hearing to the respondent, he failed to appear.

BRIEF FACTS OF THE COMPLAINT

6. The complainant submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named “Capital Gateway” Sector 111”, Gurugram. Complainant, booked an apartment/flat measuring 1760 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs.82,80,564/- (now 94,43,616) which includes BSP, car parking, IFMS, club membership, PLC etc.
7. The complainant submitted that as per flat buyer’s agreement the respondent had allotted a unit/flat bearing no. F- 403 having super area of 1760 sq. ft. (now 2049 sq. ft.) to the complainant. As per clause 2.1 of the agreement, the respondent had agreed to deliver the possession of the flat within 36 from sanctioning of building plan with an extended period of six months.
8. The complainant submitted that he regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant.
9. The complainant submitted that it could be seen that the construction of the block in which the complainant’s flat was

booked with a promise by the respondents to deliver the flat by 12.01.2016 but was not completed within time for the reasons best known to the respondent.

10. The complainant submitted that the builder gave a different layout plan for site and floor as per the said agreement without any consent from the customers/ allottees, the respondent has changed the project site and floor layout plan leading to an increase of 289 sq. ft. super area on each customer and caused unsolicited/uncalled financial burden and hardship for the customers with increased demand of additional unbudgeted Rs 10,54,634/-, causing an additional loan burden of this amount.

11. The complainant submitted that as per clause 2.3 of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the flat which is unjust.

12. Hence, this complaint.

13. ISSUES RAISED BY THE COMPLAINANT

The following issues have been raised by the complainant:

- I. Whether the developer has violated the terms and conditions of the flat buyer's agreement?

- II. Whether the complainant is entitled for possession of the said unit along with prescribed interest for delay in possession?
- III. Whether complainant is entitled for any other relief?

14. RELIEF SOUGHT

The complainant is seeking the following reliefs:

- I. Direct the respondents to handover the possession along with prescribed interest per annum 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 complainant.

RESPONDENT'S REPLY

15. The respondent submitted that the complainant has failed to specify any cause of action and the complaint is liable to be dismissed. The complainant has not approached this forum with clean hands and has abused the process of law.

16. The respondent submitted that complainant booked the unit in the project and made payment towards the said unit which are duly acknowledged by the complainant vide receipts issued against payments. The respondent further submitted that the construction is nearly complete and almost ready for possession.

17. The respondent submitted that it has already applied for occupancy certificate (ref no.4553 dated 25.02.2019) for phase -1 and it is anticipated that the apartments in tower will be ready to be delivered by June 2019. Further stated that the substructure (excavation, laying of foundation, basement, waterproofing) and super structure (stilt, walls on floor, staircases, lift wells and lobbies) has been completed 100% far back. The lifts have been installed in all towers of Phase 1. Internal and external walls tiling is completed upto 90%. Now the development of internal roads and pavement is being undertaken.

18. The respondent submitted that the buyer is bound by the terms of the agreement and explained the construction work was disrupted in 2016 when the construction was put on

hold under directions of Delhi Government. Also due to demonetization of currency, which brought the construction to a halt.

19. The respondent also submitted that respondent faced with unprecedented events which lead to delay in completion of project.

20. The respondent submitted that there is no deficiency of services rendered by the respondent.

DETERMINATION OF ISSUES

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

21. With respect to **all issues** raised by the complainant, the authority came across clause 2.1 of flat buyer's agreement regarding the due date of handing over possession of the said unit is reproduced below:

"2.1 ... hand over the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the building plans of the said colony plus 180 days after expiry of 36 months"

As admitted by both the parties, the building plans were approved on 12.07.2012. Accordingly, the due date of possession was **12.01.2016**, thereby violating clause 2.1 of the said agreement and the possession has been delayed by 3 years 4 months and 4 days till date of decision. As the promoters have failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the Rules *ibid*, to pay interest to the complainant, at the prescribed rate, for every month of delay till the offer of possession.

FINDINGS OF THE AUTHORITY

22. 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.
23. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

24. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. 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.
25. The authority came across clause 2.1 of flat buyer's agreement regarding the due date of handing over possession of the said unit which is reproduced below:

"2.1 ... hand over the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the building plans of the said colony plus 180 days after expiry of 36 months"

26. As per clause 2.1 of the flat buyer's agreement dated 23.04.2013 for unit no.0403, tower-F, in project "Capital Gateway", Sector-111, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of building plans i.e. 12.07.2012 +

6 months grace period which comes out to be 12.01.2016. However, the respondent has not delivered the unit in time. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 12.1.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Decisions and direction of authority:

27. After taking into consideration all the material facts produced by 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 respondents in the interest of justice:
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.65% per annum for every month of delay on the amount paid by the complainant from due date of possession till the offer of possession.
 - ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iii. The promoter shall not charge anything from the complainant which is not part of the said flat buyer's agreement.
 - iv. 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.
 - 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 before 10th of subsequent month.
28. The order is pronounced.
29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.05.2019

Judgement Uploaded on 31.05.2019