

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

Complaint No. : 1696 of 2018
First date of hearing: 16.04.2019
Date of Decision : 07.08.2019

Mr. Krishan Kumar Sachdeva
R/o House no. 1836, Sector 10A,
Gurugram, Haryana- 122001

Complainant

Versus

M/s. Apex Buildwell Pvt. Ltd.
(Through its Directors – Mr. Arun Kapoor,
Mr. Dwarika Prasad Jaisawal, Mr. Hemant
Sharma and Mr. Manoj Kumar)
Regd. Office: 14A/36, WEA,
Karol Bagh, New Delhi-110005.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Vinayak Gupta
None for the respondent.

Advocate for the complainant

EX PARTE ORDER

1. A complaint dated 10.12.2018 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 complainant, Mr. Krishan Kumar Sachdeva, against the promoter, M/s Apex Buildwell Pvt. Ltd., through its Directors on

account of violation of the clause 3(a) of the apartment buyer's agreement executed dated 20.02.2013 in respect of apartment number 399 e, 3rd floor, block/tower IRIS in the project, namely 'our homes' for not handing over possession on 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 dated 20.02.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.
3. The particulars of the complaint case are as under: -

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| 1. | Name and location of the Project | "Our homes", Sector 37-C, Gurugram. |
| 2. | Nature of real estate project | Residential township |
| 3. | Total area of the project | 10.144 acres. |
| 4. | Apartment/Unit No. | 399 e, 3 rd floor, block/tower IRIS |
| 5. | Apartment measuring area | 48 sq. mtr. of carpet area |
| 6. | RERA Registered/ unregistered. | Unregistered |
| 7. | Booking date | 03.09.2012 |
| 8. | Date of execution of apartment buyer's agreement | 20.02.2013 (Annx A) |

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| 9. | Payment plan | Time linked payment plan (Pg. 50 of the complaint) |
| 10. | Total consideration | Rs.16,00,000/- (Pg.50 of the complaint) |
| 11. | Total amount paid by the complainant till date | Rs.15,17,493.46/- (Pg.55 of the complaint) |
| 12. | Percentage of consideration amount | 95% approx. |
| 13. | Date of consent to establish | 02.12.2013 |
| 14. | 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 [Note- no document pertaining to commencement of construction has been annexed so due date has been calculated from the date of consent to establish] |
| 15. | Delay of number of years / months/ days till date of order | 2 years, 2 months and 5 days |
| 16. | Penalty Clause as per apartment buyer's agreement dated 20.02.2013 i.e. Clause 3(c)(iv) | i.e. Rs.10/- per sq. ft. per month of the carpet area of the said flat. |

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant. An apartment buyer's agreement dated 20.02.2013 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 subject apartment nor they 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 20.02.2013. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority has issued/despached notice to the respondent for filing reply and appearance on 13.12.2018, 28.12.2018 and 16.01.2019. Despite due service respondent has failed to put his appearance and also failed to file his reply. Therefore, the case is being proceeded exparte against the respondent.

Facts of the complaint:-

6. Briefly put facts relevant for the disposal of the present complaint as per the complainant's version are that 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 no. 399e, 3rd Floor, Iris having a carpet area of approximately 48 sq. meters 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 20.02.2013.

7. The basic sale price of the apartment was of Rs.16,00,000/-, payable by the apartment allottee/complainant as per payment plan and consequently the complainant has paid the amount of Rs. 15,17,493 till date. 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 months, with a grace period of 6 months.
8. 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. 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. The respondent failed to develop so called project within the period of thirty six months with grace period of 6 months.

9. Breach of builder-buyer agreement:-

a) 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.

10. Thus, the respondent had cheated and played fraud upon the complainant by booking the apartment in the so called project "our homes" at village Garauli-Khurd, Sector-37C, Gurugram and thus the respondent has committed criminal offence of breach of trust and other offences.

11. 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 respondents 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.

12. The complainant alleged that the respondents 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.

13. The complainant alleged that when he checked the internal wall plaster of my allotted unit, its sand is came to his hand and it seems that it was not mixed with the right proportion of cement. So, it is prayed by the complainant 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.

14. The complainant has submitted that he thereafter had tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying monthly rent and extra interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and

left them with more suffering and pain on account of default and negligence.

15. Some buyer of the projects have 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 he came to know that builder license has been expired and not renewed. Complainant alongwith other purchasers requested Mr. R.S. Batt to take some action & help us to get this project complete as early as possible and the request to Mr. R. S. Batt (DTP) helped a lot in the process of getting his license renewed. The reason to mention it here is that buyers should not be sufferer on account of any license expiration as complaint helped him (complainant) in this matter and moreover buyers paid all the demands on time even in time of license expiry. This is respondent's responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.

16. 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. As it is observed in past that builder has started showing himself as a bankrupt and moves his fund and assets here and there in the name of their family members. Therefore, I request all the honourable members of this committee to please take a prompt action in freezing sufficient amount of assets / bank accounts belongs to all the Directors of this company and their family member that is required to complete this project with good construction quality from the current stage.

Issues to be decided:-

- i. Why the possession of the unit in the said complex is not delivered to the complainant till date?
- ii. Why the quality of the construction/ building material is low due to which wall plaster sand comes in hand while just touching the walls. This is the check which a layman can do and understands but what about the other construction checks which are necessary to follow for building a high rise



tower. So, 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.

- iii. Although there is a long delay, now respondent should complete the project as per his latest commitment on affidavit in his reply to DTP, Gurugram in which completion of the entire project is mentioned as 31.12.2018 and should pay the Interest @18% for the delayed period.

Reliefs sought:-

- i. Interest charged by the builder @ 18% p.a. on delayed payment therefore respondent should pay as per below details-
- a) Respondent should pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for delay.
- ii. Direct the respondent to handover the possession of the subject apartment in the time bound manner.

Determination of issues:-

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

17. With respect to **first and third issue** raised by the complainant, as per clause 3(a) of apartment buyer's agreement dated 20.02.2013, the possession of the flat was to be handed over within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. Clause 3(a) of the apartment buyer's agreement is reproduced below -

...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 of Complex 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...."

18. In the present case, the complainant has failed to produce any document to show when the construction has been commenced

and/or when the requisite approvals from the competent authorities was obtained. Hence, the authority is of the view that due date of delivery of possession be calculated from the date of consent to establish i.e. 02.12.2013 (as per the precedents set in other similar matters). Hence, the due date of delivery of possession on calculation comes out to be 02.06.2017. However, the respondent has failed to deliver the possession till date which is in violation of obligation of the promoter under section 11 (4)(a) of the Act *ibid*. Moreover, no correspondence has been annexed by the complainant with his complaint to give the reason for non-delivery of possession till date.

19. As the possession of the flat was to be delivered by 02.06.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016 and henceforth liable to pay interest at the prescribed rate for every month of delay till the offer of possession under section 18(1) proviso of the Act read with

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rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

20. With respect to **second issue** raised by the complainant, he has failed to adduce any evidence in support to prove that the quality of construction is allegedly of low and substandard. Hence, this issue becomes infructuous for the want of documentary evidence in support.

Findings of the authority:-

21. 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 Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

22. Complaint was filed on 10.12.2018. Notice with respect to the reply to the complaint were issued to the respondent on 13.12.2018, 28.12.2018 and 16.01.2019. Besides this, a penalty of Rs. 5,000/- and Rs. 10,000/- was also imposed on 28.12.2018 and on 16.01.2019 for non-filing of reply even after service of notice. However, despite due and proper service of notices, the respondent neither filed the reply nor put their appearance through its representative before the authority. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into count legal/factual proposition, as raised by the complainant in this complaint.


23. A final notice dated 29.03.2019 by way of email was sent to both the parties to appear before this authority on 16.04.2019.

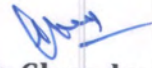
Decision and directions of the authority:-

24. After taking into consideration all the material facts as adduced, 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:-

- a. The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.60% for every month of delay as delayed possession charges from the due date of possession i.e. 02.06.2017 till the offer of possession as per the provisions of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- b. The interest so accrued from the due date of delivery of possession till the date of order be paid within 90 days from the date of decision and thereafter monthly subsequent interest be paid on or before 10th of each succeeding English calendar month.

- c. The complainant is directed to pay the outstanding dues, if any, after adjustment of interest for the delayed period. The promoter shall not charge anything from the complainant which is not the part of apartment buyer's agreement.
- d. Interest on due payments from the complainant shall be charged at the prevailing prescribed rate of interest i.e. 10.60% per annum by the promoter which is the same as is being granted to the complainant in case of delayed possession.
25. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that necessary action will be initiated against the respondent by the registration branch of the authority. A copy of this order be endorsed to the registration branch.
26. The order is pronounced.
27. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated: - 07.08.2019

Judgement uploaded on 20.08.2019

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