

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

**Complaint No.** : 1705of 2018  
**Date of First  
Hearing** : 28.02.2018  
**Date of Decision** : 06.08.2019

Mr. Ved Prakash Tripathi  
R/o H. No. LIG E-520, Avas Vikas No.1,  
Kalyanpur, Kanpur, Uttar Pradesh-208017

**Complainant**

Versus

M/s Orris Infrastructure Private Limited  
Registered Office: R2-D-5, Mahavir Enclave,  
New Delhi-110045  
Corporate Office: J-10/5, DLF Phase-2, M.G.  
Road, Gurugram, Haryana-122002

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Sushil Yadav  
None for the respondent

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 12.11.2018 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. Ved Prakash Tripathi, against the promoter M/s Orris Infrastructure Private Limited respect of apartment/unit described below in the project 'Aster Court', on account of violation of the section 11(4)(a) of the Act ibid.

2. Since, the apartment buyer's agreement has been executed on 14.12.2010 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance 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 are as under: -

|    |   |   |
|----|---|---|
| 1. | Name and location of the project                  | "Aster Court", Sector-85, Gurugram              |
| 2. | Apartment no.                                     | 1005, 10 <sup>th</sup> floor, tower 2A          |
| 3. | Registered/ unregistered                          | <b>Registered (19 of 2018 dated 13.10.2018)</b> |
| 4. | Revised date of delivery as per RERA registration | 30.06.2020                                      |
| 5. | Nature of real estate project                     | Group Housing Colony                            |
| 6. | Total area of project                             | 25.018 acres                                    |



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|-----|--|--|
| 7.  | Total area of the allotted unit no.  | 1250 sq.ft.  |
| 8.  | DTCP License no.   | 39 dated 24.07.2009  |
| 9.  | Payment Plan   | Construction Linked Payment Plan   |
| 10. | Date of apartment buyer agreement  | 14.12.2010   |
| 11. | Total consideration amount   | Rs. 39,39,488/-  |
| 12. | Total amount paid by the complainant   | Rs. 38,56,470/- (as per statement of accounts dated 18.04.2018)  |
| 13. | Date of delivery of possession from the date of execution of apartment buyer agreement<br><b>Clause-11.5- 36 months plus grace period of 6 months from the date of execution of the agreement by the company or sanction of plans or commencement of construction whichever is later</b> | <b>14.06.2014</b>  |
| 14. | Delay for number of months/ years  | 5 years 22 days  |
| 15. | Penalty clause as per the apartment buyer agreement  | <b>Clause 11.5-</b> Rs. 5/- per sq.ft of the super area of the said apartment per month for the period of delay. |

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer agreement dated 14.12.2010 is available on record for the aforementioned apartment.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 26.02.2019. The case came up for hearing on 26.02.2019, 02.04.2019, 16.05.2019, 03.07.2019 and 06.08.2019. The respondent filed the reply on 14.12.2018.

#### **Facts of the complaint**

6. Briefly stating the facts of the complaint, the respondent gave advertisement in various leading Newspapers about their forthcoming project named "Aster Court", sector-85, Gurugram promising various advantages, like world class amenities and timely execution of the project etc.
7. The complainant submitted that as per apartment buyers agreement the respondent had allotted a flat bearing No.1005 in tower-2A having super area of 1250 sq. ft. to the complainant.

8. The complainant 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. It appears that respondents have played fraud upon the complainant. The only intention of the respondents was to take payments for the tower without completing the work and handing over the possession on time. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant.
9. The complainant submitted that the respondent has charged Rs 1,96,800/- i.e Rs 1.50 per sq. ft on the super area and these bulk electricity charges were neither the part of the payment plan nor was ever communicated to the complainant at the time of buying the aforesaid flat and the respondent is not giving any reasonable justification for the same.
10. The complainant submitted that the respondent has charged an extra preferential location charges of Rs. 65,600/- which was again not mentioned in the apartment buyer agreement dated 14.12.2010 and it is pertinent to mention it here that the flat in question already carries the PLC charges of Rs 1,45,487/- which was duly paid by the complainant already .

11. The complainant submitted that due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses. The respondent sent a letter of offer of fit out possession dated 18.04.2018 but failed to give possession. As per clause 11.5 of the apartment buyer agreement it was agreed by the respondent that in case of any delay, the respondent will pay to the complainant a compensation @ Rs.5/- per sq.ft. per month of the super area of the apartment. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. The respondent incorporated the clause in one sided buyers agreement and offered to pay a sum of Rs.5/- per sq.ft for every month of delay. The amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

12. The complainant submitted that he has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent either to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gain himself and caused wrongful loss to the complainant.

**13. Issues raised by the complainant**

- I. Whether the developer has violated the terms and conditions of apartment buyer agreement?
- II. Whether the complainant is entitled for possession along with prescribed interest for delay in possession?
- III. Whether interest cost being demanded by the developer is very higher i.e. 18% which is unjustified and not reasonable?

**14. Relief sought**

- I. Direct the respondent to handover the possession of the flat along with prescribed interest per annum from the date of booking of the flat in question.

### **Respondent's reply**

15. The respondent submitted that the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before the authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this authority.

16. The respondent submitted that the complaint, in any event, cannot get his claims adjudicated under the provisions of 2016 Act and rules framed thereunder inter-alia, keeping in view the fact that the project in respect whereof the complaint has been made, is not even registered as on date with this authority. Till such time the project is registered with this authority, no complaint or claim, much less as raised by the complainant can be adjudicated upon. Thus, even on this count, no indulgence much less as claimed by the complainant can be granted.

17. The respondent submitted that without prejudice to the aforementioned submissions, it is submitted that even otherwise the complainant cannot invoke the jurisdiction of the Ld. adjudicating officer in respect of the unit allotted to the



complainant, especially when there is an arbitration clause provided in the flat buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicable failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an alternative dispute redressal forum, invoking the jurisdiction of this Ld. authority, is misconceived, erroneous and misplaced.

18. The respondent submitted the said project was being developed on a contiguous parcel of land which had been aggregated by the respondent. The land so aggregated for the above said project was contributed by a consortium of land holders, who contributed around 19 Acres. An entity namely BE Office Automation Products Ltd (BE) had also approached the respondent with 5.8 Acres of land which was contiguous with the land already aggregated by the respondent. BE requested the respondent to accept the said 5.8 Acres of land owned by BE a part of the land already aggregated by the respondent. Accordingly, a collaboration agreement dated 22.10.2007 was executed between the respondent and BE

setting out the terms and conditions of the collaboration. The said collaboration agreement also provided for the area entitlement of both the parties in the area to be developed on the 25.018 acres and the same was to be calculated on basis of saleable area attributable to 5.8 acres as contributed by BE.

19. The respondent contended that as per the collaboration agreement, it was agreed between BE and the respondent that the total saleable area with respect to the said land of 5.8 acres would be shared in the ratio of 1/3: 2/3, i.e. 1/3<sup>rd</sup> going to BE and 2/3<sup>rd</sup> going to the respondent. In addition to the collaboration agreement, BE also executed an irrevocable General Power of Attorney dated 22.10.2007 in favour of the respondent for various purposes related to development of the said project. Accordingly, the representatives of the respondent and BE met on January 24, 2011 and in pursuance of the same BE identified 82 apartments that would form part of BE's entitlement under the collaboration agreement.

20. After the aforesaid agreement with BE in the year 2007, the respondent had acquired 4-5 Acres additional land by the virtue of which more flats were constructed. BE, by misrepresenting the collaboration agreement raised a claim that it was entitled to proportionate share in the construction

on the additional parcel of land which was acquired respondent which had no relation to BE. It moved to court and filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the Ld. Additional District and Sessions Judge, Gurgaon. The Ld. ADJ granted a blanket stay in favour of BE and against the respondent, whereby the respondent was restrained from creating any third-party interest in respect of any apartments, villas and commercial areas till the matter could be decided finally by the arbitrator. The respondent was also restrained from receiving any money in respect of sale of apartments, villas and commercial sites etc. or club membership charges or in any other form from any person till the adjudication of the dispute. The abovementioned stay order caused immense hardship to the respondent as the restraint on alienation of the respondent's share of flats in the said project led to shortage of fund as the respondent could not alienate its interest in the said flats nor could it collect money for flats already sold under construction linked plans and the pace of the construction slowed down considerably. After the above said stay order was passed, the

respondent took further legal steps and filed F.A.O. No. 9901 of 2014 (O&M) whereby it was brought to the notice of the Hon'ble Punjab and Haryana High Court that the Ld. ADJ had committed an illegality and misdirected itself in not referring to the minutes of the meeting dated 24.01.2011 whereby the share and number of flats of BE had already been identified and at best the injunction should have been limited to BE's share in the said project.

21. The respondent submitted that the hon'ble High Court on 03.12.2014 was pleased to vacate the stay order and limit the injunction to BE's agreed share in the project. The respondent made serious efforts to bring the dispute to its logical ending and due to the same a Single Ld. Arbitrator, Hon'ble Mr Justice Chandramauli Kumar Prasad (Retd.), a former judge of the Hon'ble Supreme Court of India was appointed to adjudicate and decide the dispute between the two parties by the Hon'ble Punjab and Haryana High Court vide order dated 30.01.2015. The Ld. arbitrator passed interim award dated 19.08.2015 whereby the respondent's stand was upheld and the respondent was permitted to deal with their own share i.e., 2/3 share in the project as relatable to the land contributed by

BE. The arbitration proceedings concluded with final award dated 12.12.2016 passed by the Ld. single arbitrator, Mr. Justice Chandramauli Kumar Prasad, whereby contentions of the respondent were upheld and the share of BE was restricted to the original 82 flats selected by it.

22. The respondent submitted that the above mentioned award goes on to show that the respondent was subjected to constant and frivolous litigation by BE through the entire construction and development period which caused immense hardship to the opposite and resulted in loss of valuable time and resources which resulted in delay in completion of the said project

23. The respondent submitted that even after the arbitral award was passed in favour of respondent, BE was not inclined to put an end to the frivolous litigation that it was pursuing against the opposite party. BE challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 and also made a stay application before the competent court. The said stay application of BE was dismissed vide order dated 20.03.2017.

24. The respondent submitted that BE, upon the dismissal of its stay application on 20.03.2017, approached the Divisional Commissioner, Gurugram by filing an application. The Divisional Commissioner, Gurugram passed an extra jurisdictional order staying the alienation property in the said project *vide* order dated 28.03.2017. The respondent challenged the said order before the Hon'ble Punjab and Haryana High Court in CWP No. 9075/2017 wherein *vide* order dated 01.05.2017, the said impugned order was stayed. The complainant had initially succeeded in getting passed an order from the Deputy Commissioner, Gurugram that no property or part thereof be alienated. The said order had been subsequently vacated when true and correct facts had been brought to the attention of the Deputy Commissioner, Gurugram.

25. The respondent submitted that BE had also filed a contempt petition, C.O.C.P. No. 1851 of 2015, alleging contempt of court of the Additional District Judge, Gurgaon by the Respondent. The said contempt petition was eventually dismissed by the

Hon'ble High Court of Punjab and Haryana vide judgment dated 15.03.2017.

26. The respondent submitted that from the afore mentioned events, the only inference that can be drawn is that BE tried to create multiple hurdles in the way of the respondent in completing its project on time through frivolous litigation. However, the respondent won in every round of litigation as can be seen from the fact that various judicial forums decided in favour of it. The respondent further submits that court proceedings certainly took a substantial amount of time during which the respondent was restrained qua the project which resulted in the alleged delay. The respondent was kept under the constant threat of an adverse legal ruling if the contempt petition were to succeed which further put constraints on alienation of flats in the said project thereby depriving the respondent of valuable capital which was needed to finish the ongoing development and construction of the said projects.

27. Further a writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "*Sunil Singh vs. Ministry of*

*Environment & Forests Parayavaran"* wherein the Hon'ble High Court pursuant to order dated 31 July, 2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. On passing of the abovementioned order by the Hon'ble High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential part for construction. In light of the order passed by the hon'ble High Court the opposite party had to arrange and procure water from alternate sources which were far from the construction site. The arrangement of water from distant places required additional time and money which resulted in the alleged delay.

28. The respondent further contended that no additional money has been demanded from the allottees, even though the cost of the project has increased many folds because of the unavailability of water in the adjoining areas of Gurgaon.

29. The respondent submitted that the present complaint is wholly misconceived, groundless and unsustainable in law and the complainant cannot be allowed to take advantage of the



adverse situation prevailing against the respondent. There has been no deficiency in service or deceptive practices on the part of the respondent as it is crystal clear that the alleged delay is an unfortunate consequence of event which was not under the control of the respondent i.e. force majeure event.

30. The respondent submitted that the complainant cannot claim compensation since they have waived their right of claiming any compensation under clause (11.1) and (11.5) of the said agreement in case of any delay arising out of circumstances which are not under the control of the opposite party. The claims of the complainant for interest @18% p.a. for the delayed period are wholly illegal and untenable. The apartment buyer's agreement does not provide for any payment of interest by the respondent in any alleged instance of late delivery of possession as envisioned under the agreement. In any case, the money paid by the complainant have been already utilized by the respondent for the intended purpose i.e. construction of flat of the complainant, thus, now the complainant cannot wriggle out of the bargain merely

because the real estate market has suffered losses and the complainant being investor is eyeing at windfall profits.

### **Determination of issues**

i. With respect to **first issue** raised by the complainant, during the course of arguments, the counsel for the complainant has alleged that certain below noted charges which are against the terms and conditions of BBA have been demanded by the respondent:

i. Respondent has charged Rs. 1,96,800/- i.e. Rs. 1.50 per square feet on the super area and bulk electricity charges were neither the part of payment plan in BBA nor was ever communicated to the complainant at the time of purchase of unit;

ii. That the respondent has charged an extra preferential location charge of Rs. 65,600/- which was again not mentioned in BBA dated 14.12.2010. The flat in question already carries the PLC charges of Rs. 1,45,487/- which was fully paid by the complainant and till date the respondent has failed to deliver the unit.

- ii. With respect to the **second issue** raised by the complainant, as per clause 11.5 of the agreement, the respondent was under statutory obligation to deliver the possession of the unit within a period of 36 months from the date of execution of agreement or from the date of obtaining all the required sanctions from commencement of construction plus 6 months grace period. The relevant clause is reproduced as under:

*“within a period of 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction whichever is later. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months”*

The due date of possession (on calculation from the date of agreement) comes out to be 14.06.2014, which has already been elapsed. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 38,56,470/- to the respondent against a total sale consideration of Rs. 39,39,488/-. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.60% per annum for every month of delay as per section 18(1) proviso read with rule 15 of

the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

31. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

*“34 (f) Function of Authority –*

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”*

32. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

*“37. Powers of Authority to issue directions-*

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

### **Findings of the authority**

33. **Jurisdiction of the authority-** The objections raised by the respondent regarding jurisdiction of the authority stands

rejected. 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 Town & 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.

34. During the course of arguments, the counsel for the complainant has alleged that certain below noted charges which are against the terms and conditions of BBA have been demanded by the respondent:

1. Respondent has charged Rs. 1,96,800/- i.e. Rs. 1.50 per square feet on the super area and bulk electricity charges were neither the part of payment plan in BBA nor was ever communicated to the complainant at the time of purchase of unit;
2. That the respondent has charged an extra preferential location charge of Rs. 65,600/- which was again not




mentioned in BBA dated 14.12.2010. The flat in question already carries the PLC charges of Rs. 1,45,487/- which was fully paid by the complainant and till date the respondent has failed to deliver the unit.

35. As per clause 11.5 of the agreement, the respondent was under statutory obligation to deliver the possession of the unit within a period of 36 months from the date of execution of agreement or from the date of obtaining all the required sanctions plus 6 months grace period. The due date of possession (on calculation from the date of agreement) comes out to be 14.06.2014, which has already been elapsed. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 38,56,470/- to the respondent against a total sale consideration of Rs. 39,39,488/-. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.60% per annum for every month of delay as per section 18(1) proviso read with rule 15 of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

**Decision and directions of the authority**

36. The authority exercising its power under section 37 of the Act hereby issues the following directions to the respondent: -

1. The respondent shall be liable to pay delay possession charges at prescribed rate i.e. 10.60% per annum for every month of delay as per proviso to section 18(1) read with rule 15 of the act from the due date of delivery of possession till actual offer of possession.
2. The interest so accrued shall be paid within 90 days from the date of order and thereafter the monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.
3. Complainant is directed to pay outstanding dues, if any after adjustment of interest for the delayed period.
4. The promoter shall not charge anything from the complainant which is not part of the apartment buyer agreement.
5. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant if any.
37. The order is pronounced.
38. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Dated:06.08.2019

Judgement uploaded on 28.08.2019