

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

Complaint No. : 1636 of 2019
First date of hearing: 28.08.2019
Date of Decision : 28.08.2019

Mr. Kailash Chandra Garg.
R/o. House no. A 3/5, Ground Floor,
DLF Phase- 1,
Gurugram - 122002.

Complainant

Versus

M/s. Pareena Infrastructure P. Ltd.
(Through M.D./Authorized representative)
Regd. Office:- 13B, Sector- 6, Dwarka, New Delhi-
110075.
Corporate Office:- Office Space# C-7A, 2nd Floor,
Omaxe City Centre, Sector- 49,
Sohna Road, Gurugram (Haryana) - 122018.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav Advocate for the complainant.
Shri Prashant Sheoran Advocate for the respondent.

ORDER

1. A complaint dated 16.04.2019 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. Kailash Chandra Garg against the respondent, M/s. Pareena Infrastructure P. Ltd. (through its

M.D./Director/ A.R.) in respect of apartment buyer agreement dated 19.02.2015 for allotted apartment no. T-3/1401 of the project "Coban Residencies" located at sector 99 A, Gurugram on account of delay in delivery of possession which is in violation of section 11(4)(a) of the Act.

2. Since the apartment buyer's agreement dated 19.02.2015 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 obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act ibid.

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

1.	Name and location of the Project	"Coban Residencies" at sector 99 A, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	RERA Registered / not registered	Not registered.
4.	Total area of the project	10.5875 acres
5.	DTCP license no.	10 of 2013 dated 12.03.2013 valid upto 11.03.2017
6.	Date of allotment letter	27.11.2013 (Annx P 3 Pg. 28 of the complaint)
7.	Date of apartment buyer agreement	19.02.2015 (Annx P 5, Pg. 30 of the complaint)
8.	Allotted flat/unit no.	T-3/1401, 14 th floor, tower T 3

9.	Measuring area of the allotted unit	1,997 sq. ft. super area
10.	Date of start of excavation as per statement of account dated 08.04.2019	16.10.2014 (Annx P 18, Pg. 85 of the complaint)
11.	Due date of delivery of possession Clause-3.1 read with clause 5.1 of the agreement dated 19.02.2015: 4 years from the date of start of construction or execution of agreement, whichever is later plus 6 months extended period	19.08.2019 Note - Due date has been calculated from the date of execution of agreement.
12.	Total consideration as per SOA	Rs. 1,23,15,283/- (Annx P 18, Pg. 82 of the complaint)
13.	Payment plan	Construction linked payment plan (Pg. 85 of the complaint)
14.	Total amount paid by the complainant till date as per statement of account dated 08.04.2019	Rs. 66,29,905/- (Pg. 86 of the complaint)
15.	Delay in delivery of possession till 28.08.2019	6 months and 9 days.

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 and the respondent. An apartment buyer agreement dated 19.02.2015 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 19.08.2019. But the respondent has failed to fulfil its statutory obligation till date, which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance.

The respondent through his counsel appeared on 28.08.2019. The case came up for hearing on 28.08.2019. The reply has been filed by the respondent which has been perused by the Authority.

Facts of the complaint: -

6. Briefly stated, facts relevant for the disposal of the present complaint are that on 30.07.2013 complainant booked a residential unit in the respondent's project, namely 'Coban Residencies' located at Sector 99 A, Gurugram. In pursuance to the aforesaid booking of the complainant, respondent vide allotment letter dated 27.11.2013 allotted apartment/unit no. 1401, in tower T 3, measuring 1997 sq. ft. in favour of the complainant. On 19.02.2015, apartment buyer's agreement for the allotted unit was executed between the parties. The agreed consideration of the unit was fixed at Rs. 1,23,53,456/- out of which the complainant has made total payment of Rs. 66,29,905/- on various dates under construction linked payment plan.

7. As per clause 3.1 of the agreement dated 19.02.2014, possession of the unit was to be delivered within a period of 4 years' months from the date of starts of construction or execution of agreement whichever is later which comes to be 16.10.2018. The complainant alleged that respondent has failed to complete

the construction and deliver the possession till date despite collecting substantial amount of sales consideration.

8. The complainant stated that he has paid more than 54% of the actual amounts of flats and ready and willing to pay the remaining amount (due if any), but the respondent has failed to deliver the possession of the flat on time.

9. Losing all its faith from the respondent in getting the project complete, the complainant has approached the authority by filing the present complaint.

10. The complainant reserves the rights to file complaint before the adjudicating officer for compensation.

Issues to be determined: -

The issues raised by the complainant are as under -

- i. Whether the developer/respondent has violated the terms and conditions of flat buyer agreement?
- ii. Whether there is any reasonable justification for delay to give possession of flat?
- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developer for delay in giving possession?

- iv. Whether complainant is entitled for interest for every month of delay from due date of possession till actual handing over of the possession under section 18 of RERA Act?
- v. Whether the respondents are liable to refund the entire amount alongwith compounding interest at prescribed in the Act from the date of booking till the date of refund under section 19(4) of RERA Act?

Relief sought:-

- (i) Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over of possession on the paid amount of the complainant as per section 18 of the Act.
- (ii) Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the apartment buyer agreement.

Respondent's reply:-

11. The respondent submitted that the construction work of the said project is at an advance stage and the structure of various towers has already been completed and remaining work is endeavoured to be completed as soon as possible.

12. The present complaint has been filed by the complainant by concealing the material facts from this authority.

13. The respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments by various allottees. This clearly shows unwaiverly commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present once is seriously hampered the capability of the respondent to deliver the project as soon as possible. The amounts which were realised from the complainant have already been spent in the development work of the proposed project. On the otherhand the respondent is still ready to deliver the unit in question of this due completion to the complainant, of course, subject to payment of due instalments and charges.

14. It has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then its other genuine allottees of the project, who will stand to be

adversely affected. In these circumstances, the present complaint deserves to be dismissed.

15. The respondent submitted that the unit of the complainant is located on the 14th floor of tower no.3 of the project. The structure work of this tower is complete, the brick work is also completed, wall conduit is completed till 5th Floor, internal plaster work is in progress, internal door frames completed till 5th floor, machine room and water tank of this tower is completed. That the work is still in progress. This is despite of the fact that allottees including the complainant is not making payment on time of due instalments. Even the present complainant had defaulted several times in making payment. Initially when the complainant had booked the unit in question he failed to make payment on time. It is submitted that vide letter dated 01.10.2014 respondent issued payment request letter demanding Rs. 12,59,117 on start of excavation, however the complainant failed to pay the same on time. That only after issuance of several reminders for the payment was made by complainant.

16. In the similar manner there are several other customers who either delayed payment or even never paid the instalments,

causing extreme pressure on the respondent in executing the construction work. Since the payments of the due instalments are beyond the control of respondent, thus the respondent is entitled to reasonable extension of time in order complete the project and thus the respondent is not liable to pay penalty as claimed by the complainant.

17. Since the complainant had signed the apartment buyer agreement out of his own accord and free will. He is also bound by the terms and condition of the said apartment buyer agreement. It is submitted that as per clause 3.1, the date of possession will be years from the start of construction or execution of this agreement, whichever is later. It is submitted that the agreement in question was executed on 19.02.2014 and the complainant on said date had specific knowledge that the construction was yet to be started and it was specifically made aware that the construction of the project shall begin soon. It is submitted that the construction of the project started on 16-oct-2014 as duly mentioned by complainant himself. Thus legally the period of offer of possession shall starts from said date and the date of possession comes to 15-Oct-2018.

18. Admittedly completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount demand does not fulfil the criteria of collective payment. It is submitted that a numerous allottees have defaulted in payment demanded by respondent, resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds. That a brief detail of the expenditure showing the bonafide intention of the respondent that the respondent is trying to complete structure out of his own fund is as follow:

- Total no. of units - 544
- Units sold - 238
- Total amount spent on construction - Rs. 165.13 Cr
- Total amount received from customers - Rs. 123.23 Cr
- Total amount demanded from customers - Rs. 162.46 Cr (it could increase further since company have stopped raising demand to defaulter customer service)
- Developers contribution - Rs. 41.90 Cr

19. In the present case in order to compensate the delay against the project in question i.e. Coban Residencies, the respondent had also paid an amount of Rs. 3,10,000/- against the unit of complainant, but now the complainant became dishonest and is trying to get dual benefit by seeking interest. It is submitted

that the respondent had already paid an amount equivalent to interest at the prescribed rate as per RERA upto the month of Jan 2019 to the complainant. That the amount paid by respondent is must more than the interest for the period of 16-10-2018 (i.e. date of delivery of possession) to 16-01-2019 and the balance amount shall be adjusted in future payments. It is submitted that as per prescribed rate of interest the amount on the payment made by complainant comes to Rs. 2,97,000/- and the Respondent had already been compensated the respondent by Rs. 3,10,000/-.

Determination of Issues-

20. As regards the issue no. i, ii, iv and v raised by the complainant, it is to be noteworthy from the perusal of record and the submissions made by the parties, as per clause 3.1 of the apartment buyer agreement dated 19.02.2015, possession of the unit in question was to be delivered within a period of 4 years from the date of commencement of construction or date of execution of agreement, whichever is later. Relevant portion of the clause is reproduced below -

"3.1..... That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of

construction or execution of this Agreement whichever is later.....

5.1 In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by the Developer, the Developer is unable to complete construction of the Said Flat as provided hereinabove (subject to force majeure conditions) to the Flat allottee(s)....."

As per statement of account dated 08.04.2019 (Annx P-18), the date of start of construction is 16.10.2014 which is earlier than the date of execution of agreement dated 19.02.2015. Hence on calculation the due date of delivery of possession from the date of execution of agreement comes out to be 19.08.2019, however the respondents have failed to deliver the possession till date even after a delay of more than 6 months which is in violation of section 11(4)(a) of the Act.

Thus, the complainant is entitled for delayed possession charges at prescribed rate of interest @ 10.45% p.a. on the deposited amount in terms of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

21. As regards **issue no. iii** raised by the complainant, the complainant has failed to produce any documentary evidence to prove that there is any kind of alleged misrepresentation

made by the respondents regarding the timeframe of delivery of unit as well the status of the project. Hence, this issue cannot be decided in favour of complainant for the want of documentary evidence.

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 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.

23. Arguments heard. Project is not registered with the Authority.

24. Since, the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent to show cause as to why a penalty of Rs. 25 lakhs may not be imposed. Registration branch is directed to do the needful.

Decision and directions of the Authority -

25. 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 issue the following directions:-


- (i) The respondent is liable to pay delay possession charges at the prescribed rate of interest @ 10.45% p.a. from the due date of delivery of possession i.e. 19.08.2019 till offer of possession to the complainant.
- (ii) The interest so accrued from due date of delivery of possession (19.08.2019) till the date of order be paid within 90 days from the date of order and monthly interest be paid subsequently on or before 10th of each subsequent month.
- (iii) The complainant is directed to pay the outstanding dues, if any, after adjustment of interest awarded for

the delayed period of possession. Interest on due payments from the complainant shall be charges at the prescribed rate of interest i.e. 10.45% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.

26. A copy of this order be endorsed to the registration branch.

27. The order is pronounced.

28. Case file be consigned to the registry


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -28.08.2019


(Subhash Chander Kush)

Member

Judgement uploaded on 04.09.2019

HARERA
GURUGRAM

AUTHENTICATED

GURBACHAN KAUR
LEGAL OFFICER