

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

**Complaint no. : 1566 of 2019**  
**Date of First hearing: 20.08.2019**  
**Date of decision : 30.08.2019**

1. Mrs. Shruti Chopra  
2. Mr. Ashish Chopra  
R/o. K-34, Jangpura Extension,  
New Delhi.

**Complainants**

**Versus**

M/s Anjali Promoters and Developers Pvt.  
Ltd.

**Office at:-** 7, Barakhamba Road,  
New Delhi- 110001.

**Respondent.**

**CORAM:**

**N. K. Goel**

(Former Additional District and Sessions Judge)

Registrar –cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,  
GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July 2019)  
under section 81 of the Real Estate (Regulation and  
Development) Act, 2016.

**APPEARANCE:**

Ms. Priyanka Agarwal

A.R. for the complainants

Ms. Meena Hooda, Adv.

alongwith Ms. Sakshi Khater, Adv.

and Shri Sidhant Yadav

A.R. for the respondent

**EXPARTE ORDER**

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*30.8.19*



1. The present complaint filed on 22.04.2019 relates to a space buyer's agreement dated 20.12.2010 executed between one M/s. Ashish Cheese Products (original allottee) and the respondent promoter in respect of office/unit measuring 1000 sq. ft. super area bearing no. 012-1206, 12<sup>th</sup> Floor in the project, namely, "Centra One" situated in Sector 61, Gurugram (in short, the subject unit) for a total cost of Rs. 66,64,750/- inclusive of BSP, EDC, IDC, Parking and PLC out of which Rs. 55,28,338/- was demanded by the respondent and paid by the previous allottee before 12.04.2011. The said unit was later on transferred in the name of the complainants vide nomination letter dated 19.07.2011 issued by the respondent and the complainants became the lawful legal allottees and purchasers thereof. Complainants paid Rs. 11,13,837.31 paise to the respondent and thus a total sum of Rs. 66,42,175.31/- has been paid to the respondent in time bound manner.

2. The particulars of the complaint are given below: -

1.	Name and location of the project	"Centra One", Sector 61, Gurugram.
2.	DTCP license no.	277 of 2007
3.	Nature of real estate project	Commercial Complex
4.	Total area of the project	3.675 acres



5.	Office/unit no.	012-1206, 12 <sup>th</sup> floor (as per the agreement) 014-1404, 14 <sup>th</sup> floor, (as per offer of possession letter dated 19.11.2018-Ann P/8)
6.	Measuring area of the allotted unit	1000 sq. ft. (booked) 1071 sq. ft. (99.50 sq. mtr. - offered)
7.	RERA Registered/ unregistered	Not Registered
8.	Date of execution of space buyer agreement	20.12.2010 ( <b>Annx P/1</b> )
9.	Total consideration as per statement of accounts cum invoice	Rs. 7,64,28,940.24 paise ( <b>Pg.60 of the complaint</b> )
10.	Total amount paid by the complainants till date	Rs. 65,27,860.24 paise ( <b>Statement of account cum invoice- Annx A to offer of possession letter Annx P8</b> )
11.	Due date of delivery of possession as per clause 2.1 of the agreement dated 20.12.2010	<b>31.12.2011</b>
12.	Date of offer of possession letter	19.11.2018 ( <b>Annx P/8</b> )
13.	Delay in handing over possession	6 years, 11 months approx.

3. As per clause 2.1 of the SBA, the respondent was liable to hand over the possession of the developed commercial unit before 31.12.2011.

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4. According to the complainants, they visited the project site many times and found that the respondent builder had not carried out development work except super structure completion, even during the years 2011 to 2017. The project was abandoned and development work was not carried out by the respondent builder. The complainants sent emails dated 06.04.2017 and 21.04.2017 to the respondent builder seeking delay penalty and requested for date of possession. Although the respondent assured the complainants that the delay penalty shall be paid at the time of offer of possession but did not disclose the date of possession.
5. It is stated that vide letter dated 19.11.2018 i.e. after a delay of approximately 7 years from the committed date of possession, the respondent offered the possession of the subject unit along with the statement of accounts-cum- invoice and in the offer of possession letter dated 19.11.2018 even did not adjust any delay penalty for delay in handing over the possession.
6. According to the complainants, the respondent has changed the unit and customer id many times without any discretion of complainants. The unit earlier allotted was unit no. 12-1206

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which was changed to 013-1304 and then finally to unit no. 014-

1404. Paras 14 and 15 of the complaint read as under:-

“14. That the respondent charged the PLC of Rs. 288750/- for unit 014-1404 however, unit doesn't meet the any criteria set by the builder for PLC therefore charges of PLC is unilateral illegal and arbitrary. Copy of offer of possession and Payment plan Annexed Herewith as P/8 and P/5.

15. That complainants had paid complete EDC IDC in 2011 as per original payment plan of Builder Buyer Agreement still builder has raised extra demand of EDC IDC of Rs. 151680/- which is unilateral illegal and arbitrary.

Copy of offer of possession & payment plan annexed Herewith as P/8 and P/5”

Para 19 reads as under: -

“19. That such an inordinate delay in the delivery of possession to the allottee is an outright violation of the rights of the allottees under the provisions of RERA Ac as well the agreement executed between complainants and respondent. The complainant's demands delay penalty in terms of Section 18(3) of the Act, along with principles of Justice, Equity and Good Conscience.”

7. Hence, this complaint.

8. In the declaration the complainants have stated that they do not wish to withdraw from the project.

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9. The following issues have been raised to be decided by the Authority: -

1. "Whether the respondent has breached the provisions of the Act as well as the Agreement by not completing the construction of the said unit in time bound manner?
2. Whether the respondent has breached the terms of Agreement, as per term of space buyer's agreement builder had committed in the FBA clause no. 2.1 and was accordingly obliged and liable to give possession of said unit before 31.12.2011?
3. Whether the respondent has cited false milestone in payment plan to extract more and more amount without doing any development?
4. Whether the respondent is liable to pay penalty for delayed possession?
5. Whether the respondent is authorized to charge PLC and increased EDC?
6. Whether the respondent has unjustly enriched himself by misusing the hard-earned money of the complainants for almost 10 years without paying any interest or penalty for the delay in delivery of the said unit?"

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10. The reliefs sought are detailed as under: -

Interim Relief -

1. "Direct the respondent to immediately hand over the possession of unit in habitable condition.
2. To restrain the respondent from raising any fresh demand and increasing the liability of the complainants.
3. Pass an order for delay interest on paid amount of Rs. 66,42,175.31/- from 31.12.2011 alongwith pendent lite and future interest till actual possession thereon @ of as prescribed in RERA Act.
4. Direct the respondent to quash the demand of PLC of Rs. 2,88,750/-.
5. Direct the respondent to quash the demand of increased charges of EDC of Rs. 1,51,680/-."

11. Notice of the complaint has been issued to the respondent by speed post and also on given email address at [customercare@bptp.com](mailto:customercare@bptp.com) [sales@bptp.com](mailto:sales@bptp.com) [secrtarial@bptp.com](mailto:secrtarial@bptp.com) and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint. Accordingly,



the Authority is left with no other option but to decide the complaint exparte against the respondent.

**Issue wise findings of the Authority: -**

12. **All issues:** - As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the space buyer's agreement (copy annexure P/1), there is every reason to believe that vide the space buyer's agreement dated 20.12.2010 the respondent had agreed to handover the possession of the subject unit to the complainant on or before 31.12.2011. However, the offer of possession letter has been placed on the file which clearly proves that the offer of possession of the subject unit was offered to the complainants on 19.11.2018 which further clearly shows that the respondent has caused delay of more than 6 years in offering possession of the subject unit to the complainants. Hence, it is held that there was a delay of more than 6 years in offering the possession of the subject unit to the complainants and this was in violation of the terms and conditions of the space buyer's agreement and also violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Since on the date of coming into force of the Act the project in question was not complete it must be





held to be an “ongoing project” and thus covered under the provisions of the Act and the Rules framed thereunder.

13. Therefore, in the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.65% per annum as prescribed under section 18 (1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
14. From a perusal of clause 1.1 of the space buyer’s agreement, there is evidence on the record to show that the respondent had informed the intending purchaser and the intending purchaser had understood that EDC/IDC is not included in the consideration and the same shall be payable by the intending purchaser in proportion to its super area, whenever any demand for the same is raised by the intending seller. Further, in case of any retrospective enhancement of EDC by the concerned Government Authorities in the future, the Intending Purchaser had undertaken to pay the enhanced charges, proportionate to the super area of the premises as and when demanded by the intending seller.

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15. Therefore, in the considered opinion of this Authority, the complainants are not entitled to raise this grievance before this Authority at this stage. Therefore, it is held that the demand for additional charges towards EDC is perfectly justified. Thus, the demand for additional charges towards EDC cannot be struck down and is also not unjustified nor arbitrary nor is an act of unfair trade practice.

16. Clause 1.1 of the space buyer agreement inter alia reads as follows: -

*"Further the Intending Purchaser hereby agrees to additionally pay Preferential Location Charges explained to Intending Purchaser at the time of booking in a manner and within the time as stated in the payment plan. The Intending Purchaser has specifically agreed that if due to any change in the layout/building plan, the said shop/Office Space/Unit ceases to be in a preferential location, the Company shall adjust the said amount in the last instalment as per payment plan. If due to any change in the layout/building plan, the Shop/Office Space/Unit becomes preferentially located, then the Intending Purchaser agrees to pay preferential location charges as demanded by the Company."*

As per this clause, the complainants are to pay and the respondent is legally entitled to charge the PLC if the shop/office space/unit becomes preferentially located after the booking of the same. Annexure - II to the space buyer agreement inter alia deals with the preferential location charges for front corner-

fifth floor to fourteenth floor @ 10% of the total BSP in multiples of each PLC.

17. Copy of the offer of possession letter dated 19.11.2018 has been filed as Annexure P/8 and annexure A thereto is the statement of accounts cum invoice which inter alia has prescribed the PLC as Rs. 3,09,251.25/-. The subject unit is at the fourteenth floor. As per Annexure II to the space buyer agreement the respondent is entitled to claim 10% of the total BSP in multiples for each PLC in case the space is front corner on the fourteenth floor. However, in the offer of possession letter the location of the subject unit, whether it is a front corner flat or not, has not been mentioned. Therefore, the complainants as well as this Authority have been kept in dark as to whether the respondent is justified in making demand of PLC to the tune of Rs. 3,09,251.25 paise from the complainants towards PLC. It is for the first time that the respondent has stated in the reply (para 14) that the unit in question is park facing. However, there is nothing on the record to prove this fact. Mere assertion of a fact without substantive evidence is no proof. Therefore, prima facie the said demand seems to be against the terms and conditions of the space buyer agreement.

and hence not according to the provisions of the Act. The same is struck down.

18. The project in question was not complete on the date of coming into force of the Act. Hence it is an "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder.

19. Therefore, this Authority directs the respondent and the complainants to make a joint inspection of the subject unit in order to ascertain whether the subject unit is a front corner flat and, if yes, whether the demand raised by the respondent under this head is in accordance with the terms and conditions of space buyer agreement. In case the subject unit is not found to be a front corner unit the respondent shall withdraw the said demand of Rs. 3,09,251.25 paise and in case the same is the front corner unit the complainants shall pay the same to the respondent without any objection.

**Findings of the Authority: -**

20. 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 purposes for promoter projects 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.

**Decision and directions of the Authority:-**

21. Subject to compliance of the directions contained in para 19 of this order, the Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 31.12.2011 till the date of offer of possession letter dated 19.11.2018 within a period of 90 days from this order.
22. The complaint stands disposed of accordingly.
23. The case file be consigned to the registry.

*N. K. Goel*  
*30.8.19*  
**N. K. Goel**

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,

GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July 2019)

under section 81, Real Estate (Regulation and Development)  
Act, 2016.

Dated: 26.08.2019

24. Order ratified by the Authority as above.

*(Samir Kumar)*  
**(Samir Kumar)**  
Member

*(Subhash Chander Kush)*  
**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -30.08.2019

Judgement uploaded on 05.09.2019

**HARERA**  
**GURUGRAM**