

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

Complaint no. : 2158 of 2018
First date of hearing: 16.04.2019
Date of decision : 07.08.2019

Mr. Akash Mathur,
R/o. A10/157, Air India Colony,
Vasant Vihar I, South West Delhi -110057.

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
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
Shri Sahil Khan

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 27.12.2018 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. Akash Mathur against the promoter M/s Apex Buildwell Pvt. Ltd., in respect of apartment number 1027, 10th floor, block/tower 'Rose' in the project 'Our Homes' for not handing over possession on the due date i.e. 2nd June 2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 02.03.2013 i.e. prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by both the parties, the authority has decided to treat this complaint as an application to issue directions for compliance of obligations by the promoters under 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	"Our Homes", Sector 37-C, Gurugram
2.	RERA registered/ not registered.	Not registered
3.	Nature of the project	Affordable group housing project
4.	DTCP license	13 of 2012 dated 22.02.2012
5.	License valid up to	22.02.2016 (Applied for renewal on 11.02.2016)
6.	Project area	10.144 acres
7.	Apartment/unit no.	1027 on 10 th floor, block/tower 'rose'
8.	Apartment measuring	48 sq. mtr. of carpet area
9.	Date of execution of apartment buyer's agreement	02.03.2013
10.	Payment plan	Construction linked payment plan
11.	Basic sale price	Rs.16,00,000/-
12.	Total amount paid by the	Rs.14,40,000/-



	complainant till date as per "intimation of due instalment" dated 21.09.2016 (page 45 of complaint)	
13.	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
14.	Consent to establish granted on (Annexure R4) (page 31 of reply)	02.12.2013
15.	Delay in handing over possession till date	2 years 2 months 5 days
16.	Penalty clause as per apartment buyer's agreement dated 1.03.2013	Clause 3(c)(iv) of the agreement 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 and the respondent. An apartment buyer's agreement 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 said unit as on date to the purchaser 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 02.03.2013 duly executed between the parties.

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 appearance. Accordingly, the parties appeared on 16.04.2019, 11.07.2019 and 07.08.2019. The reply on behalf of the respondent was filed on 13.02.2019 has been perused by the authority.

FACTS OF THE COMPLAINT:

6. The complainant submitted that he applied in affordable housing project under government of Haryana affordable housing scheme and thus allotted apartment no. 1027, 10th floor, Iris having a carpet area of approximately 48 sq. meters vide apartment buyer's agreement dated 02.03.2013. The basic sale price of the apartment was of Rs.16,00,00.
7. The complainant submitted that 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 (36) months, with a grace period of 6 months and the respondent has failed to develop the project within the said time.
8. The complainant submitted that respondent had cheated and played fraud upon the complainant by booking the apartment in the so called project OUR HOME at village Garauli-Khurd, Sector-37C, Gurugram and thus the respondent has committed criminal offence of breach of trust and other offences.

9. The complainant submitted that he several times requested the respondents telephonically as well as through personal visits at the office for the delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondent but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and the lingered on one pretext or the other and refused to deliver the possession of the above said flat.
10. 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.
11. The complainant submitted that when he checked the internal wall plaster of allotted unit, its sand came to his hand and it seems that it was not mixed with the right proportion of cement. As complainant is not from the construction background and did a very basic test but this plaster material itself shows that the intention of respondent is not on quality but it is just to collect money and spend as low as possible on the construction. It is further submitted 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.

12. The complainant submitted that some buyers of this project have filed complaint about this delay in CM window and one of the complainants has forwarded the complaint to DTP office, sector-14, Gurugram.

ISSUES RAISED BY THE COMPLAINANT:

13. The following issues have been raised by the complainant:
- i. Whether the respondent delayed in handing over the possession of the unit to the complainant?
 - ii. Whether the quality of construction/building material is of low quality due to which by touching the wall plaster its sand comes in hand?
 - iii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?

RELIEF SOUGHT BY THE COMPLAINANT:

14. The complainant is seeking the following reliefs:
- a. Interest charged by the builder @ 18% p.a. on delayed payment therefore respondent should pay as per below details:

Respondent should pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to be calculated as and when the thirty-six months was completed and thereafter the grace period was exhausted. Further, the calculation shall

be done on the total amount paid at the above-mentioned interest rate till the date of order pendente -lite

- b. Direct the respondent to deliver the flat in a time bound manner.

RESPONDENT'S REPLY:

15. The respondent admitted the fact that the reliefs prayed for in the complaint are not tenable and cannot be granted as this hon'ble authority lacks jurisdiction in the present matter. That the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully. Further, the respondent has contended that the complainant is estopped from filing the present complaint as the complainant himself defaulted in making payments in timely manner which is *sine qua non* of the performance of the obligations by the respondent. This default has led multiple problems to the respondent company and extra costs being incurred by the respondent.

16. However, the respondent submitted that the construction of the said project is in full swing. That the respondent company is very much committed to develop the real estate project and as on date the status of construction is as under:

- | | | |
|----------------------|---|----------------------------|
| a) Civil structure | : | Complete |
| b) Internal plaster | : | Complete |
| c) White wash | : | Under process |
| d) Floorings | : | Under process 68% complete |
| e) Electric fittings | : | Under process 70% complete |

The respondent has scheduled to deliver the possession of the first phase of the project within 4 months from the renewal of the license which comprises of 432 flats in 10 towers and complete delivery of 2nd phase by March 2019 comprising of 16 towers having 704 flats.

17. The respondent further admitted that the respondent company is behind schedule of completion, but the respondent is not responsible for the delay as the delay occurred is due to extraneous circumstances beyond their control. Further, the respondent could get the consent to establish only on 02.12.2013 due to which construction could not be started. That the license bearing no. 13 of 2012 expired on 22.02.2016. However the company filed an application for renewal of license on 11.02.2016 but due to policy issues, the license could not get renewed till date and further due to non-renewal of the license, the application for registration with the HRERA, could not be allowed and the application of the respondent was rejected as a result of which the bankers are not allowing smooth finances and the respondent company suffered but the company is not letting such issues come in their way of delivering possession.
18. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. The respondent has further contended that the parties are bound by the terms and conditions of the contract and that as per clause 3(a) of the

apartment buyer's agreement, the respondent shall handover the possession of the apartment within 36 months with a grace period of 6 months from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plan/revised building plan and other approvals.

19. The respondent submitted that though the said project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bona fide manner and the delay occasioned had been beyond the control of the respondent and due to multifarious reasons and given the agreed terms between the parties the complainant have no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

DETERMINATION OF ISSUES:

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

- i. With respect to the **first issue** raised by the complainant, as per clause 3(a) of apartment buyer's agreement, the possession of the said flat is 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. In the present case, the consent to establish was granted to the respondent on 2.12.2013. Therefore, the due date of handing over possession will be



computed from 2.12.2013. The clause regarding the possession of the said unit is reproduced below:

"3(a) offer of possession

...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 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...."

Accordingly, the due date of possession was 02.06.2017 and the possession has been delayed by two years two months five days till date. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 02.06.2017 till date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

- ii. With respect to the **second issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint. Thus, this issue is not maintainable.
- iii. With respect to the **third issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for



every month of delay till the date of handing over of possession.

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 Department of Town and Country Planning, 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. 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 complainants at a later stage.
22. As per clause 3(a) of the apartment buyer's agreement dated 02.03.2013 for unit no. 1027, 10th floor, block/tower Rose in project "Our Homes", sector 37 C, Gurugram, possession was to be handed over to the complainant within a period of 36 months plus 6 months grace period from the date of commencement of construction upon receipt of all approvals and the date of consent to establish is 02.12.2013 and hence the due date of delivery of possession shall be computed from 02.12.2013 which



comes out to be 02.06.2017. However the respondent has failed to deliver the possession in time. As such the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 02.06.2017 as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

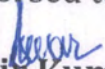
DECISION AND DIRECTIONS OF THE AUTHORITY

31. After taking into consideration all the material facts as adduced and produced by both 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 in the interest of justice and fair play:

- a. Respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 02.06.2017 as per provisions of proviso to section 18(1) of the Act ibid till offer of possession.
- b. 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.
- c. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The promoter shall not charge anything from the complainant which is not a part of the apartment buyer's agreement.
- e. Interest on due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.60% by the

promoter which is the same as being granted to the complainant in case of delayed possession.

32. The order is pronounced.
33. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent.
34. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority

Date: 07.08.2019

Judgement uploaded on 29.08.2019

HARERA
GURUGRAM