

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

Complaint no. : 328 of 2019
First date of hearing : 21.05.2019
Date of decision : 06.08.2019

Mrs. Anju Gupta,
R/o 40/5, Shakti Nagar,
Delhi- 110007.

Complainant

Versus

1. M/s Ansal Phalak Infrastructures Ltd.
1202, Antriksh Bhawan, 16, K.G. Marg,
New Delhi: 110007.
2. M/s Ansal Properties Infrastructures
Ltd.,
B Block, 24 meter wide road, "Esencia"
Sector- 67, Golf Course Extension Road
Gurugram, Haryana.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mrs. Anju Gupta
Shri O.P. Yadav
Shri Siddharth Yadav

Complainant in person
Advocate for the complainant
Advocate for the respondents

ORDER

1. A complaint dated 30.01.2019 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 Mrs. Anju Gupta, against the promoters M/s Ansal Phalak



Infrastructure Pvt. Ltd. and Ansal Properties Infrastructures Ltd. on account of violation of the clause 5.1 of plot buyer agreement executed on 18.06.2010 in respect of plot 0711-F-2510 described as below in the residential colony "Esencia" for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the plot buyer agreement dated 18.06.2010 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligations 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 are as under: -

1.	Name and location of the Project	Esencia, sector 67, Gurugram
2.	Nature of real estate project	Residential colony
3.	Plot no.	0711-F-2510
4.	Unit measuring	250 sq. mtr.
5.	RERA registered / not registered.	Registered 336 of 2017
6.	Validity of registration as per registration certificate	31.12.2019
7.	Date of execution of plot buyer agreement	18.06.2010
8.	Total sale consideration as per	Rs. 51,01,239/-

	customer ledger dated 06.04.2015	
9.	Total amount paid by the complainant till date as per customer ledger dated 06.04.2015	Rs. 45,72,581/-
10.	Due date of possession as per clause 5.1 of the said plot buyer agreement: Within 24 months + 6 months from the date of execution of plot buyer agreement	18.12.2012
11.	Application for part completion certificate made on	10.12.2013
12.	Delay in handing over of possession	6 years 7 months 19 days
13.	Payment plan	Development linked interest free payment plan

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondents. As per clause 5.1 of the plot buyer agreement dated 18.06.2010, the due date of handing over possession was 18.12.2012. Therefore, the promoter has not fulfilled their committed liability.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 21.05.2019. The case came up for hearing on 21.05.2019 and 03.07.2019. The reply filed on behalf of the respondent has been perused by the authority. Written arguments have been submitted on behalf of the complainant wherein he has reasserted the facts of the complaints.

FACTS OF THE COMPLAINT:

6. The complainant submitted that she purchased plot no. 0711-F-2510 admeasuring 250 sq. meters situated at "Esencia", a residential project developed by the respondent in sector 67, Gurugram through transfer vide sellers transfer request letter dated. 27.8.2010. The said plot was allotted to the complainant on the same terms and conditions of plot buyer agreement dated 18.6.2010 entered into between Sh. C.K Devgan, the seller, and the respondent.
7. The complainant submitted that the amount paid by the seller to the respondent as on the date of transfer was duly paid by the complainant to the seller and the same was duly reflected in the name of complainant ledger sheet maintained by the respondent. The total sale consideration was Rs. 51,01,239/- out of which complainant had made the payment of Rs. 45,72,581/- as per schedule of the agreement.
8. The complainant submitted that as per para 5.1 of the agreement possession of the said plot was to be given within 24 months with an extension period of 6 months from the date of execution of the agreement i.e. 18.6.2010. The said period expired on 31.12.2012.
9. The complainant submitted that she took up the matter with the respondent through personal visit in their office and also through letters. Respondent seeks time on every visit to their office at Gurugram.

10. The complainant submitted that till date the complainant has not received the possession even after best efforts and personal meetings. The delay is more than 6 years.

ISSUES RAISED BY THE COMPLAINANT

11. The complainant has raised the following issues:
- Whether or not the complainant has violated terms and conditions of the plot buyer agreement thereby delaying possession?

RELIEF SOUGHT BY THE COMPLAINANT

12. The complainant is seeking the following relief:
- Direct the respondent to deliver the possession of plot no. 0711-F-2510 admeasuring 250 sq. mts in "Esencia" project, sector 67 Gurugram and also payment of interest at 24% p.a. on the amount paid by the complainant from 1.01.2013 till the date of possession.

REPLY BY RESPONDENT NO. 1

11. The respondent submitted that the instant complaint filed by the complainant is false, frivolous, baseless and nothing but gross abuse of the process of law and this ld. forum. It has been filed with the sole purpose of harassing and extracting unlawful gains from the respondent company.
12. The respondent submitted that the complainant has not approached this ld. authority with clean hand and is trying to conceal material facts relevant to the matter in dispute. That the complainant is guilty of suppressio veri, suggestio falsi and the complaint is liable to be dismissed on this ground alone.



13. The respondent submitted that the RERA Act is a beneficial provision enacted for the benefit of buyers/consumers however same cannot be misused or misconstrued by individual buyers, as per their own whims and fancies, to evade liabilities created under executed contracts/agreement and thereby, extort wrongful gains/benefit from the builders. The present complaint is a clear case of misuse of RERA provisions by the complainant and same is liable to be dismissed at the threshold.
14. The respondent submitted that present complaint is liable to be dismissed as the same has been filed without any cause of action against the respondent. The respondent company is committed to abide with the agreed terms and conditions of the plot buyer agreement executed between the complainant and the answering respondent. However, the complainant is not willing to comply with the terms and conditions of the agreement/contract and trying to evade its liability by filing false and frivolous complaint against the respondents.
15. The respondent submitted that the respondent had applied to Director General, Town and Country Planning for part completion certificate for residential plotted colony namely "Esencia" vide letter dated 10.12.2013, which was much before the enactment of the RERA Act, 2016. Further, said application for part completion certificate" was also not rejected by the Director General, Town and Country Planning and hence, as per the applicable provisions of law the Project was not covered under RERA Act, 2016 and not required to be registered under RERA Act, 2016. In view of the same the present case does not

merit indulgence by this Id. authority for want of jurisdiction and is liable to be dismissed at the threshold.

16. The respondent submitted that the respondent company has never refused to abide by the contractual obligations on its part and has always acted bonafide and in good faith. There was/is no occasion with the complainant to file the present complaint in absence of any valid or tenable cause of action.
17. The respondent submitted that in view of the above, without prejudice to its rights and contentions and as a goodwill gesture towards its valued customer it is submitted that the respondent company had previously offered to the complainant an alternate flat/plot and is still offering the complainant alternate flats/plots in the said project or other project of the company in Gurgaon or some other place as per the available inventory.
18. The respondent submitted that in view of the above stated facts and circumstances it is, therefore, respectfully prayed that above said complaint lodged before your good office may kindly be rejected/cancelled/closed in the interest of justice.

DETERMINATION OF ISSUES

19. With respect to **issue** raised by the complainant as per clause 5.1 of the agreement dated 18.06.2010 the possession of the said plot is to be handed over within 24 months plus 6 months grace period from the date of execution of plot buyer agreement. Grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond the control of respondent Therefore, the due date of possession comes out to be 18.12.2012 and the project is registered with the authority and the revised date of completion is 31.12.2019.



The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f. 18.12.2012 till date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

FINDINGS OF THE AUTHORITY

20. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is residential in nature so the authority has subject matter jurisdiction along with territorial jurisdiction. 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.

21. The complainants made a submission before this authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.



22. By virtue of this complaint, the complainant seeks the indulgence of this authority to pass directions against the respondent to hand over the possession of the plot no. 0711-F-2510, admeasuring 250 sq. mtrs. booked with the respondent. In addition to that, complainant has also sought interest @24% p.a. on the amount paid to the respondent.
23. The complainant had booked a plot admeasuring 250 sq. mtrs. in "Esencia" project of the respondent located in sector 6, Gurugram and plot buyer agreement to this effect was executed between the parties on 18.06.2010. As per clause 5.1 of the said plot buyer agreement, respondent was obligated to hand over the possession of the booked plot to the complainants within a period of 24 months plus 6 months from the date of execution of plot buyer agreement i.e. on 18.12.2012 but the complainant has alleged that till date the respondent has failed to fulfil its commitments to hand over the possession of the plot despite payment of Rs. 45,72,581/- out of the total sale consideration of Rs. 51,01,239/-.
24. Counsel for respondent while admitting the delay in handing over the possession of the booked plot to the complainant submits that the plot in question has since been encroached upon by third party and the respondent is trying its best to get the encroachment removed but till date no result has been achieved. Moreover the respondent further submitted that respondent had applied to Director Genral, Town and Country Planning for part completion certificate for residential plotted



colony vide their letter dated 10.12.2013 which was much before the enactment of the RERA Act,2016 and as per applicable provisions of the law the project in which the plot was allotted to the complainant is not covered under the RERA Act, 2016 and in view of the same the present complaint does not merit indulgence by this authority for want of jurisdiction and is liable to be dismissed.

25. Hearing the rival arguments advanced on behalf of the parties and considering the facts and circumstances of the matter, the authority is of the considered view that the present complaint is well within the jurisdiction of this authority as the possession of the booked plot has yet to be delivered to the complainant. As far as contention of the respondent that the plot in question is in illegal possession of third party which led to the delay in handing over the possession. Plea taken by the respondent does not hold water as the complainant is not at fault and it is the primary responsibility of the respondent to get the encroachment removed and to hand over the possession within a period of one month of pronouncement of this order.

26. Considering the factual position of the matter, the authority directs the respondent to hand over the possession of the plot in question to the complainant. In addition to that, the respondent is also directed to pay delayed possession charges at prescribed rate of interest i.e. 10.60% per annum w.e.f. 18.12.2012 as per the provisions of section 18(1) of the Real



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

DECISION AND DIRECTIONS OF THE AUTHORITY

27. 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 to the respondent 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. 18.12.2012 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 every 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




HARERA
GURUGRAM


Complaint No. 328 of 2019

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

28. The order is pronounced.

29. Case file be consigned to the registry.


Samir Kumar
Member


Subhash Chander Kush
Member

Haryana Real Estate Regulatory Authority

Dated: 06.08.2019

Judgement uploaded on 29.08.2019



HARERA
GURUGRAM