

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

Complaint no. : 511 of 2018
First date of hearing: 11.09.2018
Date of decision : 09.01.2019

Bhushan Sachdeva and Mr Sanjay Sachdeva
through Special Power of Attorney holder
Kiran Rai Khatri
R/o Flat no: 1001, tower 3
Uniworld Garden, Sohna road
Gurugram: 122018.

Complainants

Versus

M/s Anjali Promoters and Developers Private
Limited
M-11, Middle Circle,
Cannaught Circus, New Delhi- 110001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

**Chairman
Member
Member**

APPEARANCE:

Shri Garv Malhotra
Shri Sachin Ghai

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 09.07.2018 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 complainants, Bhushan Sachdeva and Mr. Sanjay Sachdeva through special Power of



Attorney holder Kiran Rai Khatri against the promoter, M/s Anjali Promoters and Developers Private Limited., on account of violation of the clause 2.1 of the Space Buyer's Agreement executed on 29.12.2011 in respect of apartment number 1202 A, 12th floor in the project "Centra One" for not handing over possession by the due date i.e. 31.12.2011 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 17.01.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual 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 case are as under: -

- **Nature of project: Commercial complex**
- **DTCP License no: 277 of 2007**
- **Valid up to: 16.12.2019**
- **Holders name: Country wide**

1.	Name and location of the project	Centra One, Sector-61, Gurugram.
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2.	RERA registered/ not registered.	Not registered
3.	Apartment/unit no.	1203 A on the 12 th floor
4.	Allotment letter Annexure 4	10.06.2008
5.	Application for cancellation by complainant (annexure 4)	01.01.2009
6.	New unit no	09-903
7.	Apartment measuring	1000 sq. ft
8.	Date of execution of space buyer's agreement Annexure 7	17.01.2012
9.	Payment plan	Construction linked plan As per annexure II of agreement
10.	Total consideration As per ledger account dated 27.06.2018 Annexure 14	Rs. 67,97,232/-
11.	Total amount paid by the complainant till date As per ledger account dated 27.06.2018 Annexure 14	Rs. 65,72,893/-
12.	Percentage of consideration amount	Approx. 60.40 Percent
13.	Date of delivery of possession as per clause 2.1 of apartment	30.06.2012



	buyer's agreement+ 6 months grace period (as per cl. 2.2)	
14.	Delay in handing over possession till date	Approximately 7 years 6 months 9 days
15.	Penalty as per clause 2.2 of space buyers agreement	Rs.15/- per sq. ft per month
16.	Occupation certificate Reference R 8	09.10.2018
17.	Offer of possession	November 2018

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 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 31.12.2011. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.15/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 2.2 of apartment buyer's agreement dated 17.01.2012. 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. The



09.01.2019

respondent appeared on 09.01.2019. The case came up for hearing on 09.01.2019. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply.

FACTS OF THE CASE:

6. On 1st December, 2006 the complainant applied for a booking in BPTP's then upcoming project in Faridabad, Haryana and made a payment of Rs. 12,00,000/-. A further payment of Rs. 8,21,250/- was made till 07.02.2007 to the builder.
7. It is submitted that sometime in December 2007, the builder i.e. BPTP informed us that its project at Faridabad, Haryana is stuck and would not see the light of the day and that the money paid by the complainant would be adjusted/transferred towards another project that was being developed at village Ghata, Gurugram, Haryana. Complainant agreed to their proposal and paid an additional sum of Rs. 5,77,500 to the builder namely M/s Anjali Promoters Private Limited. Thus, making a total payment of 25,98,750/- which was approximately 45% of the cost of the unit.
8. It is also submitted that on June 2008 M/s Anjali Promoters and Developers Private Limited sent a letter to the complainant allotting unit #012-1202A measuring about

Corrected vide order dated
12.03.2019.





1000 sq. ft. in the upcoming project Centra One at Sector 61 Gurugram and further demanded a sum of Rs. 8,89,750 towards EDC, IDC, PLC and car parking charges, which was duly paid by us.

9. It is also submitted that even after the payment of Rs. 34,88,500/- which was more than 50% of the cost of the unit, no agreement to sale was signed. After repeated written follow ups and personal visit to their office the complainant was given a draft space buyers' agreement on 29.12.2008, which had certain onerous and legally untenable clauses.
10. It is also submitted that on 03.01.2009, complainant requested for refund of money with interest in view of an unfair space buyers agreement. Despite several reminders and personal visit, no reply was received.
11. That on 15.05.2009, complainant received a letter informing about the rebate of 10% on timely payment of future installments and that the delayed possession charges have been enhanced from Rs 15/- to Rs 30/- per sq. ft per month.
12. Finally, the space buyer's agreement was executed on 17.01.2012 wherein the respondent promised to give possession by 31.12.2011.



13. On 30.10.2014, the complainants received a mail from the respondent demanding interest of Rs 1,55,064/- overdue payment. The complainants disputed the same, by mail dated 01.12.2014 as the interest demanded was for the period when the buyers agreement had not been signed.
14. On 13.03.2015 the complainants were shocked to receive a mail that the complainants were not entitled to receive any delayed possession charges as they were in breach of agreement.
15. As on date of filing complaint the possession is overdue by more than 7 years 6 months and 9 days.

ISSUES RAISED BY THE COMPLAINANT

16. Issues raised by the complainants are as follows:

- i. Whether or not the builder M/s Anjali Promoters and Developers Private Limited have acted legally by demanding several instalments amounting to about 50% of the total cost from the buyer before signing the contract with the buyer?
- ii. Whether or not the builder M/s Anjali Promoters and Developers Private Limited has been fair and within their legal rights to demand 18% interest on



- overdue payments, before signing the space buyer agreement with the buyer?
- iii. Whether or not the builder M/s Anjali Promoters and Developers Private Limited are liable to pay to the complainant delayed possession charges @18% per annum?
- iv. Whether or not the builder M/s Anjali Promoters and Developers Private Limited is justified in delaying the possession by more than 7 years and 9 days?
- v. Whether or not the complainant is entitled for a refund from the builder of entire money paid along with the interest at the rate of 18% per annum?

RELIEF SOUGHT BY THE COMPLAINANT

17. The complainant is seeking the following relief:

- i. The entire amount paid by the complainant should be refunded along with the interest @18% per annum from the date of payment of each instalment till the date of payment i.e. Rs 1,72,50,769.50/- (one crore seventy two lakhs fifty thousand seven hundred sixty nine rupees and fifty paise only) (as per calculations given in Annexure 17).



- ii. Any other order which this hon'ble authority deems fit and proper be kindly granted to the applicant.

REPLY BY THE RESPONDENT

18. The respondent has received occupation certificate dated 09.10.2018 to the respondent for the project in question 'Centra One' located in Sector-61, Gurugram. It is further submitted that accordingly, the respondent would be shortly sending the offer of possession to the complainants in terms of the duly executed space buyer's agreement dated 17.01.2012.
19. The agreements that were executed prior to the registration of the project under RERA shall be binding on the parties and cannot be reopened. As contemplated in Section 13 of the Act, subsequent to the commencement of the Rules, a promoter has to enter into an agreement for sale with the allottees and get the same registered prior to receipt of more than 10 percent of the cost of the plot, or building
20. The parties had agreed under the space buyer agreement (SBA) to attempt at amicably settling the matter and if the





matter is not settled amicably, to refer the matter for arbitration.

21. That the complainants have alleged that the respondent has delayed the project and even in terms of the SBA whereby the respondent had agreed to handover possession by 31.12.2011 there has been a huge delay.

22. In this context, it is submitted that the respondent with a view to create a world class commercial space, engaged renowned architects Cervera and Pioz of Spain for the said project. The respondent also engaged renowned contractor M/s Ahluwalia Contracts (P) Ltd. for the said project. The respondent launched the project with a vision of creating an iconic building and hence, engaged the best professionals in the field for the same.

23. The respondent had conceived that the project would be deliverable by 31.12.2011 based on the assumed cash flows from the allottees of the project. However, it was not in the contemplation of the respondent that the allottees including the complainant herein would hugely default in making payments and hence, cause cash flow crunch in the project.



The complainant also knew that as per the agreement, timely payment of the installments was the essence of the contract who are well known for their timely commitment as well.

24. The complainant, in view of the fact that the complainant has relied upon clause 2.1 of the agreement for the timelines, it is submitted that the said timelines for possession till 31.12.2011 were subject to compliance of all terms and conditions of the agreement, including but not limited to timely payment of all the dues. A further grace period of 6 months was also agreed to between the parties. As detailed above, the complainant hugely defaulted in making timely payments of the various installments and despite grant of numerous opportunities, failed to clear dues. Hence, the timelines for possession stood diluted because of the acts/ defaults of the various allottees



25. It is further submitted that the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant were well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Majority of customers opted



for construction linked payment plan after clearly understanding that and agreed upon to tender the payment as per the construction milestones. It is pertinent to mention here that, given the choice of payment plan and terms of the agreement, all the customers including the complainant specifically understood that a default in tendering timely payment by significant number of customers, would delay the construction activity. It is a matter of fact and record that the space/unit holders as a group have defaulted in making timely payment which has caused major set-back to the development work.

26. It is further evident that the customers as a group defaulted in making timely payments, which obviously had a rippling effect on the development of the project and hence, the possession timelines also stood diluted accordingly. It is further submitted that in case the complainant wants to withdraw the booking of the unit in question, the same shall be governed by the duly agreed clauses of the agreement executed between both the parties



DETERMINATION OF ISSUES:

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

- i. With respect to the **first issue** the builder M/s Anjali Promoters and Developers have acted illegally in demanding more than 50% of the total cost of the project from the buyer, as the space buyer agreement nowhere mentions about any such provision. The relevant provision of the concerned act has been reproduced below,

"section 13(1): A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

It is pertinent to mention that section 13 of the Act does not apply retrospectively and that the contract between the parties shall prevail.

- ii. With respect to the **second issue**, the **interest demanded** by the respondent @18% on the overdue payments is exorbitant. The terms of the agreement have



been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), delivered by the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

iii. With respect to the **third issue** raised by the complainant, as per proviso to section 18(1) of the Act *ibid* read with rule 15 of the Rule *ibid*, the respondent is liable to pay interest at the prescribed rate for every month of delay till the handing over of possession and not compensatory interest as claimed by the complainant.

iv. With respect to the **fourth issue** raised by the complainant, the authority came across that as per clause 2.1 of apartment buyer's agreement, the possession of the flat was to be handed over by



31.12.2011. The clause regarding the possession of the said unit is reproduced below:

2.1. *"The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31.12.2011 however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of possession, and in the event the intending purchaser with regard to the date of handing over of possession...."*

As the possession of the flat was to be delivered by 31.12.2011 as per the clause referred above, the authority is of the view that the possession has been delayed by 7 years 9 days till date and the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

- v. With respect to the **fifth issue** raised by the complainant, from the perusal of the record the status of the project cannot be ascertained as neither the complainant nor the respondent has annexed photographs of the project. Thus this issue needs to be ascertained during the proceedings.

FINDINGS OF THE AUTHORITY:

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

29. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
30. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation.
31. Project if not registered with the authority. It seems that the builder is taking the provisions of the Real Estate (Regulation and Development) Act, 2016 in a non serious manner. As such a show cause notice be issued to the builder on account of violation of section 3(1) of the Act *ibid*.
32. As per clause 2.1 of the builder buyer agreement dated 17.01.2012 for unit 1203 A, 12th floor in project "Cenytra One", Sector 61, Gurugram possession was to be handed over to the complainant on 31.06.2012. it was a construction linked plan. However the respondent has not delivered the





unit in time. Complainant has already paid Rs 65,72,893/- to the respondent against a total sale consideration of Rs 67,97,232/- . Possession was offered by the respondent to the complainant in November 2018.

DECISION AND DIRECTIONS OF THE AUTHORITY

33. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions:

- i. The respondent was duty bound to hand over the possession of the said unit by 30.06.2012 as committed by the respondent.
- ii. The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. ~~30.06.2016~~ ^{30.06.2012} till offer of possession within 90 days of this order.



34. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch and a show cause notice be issued as to why a penalty of Rs 1 crore not be imposed. *Corrected vide order dated 12.03.2019.*

35. The order is pronounced.

36. Case file be consigned to the registry.

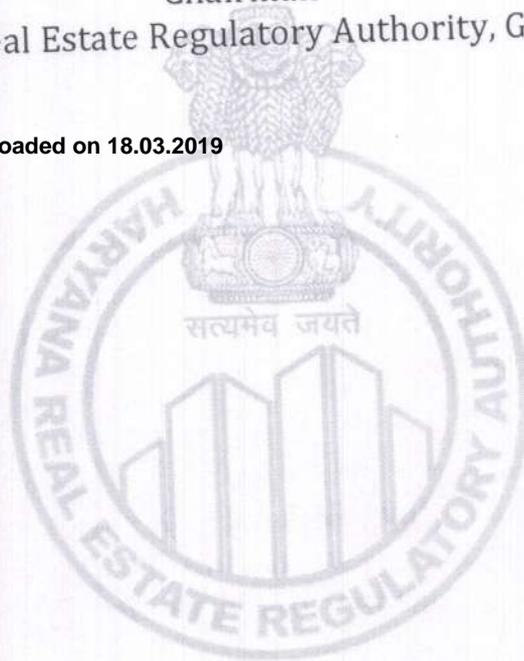

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Corrected judgement uploaded on 18.03.2019



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 09.01.2019
Complaint No.	511/2018 Case titled as Mr. Kiran Rai Khatri V/s M/s Anjali Promoters and Developers Limited & anr
Complainant	Mr. Kiran Rai Khatri
Represented through	Shri Garv Malhotra, Advocate for the complainant
Respondent	M/s Anjali Promoters and Developers Limited & another
Respondent Represented through	Shri Sachin Ghai proxy counsel for Shri Shanshank Bhushan Advocate for the respondent.
Last date of hearing	11.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Shri Garv Malhotra Advocate has appeared on behalf of the complainant and filed power of attorney.

Project is not registered with the authority. It seems that the builder is taking the provisions of the Real Estate (Regulation & Development) Act, 2016 in a non-serious manner. As such, a show cause notice be issued to the builder on account of violation of section 3 (1) of the Act ibid under section 59 of the Act to show cause as to why a penalty of Rs.1 crore be not imposed.

As per clause 2.1 of the Builder Buyer Agreement dated 17.1.2012 for unit No.1203 A,12th floor, in project “ Centra One, Sector 61, Gurugram possession was to be handed over to the complainant on 31st December 2011. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.65,72,893/- to the respondent against a total sale consideration of Rs.67,97,232/-. Possession was offered by the respondent to the complainant in November 2018. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 31.12.2011 till November 2018 as per provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

Complaint is disposed of accordingly. Detailed order will follow.
File be consigned to the registry.

Samir Kumar
(Member)
9.1.2019

Subhash Chander Kush
(Member)

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

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Complainants

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M-11, Middle Circle,
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Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
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APPEARANCE:

Shri Garv Malhotra Advocate for the complainant
Shri Sachin Ghai Advocate for the respondent

ORDER

1. A complaint dated 09.07.2018 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 complainants, Bhushan Sachdeva and Mr. Sanjay Sachdeva through special Power of



Attorney holder Kiran Rai Khatri against the promoter, M/s Anjali Promoters and Developers Private Limited., on account of violation of the clause 2.1 of the Space Buyer's Agreement executed on 29.12.2011 in respect of apartment number 1202 A, 12th floor in the project "Centra One" for not handing over possession by the due date i.e. 31.12.2011 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 17.01.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual 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 case are as under: -

- **Nature of project: Commercial complex**
- **DTCP License no: 277 of 2007**
- **Valid up to: 16.12.2019**
- **Holders name: Country wide**

1.	Name and location of the project	Centra One, Sector-61, Gurugram.
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2.	RERA registered/ not registered.	Not registered
3.	Apartment/unit no.	1203 A on the 12 th floor
4.	Allotment letter Annexure 4	10.06.2008
5.	Application for cancellation by complainant (annexure 4)	01.01.2009
6.	New unit no	09-903
7.	Apartment measuring	1000 sq. ft
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9.	Payment plan	Construction linked plan As per annexure II of agreement
10.	Total consideration As per ledger account dated 27.06.2018 Annexure 14	Rs. 67,97,232/-
11.	Total amount paid by the complainant till date As per ledger account dated 27.06.2018 Annexure 14	Rs. 65,72,893/-
12.	Percentage of consideration amount	Approx. 60.40 Percent
13.	Date of delivery of possession as per clause 2.1 of apartment	30.06.2012



	buyer's agreement+ 6 months grace period (as per cl. 2.2)	
14.	Delay in handing over possession till date	Approximately 7 years 6 months 9 days
15.	Penalty as per clause 2.2 of space buyers agreement	Rs.15/- per sq. ft per month
16.	Occupation certificate Reference R 8	09.10.2018
17.	Offer of possession	November 2018

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 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 31.12.2011. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.15/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 2.2 of apartment buyer's agreement dated 17.01.2012. 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. The



respondent appeared on _____. The case came up for hearing on _____. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply.

FACTS OF THE CASE:

6. On 1st December, 2006 the complainant applied for a booking in BPTP's then upcoming project in Faridabad, Haryana and made a payment of Rs. 12,00,000/-. A further payment of Rs. 8,21,250/- was made till 07.02.2007 to the builder.
7. It is submitted that sometime in December 2007, the builder i.e. BPTP informed us that its project at Faridabad, Haryana is stuck and would not see the light of the day and that the money paid by the complainant would be adjusted/transferred towards another project that was being developed at village Ghata, Gurugram, Haryana. Complainant agreed to their proposal and paid an additional sum of Rs. 5,77,500 to the builder namely M/s Anjali Promoters Private Limited. Thus, making a total payment of 25,98,750/- which was approximately 45% of the cost of the unit.
8. It is also submitted that on June 2008 M/s Anjali Promoters and Developers Private Limited sent a letter to the complainant allotting unit #012-1202A measuring about



1000 sq. ft. in the upcoming project Centra One at Sector 61 Gurugram and further demanded a sum of Rs. 8,89,750 towards EDC, IDC, PLC and car parking charges, which was duly paid by us.

9. It is also submitted that even after the payment of Rs. 34,88,500/- which was more than 50% of the cost of the unit, no agreement to sale was signed. After repeated written follow ups and personal visit to their office the complainant was given a draft space buyers' agreement on 29.12.2008, which had certain onerous and legally untenable clauses.
10. It is also submitted that on 03.01.2009, complainant requested for refund of money with interest in view of an unfair space buyers agreement. Despite several reminders and personal visit, no reply was received.
11. That on 15.05.2009, complainant received a letter informing about the rebate of 10% on timely payment of future installments and that the delayed possession charges have been enhanced from Rs 15/- to Rs 30/- per sq. ft per month.
12. Finally, the space buyer's agreement was executed on 17.01.2012 wherein the respondent promised to give possession by 31.12.2011.



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14. On 13.03.2015 the complainants were shocked to receive a mail that the complainants were not entitled to receive any delayed possession charges as they were in breach of agreement.
15. As on date of filing complaint the possession is overdue by more than 7 years 6 months and 9 days.

ISSUES RAISED BY THE COMPLAINANT

16. **Issues raised by the complainants are as follows:**
 - i. **Whether or not the builder M/s Anjali Promoters and Developers Private Limited have acted legally by demanding several instalments amounting to about 50% of the total cost from the buyer before signing the contract with the buyer?**
 - ii. **Whether or not the builder M/s Anjali Promoters and Developers Private Limited has been fair and within their legal rights to demand 18% interest on**



- overdue payments, before signing the space buyer agreement with the buyer?
- iii. Whether or not the builder M/s Anjali Promoters and Developers Private Limited are liable to pay to the complainant delayed possession charges @18% per annum?
- iv. Whether or not the builder M/s Anjali Promoters and Developers Private Limited is justified in delaying the possession by more than 7 years and 9 days?
- v. Whether or not the complainant is entitled for a refund from the builder of entire money paid along with the interest at the rate of 18% per annum?

RELIEF SOUGHT BY THE COMPLAINANT

17. The complainant is seeking the following relief:
- i. The entire amount paid by the complainant should be refunded along with the interest @18% per annum from the date of payment of each instalment till the date of payment i.e. Rs 1,72,50,769.50/- (one crore seventy two lakhs fifty thousand seven hundred sixty nine rupees and fifty paise only) (as per calculations given in Annexure 17).



- ii. **Any other order which this hon'ble authority deems fit and proper be kindly granted to the applicant.**

REPLY BY THE RESPONDENT

18. The respondent has received occupation certificate dated 09.10.2018 to the respondent for the project in question 'Centra One' located in Sector-61, Gurugram. It is further submitted that accordingly, the respondent would be shortly sending the offer of possession to the complainants in terms of the duly executed space buyer's agreement dated 17.01.2012.
19. The agreements that were executed prior to the registration of the project under RERA shall be binding on the parties and cannot be reopened. As contemplated in Section 13 of the Act, subsequent to the commencement of the Rules, a promoter has to enter into an agreement for sale with the allottees and get the same registered prior to receipt of more than 10 percent of the cost of the plot, or building
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matter is not settled amicably, to refer the matter for arbitration.

21. That the complainants have alleged that the respondent has delayed the project and even in terms of the SBA whereby the respondent had agreed to handover possession by 31.12.2011 there has been a huge delay.

22. In this context, it is submitted that the respondent with a view to create a world class commercial space, engaged renowned architects Cervera and Pioz of Spain for the said project. The respondent also engaged renowned contactor M/s Ahluwalia Contracts (P) Ltd. for the said project. The respondent launched the project with a vision of creating an iconic building and hence, engaged the best professionals in the field for the same

23. The respondent had conceived that the project would be deliverable by 31.12.2011 based on the assumed cash flows from the allottees of the project. However, it was not in the contemplation of the respondent that the allottees including the complainant herein would hugely default in making payments and hence, cause cash flow crunch in the project.



The complainant also knew that as per the agreement, timely payment of the installments was the essence of the contract who are well known for their timely commitment as well.

24. The complainant, in view of the fact that the complainant has relied upon clause 2.1 of the agreement for the timelines, it is submitted that the said timelines for possession till 31.12.2011 were subject to compliance of all terms and conditions of the agreement, including but not limited to timely payment of all the dues. A further grace period of 6 months was also agreed to between the parties. As detailed above, the complainant hugely defaulted in making timely payments of the various installments and despite grant of numerous opportunities, failed to clear dues. Hence, the timelines for possession stood diluted because of the acts/ defaults of the various allottees



25. It is further submitted that the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant were well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Majority of customers opted

for construction linked payment plan after clearly understanding that and agreed upon to tender the payment as per the construction milestones. It is pertinent to mention here that, given the choice of payment plan and terms of the agreement, all the customers including the complainant specifically understood that a default in tendering timely payment by significant number of customers, would delay the construction activity. It is a matter of fact and record that the space/unit holders as a group have defaulted in making timely payment which has caused major set-back to the development work.

26. It is further evident that the customers as a group defaulted in making timely payments, which obviously had a rippling effect on the development of the project and hence, the possession timelines also stood diluted accordingly. It is further submitted that in case the complainant wants to withdraw the booking of the unit in question, the same shall be governed by the duly agreed clauses of the agreement executed between both the parties



DETERMINATION OF ISSUES:

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

- i. With respect to the **first issue** the builder M/s Anjali Promoters and Developers have acted illegally in demanding more than 50% of the total cost of the project from the buyer, as the space buyer agreement nowhere mentions about any such provision. The relevant provision of the concerned act has been reproduced below,

“section 13(1): A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

It is pertinent to mention that section 13 of the Act does not apply retrospectively and that the contract between the parties shall prevail.

- ii. With respect to the **second issue**, the **interest demanded** by the respondent @18% on the overdue payments is exorbitant. The terms of the agreement have



been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), delivered by the Bombay HC bench held that:

“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

iii. With respect to the **third issue** raised by the complainant, as per proviso to section 18(1) of the Act ibid read with rule 15 of the Rule ibid, the respondent is liable to pay interest at the prescribed rate for every month of delay till the handing over of possession and not compensatory interest as claimed by the complainant.

iv. With respect to the **fourth issue** raised by the complainant, the authority came across that as per clause 2.1 of apartment buyer's agreement, the possession of the flat was to be handed over by



31.12.2011. The clause regarding the possession of the said unit is reproduced below:

2.1 *“The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31.12.2011 however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of possession, and in the event the intending purchaser with regard to the date of handing over of possession....”*

As the possession of the flat was to be delivered by 31.12.2011 as per the clause referred above, the authority is of the view that the possession has been delayed by 7 years 9 days till date and the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

- v. With respect to the **fifth issue** raised by the complainant, from the perusal of the record the status of the project cannot be ascertained as neither the complainant nor the respondent has annexed photographs of the project. Thus this issue needs to be ascertained during the proceedings.



FINDINGS OF THE AUTHORITY:

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

29. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
30. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation.
31. Project if not registered with the authority. It seems that the builder is taking the provisions of the Real Estate (Regulation and Development) Act, 2016 in a non serious manner. As such a show cause notice be issued to the builder on account of violation of section 3(1) of the Act *ibid*.
32. As per clause 2.1 of the builder buyer agreement dated 17.01.2012 for unit 1203 A, 12th floor in project “Cenytra One”, Sector 61, Gurugram possession was to be handed over to the complainant on 31.06.2012. it was a construction linked plan. However the respondent has not delivered the



unit in time. Complainant has already paid Rs 65,72,893/- to the respondent against a total sale consideration of Rs 67,97,232/- . Possession was offered by the respondent to the complainant in November 2018.

DECISION AND DIRECTIONS OF THE AUTHORITY

33. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions:

- i. The respondent was duty bound to hand over the possession of the said unit by 30.06.2012 as committed by the respondent.
- ii. The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 30.06.2016 till offer of possession within 90 days of this order.

34. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch and a show cause notice be issued as to why a penalty of Rs 1 crore not be imposed.



35. The order is pronounced.

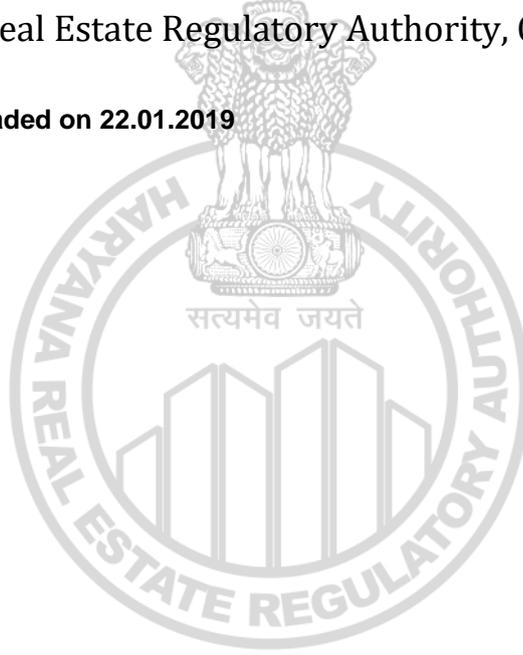
36. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Judgement uploaded on 22.01.2019



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