

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

Complaint no. : 1565 of 2019
First date of hearing : 09.07.2019
Date of decision : 10.09.2019

1. Shri Randhir Chadha
2. Smt. Shruti Chopra
Both r/o K-34, Jangpura Extension, **Complainants**
New Delhi.

Versus

M/s Anjali Promoters and
Developers Pvt. Ltd.
Office: 28, ECE House, 1st floor, **Respondent**
Kasturba Gandhi Marg,
New Delhi: 110001.

CORAM:

N.K.Goel

(Former Additional District and Sessions Judge)
Registrar-cum-Administrative Officer(Petitions)
(Haryana Real Estate Regulatory Authority, Gurugram)

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

APPEARANCE:

Ms. Priyanka Agarwal

Representative for the
complainant.

Shri Siddhant Yadav

Authorized representative for
the respondent.

EX-PARTE ORDER

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1. The present complaint Dated 22.04.2019 relates to a space buyer's agreement dated 07.12.2011 executed between the complainants and the respondent promoter, , in respect of unit measuring 1000 sq. ft. super area bearing no. 08-812 on 8th Floor, in the project, namely, "Centra One" situated in Sector 61, Gurugram, which is not registered with this Authority (in short, the subject unit) for a total consideration of Rs. 66,64,750/- and other charges as per the space buyer's agreement dated 07.12.2011 and the complainants opted for construction linked payment plan though according to them the booking was made in the year 2006 by the previous allottees who subsequently sold the same to the complainants and transferred the same in their names and recorded in the records of respondent vide nomination letter dated 09.09.2011.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	Centra One, Sector 61, Gurugram
2.	Nature of project	Commercial complex
3.	Registered/Unregistered	Not registered
4.	DTCP license no.	277 of 2007
5.	Date of agreement	07.12.2011
6.	Unit no.	812, 8 th floor (booked) 09-912 (possession offered)
7.	Area of unit	1000 sq. ft. (booked)
8.	Final super area	1013 sq. ft.

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9.	Payment plan	Construction linked
10.	Total consideration as per statement of account annexed on page 62 of complaint	Rs. 73,14,549/-; including an amount of Rs. 54,99,50/- @18% p.a. for interest for delay payment of instalment (as pleaded in the complaint)
11.	Total amount paid by the complainants as per statement of account annexed on page 62 of complaint	Rs. 66,42,175.50/-
12.	Due date of delivery of possession as per clause 2.1 of the agreement dated 07.12.2011	31.12.2011
13.	Date of offer of possession letter (Annexure P/7)	19.11.2018
14.	Delay in handing over possession	About 6 years 10 months

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.

4. According to the complainants, they visited the project site many times and found that the builder respondent had not carried out the development work except super structure completion, even during the years 2011 to 2017. Project was abandoned and development work was not carried out by the builder respondent. The complainants sent emails dated 06.04.2017 and 21.04.2017 to the builder respondent seeking delay penalty and requested for date of possession. Although the respondent assured the complainants that the delay

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penalty shall be paid at the time of offer of possession but the respondent 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 the respondent did not adjust any delay penalty for delay in handing over the possession though the respondent had charged interest @18% amounting to Rs. 5,49,950/- for delay in payment of instalments by the complainants.
6. According to the complainants, the respondent had changed the unit and customer id many times without any discretion of complainants. The unit earlier allotted was unit no. 08-812 which was changed to 09-912.
7. Paras 11,13,14 and 18 of the complaint are relevant. They are reproduced as hereunder:

"11. That the complainants visited project after getting offer of possession. The unit is not in a habitable condition even walls of unit, construction of fire emergency and fitting of toilets and finishing of building is still pending and project is not in habitable condition.

*13. That the respondent charged PLC of Rs. 288750/- for unit 912. However, unit doesn't meet any criteria set by the builder for PLC. therefore, charges of PLC are unilateral illegal and arbitrary. **Copy of offer of possession and payment plan annexed herewith as P7 and P4.***

14. That complainants had paid complete EDC, IDC in 2011 as per original payment plan of space buyer agreement,

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still builder has raised extra demand of EDC, IDC of Rs. 151680/- which is unilateral, illegal and arbitrary. Copy of offer of possession and payment plan annexed herewith as P7 and P4.

18. *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 Act as well the agreement executed between complainants and respondent. The complainant demands delay penalty in terms of section 18(1) read with section 18(3) of the Act, along with principles of justice, equity and good conscience."*

15. Hence, this complaint.

16. In the application for amendment the complainants have stated that they do not wish to withdraw from the project.

17. The following issues have been raised by the complainants:

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 SBA 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?

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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?"
8. The reliefs sought are detailed as under: -
 1. "Direct the respondent to immediately handover the possession of Unit in habitable condition.
 2. Refrain the respondent from raising any fresh demand and increasing the liability of the complainant.
 3. Pass an order for delay interest on paid amount of Rs. 66,64,750/- from 31.12.2011 along with pendent lite and future interest till actual possession thereon @18% of per annum as charged by builder for delayed instalments.
 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/-"
 6. Respondent has been proceeded ex-parte vide order dated 09.07.2019. Reply to the complaint has been filed on behalf of the respondent today which has been taken on record subject to all just exceptions and is not being considered in view of the judgment reported as AIR 1964 SC 993.
 7. Arguments are heard.

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Issue wise findings of the Authority: -

9. **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/2), there is every reason to believe that vide the space buyer's agreement dated 07.12.2011, 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 and hence, it must be held to be an "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder.
10. Therefore, in the opinion of this Authority the complainants are entitled to interest on delayed offer of possession.

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Accordingly, it is held that the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.40% per annum as prescribed under section 18 (1)(b) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

11. From a perusal of clause 1.1 of the space buyer's agreement, there is evidence on the record to inter alia 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 same premises as and when demanded by the intending seller.

12. The clause further reads as follows:

"Further the intending purchaser hereby agreed 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."

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13. 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 on account EDC cannot be struck down and is also not unjustified nor arbitrary nor is an act of unfair trade practice on the part of the respondent. Charging of interest @18% p.a. by the respondent from the complainant towards delayed payment of instalments before the coming into force of the act cannot be looked into by the Authority.

14. Now the next question which arises for consideration is whether the respondent he justified in charging Rs. 292503.75 towards PLC. The submission made on behalf of the respondent in this regard is at the unit in question is landscape facing and hence is liable to be charged the PLC. This plea has also been taken in the reply. The said submission made in the reply is being taken into consideration in order to reach to a just and proper conclusion. Now it is jointly agreed that both the parties shall visit the subject unit and see whether it is in fact landscape facing or has no preferential location. Therefore, it is directed that in case the subject unit is landscape facing the respondent shall be legally justified in charging the preferential location charges as stipulated in Annexure-2 of the Space Buyer Agreement. In case the subject unit is not at any preferential location, the respondent would refund the preferential location charges to the complainant or adjust it in the future payment, if any.

Findings of the Authority: -

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15. 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:-

16. The Authority exercising its power under section 37 of the Real Estate (Regulation & Development) Act, 2016 and as prescribed in proviso to Section 18(1)(b) of the Act read with Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.40% 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.

17. It is directed that in case the subject unit bearing No. 09-912, Centra One, Sector 61, Gurugram is land scape facing the respondent shall be legally justified in charging the preferential location charges as stipulated in Annexure-2 of the Space Buyer Agreement. In case the subject unit is not at any preferential location, the respondent would refund the

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preferential location charges to the complainant or adjust it in the future payment, if any.

18. Since the project is not registered, so the Authority has decided to take suo moto cognizance of this fact and direct the registration branch to take necessary action against the respondent under Section 59 of the Act for violation of Section 3 of the Act. A copy of this order be endorsed to the registration branch.
19. The complaint stands disposed of accordingly.
20. The case file be consigned to the registry.

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(Former Additional District and Sessions Judge)
Registrar-cum-Administrative Officer(Petitions)
(Haryana Real Estate Regulatory Authority, Gurugram)

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

Dated: 10.09.2019

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: 10.09.2019

Judgement uploaded on 20.09.2019