

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

Complaint No. : 697 of 2019
Date of first hearing: 25.04.2019
Date of Decision : 20.08.2019

1. M/s Puri construction Pvt. Ltd.
 2. M/s Florentine Estate of India Ltd
Office at: 4-7B, GF, Tolstoy House, Tolstoy Marg, New Delhi
- ...Complainant**

Versus

Shri Sanjay Goel
Resident of: 154, Neb Sarai Village, New Delhi

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Himanshu Juneja
None for the respondent

Authorised representative for
the complainant
Advocate for the respondent

ORDER

1. A complaint dated 18.02.2019 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 complainants-promoter M/s Puri Constructions Ltd. and M/s. Florentine Estate of India Ltd. against the respondent - allottee Sh. Sanjay Goel, in respect of unit described below in the project 'Emerald Bay', Sector 104, Gurugram on account of violation of obligations of the respondent-allottee for not taking over possession by clearing the outstanding dues which is in violation of obligation of allottees under section 19(6) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Emerald Bay" in Sector 104, Gurugram
2.	Nature of real estate project	Group housing complex
3.	Unit no.	2103, 21 st floor , block A2
4.	Unit area	2450 sq. ft.
5.	Registered/ not registered	Registered (136 of 2017)
6.	Revised date of completion as per RERA registration certificate	28.02.2020 (2.5 years from 28.08.2017)
7.	DTCP license	68 of 2012
8.	Date of booking	21.01.2013
9.	Date of apartment buyer agreement	04.10.2013
10.	Total consideration	Rs. 2,51,52,920/-
11.	Total amount paid by the complainant	Rs. 1,81,74,176/-
12.	Payment plan	Construction linked plan
13.	Date of delivery of possession	04.04.2018

		Clause 11(a) – 48 months from date of execution of agreement + 180 days grace period, i.e. by 04.04.2018
14.	Occupation certificate	21.11.2018
15.	Intimation of offer of possession	24.12.2018
16.	Delay till date of offer of possession, i.e. 24.12.2018	8 months (approx.)
17.	Penalty clause as per apartment buyer agreement dated 04.10.2013	Clause 15- Rs. 5/- per sq. ft. of super area per month for first 6 months of delay; Rs. 10/- per sq. ft. of super area per month for upto 12 months of delay; Rs. 15/- per sq. ft. of super area per month for delay beyond 12 months;

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer agreement dated 04.10.2013 is available on record for unit no. 2103, 21st floor, block no. 'A2', admeasuring 2450 sq. ft. in the project 'Emerald Bay' according to which the due date of possession comes out to be 04.04.2018.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 25.04.2019, 30.05.2019,

30.07.2019, 20.08.2019. The reply has been filed by the respondent and the same has been perused.

Facts of complaint

5. The complainant submitted that the petitioners have launched the residential group housing project by the name of 'Emerald Bay' in Sec-104, Gurgaon in the first quarter of year 2013 and the respondent has made a booking of an apartment no. A2-2103 in January 2013, after carrying out the due diligence about the property.
6. The complainant submitted that the petitioners and respondent entered into buyer's agreement with the respondent on 4th October 2013. The detailed terms and conditions governing the contractual obligations of the parties were detailed and described in the said buyer's agreement. As per the agreed terms of the buyer's agreement, the time period for completion of the construction, subject to force majeure conditions and subject to respondent making timely payments was agreed between the parties as 48 months from the date of execution of the buyer's agreement with a grace period of 6 months for applying and obtaining occupation certificate.
7. The complainant submitted that the respondent failed to adhere to the agreed terms of the buyer's agreement since the

very beginning and started making defaults in making timely payments of sale consideration as per agreed payment plan. The respondent sent an email dt. 31.10.2013 to the petitioners, for granting him time extension for payment of due instalments.

8. The complainant submitted that the petitioners accepted the request of the respondent seeking extension of time period for making payment, vide its email dt. 06.11.2013.
9. The complainant submitted that during the currency of the agreement, the respondent made further defaults in the payment of the instalments and ultimately the respondent had requested the complainant vide email dt. 31.08.2015, to change his agreed payment plan from 'construction linked payment plan' [CLP] to 'possession linked payment plan' [PLP].
10. The complainant submitted that in good faith and purely in keeping with the company's policy of keeping the customer happy the complainants accepted the request of the complainant, vide its email dt. 02.09.2015 and changed the payment plan of the respondent from CLP to PLP.
11. The complainant submitted that the time period for completion of construction was subject to force majeure

conditions as well as subject to timely payment of instalments by the respondent. But the respondent did not adhere to the agreed payment plan and defaulted on various occasions in making timely payments, which is also reflected in the statement of accounts.

12. The complainant submitted that apart from the defaults of the respondent and breach in the agreed terms and conditions of buyer's agreement in making timely payments, the major force majeure conditions affecting the construction during currency of the buyers agreement are as under:

- A) **Demonetization**: The complainant has awarded the construction of the project to M/s. Simplex Infrastructure Limited, which is one of the leading construction company of India. The said contractor/ company undertaking the construction of the project could not undertake construction for approx. 3-4 months during the period of demonetization. Like other industries, real estate industry was also worst sufferer during period of demonetization as the contractor could not make payment to the labour in cash and the work at site got halted for 3-4 months as the labour went to their hometowns and had impacted the planned pace of



construction thereafter. The said event of demonetization was one such event which was not foreseen by anyone including respondent in 2013 at the time of entering into buyer's agreement, rather the said event of demonetization has occurred in our country only twice in 71 years of independence.

B) **NGT order:** There were specific orders of National Green Tribunal for stopping all construction activities in the whole National Capital Region for two successive years 2016 & 2017, when pollution levels were alarmingly high, and the construction activities were stopped for certain time period. This too resulted in delays of 3-4 months as labour went back to their hometowns and this also resulted in impacting planned pace of construction. This event also could not be foreseen in 2013 at the time of entering into buyer's agreement, as such directions were never issued by any court till such dates of 2016 and 2017.

C) **Non-payment of instalments by allottees** including the respondent: Several allottees including the respondent were in default of the agreed payment plan and the payment of

construction linked instalments was delayed on several occasions. The construction/development of the project is dependent upon the allottees including respondent to fulfill their obligations of making timely payments. The respondent has been in default of making timely payments on several occasions as explained herein, hence the delay in completion of construction for a period of 6-12 months is duly covered by the above stated force majeure conditions and also due to defaults of the respondent. Rather the non-payment of timely instalments by the respondent amounts to default on the part of respondent and will result in automatic extension of time periods for completion of construction. The respondent in total has committed default of 42 months in making timely payments, hence the said period will be added to the time period prescribed in the agreement for completion of construction.

D) Inclement weather conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were stopped as the whole town was waterlogged and gridlocked

as a result of which the construction came to standstill for many weeks and was widely reported in the media. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

E) **Lack of civic infrastructure:** The State of Haryana has miserably failed to provide the basic civic infrastructure to all the new sectors falling on the Dwarka Expressway despite payment of hundreds of crores of rupees towards EDC and IDC by the respondent and other developers. Till date the State of Haryana has not been able to complete the construction of much publicized Dwarka Expressway even after expiry of more than 11 years of publication of development plan of Gurugram, Haryana. The state agencies responsible for providing water supply and electricity in new sectors have also failed to provide the same on time. All these factors have impacted the pace of construction. HUDA failed to lay any water pipe lines near the site of the complainant and the complainant was reliant on HUDA STP treated water from far away sites which was unavailable many a times. Adequate and



accessible water supply for construction is a basic necessity and non-availability of the same seriously hampered progress. Even Dwarka Expressway Association has filed a civil writ petition in High Court of Punjab and Haryana seeking directions against the authorities to provide basic infrastructure and amenities, which is pending adjudication. It is pertinent to mention here that the total sale consideration of the present unit of the respondent, includes more than Rs. 26 Lacs (collectively), towards taxes and EDC and IDC, which stand paid to the Government agencies.

In view of the above stated force majeure conditions/events, and also the time period for which the respondent committed the default in making payment of timely instalments, the time period to complete the construction comes to June 2019 and the complainant has already obtained the occupation certificate of the project on 21.11.2018 i.e. within the prescribed timelines.

13. The complainant submitted that the complainant after receipt of the occupation certificate in November, 2018 has intimated the respondent and his relatives- Anil Goel and Sumeet Goel,

who have got two separate booking of apartments, in the personal meeting about the impending occupation certificate as the application for obtaining occupation certificate was made in August 2018.

14. The complainant submitted that the respondent to avoid the discharge of his obligations as per the agreed terms and conditions of the buyers agreement and to eke out of the booking/allotment on frivolous grounds, as the market rates of the real estate apartments on Dwarka expressway have seen downwards trend in last 5 years due to non-operational Dwarka expressway, firstly filed a frivolous petition before National Company Law Tribunal New Delhi, claiming himself and his relatives as financial creditors and also thereafter sent a false and frivolous email dt. 7.12.2018 to the complainant seeking refund of the amounts paid by it along with interest thereon, though knowing very well that the complainants have received the occupation certificate of the project.

15. The complainant submitted that as per the agreed clause no. 1.4 and other provisions of the buyers agreement, the respondent is required to make payment of total price as per payment plan being part of the buyers agreement and also to keep the complainant indemnified against all losses, damages



etc. for non payment of the dues and/or total price of the apartment. The complainant has already completed the project and has intimated about offer of possession of the apartment to the respondent and has invested huge amounts towards the project on the basis of the reciprocal promises/commitments/obligations of the respondent to make payment of total price. It is quite evident that the respondent does not want to fulfil his contractual obligations on the basis of which the complainant has developed the project as the respondent does not want to make payment of agreed sale price to the complainant as is evident from his email.

16. It is submitted that the complainants have been adhering to all the provisions/clauses/terms and conditions agreed between the respondent-allottee and the promoter and respondent - allottee has been in default thereof. Hence the present petition seeking directions against the respondent to fulfil his part of obligations mentioned agreement to sale and duties cast upon allottees under RERA Act.

17. Issues to be determined: -

- i. Whether the respondent has committed default/breach of the terms and conditions of the agreement by not making timely payments?
- ii. Whether the complainant is entitled to recover the amounts of outstanding dues and amount of balance sale consideration from the respondent?
- iii. Whether the Hon'ble Authority can issue directions against the respondent as per provisions of Sec. 37 read with 19(6) (7) and Sec. 31 of Act?

18. Reliefs sought: -

- i. That in the light of facts and circumstances mentioned in the petition, the complainant is entitled to the relief of directing the respondent to make payment of outstanding amounts as well as balance sale consideration and other charges amounting of Rs. 77,48,983/- alongwith interest at the rate prescribed under the Haryana RERA rules and Act.
- ii. That the respondent be further directed to make payment of Rs. 14,92,900/- towards the stamp duty, CAM, IBMS etc.

in terms of the agreement towards the unit no. A2-2103 in project Emerald Bay, Sec-104, Gurugram.

iii. Any other relief, this hon'ble authority may deem fit, in the circumstances of the matter.

Respondent's reply

19. The respondent submitted that he denied the averments and contentions urged in the complaint individually and collectively.
20. The respondent submitted that the complainant had sent the post-dated affidavit to the brother of the respondent vide email dated 15.02.2019. Thus, prima facie, the contents of the complaint cannot be taken on record and thus the complaint is liable to be dismissed on this short ground itself.
21. The respondent submitted on the page titled as "information regarding complaint", the complainant has stated that the remaining amount was payable by the respondent on 28.11.2015. As per the provisions of the Limitation Act, the said complaint ought to have been filed within 3 years from the date when cause of action arose and as such the claims made by the complainant are time barred.

22. The respondent submitted on the page titled as “information regarding complaint”, the complainant has stated that no payment has been made on casting of 10th floor roof slab. However, demand for the same was raised on 01.08.2015. Further as per its own sales customer ledger the complainant has indicated that payment of Rs. 19,34,755/- was made by the respondent to the complainant on 10.08.2015 with regard to 10th floor roof slab. Further a sum of Rs. 19,543 was paid towards TDS to the complainant on 01.03.2016 on this account.
23. The respondent submitted that admittedly vide email dated 07.12.2018 they sought cancellation of the allotment and refund of the money. However, the complainant failed to respond to the said email or provide refund to the respondent.
24. The respondent submitted that once the respondent has cancelled the allotment, the complainant cannot compel the respondent to make payment or to purchase the apartment. The demand for refund had been made much prior to filing of the captioned complaint. Thus, the complainant is liable to return the amount in terms of section 18 of the Act *ibid*.
25. The respondent submitted on the page titled as “information regarding complaint”, the complainant has stated falsely that

the amount paid by the complainant is Rs. 1,81,74,176/-. The respondent submitted that no amount has been paid by the complainant to the respondent.

26. The respondent submitted that he has filed an insolvency petition bearing no. IB no. 1662(PB)/2018 before the NCLT titled as "M/s Puri Construction Pvt. Ltd. v. Sanjay Goel against complainant on the same cause of action as alleged by him in the captioned complaint. The complainant been aggrieved by the said proceedings has already filed a writ petition bearing no. W.P.(C) no. 196/2019 titled as 'M/s Puri Construction Pvt. Ltd. v. Union of India and others' before the Supreme Court of India, which is pending adjudication. Further vide order dated 19.02.2019 the proceedings of the case has been stayed. Upon this ground the complaint is liable to be dismissed.
27. It is evident that the complainant has concealed complete details of the aforesaid proceedings and the complainant has not approached this authority with clean hands. In terms of the same the complaint is liable to be dismissed with heavy costs.
28. The respondent denied the averment and contentions alleged by the complainant.
29. The respondent submitted that the complainant had offered to the brother of the respondent that the payment plan would be

changed from construction linked to possession linked but it was never consented by the respondent.

30. The grounds mentioned by the respondent regarding the force majeure conditions affecting the construction of the said project including demonetisation, order passed by the Hon'ble NGT, on non-payment of instalments by the allottees etc., but also pleaded before the NCLT as well as in Cp No. IB-1351(PB)/2018 and they were not given much weightage.
31. The respondent submitted that similar grounds have been sought to be raised by various developers time and again, in various courts of law.
32. The respondent submitted that no communication has been made by the complainant to the respondent with regard to occurrence of these force majeure conditions and no extension of the of dead line of delivery of the said apartment was sought for by the complainant. The complainant has failed to indicate the specific dates or month during which it was unable to carry out construction of the said project.
33. The respondent has submitted that the complainant has filed pictures of said project which are stated to be latest pictures but has failed to file pictures showing the periodical

construction as to whether the demand raised by the complainant is in consonance with the actual construction.

34. The total consideration of the said apartment was Rs. 2,40,39,457/- and the total amount paid by the respondent is Rs. 1,81,03,584.97/-
35. The respondent submitted that the complainant arbitrarily and without explanation executed the ABA on 04.10.2013. That the respondent vide email dated 07.12.2018 requested the complainant for cancelling the allotment of said apartment and demanded refund of entire amount.
36. The respondent submitted that he filed the petition before NCLT vide no. IB no. 1662 (PB)/2018. The NCLT was pleased to initiate corporate insolvency resolution process against the complainant vide order 10.01.2019.
37. The respondent submitted that 19.02.2019 the Hon'ble Supreme Court Of India stayed the proceeding of the said petition pending before NCLT in writ petition bearing no. W.P. C No.196/2019 titled "M/s Puri Construction Pvt. Ltd. vs. Union Of India and Others " filed by the complainant. The respondent submitted that on 01.03.2019, the said petition was adjourned sine die by the NCLT.

Determination of Issues

After considering the facts submitted by the complainant, reply by respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

38. As regards **issue no. 1, 2 and 3 raised by the complainants**, it is evident from perusal of records that as per clause 11(a) of the apartment buyers agreement dated 04.10.2013, the complainant had agreed to deliver the possession of the apartment in question within a period of 48 months plus 180 days grace period from the date of execution of agreement. The due date of delivery of possession on calculation comes out to be 04.04.2018. And the complainant has offered the possession on 24.12.2018 after receipt of occupation certificate on 21.11.2018. However, the respondent did not turn up to take the physical possession of the apartment on payment of outstanding dues.
39. The plea of the respondent that the present complaint is not maintainable on the ground that an insolvency petition bearing no. IB no. 1662(PB)/2018 before the NCLT titled as "M/s Puri Construction Pvt. Ltd. v. Sanjay Goel" against complainant on the same cause of action is pending adjudication does not bar the jurisdiction of this Authority to

decide the present complaint as the stay to that petition has already been granted by the Hon'ble Apex Court in the civil writ petition challenging the said insolvency petition. Moreover, the Real Estate (Regulation and Development) Act, 2016 is a special Act wherein section 79 of the Act bars the jurisdiction of other courts/Authority to order for any injunction against the proceedings of this Authority.

40. Since, the respondent has defaulted in making payment of outstanding dues and taking possession of the apartment in question, so there is a violation of terms and conditions of agreement and also violation of obligation of allottee under section 19(6) of the Act on the part of respondent. Hence, the complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.45% per annum.

Findings of the Authority: -

41. The authority has complete subject matter 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department,

the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices 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.

42. During the proceedings dated 20.08.2019, none was present on behalf of the respondent despite service and calling the matter twice. Hence, the respondent is proceeded ex-parte on the basis of material facts available on record.
43. As per clause 11(1) of the agreement dated 04.10.2013 for the unit in question, possession was to be handed over to the respondent/buyer within a period of 48 months + 180 days grace period from the date of execution of agreement, which comes out to be 04.04.2018. the possession of the unit in question was offered to the respondent on 24.12.2018 after receipt of occupation certificate on 21.11.2018 but respondent is not coming forward to take the possession of the unit and payment of balance dues.

Decision and directions of the authority: -

44. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues

the following directions to the parties in the interest of justice and fair play: -

- i. Respondent is directed to take over possession of the unit on payment of balance dues along with prescribed rate of interest, i.e. 10.45% per annum to the complainant within a period of one month.
- ii. The complainant is also liable to pay late delivery charges, if any, at the prescribed rate of 10.45% per annum, which is being levied on the respondent.

45. The complaint is disposed of accordingly.

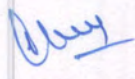
46. The order is pronounced.

47. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date: 20.08.2019

AUTHENTICATED

GURBACHAN KAUR
LEGAL OFFICER

Judgement uploaded on 11.09.2019