

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

Complaint No. : 2096 of 2019
Date of first hearing : 05.09.2019
Date of Decision : 05.09.2019

1. Mrs. Madhu Asthana
2. Mr. Varun Asthana
Both R/o. 8463, Sector -8, Pocket-C,
Vasant Kunj, New Delhi - 110070.

Complainants

Versus
M/s Mapsko Builders Private Limited
Office at: - 52, North Avenue Road,
Punjabi Bagh West,
New Delhi - 110026.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Harshit Batra
Shri Sanjeev Dhingra

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 20.05.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Madhu Asthana and Mr. Varun Asthana against the promoter M/s Mapsko Builders Pvt. Ltd., on account of violation of clause 18 (a) of flat buyer's agreement dated 27.02.2013 for flat/unit no. 501, 5th floor in tower E, measuring 1490 sq. ft. super area in the project "Mapsko

AUTHENTICATED
GURBACHAN KAUR
LOCAL OFFICER

Mount Ville”, located at Sector 78-79, Gurugram for delay in handing over the possession from the committed date which is in violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer’s agreement dated 27.02.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act for non-compliance of statutory obligation on the part of the respondent.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Mapsko Mount Ville, Sector 78-79, Gurugram.
2.	Nature of real estate project	Residential group housing complex
3.	Total area of the project	16.369 acres (as per RERA registration certificate)
4.	DTCP License no.	38 of 2012 dated 12.04.2012
5.	Allotted flat/unit no.	501, 5 th floor, tower E
6.	Apartment measuring area	1490 sq. ft. super area
7.	RERA registered/unregistered	Registered vide no. 328 of 2017 dated 23.10.2017
8.	RERA registration valid upto	30.11.2019
9.	Date of execution of the flat buyer’s agreement	27.02.2013 (Annx C-3 - Pg.32 of the complaint)
10.	Payment Plan (as per applicant’s ledger at Pg. 48 of the complaint)	Construction linked payment plan

11.	Total consideration as per applicant's ledger	Rs.94,18,720/- (Pg. 48 of the complaint)
12.	Total amount paid by the complainants till date as per applicant's ledger	Rs. 86,75,686/- (Pg. 48)
13.	Percentage of consideration amount paid by the complainant till date	92.11%
14.	Due date of delivery of possession as per the agreement.	27.08.2017 (Clause 18 (a): 48 months plus six months grace period from the date of signing of agreement)
15.	Delay penalty payable as per the agreement	Rs. 5/- per sq. ft. per month payable till handing over of possession.
16.	Delay in handing over possession till the date of decision (05.09.2019)	2 years and 9 days.

4. As per the details provided above, which have been checked as per record of the case file, a flat buyer's agreement dated 27.02.2013 is available on record for flat/unit no. 501, 5th floor tower E in the project stated above. As per the allegations of the complainants, the respondent - promoter has failed to deliver the possession by committed date. Therefore, the promoter has not fulfilled his committed liability.

5. Taking cognizance of the complaint, the authority has issued notice to the respondent for appearance and filing of reply. The respondent appeared through his counsel appeared on 05.09.2019. The case came up for hearing on 05.09.2019. The

reply has been filed by the respondent on 11.06.2019 and the same has been perused by the authority.

Facts of the case :-

6. Briefly put facts relevant for the disposal of the present complaint are that on 11.11.2012, the respondent through their marketing representatives approached the complainants and invited them to purchase a unit in their project "MAPSKO MOUNTVILLE". The complainants relying on representations, assurances, brochures and meetings, agreed to purchase one unit admeasuring super area 1490 sq. ft. for an agreed sale consideration of Rs. 94,74,376/-.
7. Pursuant to aforesaid booking, the complainants were allotted unit bearing no. 501, block-E in the project, vide allotment letter dated 25.11.2012.
8. On 27.02.2013, the flat buyer's agreement was executed between the complainants and respondent. As per clause 18 (a) of the agreement, the possession of the unit was to be handed over within 48 months from the date of signing of the agreement. Therefore, the due date for handing over the possession was 27.02.2017.
9. The complainants submitted that they have paid all the instalments as per the payment schedule and demands raised by the respondent.

Till date the complainants had paid an amount of Rs. 87,38,692/- including TDS amounting to Rs. 57,312/- and credit notes, i.e. approximately 92% of the agreed sale consideration, till 05.11.2018.

10. The complainants vide email dated 15.05.2015, stating their financial condition, requested the respondent, to be able to make the payment of the remaining amount at the time of possession. The complainants further vide email dated 18.05.2015, requested the respondent, to make the payment of remaining amount at the time of possession. He further requested the respondent to process refund of the amount paid by the complainants on inability of the respondent to accept the request of the complainants for payment at the time of possession.
11. The complainants stuck in the project, due to the respondent paying no heed to the requests of the complainants for refund, vide email dated 08.07.2018 to the respondent sought the date of handing over of possession.
12. The complainants aggrieved with the negligent behaviour of the respondent, vide email dated 31.07.2018 to the Chairman, HRERA, Gurugram, Haryana, stating their financial crisis due to their health, requested to help in getting refund of the amount paid.

13. However, the respondent has failed to fulfil his obligations to deliver the possession of the unit in time and has caused huge losses to the complainants, hence the present complaint.

Issues to be determined: -

1. Whether the respondent has failed to hand over the possession in stipulated time and/or failed to fulfil their obligation under section 18 of the Act?
2. Whether the respondent have failed to deliver the possession of the unit with amenities as promised under the agreement?
3. Whether the respondent is required to register the phase/project "Mapsko Mountville", at Sector-78,79, Gurugram in terms of section 3 of the Act?
4. Whether the respondent is liable to pay interest on the amount paid by the complainants under section 18 of the Act, for failing to hand over possession of the unit in time as per the terms of buyer agreement?

Reliefs sought: -

- (a) Direct the respondent to give prescribed rate of interest on delay in handing over of possession on the amount paid by the

complainants from the date of possession as per the buyer agreement till actual possession;

- (b) To conduct such inquiry under section 35 of the Act into the affairs of the respondent.

Respondent's reply:-

14. The respondent in their reply denied each and every allegation so raised by the complainants.
15. It is submitted by the respondent that as per clause 18 (a) of the said agreement, the promoter shall endeavour to complete the construction of the flat in question within a period of 48 months from the date of signing of agreement with an extended period of 6 months, subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of promoters. The same was admitted by the complainants in their complaint.
16. It is further submitted by that the complainants are merely an investor and booked the flat in 2012 to gain profit by selling the property in question and the false complaint and raised the present dispute because real estate market is facing crisis in present.

17. It is submitted that the project in question is registered under RERA bearing registration no. 328 of 2017. The said registration shall be valid for a period commencing from 23.10.2017 to 30.11.2019. Hence, the present complaint is not maintainable.

Determination of issues: -

18. With respect to **first, second and fourth** issue raised by the complainants, it is evident from perusal of record and submissions made by the parties, as per clause 18 (a) of the flat buyer's agreement dated 27.02.2013 that respondent has agreed to deliver the possession of the subject flat within a period of 48 months plus 6 months grace period from the date of signing of flat buyer's agreement. Relevant portion of clause 18 (a) is reproduced below-

"That the Promoter shall endeavour to complete the construction of the said Flat within a period of 48 months from the date of signing of this Agreement with the Buyer or within an extended period of six months subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of the Promoter....."

Hence the due date of delivery of possession by applying the abovementioned clause on calculation comes out to be

27.08.2017, however, the respondent has failed to deliver the possession till date which is in violation of obligation of promoter under section 11(4)(a) of the Act. Thus, the respondent is liable to pay prevalent prescribed rate of interest i.e. 10.45% p.a. on the amount paid by the complainant for every month of delay from the due date of delivery of possession as per section 18 (1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

19. With respect to **third issue** raised by the complainant, it is observed by the authority that the respondent has registered the project in question with the authority vide no. 328 of 2017. Hence, this issue becomes infructuous.

Findings of the authority: -

20. 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 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.

21. Project is registered with the authority. Arguments heard.
22. As per clause 18(a) of the agreement dated 27.02.2013, the respondent was bound to deliver the possession of the flat in question within a period of 48 months plus 6 months grace period which comes out to be 27.08.2017, however, they have failed to deliver the possession of the unit till date. Hence, the complainants are entitled for delayed possession charges at the prescribed rate of interest of 10.45% p.a. for every month of delay in terms of section 18(1) proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

Decision and directions of the authority: -

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

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

- i. The respondent is directed to pay delayed possession charges at the prevalent prescribed rate of interest i.e. 10.45% p.a. on the paid amount to the complainants from the due date of delivery of possession i.e. 27.08.2017 till the offer of possession.
- ii. The interest so accrued from the due date of delivery of possession (27.08.2017) till the date of order be paid within 90 days from this date and thereafter monthly interest at the prevalent prescribed rate of interest of 10.45% per annum be paid on or before 10th of each succeeding English calendar month.
- iii. Complainants are also directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession.

- iv. The respondent/promoter shall not charge any amount/charges from the complainant which is not a part of the flat buyer agreement dated 27.02.2013.
24. The order is pronounced.
25. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -05.09.2019

(Subhash Chander Kush)

Member

Dated: -05.09.2019

Judgement uploaded on 26.09.2019

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