

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

Complaint no. : 2031 of 2019
First date of hearing: 04.09.2019
Date of decision : 11.09.2019

Mrs. Poonam Yadav
R/o: RZ-35, Prem Nagar, Phase-I, Thana Road,
Najafgarh, New Delhi-110043

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
Office: 14A/36, W.E.A. Karol Bagh,
New Delhi
Also at: Plot No. 25 B, Sector-32, Gurugram.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Harshwardhan Yadav Advocate for the complainant
Shri Sandeep Choudhary Advocate for the respondent

ORDER

1. A complaint dated 21.05.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mrs. Poonam Yadav, against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3(a) of the apartment buyer's agreement executed on 06.03.2013 in respect of apartment

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER



number 998, 9th floor, block/tower 'Iris' in the project 'Our Homes' for not handing over possession by the due date i.e. 02.06.2017 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement dated 06.03.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligations on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Project area	10.144 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no.	13 of 2012 dated 22.02.2012
5.	RERA registered/ not registered.	Registered vide no. 40 of 2019 dated 08.07.2019
6.	RERA registration valid up to	01.12.2019
7.	Provisional allotment of unit	23.10.2012
8.	Apartment/unit no.	998 on 9 th floor, block/tower 'Iris'
9.	Apartment measuring	48 sq. mtr. of carpet area
10.	Date of execution of apartment buyer's agreement	06.03.2013



11.	Payment plan	Time linked plan (page no. 56 of complaint)
12.	Basic sale price as per clause 1.2(a) of apartment buyer's agreement	Rs.16,00,000/-
13.	Total amount paid by the complainant till date	Rs.14,20,608/- (as per receipts annxed)
14.	Consent to establish granted on	02.12.2013
15.	Date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals)	02.06.2017 (calculated from consent to establish)
16.	Delay in handing over possession till date i.e. 11.09.2019	2 years 3 months 9 days
17.	Penalty clause as per clause 3(c)(iv) of apartment buyer's agreement dated 06.03.2013	Rs.10/- per sq. ft per month of the carpet area of the said apartment for delay.

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 dated 06.03.2013 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the complainant nor has it paid any compensation as per clause 3(c)(iv) of apartment buyer's agreement dated

06.03.2013. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 04.09.2019. The reply filed on behalf of the respondent on 11.06.2019 has been perused by the authority.

Facts of the complaint

6. The complainant submitted that the present petition is being filed by the complainant against the respondent as the respondent has, in a pre-planned manner, cheated and defrauded the complainant of her hard-earned money and has rendered deficient services by not providing possession of the residential apartment purchased by the complainant from the respondent. The complainant for her own bonafide residential use purchased the residential apartment in question.
7. The complainant submitted that respondent issued an advertisement in media inviting applications for advance registration for a upcoming project of flat in the Real Estate project namely Our Homes located at Sector-37C, Village Garoli Khurd, Gurugram, Haryana and the complainant made



an application for booking of residential apartment in the above project. On demand of the company respondent, the complainant made a payment of Rs. 1,64,944/- by way of cheque bearing no. 625095 dated 01.09.2012 at the time of booking the apartment/flat.

8. The complainant submitted that the respondent raised the demands of money, accordingly the complainant had paid the amount as demanded by the respondent time to time. The respondent has not completed the construction/finishing work in the above said project in which the apartment no. 998 on 9th floor, block/tower 'IRIS' having a carpet area of approx. 48 sq. mtrs. with an exclusive right to use of one (covered/open) car parking space.
9. The complainant submitted that after taking the money, the respondent has failed to deliver the possession as per the terms and conditions of the buyer's agreement clause no. 3 that the possession of the said apartment was to be delivered by the seller to the purchaser within 36 months from the date of execution of the agreement/construction. Despite the

elapse of the grace of 6 months, the respondent has failed to deliver the possession to the complainant till date.

10. The complainant submitted that the basic sale price of the above said unit is Rs. 16,00,000/- and the complainant has paid an amount of Rs. 14,20,608/- through cheques and demand drafts to the respondent and in this regard the respondent has issued the acknowledgment/ receipts.
11. The complainant submitted that it was at this stage that the complainant again contacted the representatives of the respondent to find out status of flat handing over. The complainant sought information on the tentative timeline for possession by way of a clear and firm assurance by the respondent that they shall complete the project on time. Much to their dismay, the respondent refused to provide any such assurance.
12. The complainant submitted that only the rough structure is standing there and no more progress has been done till date. It is apparent that the respondent has provided deficient services is guilty of unfair trade practices, and has planned to fleece the complainant of her hard-earned money in a well-

directed and pre-planned manner. On the other hand, she is suffering additional loss because of blocked capital of a very heavy amount for no fault of her own.

13. The complainant submitted that the actions of the respondent are violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust and illegal as have been shown in the preceding paragraphs. The said practices are against the tenants of ethical business and are liable to be severely deprecated by this hon'ble authority.
14. The complainant submitted that the respondent has caused monetary losses to the complainant and has denied them the right to enjoy the property for which they have already paid major amount. Even more damaging they have caused immense mental agony, confusion, insecurity and pain to the complainant.
15. The complainant submitted that the complainant has also further incurred costs towards the legal/ documentation and other expenses due to no fault of their own.
16. The complainant submitted that the respondent is guilty of deficiency in service as per Act. The complainant has suffered

on account of deficiency in service by the respondent. The complainant is fully entitled to take the possession of the booked flat from the respondent company, as such the respondent is fully liable to deliver the possession of the flat to the complainant with penalty amount.

Issues raised by the complainants:

17. The following relevant issues are raised by the complainant:

- i. Whether the respondent has violated the terms and conditions of the buyer's agreement dated 06-03-2013?
- ii. Whether the petitioner/complainant is entitled for possession of the Flat?

Relief sought:

18. The complainant is seeking the following relief:

- (I) Direct the respondent company/its officials to deliver the physical possession of the apartment no. 998 on 9th floor, block/tower 'IRIS' having a carpet area of approx. 48 sq. mtrs. with an exclusive right to use of one (covered/open) car parking space, in the said project.

(II) Direct the respondent company/its officials to pay the penalty amount of delayed possession to the complainant regarding the above flat.

Respondent's reply

18. The respondent submitted that the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully.
19. The respondent submitted that the reliefs prayed for the in the case pertains only for adjudication of the compensation, therefore, this hon'ble authority lacks jurisdiction in the present matter and only the adjudicating officer appointed under section 71 of the said Act is empowered for the same and hence the present complaint filed under rule 28 being non maintainable is liable to be rejected/dismissed right-away.
20. The respondent submitted that the complainant is estopped to file the present complaint due to her own acts and conduct. The plan chosen and terms agreed between the parties are very much binding on the applicant. The failure to pay the due amounts in a timely manner by so many of the allottees including the complainant have led to multiple problems and extra costs on the respondent leading to further delays.



21. The respondent submitted that it is very well committed to the development of the real estate project and the delay being occasioned for delivering the possession of the project is only because of explainable and extendable as per clause 3(b)(i) and (ii) of the apartment buyer's agreement and is due to causes beyond the control of the respondent, therefore the complainant is estopped from filing the present complaint.
22. The respondent submitted that firstly, on grant of license bearing no. 13 of 2012 dated 22.02.2012, the respondent applied for all other relevant permissions and could secure the BRRII for sanction of building plans only on 7.05.2013 and the consent to establish by the office of HSPCB, Panchkula was only granted on 2.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016, the respondent is seeking the renewal of the license from the Office of DGTCP, Haryana and finally the same has now been received on 26.04.2019 and the respondent is duty bound to deliver the possession of the project within the permissible time.
23. The respondent further submitted that the provisions of Real Estate (Regulation and Development) Act, 2016 came into



force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13 of 2012, the same got dismissed vide orders dated 19.01.2018 leading to further operational obstacles and restrictions of funds in completion of the project.

24. The respondent submitted that since then the respondent is hard trying to avail all the approvals, permissions and sanctions from the relevant authorities. The approvals and license be granted in time the respondent, given the speed and efficiency of construction would have duly completed the project within the permissible time period. The respondent submitted that it is the respondent who is suffering due to the delay that is being occasioned and has to face extra charges and costs and expenses in getting all the above permissions renewed.

25. The respondent submitted that as per clause 3 of the apartment buyer's agreement executed with the complainant, it was agreed between the parties that the respondent shall hand over the possession of the apartment within 36 months with a grace period of six months from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plan/revised building plan and approval of all



concerned authorities including the fire service department, similar vision department, traffic department, pollution control department etc., as may be required for commencing carrying on and completing the said complex subject to force majeure, restraints of restrictions from any code/authorities. Further as per clause 3(b) of the agreement, it was agreed between the parties that the date of the possession shall get extended in the following situation:

- i. The completion of the said low-cost/affordable group housing project including the apartment is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or, lock out or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of god or due to circumstances beyond the power and control of the developer or due to any act, notice, order, rule or modification of the government and/or any other public or competent authority or due to delaying sanction of any revised building/zoning plans/grant of occupation certificate or for any other reason beyond the control of the developer, then the apartment allottees agrees that the developer

shall be entitled to extension of time for offering the possession of the said apartment.

- ii. If as a result of any law that may be passed by any legislature or rule, or regulation or order on notification that may be made and/or issued by the government or any other authority including a minuscule authority or on account of delay in sanctioning of plans or any other sanction or approval for development or issuance of occupation certificate by appropriate authorities, the developer is not in a position to hand over the possession of the apartment then the developer may, if so advised though not bound to do so at its sole discretion challenge the validity, applicability and/or efficacy of such legislation, rule, order or notification by moving the appropriate courts, tribunals and/or authorities.

26. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent cannot be penalised for the delay being occasioned. In any case the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. On the other hand, even the



respondent company due to the uncontrollable delay in the delivery of the project is suffering because it has to pay the huge fees for renewal of licenses.

27. The respondent submitted that this honourable forum does not have the subject matter jurisdiction as the respondent have not violated or contravene any of the provisions of the newly promulgated Act or the Rules made thereunder.
28. The respondent submitted that though the said project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bona fide manner and the delay occasioned had been beyond the control of the respondent, the complainant has no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

Determination of issues:

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:

29. With respect to the **issues** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement, the respondent has delayed in handing

over the possession of the said apartment. The relevant clause regarding the possession of the said unit is reproduced below:

“3(a) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities....”

The consent to establish has been granted to the respondent on 02.12.2013. Accordingly, the due date of possession was 02.06.2017 and the possession has been delayed by 2 years 3 months and 9 days till the date of decision.

Thus, the respondent has failed in handing over the possession of the subject unit as per the terms and conditions of the apartment buyer's agreement and its obligation as envisaged under section 11(4)(a) of the Act *ibid*. As the promoter has failed to fulfil its obligation as per section 11 of the Act *ibid*, the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid*, to pay interest to the complainant, at the prescribed rate i.e. 10.35%, for every month of delay till the offer of possession.

Findings of the authority

30. 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.
31. The complainant reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned under section 11 of the said Act. 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.
32. Counsel for the respondent has brought certain material facts w.r.t pendency of the renewal of licence and he stated that the delay is on the part of the concerned department. However, it was incumbent duty of the respondent/builder to get the licence renewed and keep every approval on record. No laxity can be granted to him on this pretext. As such, the

complainant is entitled for delayed possession charges till the actual delivery of possession.

33. As per clause 3 (a) of the apartment buyer's agreement dated 6.3.2013 for unit no.998, 9th floor, tower- Iris in project "Our Homes" Sector-37C, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction after receipt of all approvals i.e. 2.12.2013 + 6 months grace period which comes out to be 02.06.2017. The respondent has failed to deliver the possession of the unit in time. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.35% per annum w.e.f 02.06.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the actual offer of possession.

Decision and directions of the authority

34. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:



- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.35% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 02.06.2017 till the actual offer of possession.
- ii. The arrears of interest accrued so far shall be reimbursed to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
- iv. The promoter shall not charge any amount/charges from the complainant which is not a part of the apartment buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.35% by the promoter which is the same as is being granted to the complainant in case of delayed possession.



HARERA
GURUGRAM

Complaint no. 2031 of 2019

35. Complaint stands disposed of.
36. File be consigned to the registry.

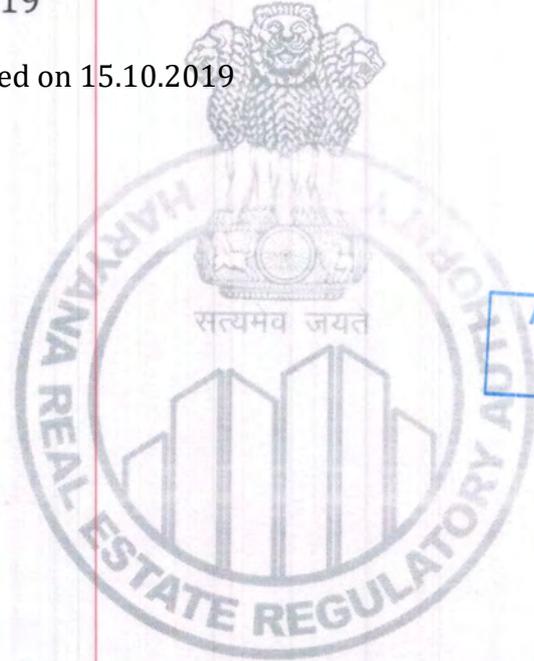

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2019

Judgement uploaded on 15.10.2019



AUTHENTICATED

GURBACHAN KAUR
LEGAL OFFICER

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