

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

Complaint No. : 636 of 2018
First date of hearing: 27.09.2018
Date of Decision : 13.12.2018

Mr. Vinay Yadav
Flat no. B-11, R.D. Apartments Plot no. 20,
Sector-6, Dwarka,
New Delhi- 110075.

Complainant

Versus

1. M/s. Selene Construction Ltd.
(through its Director)
2. M/s. India Bulls Real Estate
(through its Director)
**Office at: - 488-451, India Bulls House,
Udyog Vihar, Phase V, Gurugram- 122016.**

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Vinay Yadav Complainant in person
Shri Randhir Singh Advocate for the complainant
Shri Rahul Yadav Advocate for the respondent

ORDER

1. A complaint dated 01.08.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Vinay Yadav, against the promoter, M/s Selene Construction Pvt. Ltd., on account of violation of the clause 10.1 of the flat



buyer's agreement executed on 27.12.2010 in respect of flat/unit no. K3- 014, 1st floor, block/tower K3, admeasuring 1,900 sq. ft. super area, in the project 'Indiabulls centrum park' for not handing over possession on the due date i.e. 27.06.2014 which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 21.12.2010 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: -

1.	Name and location of the project	"Indiabulls centrum park", sector 103, Gurugram.
2.	Nature of real estate project	Residential complex
3.	DTCP license no.	252/2007, 50 of 2011 and 63 of 2012 dated 19.6.2012
4.	Flat/unit no.	14 on 1 st floor, block/tower 'K3'





5.	Apartment measuring	1,900 sq. ft. super area
6.	RERA registered/ unregistered.	Registered vide no. 10 of 2018 for phase I and 11 of 2018 for phase II
7.	Booking date	07.10.2010
8.	Date of execution of flat buyer's agreement	27.12.2010
9.	Payment plan	Construction linked payment plan
10.	Total consideration	Rs.68,13,500/-
11.	Total amount paid by the complainant as per SOA	Rs.51,93,633/-
12.	Percentage of consideration amount	89% approx.
13.	Due date of delivery of possession as per clause 10.1 of flat buyer's agreement dt. 27.12.2010 (3 years + 6 months' grace period from the date of execution of agreement)	27.06.2014
14.	Delay in handing over possession till date	4 years and 6 months
15.	Penalty clause as per flat buyer's agreement dated 27.12.2010	Clause 10.2 of the agreement i.e. Rs.5/- per sq. ft per month of the super area.
16.	Revised date of delivery of possession as per RERA certificate	31.07.2018 for phase I and 31.10.2018 for phase II
17.	Date of receipt of OC	23.07.2018



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. A flat buyer's agreement dated 27.12.2010 is available on record for the aforesaid flat no. 14 ,1st floor in tower K3 of the project, according to which the possession of the same was to be delivered by

27.06.2014. Neither the respondent has delivered the possession of the said unit/flat till now to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of such delay as per clause 10.2 of flat buyer's agreement dated 27.12.2010s. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent's counsel appeared on 13.12.2018. The case came up for hearing on 27.09.2018 and 13.12.2018. The reply filed by the respondent on 27.09.2018 which has been perused. The respondent has supplied the details and status of the project along with the reply.

Facts of the complaint

6. Briefly stated, the facts relevant for the disposal of the present complaint are that on 07.10.2010, complainant booked a residential flat in the project of the respondent namely, "Indiabulls centrum park" at sector-103, Gurugram.



7. The complainant submitted that pursuant to the aforesaid booking of the flat, respondent allotted apartment/flat no. K3 014 on 1st floor, tower K3 of the project in favour of the complainant. A flat buyer's agreement for the allotted flat was executed on 27.12.2010. As per clause 10.1 of the agreement, possession of the flat was to be delivered within 36 months plus 6 months grace period from the date of execution of the agreement i.e. by 27.06.2014.
8. The complainant stated that he has paid a total sum of Rs. 51,93,633/- towards the aforesaid residential flat in the project as and when demanded by the respondent under the construction linked payment plan as against the total consideration of Rs. 68,13,500/-.
9. It was alleged by the complainant that the respondent has failed to complete the construction and deliver the possession till date despite repeated reminders from the complainant.
10. It was further alleged by the complainant that the respondent from 2013 kept on revising the date of delivery of possession and failed to pay any heed to complainant request vide legal





notice dated 08.03.2018, where he sought possession with interest for delay. Rather, the respondent has served another demand notice dated 07.06.2018 demanding a sum of Rs.15,30,313/- ignoring the fact that no construction activity was carried out.

11. Being aggrieved by the alleged conduct of the respondent, the complainant has filed the instant complaint.

12. **Issues to be decided:**

Whether the builder did not handover the possession of the flat as per the agreement?

13. **Reliefs sought:**

The complainant is seeking the following relief:

- i. Direct the respondent to deliver the possession of the subject flat.
- ii. Direct the respondent to pay interest on the amount paid by the complainant towards the cost of the flat from the date of payment till actual delivery of possession.
- iii. Direct the respondent to pay rent of Rs. 20,000/- from the date of possession till actual delivery of possession.



notice dated 08.03.2018, where he sought possession with interest for delay. Rather, the respondent has served another demand notice dated 07.06.2018 demanding a sum of Rs.15,30,313/- ignoring the fact that no construction activity was carried out.

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- i. Direct the respondent to deliver the possession of the subject flat.
- ii. Direct the respondent to pay interest on the amount paid by the complainant towards the cost of the flat from the date of payment till actual delivery of possession.
- iii. Direct the respondent to pay rent of Rs. ~~2,000/-~~^{20,000/-} from the date of possession till actual delivery of possession.

Corrected vide order
dated 18/11/19. Page 6 of 14



Respondent's reply

14. The respondent submitted the fact that the instant complaint is not maintainable, on facts of law, and is as such liable to be dismissed at the threshold being in wrong provisions of the law. The present complaint is devoid of any merits and had been preferred with sole motive to harass the respondent.
15. The respondent submitted that the present complaint filed by the complainant is outside the purview of authority. As per clause 25 of the flat buyer's agreement dated 27.12.2010, all the disputes pertaining to the booking of the subject flat should be settled through arbitration only. Hence, the present complaint is liable to be dismissed on this ground alone.
16. The respondent contended that the complainant did not approach the hon'ble authority with clean hands and suppressed the material fact that he was a wilful defaulter and did not pay the instalments as per the construction linked payment plan.
17. The respondent submitted that they have already completed construction of the tower K3 and have also obtained



occupation certificate on 23.7.2018 and now are under process of handing over the possession of the unit(s) including the unit in question of the complainant.

18. The respondent further submitted that delay in delivery of possession was due to various reasons which are beyond the control of the answering respondent which includes problem of labour/raw material and government restrictions including NGT which imposed a ban on carrying out constructions in Delhi/NCR for several months.
19. The allegations made in the instant complaint are wrong, incorrect and baseless in the fact of law.

Determination of issues:

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

- i. With respect to the **core issue** raised by the complainant the authority came across that as per clause 10.1 of flat buyer's agreement, the possession of the flat was to be handed over within 3 years plus 6 months' grace period



from the date of execution of agreement which is taken as 27.12.2010. Accordingly, the due date of possession was 27.06.2014 and the possession has been delayed by 4 years and 6 months till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said flat as per clause 10.2 of flat buyer's agreement is held to be very nominal and unjust. 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), wherein 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."

As the possession of the flat was to be delivered by 27.06.2014 as per the clause referred above, the authority is



of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. Hence, the respondent is liable to pay interest to the complainant, at the prescribed rate for every month of delay till the handing over of possession.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

21. 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.
22. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

23. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

24. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a



consumer. This view has been upheld by the Supreme Court - in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

25. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the subject unit to the complainant by the committed date and the possession has been delayed more than 4 years. Thus, the complainant is entitled to interest at prescribed rate of 10.75% p.a. for every month of delay till the handing over of the possession Further, the respondent has submitted in their reply that the construction of the project is completed and they have already received the Occupation Certificate dated 23.7.2018 for tower K3 where the complainant's flat is located.



Decision and directions of the authority

26. 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 delayed possession charges at the prescribed rate of interest i.e. 10.75% p.a. on the paid up amount of the complainant, for every month of delay from the due date of possession i.e. 27.06.2014 till the actual date of offer of the possession.
- (ii) The respondent is further directed to pay cumulative accrued interest @ 10.75% p.a. from 27.06.2014 to 13.12.2018 amounting to Rs. 24,93,299.57/- for delay in handing over of possession which shall be paid to the complainant within 90 days.
- (iii) Thereafter, the subsequent monthly interest so accrues @ 10.75% p.a. amounting to Rs.



46,526.30/- shall be paid by the respondent by the
10th of every succeeding month.


27. The order is pronounced.

28. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: -

Corrected judgement uploaded on 26.11.2019



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2. Since, the flat buyer's agreement has been executed on 21.12.2010 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.

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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. A flat buyer's agreement dated 27.12.2010 is available on record for the aforesaid flat no. 14 ,1st floor in tower K3 of the project, according to which the possession of the same was to be delivered by



27.06.2014. Neither the respondent has delivered the possession of the said unit/flat till now to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft. per month of the super area of the said flat for the period of such delay as per clause 10.2 of flat buyer's agreement dated 27.12.2010s. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent's counsel appeared on 13.12.2018. The case came up for hearing on 27.09.2018 and 13.12.2018. The reply filed by the respondent on 27.09.2018 which has been perused. The respondent has supplied the details and status of the project along with the reply.

Facts of the complaint

6. Briefly stated, the facts relevant for the disposal of the present complaint are that on 07.10.2010, complainant booked a residential flat in the project of the respondent namely, "Indiabulls centrum park" at sector-103, Gurugram.



7. The complainant submitted that pursuant to the aforesaid booking of the flat, respondent allotted apartment/flat no. K3 014 on 1st floor, tower K3 of the project in favour of the complainant. A flat buyer's agreement for the allotted flat was executed on 27.12.2010. As per clause 10.1 of the agreement, possession of the flat was to be delivered within 36 months plus 6 months grace period from the date of execution of the agreement i.e. by 27.06.2014.
8. The complainant stated that he has paid a total sum of Rs. 51,93,633/- towards the aforesaid residential flat in the project as and when demanded by the respondent under the construction linked payment plan as against the total consideration of Rs. 68,13,500/-.
9. It was alleged by the complainant that the respondent has failed to complete the construction and deliver the possession till date despite repeated reminders from the complainant.
10. It was further alleged by the complainant that the respondent from 2013 kept on revising the date of delivery of possession and failed to pay any heed to complainant request vide legal



notice dated 08.03.2018, where he sought possession with interest for delay. Rather, the respondent has served another demand notice dated 07.06.2018 demanding a sum of Rs.15,30,313/- ignoring the fact that no construction activity was carried out.

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12. **Issues to be decided:**

Whether the builder did not handover the possession of the flat as per the agreement?

13. **Reliefs sought:**

The complainant is seeking the following relief:

- i. Direct the respondent to deliver the possession of the subject flat.
- ii. Direct the respondent to pay interest on the amount paid by the complainant towards the cost of the flat from the date of payment till actual delivery of possession.
- iii. Direct the respondent to pay rent of Rs. 20,000/- from the date of possession till actual delivery of possession.



Respondent no. 1's reply:-

14. The respondent submitted the fact that the instant complaint is not maintainable, on facts of law, and is as such liable to be dismissed at the threshold being in wrong provisions of the law. The present complaint is devoid of any merits and had been preferred with sole motive to harass the respondent.
15. The respondent submitted that the present complaint filed by the complainant is outside the purview of authority. As per clause 25 of the flat buyer's agreement dated 27.12.2010, all the disputes pertaining to the booking of the subject flat should be settled through arbitration only. Hence, the present complaint is liable to be dismissed on this ground alone.
16. The respondent contended that the complainant did not approach the hon'ble authority with clean hands and suppressed the material fact that he was a wilful defaulter and did not pay the instalments as per the construction linked payment plan.
17. The respondent submitted that they have already completed construction of the tower K3 and have also obtained occupation certificate on 23.7.2018 and now are under



process of handing over the possession of the unit(s) including the unit in question of the complainant.

18. The respondent further submitted that delay in delivery of possession was due to various reasons which are beyond the control of the answering respondent which includes problem of labour/raw material and government restrictions including NGT which imposed a ban on carrying out constructions in Delhi/NCR for several months.

19. The allegations made in the instant complaint are wrong, incorrect and baseless in the fact of law.

Determination of issues:

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

- i. With respect to the **core issue** raised by the complainant the authority came across that as per clause 10.1 of flat buyer's agreement, the possession of the flat was to be handed over within 3 years plus 6 months' grace period from the date of execution of agreement which is taken as 27.12.2010. Accordingly, the due date of possession



was 27.06.2014 and the possession has been delayed by 4 years and 6 months till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said flat as per clause 10.2 of flat buyer's agreement is held to be very nominal and unjust. 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), wherein 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."

As the possession of the flat was to be delivered by 27.06.2014 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. Hence, the



respondent is liable to pay interest to the complainant, at the prescribed rate for every month of delay till the handing over of possession.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

21. 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.

22. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.

23. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

24. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court - in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by



the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

25. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the subject unit to the complainant by the committed date and the possession has been delayed more than 4 years. Thus, the complainant is entitled to interest at prescribed rate of 10.75% p.a. for every month of delay till the handing over of the possession Further, the respondent has submitted in their reply that the construction of the project is completed and they have already received the Occupation Certificate dated 23.7.2018 for tower K3 where the complainant's flat is located.



Decision and directions of the authority

26. 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 delayed possession charges at the prescribed rate of interest i.e. 10.75% p.a. on the paid up amount of the complainant, for every month of delay from the due date of possession i.e. 27.06.2014 till the actual date of offer of the possession.
- (ii) The respondent is further directed to pay cumulative accrued interest @ 10.75% p.a. from 27.06.2014 to 13.12.2018 amounting to Rs. 24,93,299.57/- for delay in handing over of possession which shall be paid to the complainant within 90 days.
- (iii) Thereafter, the subsequent monthly interest so accrues @ 10.75% p.a. amounting to Rs. 46,526.30/- shall be paid by the respondent by the 10th of every succeeding month.



27. The order is pronounced.

28. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: -

Judgement uploaded on 25.04.2019



HARERA
GURUGRAM

