



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 10.12.2019
Complaint No.	CR/5035/2019 Case titled as Somnath Vs Anant Raj Ltd
Complainant	Somnath
Represented through	Mr Abhay Jain, Adv
Respondent	Anant Raj Ltd
Respondent Represented through	Mr Rohit Aggarwal, Adv
Last date of hearing	First
Proceeding Recorded by	Naresh Kumari/S.L.Chanana

Proceedings

Arguments heard.

As per clause 7.1. of the BBA dated 03.08.2012 executed between the parties, the respondent was duty bound to deliver the possession of the allotted unit to the complainant within a period of 36 months plus six month as grace period which comes out to be 03.02.2016.

Respondent has received occupation certificate on 07.06.2019 and offered the possession of the allotted unit to the complainant on 30.06.2019.

As such, the complainant is entitled for delayed possession charges w.e.f. 03.02.2016 to 30.06.2019 at the prescribed rate of interest i.e. 10.20.% p.a.

The complainant is directed to take over the possession of the unit within a period of 30 days by making the requisite payments to the respondent failing which the respondent shall be entitled to charge holding charges. Respondent is directed not to charge more than 5% (+-) of the super area from the complainant.

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

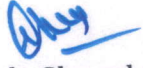
Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

The promoter shall not charge anything from the complainant which is not part of the BBA.

Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.20% p. a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

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

**Complaint no. : 5035 of
2019**
Date of first hearing: 10.12.2019
Date of decision : 10.12.2019

Som Nath
House no. 884, Sector - 4, Gurugram-122001,
Haryana

Complainant

Versus

M/s Anant Raj Industries Limited
Registered Office:- CP-1, Sector 9, IMT
Manesar, Haryana-122051.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Mr. Abhay Jain
Mr. Rohit Aggarwal

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 28.11.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) by the complainant Som Nath against the promoter M/s Anant Raj Industries Ltd., on account of violation of clause 7.1 of apartment buyer's agreement (ABA, in short) executed on 03.08.2012, in respect of flat bearing no. K-503, 5th floor,

tower -K with super area of 1285 sq. ft. in the project "Maceo" at Sector 91, Gurugram for not handing over the possession by the due date which is an obligation on the promoter under section 11(4)(a) of the Act.

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

1.	Name and location of the project	"Maceo", Sector-91, Gurugram
2.	Nature of the project	Group housing colony
3.	RERA registered/ not registered	Registered vide no. 63 of 2017 dated 18.08.2017
4.	RERA registration valid up to	17.08.2019
5.	Project area	15.575 acres
6.	DTCP license no.	71 of 2008 dated 25.03.2008
7.	Apartment/unit no.	503, 5 th floor, tower K
8.	Payment plan annexed with the said agreement dated 03.08.2012	Construction linked payment plan (page 84 of complaint)
9.	Area of the allotted apartment	1285sq. ft.
10.	Date of apartment buyer's agreement	03.08.2012 (page 31 of complaint)
11.	Total consideration as per statement of account dated 29.06.2019 at page no. 91 of complaint	Rs.45,64,139 /-
12.	Total amount paid by the complainant	Rs. 43,05,202/- (Page 90 of the complaint)
13.	Due date of delivery of possession as per clause 7.1 of the said agreement- i.e. 36 months + 180 days grace period from the date of execution of agreement i.e. 03.08.2012	03.02.2016



14.	Occupation Certificate	07.06.2019
15.	Offer of Possession	30.06.2019
16.	Delay in handing over possession	3 years , 4 months, 28 days
17.	Relief Sought (in specific terms)	<p>i. To direct the respondent to pay the prescribed interest on the entire amount paid by the complainants from the date of respective deposits till the date of possession.</p> <p>ii. Direct the respondent to deliver immediate possession of the unit.</p>

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's agreement dated 03.08.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 03.02.2016. The respondent has failed to fulfil its contractual obligation by neither delivering the possession within the stipulated period nor paying the compensation as per the terms of the agreement dated 03.08.2012.

4. The possession was offered to the complainants on 30.06.2019. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the buyer's

agreement and failed to offer the possession in terms of section 18 of the Act read with the Rules. Hence, this complaint for the aforementioned reliefs.

5. On the date of hearing the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. The respondent contests the complaint inter alia on the grounds mentioned in the reply which according to him were beyond his control.

Arguments heard.

7. As per clause 7.1. of the apartment buyer's agreement dated 03.08.2012 executed between the parties, the respondent was duty bound to deliver the possession of the allotted unit to the complainant within a period of 36 months plus six months as grace period which comes out to be 03.02.2016.
8. Respondent has received occupation certificate on 07.06.2019 and offered the possession of the allotted unit to the complainant on 30.06.2019. However, the respondent has put the entire blame on the complainant-allottee by pleading that it is the complainant who has made violation of the terms of the buyer's agreement by not making timely scheduled

payments of the sale consideration amount in time.

Respondent has also made a futile attempt to take recourse to force majeure clause.

9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
10. The Authority on the basis of information and explanation and other submissions made and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.
11. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
12. On consideration of the circumstances, the evidence and other record and submissions made by both the complainant and respondent and based on the findings of the authority

regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 7.1 of the apartment buyer's agreement executed between the parties on 03.08.2012, possession of the booked unit was to be delivered within a period of 36 months with 180 days grace period from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 03.02.2016. The respondent has offered possession of the subject unit to the complainants on 30.06.2019. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 03.08.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.

13. As such the complainants are entitled for delayed possession charges w.e.f. 03.02.2016 to 30.06.2019 at the prescribed rate of interest i.e. 10.20.% p.a. as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

14. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.20% per annum w.e.f. 03.02.2016 to 30.06.2019 as per the proviso to section 18(1) of the Real Estate (Regulation & Development) Act, 2016 read with rule 15 of the rules.
- ii. The complainant is directed to take over the possession of the unit within a period of 30 days by making the requisite payments to the respondent failing which the respondent shall be entitled to charge holding charges. Respondent is directed not to charge more than 5% (+_) of the super area from the complainant.
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.20% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- v. The promoter shall not charge anything from the complainant which is not part of the apartment buyer's agreement.

15. Complaint stands disposed off

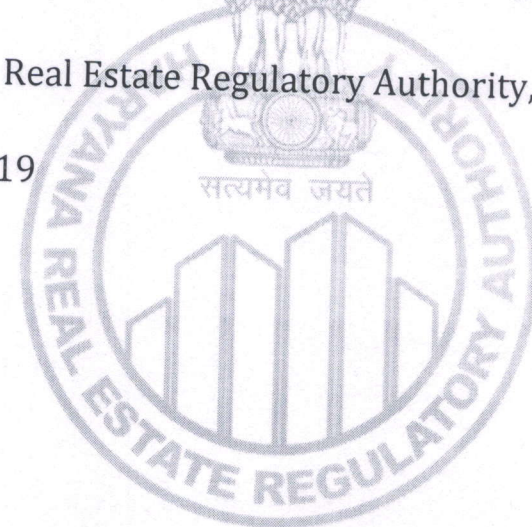
16. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:10.12.2019



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