



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	Wednesday 27.06.18
Complaint No.	18/2018 case titled as Mr. Ramavta Maheshwari V/s Apex Buildwell Pvt. Ltd.
Complainant	Mr. Ramavta Maheshwari
Represented through	Shri Sushil Yadav, Advocate for the Complainant
Respondent	Apex Buildwell Pvt. Ltd.
Respondent Represented through	None on behalf of the Respondent.

Proceedings


The counsel for the complainant made a statement that he is not appearing before the Authority for compensation but for fulfilment on the obligations by the promoter as per The Real Estate (Regulation & Development) Act, 2016 for which he will be giving application.

The counsel of the complainant appeared on his behalf argued that the respondent has already given the possession of the unit to the complainant. However, the complainant is entitled to the interest on the delayed possession. The request of the complainant is acceded. The respondent is directed to pay the interest on prescribed rate to the complainant from the due date of possession till the actual date of possession for every month on account of delay under Section 18(1) of The Real Estate (Regulation & Development) Act, 2016.

The detailed order will follow.


Samir Kumar
(Member)

Subhash Chander Kush
(Member)


Dr. K.K. Khandelwal
(Chairman)
27.06.2018

B.K

94/3-7-18

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

Complaint No. : 18 of 2018
Date of Institution : 28.02.2018
Date of Decision : 27.06.2018

1. Ramavtar Maheshwari R/o Kusum Kunj,
Kothi No. 1222, Sector 15 Part II, Gurugram

...Complainant

Versus

1. M/s Apex Buildwell Pvt. Ltd.
Marketing Office Plot No. 25B, Sector 32,
Gurugram

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Sushil Yadav
None appeared (ex-parte)

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 28.02.2018 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. Ramavtar Maheshwari)



against the promoter (M/s Apex Buildwell Pvt. Ltd.) on account of violation of Clause 3(a) of the builder-buyer agreement executed on 11.06.2013 for the apartment as described below for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

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

1.	Name and location of the project	Our Homes, Sector 37C, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	1087, Tower -IRIS
3.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 164994/-
4.	Total consideration amount as per agreement dated 11.06.2013	Rs. 16,00,000/-
5.	Total amount paid by the complainant upto date	Rs. 15,67,210/-
6.	Percentage of consideration amount	95%
7.	Date of delivery of possession.	36 months + 6 months i.e. 11.12.2016
8.	Delay of number of months/ years upto 04.05.2018	1 year 4 months approx.
9.	Penalty Clause as per builder buyer agreement dated 11.06.2013	Clause 3© (iv) Rs. 10/- per sq. ft. of the carpet area per month
10.	Cause of delay in delivery of possession	Non-availability of Construction material/civil commotion/ enemy action/ Vis Major



3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for Apartment No. 1087, Block/ Tower IRIS according to which the possession of the aforesaid unit was to be delivered by December 2016. The promoter has failed to deliver the possession of the said unit to the complainant by the due date nor has paid any compensation i.e. @ Rs. 10 per Sq. ft of the carpet area of the said unit per month for the period of the such delay as per builder buyer agreement dated 11.06.2013. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 11.04.2018. The case came up for hearing on 11.04.2018, 25.04.2018, 15.05.2018, 07.06.2018 & 27.06.2018. The reply has been filed on behalf of the respondent before the court on 25.04.2018. The respondent contended that the delay in delivery of possession was due to reasons out of their control and that parties are bound by the terms and conditions of the contract.
6. As per clause 3 of the builder-buyer agreement, the Company proposed to hand over the possession of the said unit by December 2016 including grace period. The clause regarding possession of the said unit is reproduced below:



"3. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all the provisions, formalities, registration of the sale deed, documentation, payment of all amount due and payable to the developer by the Apartment Allottee under this agreement as prescribed by the developer, the developer proposes to hand over the possession of the apartment within a period of 36 months, with a grace period of 6 months from the date of commencement of construction of the complex upon the receipt of all the project related approvals.....

Accordingly, the due date of possession was December 2016 (including grace period). As far as the penalty clause in case of delay in possession is concerned which is Rs. 10/sq. ft. of the carpet area per month, it is held to be one sided as also held in para 181 of the judgment in **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."



7. As the possession of the flat was to be delivered by December 2016 (including grace period) as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

8. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:



"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."



It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

9. As per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the complainant, interest at the prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled his obligation.

Section 18(1) is reproduced below:

"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of



delay, till the handing over of the possession, at such rate as may be prescribed.

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

10. 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.

11. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016, hereby issue directions to the respondent to pay interest at the prescribed rate of interest for every month of delay i.e. from due date of possession till the handing over of possession as per Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 which provides that interest payable shall be the State Bank of India highest marginal cost of lending rate plus two percent i.e. 10.15% p.a.



12. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that

separate proceeding will be initiated against the respondent u/s
59 of the Act.

13. The order is pronounced.


14. Case file be consigned to the registry.




(Samir Kumar)
Member

HARERA
GURUGRAM


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

