



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	Thursday 07.06.18
Complaint No.	20/2018 case titled as Pushpa Sodhani Vs. M/s Athena Infrasturcture Ltd.
Complainant	Pushpa Sodhani
Represented through	Shri Satish Sodhani on behalf of the Complainant with Shri Vaibhav Suri, Advocate
Respondent	M/s Athena Infrasturcture Ltd.
Respondent Represented through	Shri Manmohan Dang, Advocate on behalf of the respondent.

Proceedings

The Learned Counsel for the Respondent has filed written submission today. The agreement was executed on 26.03.2012 and as per Clause-21 of the Agreement the possession was to be handed over to the allottee in 36 plus 6 months i.e. upto 26.09.2015 which was agreed by both the respondent as well the complainant. Now, the project is nearly completion and at this stage it will not be proper to allow allottee to withdraw from the project.

The counsel for the respondent stated that they will be able to give possession within next five months and they have already applied for the Occupation Certificate for the portion where the apartment of the allottee is situated. As per Section-18 of The Real Estate (Regulation & Development) Act, 2016, it is the obligation of the promoter to pay interest for every month of delay till handing over of the possession at the prescribed rate from the date possession was to be given as per the terms of Agreement for Sale.

The matter regarding compensation, if any, be brought before the Adjudicating Officer, ~~to~~ The request of compensation is declined by the Authority for want of jurisdiction.

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

CA.
[Signature]



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

Complainant is directed to file an account statement about how much amount he has paid, how much amount is to be payable and interest accrued on the delayed payment so that these charges would be adjusted at the time of possession. The order is pronounced.

The complaint is disposed of accordingly. File be consigned to the Registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)


Dr. K.K. Khandelwal
(Chairman)
07.06.2018

B.K

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

Complaint No. : 20 of 2018
Date of Institution : 28.02.2018
Date of Decision : 07.06.2018

Mrs. Pushpa Sodhani, R/o S-79, Greater Kailash-2, New Delhi-110048 **Complainant**

Versus

M/s Athena Infrastructure Ltd., M-62&63 First Floor, Connaught Place, New Delhi- 110001 **Respondent**

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Satish Sodhani on behalf of complainant with Shri Vaibhav Suri, Advocate
Shri Manmohan Dang 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 (Mrs. Pushpa Sodhani) against promoter (M/s Athena Infrastructure Ltd.) on account of violation of clause 21 of buyer's agreement executed on 26.03.2012 for unit no. 1022, 2nd floor, block no. 1



in project "Indiabulls Enigma" for not giving possession on the due date which is an obligation 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	Indiabulls Enigma, Sector - 110, Gurugram
2.	Unit No.	1022, block I
3.	Registered/Un-registered	Registered
4.	HRERA Registration no.	351 of 2017
5.	Booking amount paid by the buyer to the promoter via agreement dated 26.03.2012	Rs. 5,00,000/-
6.	Total consideration amount as per agreement dated 26.03.2012	Rs. 2,45,48,750/-
7.	Total amount paid by the complainant	Rs. 2,39,86,134/-
8.	Percentage of consideration amount	Approx. 97.7%
9.	Date of delivery of possession from the date of the execution of the builder buyer agreement	3 years (with grace period of 6 months) i.e. 26.09.2015
10.	Delay for number of months/ years upto date 07.06.2018	3 years 4 months 1 day
11.	Penalty Clause as per builder buyer agreement	Clause 22 i.e. Rs.5/- per square ft of super area
12.	Cause of delay in delivery of possession	The delay in completion and offering of possession of



	the flat is due to defaults committed by other allottees in making payments of their instalments.
--	---

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 the aforementioned apartment according to which the possession of the same was to be delivered by 26.09.2015(with 6 months grace period). Whereas, the respondent company has not delivered the possession to the complainant till 07.06.2018. Therefore, the promoter has not fulfilled his committed liability as on date. Neither he has delivered the possession of the said unit as on date to the purchaser nor has paid any compensation i.e. @ Rs. 5 Sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 26.03.2012.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance before the Authority. The respondent appeared on 11.04.2018. Subsequently, the case came up for hearing on 24.04.2018,



15.05.2018 & 07.06.2018. The reply has been filed on behalf of the respondent which has been perused and found to be vague and evasive as it has been contended that they have not unjustifiably delayed the construction and development of the project. The reason of delay in fulfilling their obligation as per builder buyer agreement is due to non-timely payment of instalments made by other allottees. It has been further contended that the parties are bound by the terms and conditions of the agreement. The complainant filed the rejoinder to rebut the reply filed by the respondent in which the complainants reaffirmed the contentions given in the complaint.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The counsel for the complainant argued before the court that the delay in completion of the project is solely attributable to the respondent and they cannot run away from their obligations by alleging default on the part of other innocent allottees. The counsel further submits that "time is the essence of contract" and delay in construction is totally attributable to the careless and irresponsible conduct of the respondent.

The learned counsel for the respondent has made a statement before the authority that they will be able to give possession





within the next five months and that they have already applied for the Occupation Certificate for the portion which is the subject matter in issue in the present case.

7. As per the agreement for sale, clause no. 21, the possession of the flat was to be handed over within 3 years (with 6 months grace period thereon) from the date of execution of the builder buyer agreement. The clause regarding the possession of the said flat is reproduced below:

"21. The developer shall endeavour to complete the construction of the said building/unit within a period of 3 years, with a six months grace period thereon from the date of execution of the flat buyers agreement subject to timely payment by the buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer. The developer on completion of the construction/development shall issue final call notice to the buyer, who shall within 60 days thereof, remit all dues and take possession of the unit. In the even of his/her failure to take possession of the unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/cost and any other levies on account of the allotted unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the buyer has not taken possession of the unit or has not been enjoying benefit of the same. The buyer in such an eventuality shall also be liable to pay the holding charges @Rs. 5 per sq.ft. (of the super area) per month to the developer, from the date of expiry of said thirty days till the time possession is actually taken over by the buyer.



Accordingly, the due date of possession was 26.09.2015. As far as the terms of the builder buyer agreement are concerned, they have been drafted mischievously 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."

8. As the possession of the flat was to be delivered by 26.09.2015 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."

9. The complainant has 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.



10. Keeping in view the present status of the project and intervening circumstances, the complainant wishes to continue with the project and as per proviso to section 18(1) of the Act, 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 handing over of the possession, at such rate as may be prescribed. Complainant reserves her right to seek compensation from the promoter for which he/she shall make separate application to the adjudicating officer, if required. Section 18(1) is reproduced below:

18 (1) Return of amount and compensation -

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.

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 give interest at the prescribed rate @ 10.15 % p.a. for every month of delay from the due date of possession on the amount deposited by the complainant.
12. 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.
13. The order is pronounced.
14. Case file be consigned to the registry.



(Samir Kumar)
Member

(Dr. K.K. Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram