

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

Complaint no. : 794 of 2018
First date of hearing: 05.02.2019
Date of decision : 05.02.2019

Mrs. Reeta Raina and Mr. Sushant Upadhyay
H.no. 1001, tower 12, Orchid Petals, Sector-47,
Sohna Road, Gurugram

Complainants

Versus

1.M/s Advance India Projects Limited
Regd. Office:2328, 4th Floor, Okhla Industrial
Estate Phase-III, New Delhi-110020,
New Delhi-110020
2.M/s Haamid Real Estate Private Limited
Regd. Office: 232 B, 4th floor, Okhla Industrial
Estate Phase-III, New Delhi-110020,
New Delhi-110020

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sumit Mehta
Shri Nishit Khandelwal
Shri Jasmeet Singh

Advocate for complainants
Vice President
AM- Legal on behalf of the
respondents company



ORDER

1. A complaint dated 30.08.2018 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 complainants Mrs. Reeta Raina and Mr. Sushant Upadhyay against the promoters M/s Advance India Projects Limited and M/s Haamid Real Estate Private Limited on account of violation of the clause 11(a) of the flat buyer's agreement executed on 17.05.2014 in respect of flat/no. A114, 11th floor, block/tower A, admeasuring 2925 sq. ft. super area, in the project 'The Peaceful Homes' for not handing over possession which is an obligation under section 11(4)(a) of the Act *ibid.*

2. Since, the flat buyer's agreement has been executed on 17.05.2014 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot 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	"The Peaceful Homes", Sector 70A, Gurugram
2.	Nature of real estate project	Residential group housing colony
3.	DTCP license no.	16 of 2009
4.	Apartment/unit no.	A114, 11 th floor, block/tower A
5.	Apartment measuring	2925 sq. ft. super area
6.	RERA registered/ unregistered.	Not registered
7.	Allotment letter	20.05.2013
8.	Booking date	24.11.2012
9.	Date of execution of flat buyer's agreement	17.05.2014
10.	Payment plan	Construction linked payment plan
11.	Basic sale price	Rs.1,89,36,450 /-
12.	Total sale consideration	Rs. 2,22,97,168/-
13.	Total amount paid by the complainant as per SOA	Rs.1,33,22,765/-
14.	Due date of delivery of possession as per clause 11(a) of builder buyer's agreement dated (36 months from the date of commencement of construction + 6 months' grace period) i.e. 21.04.2014	21.10.2017
15.	Delay in handing over possession	1 year 3 months and 15 days
16.	Penalty clause as per flat buyer's agreement	Clause 14 of the agreement i.e. Rs.5/- per sq. ft per month of the super area (delay upto 6 months)





		Delay between 6 and 12 months than Rs.7.50/- sq. ft. Delay beyond 12 months from end of grace period Rs.10/- sq. ft.
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4. The details provided above have been checked as per the case file available on record provided by complainants and respondents. A flat buyer's agreement dated 17.05.2014 executed between both the parties is available on record.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents counsel appeared 05.02.2019. The case came up for hearing on 05.02.2019. The reply filed by the respondents has been perused.

Facts of the complaint

6. The complainants submitted that a residential unit bearing no. A114, tower A, type 4BHK + utility room, 11th floor having super area admeasuring approx. 2925 sq. ft. along with three parking spaces, situated in the project named as "Peaceful Homes" located at Sector 70A, Gurugram, Haryana was





purchased by the complainants. It is pertinent to state here that the project is being developed by respondent no. 2 which is a wholly owned subsidiary of the respondent no.1. It is further stated that the project named as "The Peaceful Homes" was and has always been projected, marketed and branded in the name of respondent no. 1.

7. That a flat buyer's agreement for the above said unit was executed on 17-05-2014. That as per the terms indicated in the flat buyer's agreement, it was specifically stated in clause 11a of the said agreement, that the respondents shall deliver the possession of the said unit within 36 months from the date of commencement of the construction and the construction on the said project had started in the year 2013 i.e. upon the excavation in April 2013.
8. That the respondents have already delayed the possession for period of more than 2 years in addition to the projected timeline, due to which the complainants have suffered humongous losses.
9. That the complainants have on numerous occasions tried to contact the above named respondents for cancellation and





refund of entire money given by the complainants but the complainants have maintained their silence for best of the reasons known to them.

10. That the complainants have also issued a legal notice to the respondents but no replies of the same has been received.

11. **Issues to be decided:**

- i. Whether the respondents have breached the flat buyer's agreement by not delivering the possession of the apartment and there is no reasonable justification for the delay?
- ii. Whether the promoters have registered itself as per RERA compliances?

12. **Relief sought:**

The complainant is seeking the following relief:

1. The complainants prays before this hon'ble authority, to kindly rely on the annexure annexed with the complaint, in grant him the following relief :-
 - a. Respondents be directed to refund the principal along with interest amount of the complainants





(principal amount Rs. 1,33,22,765/- + interest amount due @ 18% p.a. from the date of each individual payment till date Rs. 86,36,742/-)

- b. And, any other order which this hon'ble authority deems fit in the interest of justice.

Reply on behalf of respondent no.1

13. The respondent no.1 submitted that the complainants have intentionally not disclosed in the present complaint that they had previously also filled similar complaint bearing no. 86/2018 against answering respondent before the Ld. authority but the same was dismissed by the authority for want of necessary parties vide order dated 12.07.2018.
14. That the answering respondent is neither the promoter nor the developer of the project and hence answering respondent has no role to play in the present complaint. The respondent no.2 is the wholly owned subsidiary of the respondent no.1 and has independent existence of its own. Therefore, the present complaint should be dismissed against the answering respondent on the ground of mis-joinder of parties.



Reply on behalf of respondent no.2

15. The respondent submitted that the complaint is bad in law for mis-joinder of necessary parties. Respondent no.1 is neither the promoter nor the developer of the project and hence answering respondent has no role to play in the present complaint. The respondent no.2 is the wholly owned subsidiary of the respondent no.1 and has independent existence of its own. Therefore, the present complaint should be dismissed against the answering respondent on the ground of mis-joinder of parties.
16. The respondent submitted that the RERA act 2016 came into force in the state of Haryana with all sections and rules w.e.f. 28.07.2017. however, the act has penal consequences and it is established law that any penal law cannot be implemented from retrospective date meaning thereby that developers/promoters should not be punished in the old projects for the past deficiencies. In view of this answering respondent seeks extended time for completion of its project in question. Similar view has been taken by the Hon'ble Bombay High Court in its judgment and order dated





06.12.2017, passed in writ petition number 2737 of 2017
(Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.).

17. The respondent submitted that the complainants and respondent entered into the buyer's agreement dated 17.05.2014 under which as per clause no. 11, the time for completion of construction is stated to be 36 months plus grace period of 6 months. Though there is some delay, however the delay is neither deliberate nor intentional and covered under the force majeure clause for which the respondent is entitled for extension of time for completion.
18. The respondent submitted that it is a established law, that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. During the course of construction some dispute with respect to quality and delay in work on the project were raised with the civil contractor. However, the disputes got aggravated and its resolution took about 4 months time, when the dispute was settled with the contractor.



19. The respondent submitted that the project in question is at its final stage and possession of the same is awaiting occupation certificate and is likely to be handed over within few months.
20. The respondent submitted that on the request of the complainants, as they were facing difficulties in making payment, the payment plan of the complainants was changed from "construction linked" to "possession linked".
21. The respondent submitted that complainants have also played fraud by stating in the complaint that the construction of the project was started in the month of April 2013 but as a matter of fact construction of project was started in April 2014. The answering respondent had also issued letter dated 21.04.2014 in this regard to the complainants and the same is duly received by them.
22. The respondent submitted that the present complaint before the authority is not maintainable in view of the arbitration clause stipulated in the buyer's agreement dated 17.05.2014. Hence, the remedy for the complainants are before the arbitrator and not before the present authority.



Determination of issues:

23. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issues wise findings of the authority are as under:
24. In respect of the **first issue** raised by the complainants, the authority is of the view that the respondent has delayed the delivery of possession of the booked unit. This is fortified from the fact that as per clause 11(a) of the agreement dated 17.05.2014, the construction was to be completed within a period of 3 years with a grace period of six months from the date of start of the construction (construction started on 21.04.2014). The due date of possession comes out to be 21.10.2017 which has already lapsed but the possession has not been delivered till date and therefore, the respondent is liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed possession at the prescribed rate of 10.75% p.a. under the Act. Delay charges will accrue from the due date of possession i.e. 21.10.2017 till offer of possession. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the





super area of the said flat as per clause 14 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."

25. As the possession of the flat was to be delivered by 21.10.2017 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 respondents are liable to pay interest to the complainantss, at the prescribed rate for every month of delay till the ^{offer} handing over of possession.

Corrected vide order dated 28/01/2020.





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

26. In respect of the **second issue** raised by the complainants the respondents are liable to get the project registered with the authority. Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

Findings of the authority

27. The preliminary objections raised by the respondents 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 *SimmiSikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainants at a later stage.
28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

29. 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.

30. 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.

31. Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the act be issued to the respondent. Registration branch is directed to do the needful.
32. As per clause 11 (a) of the builder buyer agreement dated 17.5.2014 for unit no.A114, 11th floor, tower-A in project "The Peaceful Homes" Sector 70-A, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of construction i.e. 21.4.2014 + 6 months grace period which comes out to be 21.10.2017. However, the respondents have not delivered the unit in time for which counsel for the respondents stated that there were certain NGT orders on account of which project could not be completed in time. Counsel for respondents are directed to





submit all the papers which prove his contention so that period for which project could not be completed may be minused from completion date. The project is not registered.

33. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 21.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till handing over possession failing which the complainants are entitled to seek refund of the amount.
34. The counsel for the respondents have stated that they have applied for occupation certificate and they will deliver the flat in June 2019. In case the respondents fails to deliver the possession of the unit, complainants shall be entitled to seek refund alongwith prescribed rate of interest.
35. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.





36. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

Decision and directions of the authority

37. 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 duty bound to pay the interest at the prescribed rate i.e. 10.75%^{p.a.} for every month of delay from the due date of possession w.e.f 21.10.2017 to till ~~handing over~~^{offer of} possession failing which the complainants are entitled to seek refund of the amount.

- (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order. Thereafter, monthly payment of interest till ~~handing over~~^{offer} of possession so accrues shall be paid by 10th of every subsequent month.

Corrected vide
order dated
28/01/2020



Corrected vide order
dated 28.03.19.




(iii) Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

38. The order is pronounced.

39. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.02.2019

Corrected judgement uploaded on 29.01.2020

HARERA
GURUGRAM



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Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sumit Mehta
Shri Nishit Khandelwal
Shri Jasmeet Singh

Advocate for complainants
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ORDER

1. A complaint dated 30.08.2018 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 complainants Mrs. Reeta Raina and Mr. Sushant Upadhyay against the promoters M/s Advance India Projects Limited and M/s Haamid Real Estate Private Limited on account of violation of the clause 11(a) of the flat buyer's agreement executed on 17.05.2014 in respect of flat/no. A114, 11th floor, block/tower A, admeasuring 2925 sq. ft. super area, in the project 'The Peaceful Homes' for not handing over possession which is an obligation under section 11(4)(a) of the Act *ibid*.
2. Since, the flat buyer's agreement has been executed on 17.05.2014 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot 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	"The Peaceful Homes", Sector 70A, Gurugram
2.	Nature of real estate project	Residential group housing colony
3.	DTCP license no.	16 of 2009
4.	Apartment/unit no.	A114, 11 th floor, block/tower A
5.	Apartment measuring	2925 sq. ft. super area
6.	RERA registered/ unregistered.	Not registered
7.	Allotment letter	20.05.2013
8.	Booking date	24.11.2012
9.	Date of execution of flat buyer's agreement	17.05.2014
10.	Payment plan	Construction linked payment plan
11.	Basic sale price	Rs.1,89,36,450 /-
12.	Total sale consideration	Rs. 2,22,97,168/-
13.	Total amount paid by the complainant as per SOA	Rs.1,33,22,765/-
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15.	Delay in handing over possession	1 year 3 months and 15 days
16.	Penalty clause as per flat buyer's agreement	Clause 14 of the agreement i.e. Rs.5/- per sq. ft per month of the super area (delay upto 6 months)





		Delay between 6 and 12 months than Rs.7.50/- sq. ft. Delay beyond 12 months from end of grace period Rs.10/- sq. ft.
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4. The details provided above have been checked as per the case file available on record provided by complainants and respondents. A flat buyer's agreement dated 17.05.2014 executed between both the parties is available on record.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents counsel appeared 05.02.2019. The case came up for hearing on 05.02.2019. The reply filed by the respondents has been perused.

Facts of the complaint

6. The complainants submitted that a residential unit bearing no. A114, tower A, type 4BHK + utility room, 11th floor having super area admeasuring approx. 2925 sq. ft. along with three parking spaces, situated in the project named as "Peaceful Homes" located at Sector 70A, Gurugram, Haryana was





purchased by the complainants. It is pertinent to state here that the project is being developed by respondent no. 2 which is a wholly owned subsidiary of the respondent no.1. it is further stated that the project named as "The Peaceful Homes" was and has always been projected, marketed and branded in the name of respondent no. 1.

7. That a flat buyer's agreement for the above said unit was executed on 17-05-2014. That as per the terms indicated in the flat buyer's agreement, it was specifically stated in clause 11a of the said agreement, that the respondents shall deliver the possession of the said unit within 36 months from the date of commencement of the construction and the construction on the said project had started in the year 2013 i.e. upon the excavation in April 2013.
8. That the respondents have already delayed the possession for period of more than 2 years in addition to the projected timeline, due to which the complainants have suffered humongous losses.
9. That the complainants have on numerous occasions tried to contact the above named respondents for cancellation and



refund of entire money given by the complainants but the complainants have maintained their silence for best of the reasons known to them.

10. That the complainants have also issued a legal notice to the respondents but no replies of the same has been received.

11. Issues to be decided:

- i. Whether the respondents have breached the flat buyer's agreement by not delivering the possession of the apartment and there is no reasonable justification for the delay?
- ii. Whether the promoters have registered itself as per RERA compliances?

12. Relief sought:

The complainant is seeking the following relief:

1. The complainants prays before this hon'ble authority, to kindly rely on the annexure annexed with the complaint, in grant him the following relief :-
 - a. Respondents be directed to refund the principal along with interest amount of the complainants



(principal amount Rs. 1,33,22,765/- + interest amount due @ 18% p.a. from the date of each individual payment till date Rs. 86,36,742/-)

- b. And, any other order which this hon'ble authority deems fit in the interest of justice.

Reply on behalf of respondent no.1

13. The respondent no.1 submitted that the complainants have intentionally not disclosed in the present complaint that they had previously also filled similar complaint bearing no. 86/2018 against answering respondent before the Ld. authority but the same was dismissed by the authority for want of necessary parties vide order dated 12.07.2018.
14. That the answering respondent is neither the promoter nor the developer of the project and hence answering respondent has no role to play in the present complaint. The respondent no.2 is the wholly owned subsidiary of the respondent no.1 and has independent existence of its own. Therefore, the present complaint should be dismissed against the answering respondent on the ground of mis-joinder of parties.



Reply on behalf of respondent no.2

15. The respondent submitted that the complaint is bad in law for mis-joinder of necessary parties. Respondent no.1 is neither the promoter nor the developer of the project and hence answering respondent has no role to play in the present complaint. The respondent no.2 is the wholly owned subsidiary of the respondent no.1 and has independent existence of its own. Therefore, the present complaint should be dismissed against the answering respondent on the ground of mis-joinder of parties.
16. The respondent submitted that the RERA act 2016 came into force in the state of Haryana with all sections and rules w.e.f. 28.07.2017. however, the act has penal consequences and it is established law that any penal law cannot be implemented from retrospective date meaning thereby that developers/promoters should not be punished in the old projects for the past deficiencies. In view of this answering respondent seeks extended time for completion of its project in question. Similar view has been taken by the Hon'ble Bombay High Court in its judgment and order dated



06.12.2017, passed in writ petition number 2737 of 2017
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18. The respondent submitted that it is a established law, that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. During the course of construction some dispute with respect to quality and delay in work on the project were raised with the civil contractor. However, the disputes got aggravated and its resolution took about 4 months time, when the dispute was settled with the contractor.



19. The respondent submitted that the project in question is at its final stage and possession of the same is awaiting occupation certificate and is likely to be handed over within few months.
20. The respondent submitted that on the request of the complainants, as they were facing difficulties in making payment, the payment plan of the complainants was changed from "construction linked" to "possession linked".
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22. The respondent submitted that the present complaint before the authority is not maintainable in view of the arbitration clause stipulated in the buyer's agreement dated 17.05.2014. Hence, the remedy for the complainants are before the arbitrator and not before the present authority.



Determination of issues:

23. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issues wise findings of the authority are as under:
24. In respect of the **first issue** raised by the complainants, the authority is of the view that the respondent has delayed the delivery of possession of the booked unit. This is fortified from the fact that as per clause 11(a) of the agreement dated 17.05.2014, the construction was to be completed within a period of 3 years with a grace period of six months from the date of start of the construction (construction started on 21.04.2014). The due date of possession comes out to be 21.10.2017 which has already lapsed but the possession has not been delivered till date and therefore, the respondent is liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed possession at the prescribed rate of 10.75% p.a. under the Act. Delay charges will accrue from the due date of possession i.e. 21.10.2017 till offer of possession. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the



super area of the said flat as per clause 14 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."

25. As the possession of the flat was to be delivered by 21.10.2017 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 respondents are liable to pay interest to the complainantss, at the prescribed rate for every month of delay till the handing over of possession.



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

26. In respect of the **second issue** raised by the complainants the respondents are liable to get the project registered with the authority. Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

Findings of the authority

27. The preliminary objections raised by the respondents 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 *SimmiSikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainants at a later stage.

28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

29. 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.

30. 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.

31. Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the act be issued to the respondent. Registration branch is directed to do the needful.
32. As per clause 11 (a) of the builder buyer agreement dated 17.5.2014 for unit no.A114, 11th floor, tower-A in project "The Peaceful Homes" Sector 70-A, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of construction i.e. 21.4.2014 + 6 months grace period which comes out to be 21.10.2017. However, the respondents have not delivered the unit in time for which counsel for the respondents stated that there were certain NGT orders on account of which project could not be completed in time. Counsel for respondents are directed to



submit all the papers which prove his contention so that period for which project could not be completed may be minused from completion date. The project is not registered.

33. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 21.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till handing over possession failing which the complainants are entitled to seek refund of the amount.
34. The counsel for the respondents have stated that they have applied for occupation certificate and they will deliver the flat in June 2019. In case the respondents fails to deliver the possession of the unit, complainants shall be entitled to seek refund alongwith prescribed rate of interest.
35. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.





36. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

Decision and directions of the authority

37. 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 duty bound to pay the interest at the prescribed rate i.e. 10.75% ^{p.a.} for every month of delay from the due date of possession w.e.f 21.10.2017 to till handing over possession failing which the complainants are entitled to seek refund of the amount.
- (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order. Thereafter, monthly payment of interest till handing over of possession so accrues shall be paid by 10th of every subsequent month.



*Corrected vide order
dated 28.03.19.*



HARERA
GURUGRAM

Complaint No. 794 of 2018

(iii) Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

38. The order is pronounced.

39. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.02.2019

Corrected Judgement uploaded on 05.04.2019

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 05.02.2019
Complaint No.	794/2018 Case Titled As Reeta Raina V/S Advance India Projects Limited & Haamid Real Estate Private Limited
Complainant	Reeta Raina
Represented through	Shri Sumit Mehta Advocate for the complainant.
Respondent	M/S Advance India Projects Limited & Haamid Real Estate Private Limited
Respondent Represented through	Shri Nishit Khandelwal, Vice President and Shri Jasmeet Singh, AM-Legal on behalf of the respondent company.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

As per clause 11 (a) of the Builder Buyer Agreement dated 17.5.2014 for unit No.A114, 11th floor, Tower-A in project "The Peaceful

Homes" Sector 70-A, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of construction i.e. 21.4.2014 + 6 months grace period which comes out to be 21.10.2017. However, the respondent has not delivered the unit in time for which counsel for the respondent stated that there were certain NGT orders on account of which project could not be completed in time. Counsel for respondent is directed to submit all the papers which prove his contention so that period for which project could not be completed may be minused from completion date. The project is not registered.

As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 21.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till handing over possession failing which the complainant is entitled to seek refund of the amount.

The counsel for the respondent has stated that they have applied for occupation certificate and they will deliver the flat in June 2019. In case the respondent fails to deliver the possession of the unit, complainant shall be entitled to seek refund alongwith prescribed rate of interest.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

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

Samir Kumar
(Member)
5.2.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 794 of 2018
First date of hearing: 05.02.2019
Date of decision : 05.02.2019

Mrs. Reeta Raina and Mr. Sushant Upadhyay
H.no. 1001, tower 12, Orchid Petals, Sector-47,
Sohna Road, Gurugram

Complainants

Versus

1.M/s Advance India Projects Limited
Regd. Office:2328, 4th Floor, Okhla Industrial
Estate Phase-III, New Delhi-110020,
New Delhi-110020
2.M/s Haamid Real Estate Private Limited
Regd. Office: 232 B, 4th floor, Okhla Industrial
Estate Phase-III, New Delhi-110020,
New Delhi-110020

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sumit Mehta

Advocate for complainants

Shri Nishit Khandelwal

Vice President

Shri Jasmeet Singh

AM- Legal on behalf of the
respondents company



ORDER

1. A complaint dated 30.08.2018 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 complainants Mrs. Reeta Raina and Mr. Sushant Upadhyay against the promoters M/s Advance India Projects Limited and M/s Haamid Real Estate Private Limited on account of violation of the clause 11(a) of the flat buyer's agreement executed on 17.05.2014 in respect of flat/no. A114, 11th floor, block/tower A, admeasuring 2925 sq. ft. super area, in the project 'The Peaceful Homes' for not handing over possession which is an obligation under section 11(4)(a) of the Act *ibid.*
2. Since, the flat buyer's agreement has been executed on 17.05.2014 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot 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	"The Peaceful Homes", Sector 70A, Gurugram
2.	Nature of real estate project	Residential group housing colony
3.	DTCP license no.	16 of 2009
4.	Apartment/unit no.	A114, 11 th floor, block/tower A
5.	Apartment measuring	2925 sq. ft. super area
6.	RERA registered/ unregistered.	Not registered
7.	Allotment letter	20.05.2013
8.	Booking date	24.11.2012
9.	Date of execution of flat buyer's agreement	17.05.2014
10.	Payment plan	Construction linked payment plan
11.	Basic sale price	Rs.1,89,36,450 /-
12.	Total sale consideration	Rs. 2,22,97,168/-
13.	Total amount paid by the complainant as per SOA	Rs.1,33,22,765/-
14.	Due date of delivery of possession as per clause 11(a) of builder buyer's agreement dated (36 months from the date of commencement of construction + 6 months' grace period) i.e. 21.04.2014	21.10.2017
15.	Delay in handing over possession	1 year 3 months and 15 days
16.	Penalty clause as per flat buyer's agreement	Clause 14 of the agreement i.e. Rs.5/- per sq. ft per month of the super area (delay upto 6 months)



		<p>Delay between 6 and 12 months than Rs.7.50/- sq. ft.</p> <p>Delay beyond 12 months from end of grace period Rs.10/- sq. ft.</p>
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4. The details provided above have been checked as per the case file available on record provided by complainants and respondents. A flat buyer's agreement dated 17.05.2014 executed between both the parties is available on record.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents counsel appeared 05.02.2019. The case came up for hearing on 05.02.2019. The reply filed by the respondents has been perused.

Facts of the complaint

6. The complainants submitted that a residential unit bearing no. A114, tower A, type 4BHK + utility room, 11th floor having super area admeasuring approx. 2925 sq. ft. along with three parking spaces, situated in the project named as "Peaceful Homes" located at Sector 70A, Gurugram, Haryana was



purchased by the complainants. It is pertinent to state here that the project is being developed by respondent no. 2 which is a wholly owned subsidiary of the respondent no.1. it is further stated that the project named as “The Peaceful Homes” was and has always been projected, marketed and branded in the name of respondent no. 1.

7. That a flat buyer’s agreement for the above said unit was executed on 17-05-2014. That as per the terms indicated in the flat buyer’s agreement, it was specifically stated in clause 11a of the said agreement, that the respondents shall deliver the possession of the said unit within 36 months from the date of commencement of the construction and the construction on the said project had started in the year 2013 i.e. upon the excavation in April 2013.
8. That the respondents have already delayed the possession for period of more than 2 years in addition to the projected timeline, due to which the complainants have suffered humongous losses.
9. That the complainants have on numerous occasions tried to contact the above named respondents for cancellation and



refund of entire money given by the complainants but the complainants have maintained their silence for best of the reasons known to them.

10. That the complainants have also issued a legal notice to the respondents but no replies of the same has been received.

11. **Issues to be decided:**

- i. Whether the respondents have breached the flat buyer's agreement by not delivering the possession of the apartment and there is no reasonable justification for the delay?
- ii. Whether the promoters have registered itself as per RERA compliances?

12. **Relief sought:**

The complainant is seeking the following relief:

1. The complainants prays before this hon'ble authority, to kindly rely on the annexure annexed with the complaint, in grant him the following relief :-
 - a. Respondents be directed to refund the principal along with interest amount of the complainants



(principal amount Rs. 1,33,22,765/- + interest amount due @ 18% p.a. from the date of each individual payment till date Rs. 86,36,742/-)

- b. And, any other order which this hon'ble authority deems fit in the interest of justice.

Reply on behalf of respondent no.1

13. The respondent no.1 submitted that the complainants have intentionally not disclosed in the present complaint that they had previously also filled similar complaint bearing no. 86/2018 against answering respondent before the Ld. authority but the same was dismissed by the authority for want of necessary parties vide order dated 12.07.2018.
14. That the answering respondent is neither the promoter nor the developer of the project and hence answering respondent has no role to play in the present complaint. The respondent no.2 is the wholly owned subsidiary of the respondent no.1 and has independent existence of its own. Therefore, the present complaint should be dismissed against the answering respondent on the ground of mis-joinder of parties.



Reply on behalf of respondent no.2

15. The respondent submitted that the complaint is bad in law for mis-joinder of necessary parties. Respondent no.1 is neither the promoter nor the developer of the project and hence answering respondent has no role to play in the present complaint. The respondent no.2 is the wholly owned subsidiary of the respondent no.1 and has independent existence of its own. Therefore, the present complaint should be dismissed against the answering respondent on the ground of mis-joinder of parties.

16. The respondent submitted that the RERA act 2016 came into force in the state of Haryana with all sections and rules w.e.f. 28.07.2017. however, the act has penal consequences and it is established law that any penal law cannot be implemented from retrospective date meaning thereby that developers/promoters should not be punished in the old projects for the past deficiencies. In view of this answering respondent seeks extended time for completion of its project in question. Similar view has been taken by the Hon'ble Bombay High Court in its judgment and order dated



06.12.2017, passed in writ petition number 2737 of 2017
(Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.).

17. The respondent submitted that the complainants and respondent entered into the buyer's agreement dated 17.05.2014 under which as per clause no. 11, the time for completion of construction is stated to be 36 months plus grace period of 6 months. Though there is some delay, however the delay is neither deliberate nor intentional and covered under the force majeure clause for which the respondent is entitled for extension of time for completion.

18. The respondent submitted that it is a established law, that if one party to the agreement defaults in its obligation under an agreement, he cannot expect the other party to fulfil its obligation in a timely manner. During the course of construction some dispute with respect to quality and delay in work on the project were raised with the civil contractor. However, the disputes got aggravated and its resolution took about 4 months time, when the dispute was settled with the contractor.



19. The respondent submitted that the project in question is at its final stage and possession of the same is awaiting occupation certificate and is likely to be handed over within few months.
20. The respondent submitted that on the request of the complainants, as they were facing difficulties in making payment, the payment plan of the complainants was changed from “construction linked” to “possession linked”.
21. The respondent submitted that complainants have also played fraud by stating in the complaint that the construction of the project was started in the month of April 2013 but as a matter of fact construction of project was started in April 2014. The answering respondent had also issued letter dated 21.04.2014 in this regard to the complainants and the same is duly received by them.
22. The respondent submitted that the present complaint before the authority is not maintainable in view of the arbitration clause stipulated in the buyer’s agreement dated 17.05.2014. Hence, the remedy for the complainants are before the arbitrator and not before the present authority.



Determination of issues:

23. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issues wise findings of the authority are as under:

24. In respect of the **first issue** raised by the complainants, the authority is of the view that the respondent has delayed the delivery of possession of the booked unit. This is fortified from the fact that as per clause 11(a) of the agreement dated 17.05.2014, the construction was to be completed within a period of 3 years with a grace period of six months from the date of start of the construction (construction started on 21.04.2014). The due date of possession comes out to be 21.10.2017 which has already lapsed but the possession has not been delivered till date and therefore, the respondent is liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed possession at the prescribed rate of 10.75% p.a. under the Act. Delay charges will accrue from the due date of possession i.e. 21.10.2017 till offer of possession. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the



super area of the said flat as per clause 14 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."

25. As the possession of the flat was to be delivered by 21.10.2017 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 respondents are liable to pay interest to the complainantss, at the prescribed rate for every month of delay till the handing over of possession.



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

26. In respect of the **second issue** raised by the complainants the respondents are liable to get the project registered with the authority. Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

Findings of the authority

27. The preliminary objections raised by the respondents 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 *SimmiSikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainants at a later stage.
28. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

29. 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.

30. 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.

31. Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the act be issued to the respondent. Registration branch is directed to do the needful.

32. As per clause 11 (a) of the builder buyer agreement dated 17.5.2014 for unit no.A114, 11th floor, tower-A in project "The Peaceful Homes" Sector 70-A, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of construction i.e. 21.4.2014 + 6 months grace period which comes out to be 21.10.2017. However, the respondents have not delivered the unit in time for which counsel for the respondents stated that there were certain NGT orders on account of which project could not be completed in time. Counsel for respondents are directed to



submit all the papers which prove his contention so that period for which project could not be completed may be minused from completion date. The project is not registered.

33. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 21.10.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till handing over possession failing which the complainants are entitled to seek refund of the amount.

34. The counsel for the respondents have stated that they have applied for occupation certificate and they will deliver the flat in June 2019. In case the respondents fails to deliver the possession of the unit, complainants shall be entitled to seek refund alongwith prescribed rate of interest.

35. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.



36. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

Decision and directions of the authority

37. 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 duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession w.e.f 21.10.2017 to till handing over possession failing which the complainants are entitled to seek refund of the amount.
- (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order. Thereafter, monthly payment of interest till handing over of possession so accrues shall be paid by 10th of every subsequent month.



(iii) Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.02.2019

Judgement Uploaded on 12.02.2019

HARERA
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