

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

Complaint no.: 2416 of 2019
Date of first hearing: 18.09.2019
Date of decision : 22.01.2020

Smt. Geeta Arora.
R/o.B-2, Surajmal Vihar,
New Delhi-110092.

...Complainant

Versus

1. M/s Tashee Land Developers Pvt. Ltd.
2. M/s KNS Infracon Pvt. Ltd.

Address: 517A Narain Manzil, 23
Barakhamba Road, Connaught Place,
New Delhi-110001.

...Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Aman Vivek
NONE

Advocate for the complainant.
for the respondents.

ORDER

1. A complaint dated 01.07.2019 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 complainant Smt. Geeta Arora against the promoters M/s Tashee Land Developers Pvt. Ltd. and M/s KNS Infracon Private Limited in respect of the flat in question in the project 'Capital Gateway', Sector 111, Gurugram on account of violation of section 11(4)(a) of the Act ibid.



2. Since the flat buyer's agreement was executed on 28.01.2013, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:-

1.	Name and location of the project	"Capital Gateway" in Sector 111, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	10.462 acres
4.	flat no.	204, 2 nd floor, tower 'H'
5.	Unit area	1445 sq. ft.
6.	Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 (for phase-I, tower A to G and phase II Tower H to J)
7.	Revised date of completion as per RERA registration certificate	31.12.2020 (for phase I) 31.12.2021 (for phase II Tower H to J)
8.	DTCP license no.	34 of 2011 dated 16.04.2011

		valid/renewed upto 15.04.2019.
9.	Date of transfer of booking in favour of complainant	11.01.2013 (Pg.12 of the complaint)
10.	Date of flat buyer's agreement	28.01.2013 (Pg.17 of the complaint)
11.	Total consideration	Rs. 59,08,234/- (as per summary details at Pg. 52 of the complaint)
12.	Total amount paid by the complainant	Rs. 53,73,950/- (as per summary details at Pg. 52 of the complaint)
13.	Payment plan	Construction linked payment plan
14.	Date of delivery of possession [Clause 2.1- 36 months' form date of sanction of building plans and other necessary government approvals thereon, i.e.07.06.2012 (as per building plan approval) + 180 days' grace period]	07.12.2015 Note: No approval of building plans is annexed with the file. The aforesaid date for approval of building plan has been drawn from the project registration record.
15.	Delay of number of months/ years upto date of order	4 years, 1 month and 15 days.
16.	Penalty clause as per flat buyer's agreement dated 28.01.2013	Clause 2.3- Rs. 5/- per sq. ft. per month for every month of delay

4. The details provided above have been checked on the basis of the record available in the case file. A flat buyer's agreement dated 28.01.2013 is available on record, according to which the possession of the same was to be delivered by 07.12.2015. However, the respondents has neither delivered the possession

till date nor paid the penalty amount for delay as per the terms of agreement dated 28.01.2013.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 18.09.2019, 21.11.019 and 22.01.2020. The reply has been filed by the respondents no. 2 on 15.07.2019 and the same has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of present complaint are that the complainant has purchased the unit no. H-204, 2nd floor, Tower H, admeasuring 1445 sq. ft. in the project in question from the initial purchaser namely Mr. Ramesh Kumar which was transferred in the name of complainant. Thereafter, the complainant has entered into flat buyer agreement with the respondents on 28.01.2013 for the purchase of the said unit as described earlier. The terms and conditions of the agreement were completely one sided and unjustified in nature.
7. The complainant submitted that she has made a total payment of Rs. 56,19,446/- i.e. 95% of the total consideration which was duly received and acknowledged by the respondents.

8. That as per flat buyer's agreement, the possession of the unit was to be given by 10.04.2016 i.e. within 45 months from the date of sanction plans or excavation as per clause 2.9 of flat buyer agreement, thus, project should have been completed and possession ought to have been given to allottees including the complainant in adherence to respondents' own commitment and obligation.
9. The complainant further submitted that the respondents was demanding payments with respect to delay payments made by the initial buyer which is outright violation of right of the complainant. However, the complainant under duress made a payment of Rs. 1,26,115/- for the delay payments made by the initial buyer. This payment was supposed to be charged from the initial buyer and not from the complainant.
10. That the respondents have failed to deliver the possession of the unit as promised despite repeated reminders and regular follow-ups by the complainant. Hence, this complaint has been filed for the reliefs stated herein below in the succeeding paras.

11. In the declaration the complainant has stated that she does not intend to withdraw from the project and sought possession of the unit in question.

Reliefs sought:-

- a) Direct the respondents to handover the possession of the unit in question in a habitable condition with all amenities alongwith delay interest as per HRERA Rules;
- b) Issue directions to the respondents to provide approvals from the competent authority with respect to unilateral increase in the super area of the unit;
- c) Issue directions to the respondents to waive the interest on delay penalty on payments made by the initial buyer;
- d) Issue direction to the respondents to set aside the demand letter for Rs. 1,26,115/- should be adjusted, which was paid by the complainant to pay interest on delay payments made by the initial buyer.

Respondents' reply: -

The respondents' submissions in brief are as under-

- (i) The present complaint is devoid of merits and hence not maintainable and the same is liable to be dismissed. The complainant has miserably failed to adumbrate any illegality on part of the respondents.
- (ii) That the complainant has not approached this forum with clean hands and has filed this complaint to take advantage of the current market scenario and the prejudiced perception of the builders in the eyes of the public and the wave of litigation against the builders in India.
- (iii) That the construction at the project site is going on in full swing. The project is nearing completion and is almost ready for possession. The filing of present complaint at this belated stage for the relief sought is not maintainable.
- (iv) The respondents has already formally applied for the completion certificate (reference no. 4553 dated 25.02.2019), of Phase-I of "Capital Gateway" at Sector111, Gurugram and is anticipated that thereafter and subject to the receipt of the said

certificates and approvals, the apartments in Tower will be ready for delivery very shortly in year 2019 itself.

(v) That the sub-structure (including the excavation, laying of foundation, basement, waterproofing of sub structure) and superstructure of the building (including the stilt, walls on floor, staircases, lift wells and lobbies) has been completed 100% long back. Further, the lifts have been now installed in all towers of Phase 1. The mechanical work, electricity including the wiring and plumbing work, internal plastering / painting of walls, external and internal wall tiling has also been completed more than 90% and is nearing completion. Currently, the doors and window panels are being installed and the internal entrance lobby is about to be finished.

(vi) That the development of the internal road and pavement is being undertaken. There are allegations by customer of some delay in the respondents' project and as a result has proceeded with institution of RERA

proceedings before the authority, which is being defended by the petitioner but the respondents was faced with the unprecedented events which lead to the delay in the completion of the construction of this project (Capital Gateway).

- (vii) That any delay in the execution of works is largely on account of force majeure / reasons beyond the control which could not have been avoided or prevented by exercise of reasonable diligence or despite the adoption of reasonable precautions and/ or alternative measures. In any event, consumer contracts provide for contractual penalties payable, to compensate consumers on account of any inexcusable delay which are evaluable at the time of delivery of possession.
- (viii) That was categorically agreed between the parties that they shall be bound by the terms thereof and that in the event of its breach the remedies as contained therein shall be readily available to either of the parties. Therefore, it is clearly evident from clause 2.3

and 2.9 of the agreement between the parties that the respondents was liable to hand over the possession of the property to the complainant within a period of 45 months from the date of the sanction of the building plans of the said colony, i.e., Capital Gateway at Sector III, Gurugram, Haryana. The remedy in the event of delay has also been duly envisaged in the said clause of the agreement which has been accepted, agreed upon and duly signed by both the parties. As per clause 9 ("Force Majeure") of the agreed terms of the flat buyer's agreement, which reads as under -

"The First Party (Confirming Party shall not be held responsible or liable for not performing any of its obligations or undertaking provided for in this Agreement if such performance is prevented due to Force Majeure."

- (ix) That in the performance of the terms in the agreement, i.e., the possession of the respective properties, the respondents were faced with the below listed unprecedented events which lead to the delay in the completion of the construction of this project (Capital Gateway). These events were -



- a. The construction work was first disrupted in year 2016 when the construction was put on hold under the directions of the Delhi Government and its neighbouring States owing to the alarming and unprecedented rise in the level of air pollution post Diwali (30.10.2016 and again in October 2017). The demobilizing and remobilizing activity lead to a few months' delay in the construction work.
- b. The same was immediately followed by surprise decision of the Indian Government when on 08.11.2016, the Government of India announced the demonetization of all Rs. 500 and INR 1,000 bank currencies and directly affected the liquidity to pay the construction workers. The unforeseen step undertaken by the Government adversely hit the productivity and brought the construction work at the site at a complete halt. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. When the work started again, there was acute shortage of workforce, which compounded the delay to the present situation. All these events lead to a few months delay and therefore stymied the progress and delayed the date of completion of construction.
- (x) That there is no deficiency in services on the part of respondents and the complaint is liable to be dismissed.

Findings of the authority: -

14. On the basis of submissions made by the complainant and the respondents and careful perusal of records, it is observed that as per clause 2.1 of the flat buyer's agreement executed on



28.01.2013, the possession should have been handed over within 36 months from date of sanction of building plans and other necessary government approvals thereon, i.e. 07.06.2012 (as per approval of building plan) + 180 days grace period, i.e. by 07.12.2015. Thus, the respondents breached the agreement by not completing the construction and not delivering the possession which is in violation of statutory obligation under section 11(4)(a) of the Act.

However, the project in question is registered with the authority wherein the revised date of completion as undertaken by the respondents is 31.12.2020. Thus, keeping in view the status of the project and other intervening circumstances, the authority is of the considered opinion that, the complainant is entitled to delayed possession charges at the prescribed rate of 10.20% per annum for every month of delay from the due date of possession till the date of offer of possession.



Decision and direction of the authority: -


15. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

- (i) The respondents are duty bound to pay the interest at the prescribed rate i.e. 10.20% p.a. for every month of delay from the due date of possession i.e. 07.12.2015 till the offer of possession.
 - (ii) The arrears of interest accrued so far from due date of delivery of possession i.e. 07.12.2015 till the date of order shall be paid to the complainant within 90 days from the date of this order. Thereafter, monthly interest at the prescribed rate of 10.20% per annum be paid on or before 10th of each subsequent English calendar month.
12. The order is pronounced.
13. Complaint is disposed of accordingly.
14. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated – 22.01.2020.