

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

Complaint no. : 663 of 2019
First date of hearing : 21.05.2019
Date of decision : 22.01.2020

Mr. Ishwer Singh Dahiya
R/o Flat no. 801, Arzoo CGHS, plot no. 5, Near
Artemis Heart Institute, Sector-51,
Gurugram-122003

Complainant

Versus

1.M/s Tashee Land Developers Pvt Ltd.
2.KNS Infracon Private Limited
Registered Office: Pent House, 18th Floor,
Narain Manzil 23, Barakhamba Road,
Connaught Place,
New Delhi – 110025.

Respondents

APPEARANCE:

Shri Sukhbir Yadav
None

Advocate for complainant
For the respondent

ORDER

1. A complaint dated 20.02.2019 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 Mr. Ishwer Singh Dahiya against the promoter M/s Tashee Land Developers and another, on account of violation of the clause 2 of flat buyer's agreement executed on 22.02.2013 in respect of unit described below for not handing over possession

within stipulated due date which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer's agreement dated 22.02.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"Capital gateway", Sector-111, Gurugram
2.	Nature of project	Group housing colony
3.	RERA registered/ not registered	Registered
4.	Registration number	12 of 2018 dated 10.01.2018
5.	Valid till	31.12.2020 for phase I 31.12.2021 for phase-II
6.	DTCP license	34 of 2011 dated 16.04.2011
7.	Unit no.	502, 5 th floor, tower G
8.	Unit measuring	1695 sq. ft. [area stands revised to 1874 sq. ft vide letter dated 24.03.2017][Page 106 of complaint]
9.	Flat buyer's agreement executed on	22.02.2013
10.	Total consideration	Rs. 69,16,536/- (as submitted by the complainant)

11.	Total amount paid by the complainant till date as alleged by the complainant	Rs. 68,58,810/- (as submitted by the complainant)
12.	Payment plan	Construction linked plan
13.	Approval of building plans	07.06.2012
14.	Due date of delivery of possession as per clause 2.1 of flat buyer's agreement (36 months from the date of sanction of building plans + 180 days grace period)	07.12.2015
15.	Delay in handing over possession till date of decision	4 years 1 month and 15 days (Note- the possession has not been delivered till date.)
16.	Penalty clause as per clause 2.3 of flat buyer's agreement dated 22.02.2013	Rs.5/- per sq. for every month of delay
17.	Status of project (ongoing)	Respondent stated that it has applied for OC vide ref no. 4553 dated 25.02.2019

4. The details provided above have been checked based on record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 07.12.2015 as per the said agreement, however, the respondent has failed to offer the possession of the said flat within the due date. Therefore, the promoter has not fulfilled his committed liability as per the agreement as well as the provision of section 11(4)(a) of the Act.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed reply on 12.03.2019 and the same has been perused. The case came up for hearing on 21.05.2019, 03.07.2019, 06.08.2019, 20.09.2019, 04.10.2019, 24.10.2019, 21.11.2019 and 22.01.2020.

Facts of the complaint:-

6. The complainant submitted that in the month of December 2010, he received a marketing call from office of respondent Tashee Land Developers Pvt. Ltd. for investment in his residential group housing project namely "Tashee Capital Gateway" at Sector - 111, Gurgaon, Haryana. Complainant visited the project site and was assured that possession will be delivered within 36 months. Marketing staff of Respondent informed that basic sale price of unit is Rs. 3100 per sq. ft. but they have one unit in resale with price Rs. 2900 per sq. ft.
7. The complainant submitted that believing the representation he bought the flat no. G-502 admeasuring 1695 sq. ft. from Ragini Bisaria through respondent and issued a cheque to Rs. 2,00,000/- dated 29.12.2010 along with application form. The flat was booked under construction link plan.



8. The complainant submitted that on 14.07.2011, the respondent issued a letter acknowledging the transfer of rights and interest for housing unit no. G-502, tower-G, admeasuring 1695 sq. ft. in Capital Gateway, Sector-111, Gurugram along with the payment of Rs.12,50,519/- from Ragini Bisaria in the name of the complainant.
9. The complainant submitted that on 07.06.2012, the respondent issued a letter informing that building plan of their project "Capital Gateway" has been approved and they are going to start the excavation work.
10. The complainant submitted that on 22.02.2013, a one sided flat buyer's agreement was executed between respondent and complainant for unit no. G-502, 5th floor, Tower-G having super area of 1695 sq. ft. As per clause no. 2.1 of the agreement, the respondent had to hand over the possession of the flat "within approximate period of 36 months from the date of sanction of the building plans of the said colony. The building plans of colony was sanctioned on 07.06.2012, therefore due date of possession was 07.12.2015.
11. The complainant submitted that all the payments were paid by him in cheque as and when raised by the respondent.

12. The complainant submitted that on 07.11.2017, the respondent issued a statement of account, which shows that complainant has already paid Rs. 68,13,979/- to respondent and complainant has deposited TDS of Rs. 44,831/- in the concerned department. Therefore, till 17.05.2017 complainant has paid Rs. 68,58,810/-.
13. The complainant submitted that he was always ready and willing to pay the remaining instalments provided that there is progress in the construction of their unit.
14. The complainant submitted that on 22.08.2018, the complainant sent an email to respondent and his office bearers alleging that respondent has failed to handover the possession of flat as per terms of the agreement and therefore is liable to pay the interest on paid amount from due date of possession till offer of possession. The complainant also send various emails regarding the same.

Reliefs sought:-

The complainant has sought for the following reliefs-

- I. Direct the respondent to pay interest at the prescribed rate for every month of delay from due date of possession till the actual handing over the possession;

- II. To handover the possession of flat within 12 months from the filling of complaint in the event the respondent fail to handover the possession within 12 months, this hon'ble authority may kindly direct the respondent to refund the paid amount along with prescribed interest;
- III. To handover the possession of flat alongwith agreed amenities complete in all respects and execute all required documents.

Respondent's 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 have already formally applied for the completion certificate (reference no. 4553 dated 25.02.2019), of Phase-I of "Capital Gateway" at Sector 111, 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: -

15. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file the authority came across clause 2.1 of flat buyer's agreement regarding the handing over of possession of the unit in question which is reproduced herein below:

"2.1 ... hand over the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the building plans of the said colony plus 180 days after expiry of 36 months....."

The flat buyer's agreement was executed on 22.02.2013 and the building plans were approved on 07.06.2012 Therefore, the due date of possession shall be computed from 07.06.2012. Grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond the control of respondent.

Accordingly, the due date of possession comes to 07.12.2015 and the possession has been delayed by 4 years 1 month and 15 days till date. Therefore, the respondent has violated the terms of the agreement dated 22.02.2013.

16. As the promoter has failed to fulfil its obligation under Section 11(4)(a) of the Act *ibid*, the complainant is entitled to delayed possession charges at the prevalent prescribed rate of interest for every month of delay i.e. at the rate of 10.20% p.a., in terms of section 18(1) of the Act read with rules 15 of the Rules, 2017, from the due date of possession till the offer of possession.

Decision and directions of the Authority

17. 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 shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.20% p.a. from due date of delivery of possession i.e. 07.12.2015 till offer of possession.
- ii. The interest so accrued from due date of possession i.e. 07.12.2015 till date of decision (22.01.2020) be paid within 90 days from date of order. Thereafter, the

monthly payment of interest till offer of the possession so accrued shall be paid on or before 10th of each subsequent English calendar month.

18. The order is pronounced.
19. Complaint is disposed of accordingly.
20. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated – 22.01.2020.

HARERA
GURUGRAM

Judgement uploaded on 29.01.2020

