



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	Tuesday and 10.7.2018
Complaint No.	103/2018 case titled as Mr. Ishwar Chand Garg versus M/s Selene Construction Ltd.
Complainant	Mr. Ishwar Chand Garg
Represented through	Complainant in person.
Respondent	M/s Selene Construction Ltd.
Respondent Represented through	Shri Arun Kumar Yadav, Advocate for the respondent. Shri Tarun Arora, legal representative on behalf of the company

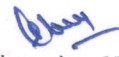
Proceedings

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

The counsel for the respondent alongwith representative of the company made a statement that they are ready to handover the possession of the unit to the complainant. The respondent is bound to give interest at the prescribed rate on the amount deposited by the complainant for every month of delay from the due date of possession i.e. from 19.2.2017 to 22.2.2018. The balance amount shall be paid by the respondent to the complainant within two months from today and further the payment shall be made by them on every month till handing over the actual possession of the unit. If the possession is not given on the date committed by the respondent then the penal consequences will follow. However, the complainant shall be at liberty to further approach the Authority for the remedy as provided under the provisions of the RERA Act. The respondent is directed that he shall not be charged the holding charges as per terms mentioned in the agreement. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
10.7.2018


Subhash Chander Kush
(Member)

A mention to
be made about
Contingency VAT.
24/10/18

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 को धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्याक 16

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

Complaint No. : 103 of 2018

Date of Institution : 21.03.2018

Date of Decision : 10.07.2018

Ishwar Chand Garg, R/o A-602 Spring Valley
Apartments, Plot 3C, Sector 11, Dwarka, New
Delhi- 110075

Complainant

Versus

Selene Constructions Ltd, "Indiabulls House"
Ground Floor, 448-451, Udyog Vihar Phase V,
Gurgaon-122001

Respondent

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Shri Ishwar Chand Garg Complainant in person

Shri Arun Kumar Yadav with Advocate for the respondent
Shri Tarun Arora, legal
representative

ORDER

1. A complaint dated 21.03.2018 was filed under Section 31 of The Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant (Mr. Ishwar Chand Garg) against the promoter (M/s Selene Constructions



Ltd.) for not handing over 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 Centrum Park, sector 103, Gurgaon
2.	Registered/Un-registered	Un-registered
3.	Unit No.	P 061, 6 th floor, tower P
4.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 7,50,000/-
5.	Total consideration amount as per agreement	Rs. 89,33,379/-
6.	Total amount paid by the complainant	Rs. 80,95,660/-
7.	Percentage of consideration amount	90 %
8.	Date of Agreement	19/2/2014
9.	Date of delivery of possession	19/2/2017
10.	Delay for number of months/ years upto date 22.02.2018	1 year
11.	Penalty Clause as per builder buyer agreement	Clause 22, Rs 5 per sq. ft. per month
12.	Cause of delay in delivery of possession	No valid reason



3. As per the details provided above, which have been checked as per record available in the case file. A builder buyer agreement is available on record for Unit No. P 061, 6th floor, tower P sector 103 Gurugram in the project "Indiabulls Centrum Park"

according to which the possession of the aforesaid unit was to be delivered by 19/2/2017 whereas the respondent company has not delivered the possession till 10.07.2018. The promoter has not fulfilled their committed liability as they have not delivered the possession of the unit no. P 061 as on date to the purchaser as per the flat buyer agreement dated 19/2/2014.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 19.04.2018. The case came up for hearing on 19.04.2018, 10.05.2018, 7.6.2018 & 10.07.2018. The reply has been filed on behalf of the respondent. 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 respondent stated that they have obtained the Occupation Certificate on 05.02.2018 and accordingly have already offered the possession of the unit to the complainant on 22.02.2018.
6. As per the flat buyer agreement, clause no. 21, the possession of the flat was to be handed over within 36 months from the



date of execution of the agreement. The clause regarding the possession of the said unit is reproduced below:

"21. The developer shall endeavour to complete the construction of the said building/unit within a period of 3 years, with an 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 30 days thereof, remit all dues and take possession of the unit. In the event 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 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 19/2/2017. 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."

7. As the possession of the flat was to be delivered by 19/2/2017 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

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

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



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



“34 (f) Function of Authority –

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

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

37. Powers of Authority to issue directions

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

9. Keeping in view the present status of the project and the re-assurance by the respondent, the complainant **does not intend to withdraw**. As per section 18(1) proviso, the promoter is obligated to pay the complainant (Ishwar Chand Garg) interest at the prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled his obligation. The complainant reserves his right to seek compensation from the promoter for which he 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.



10. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in **Simmi Sikka V/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.





11. Thus, the prayer of the complainant has been considered and the Authority, exercising its 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 prescribed rate i.e. 10.45 % p.a. on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 19/2/2017 to 22/2/2018 within 45 days from the date of this order. The balance amount shall be paid by the respondent to the complainant within two months from 10/7/2018 and further payment shall be made by the respondent on every month till handing over the actual possession of the unit.

The respondent is further directed that he shall not charge the holding charges for the period of filling this complaint and final disposal by the authority.as per terms mentioned in the agreement. Further, it is held that the demand of contingency VAT made by the promoter is unjustified and therefore, should not claimed from the complainant.

12. The authority has decided to take Suo-motu cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act



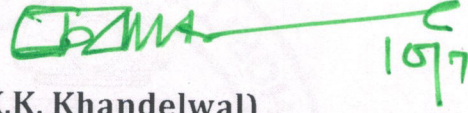


13. The order is pronounced.
14. Case file be consigned to the registry.


(Samir Kumar)
Member




(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

