



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


PROCEEDINGS OF THE DAY


Day and Date	Thursday and 19.7.2018
Complaint No.	260/2018 case titled as Mr. Mukesh Kumar V/s M/s Unitech Ltd.
Complainant	Mr. Mukesh Kumar
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/s Unitech Ltd.
Respondent Represented through	Shri Rudranath Jha Advocate for the respondent

Proceedings

For the truthful compliance of the order of Supreme Court, this authority does not pass any order but investigation of the complaint continues so that if there is any relief available to the complainant, it does not come within the definition of coercive action. The respondent's counsel has stated that the block in which the real estate of the complainant is situated has not been constructed except the basement part, the apartment allotted to the complainant is on the 6th floor and certainly there is a failure on the part of the respondent to hand over possession on the due date. It was stated by the counsel for the complainant that amount of Rs.31,65,451/- has been paid by the complainant to the respondent company and there is no likelihood of handing over the possession. Accordingly this authority may issue directions for refund of the money. It may include the obligation casts upon the promoter under section 18 of the Real Estate (Regulation & Development) Act, 2016. In case of default in refund of the amount paid by the complainant, the complainant may approach the authority again for further action. Keeping in view the Supreme Court orders, the respondent's counsel may submit whether this order for refund of the money is in consonance with the Supreme Court order or not. In case it is not then the same be deferred till pending matter is decided by the Supreme Court against the promoter. The complaint is disposed of accordingly. Detailed order will follow. Order is pronounced. File be consigned to the Registry.

Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
19.7.2018


Subhash Chander Kush
(Member)

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

Complaint No. : 260 of 2018
Date of Institution : 14.05.2018
Date of Decision : 19.07.2018

Mukesh Kumar R/o 3114/8 Plot no.29
krishna Nagar, Gambhari, Model Town,
Kurukshetra-136118.

...Complainant

Versus

M/s Unitech Ltd.
Block L, South City I, Sector-41, Gurugram,
Haryana - 122022

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sushil Yadav
Shri Rudranath Jha

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 14.05.2018 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. Mukesh Kumar) against the promoter (M/s Unitech Ltd.) on account of violation of Clause 4(a)(i) of the builder-buyer agreement executed on 17.11.2011



for unit no. 0602, 6th Floor in the project "Unitech South Park" for not giving possession on the due date which is an obligation of the promoter 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	Unitech South Park Sector-70, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	0602,Block A-4
3.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 6,75,000/-
4.	Total consideration amount as per agreement dated 17.11.2011	Rs. 99,65,950/-
5.	Total amount paid by the complainant up to date	Rs. 31,65,451/-
6.	Percentage of consideration amount	32% approx.
7.	Date of delivery of possession.	Clause 4 (a)(i) i.e. 36 months from the date of execution of the agreement.
8.	Delay of number of months/ years up to date	3 years 8 months
9.	Penalty Clause as per builder buyer agreement dated 17.11.2011	Clause 4 (c)(ii) Rs. 5/- per sq. ft. per month
10.	Cause of delay in delivery of possession	No valid reason



3.

As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is



available on record for Unit No. 0602, Block A-4. according to which the possession of the aforesaid unit was to be delivered by 17.11.2014. The promoter has failed to deliver the possession of the said unit to the complainant by the due date nor has paid any compensation i.e. @ Rs. 5 per Sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 17.11.2011. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 26.06.2018. An application on behalf of the respondent has been filed to stay the present proceedings as the respondent along with its principal directors are before the Hon'ble Supreme Court in an SLP for bail and other reliefs and that the Hon'ble Apex Court has issued directions that no coercive orders are executable against the respondent or its directors.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. As stated by the Counsel of the respondent, it has been emphasised that the block in which the real estate of the complainant is situated





has not been constructed except the basement part. As the apartment allotted to the complainant is on the 6th floor, it is not possible for the respondent to handover possession on the due date. The complainant stated that amount of Rs. 31,65,451/- has been paid by the complainant to the respondent company & there is no likelihood of handing over the possession.

6. As per clause 4(i)(a) of the builder-buyer agreement, the Company proposed to hand over the possession of the said unit by 17.11.2014. The clause regarding possession of the said unit is reproduced below:

"4.a. Delivery of Possession:

i) Subject to the Apartment Allottees complying with various terms and conditions of this Agreement and other requirements as indicated by the Developer, the Developer proposes to offer possession of the Apartment within a period of 36 months from the date of signing of this Agreement...)"

Accordingly, the due date of possession was 17.11.2014. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in *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 17.11.2014 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

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

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



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.



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As per obligations on the promoter under section 18(1) proviso, in case the allottee wishes to withdraw from the project, the promoter is obligated to refund the amount paid by the complainant along with interest at the prescribed rate as the promoter has not fulfilled his obligation. Section 18(1) is reproduced below:

"18.(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.

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

10. Thus, the Authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to refund the money of Rs. 31,65,451/- along with interest at the prescribed rate i.e. @ 10.45% p.a. from the date the respondent has received the amount from the





complainant. In case of default in refund of the amount paid by the complainant, the complainant may approach the authority again for further action.

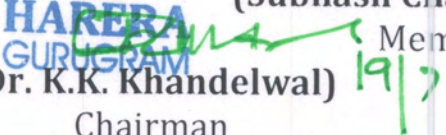
11. Further, keeping in view the Supreme Court's orders, the respondent's counsel may submit whether this order for refund of money is in consonance with the Supreme Court's order or not. In case, it is not then the same be deferred till pending matter is decided by the Supreme Court against the promoter.
12. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.
13. The authority has decided to take Suo-moto cognizance against the promoter for not getting the project registered & 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



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