

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

Complaint No. : 27 of 2018
Date of First
Hearing : 12.04.2018
Date of Decision : 13.09.2018

Raj Kumar Chawla (C1)
Indu Chawla (C2)
R/o H. No. K-3/15, DLF, Phase-II, Gurugram,
Haryana **Complainants**

Versus

M/s Parsvnath Hessa Developers Pvt. Ltd.,
Through its Directors, Parsvnath Metro Tower,
Near Shahadra Metro Station, Shahadra, Delhi-
110032, **Respondent**
Corporate Office: 6th Floor, Arunachal Building,
19, Barakhamba Road, New Delhi-110001

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Complainant in person with **Advocate for the complainants**
Sh. Sukhbir Yadav
Ms. Divya Gupta, Authorised **Advocate for the respondent**
Representative on behalf of
the respondent with Sh.
Sanjeev Jain, MD of the
respondent company



ORDER

1. A complaint dated 05.03.2018 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 complainants Mr.Raj Kumar Chawla and Mrs. Indu Chawla, against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd., on account of violation of clause 10(a) of flat buyer agreement executed on 03.09.2012, in respect of apartment described as below for not handing over the possession on 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	"Parsvnath Exotica", Sector-53/54, Gurugram
2.	Unit no.	403, 4th floor, tower B-5
3.	Registered/ not registered	Not registered
4.	Date of booking	13.07.2012
5.	Date of flat buyer agreement	03.09.2012
6.	Total consideration amount as per agreement dated 03.09.2012	Rs. 3,47,00,000/- (BSP- Rs.3,39,00,000+two covered car parking charges-Rs.8,00,000/-)
7.	Total amount paid by the complainants	Rs. 1,55,26,537/-



8.	Date of delivery of possession from the date of execution of flat buyer agreement	13.01.2015(24 months from date of booking, i.e. 13.07.2012+ 6 months grace period) Clause 10(a)- 36 months from the commencement of construction of the block in which flat is located or 24 months from the date of booking, whichever is later+ 6 months grace period. NOTE: Date of construction cannot be ascertained.
9.	Delay for number of months/ years upto date 13.09.2018	3 years 8 months
10.	Penalty clause as per flat buyer agreement dated 03.09.2012	Clause 10(c) of BBA i.e. Rs. 107.60 per sq meter or Rs.10/- per sq.ft. per month for the period of delay



3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A flat buyer

agreement is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 13.07.2014 along with 6 months grace period. The respondent company made an offer of possession on 23.03.2018 for fit outs along with a rebate offer of Rs. 14,00,000/- for carrying out finishing work. The flat builders being in a dominating position have made a one-sided agreement. The promoter has not fulfilled his committed liability by not giving possession as per the terms of the flat buyer agreement. Neither paid any compensation i.e. @ Rs. 107.60 per sq meter or Rs.10/- per sq. ft. per month for the period of delay as per flat buyer agreement dated 3.09.2012.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 01.05.2018. The case came up for hearing on 12.04.2018, 01.05.2018, 22.05.2018, 29.05.2018, 26.06.2018, 05.07.2018, 12.07.2018 and 29.08.2018.



Facts of the complaint

5. On 13.07.2012, the complainant booked a unit in the project named "Parsvnath Exotica", Sector-53/54, Gurugram by paying an advance amount of Rs 10,00,000/- to the

respondent. Accordingly, the complainants were allotted a unit bearing B5-403 on 4th floor.

6. On 03.09.2012, a flat buyer agreement was entered between the parties wherein as per clause 10(a), the construction should have been completed within a period of 36 months from the commencement of construction of the block in which flat is located or 24 months from the date of booking, whichever is later with additional 6 months grace period. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite payments as per the demands raised by the respondent.
7. The respondent had demanded 44% payment till 28.06.2014, accordingly, the complainants made payments of all instalments demanded by the respondent amounting to a total of Rs.1,55,26,537/-.
8. The complainants submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project nor any heed was paid to repeated demands of payment of EMIs and thus, no appropriate action was taken to address the concerns and grievances of the complainants. Complainants further submitted that given the inconsistent and lack of



commitment to complete the project on time and unfair and restrictive trade practices, the complainants decided to file the present complaint.

9. As per clause 10(a) of the flat-buyer agreement, the company proposed to hand over the possession of the said unit by 13.07.2014 (from date of booking) + 6 months grace period, i.e. 13.01.2015. The clause regarding possession of the said unit is reproduced below:

" 10(a)- Construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular block in which the flat is located or 24 months from the date of booking of the flat, whichever is later, with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities.....".

10. Issues raised by the complainants

- I. Whether the respondent has violated the terms and conditions of the BBA Agreement?
- II. Whether there is any reasonable justification for delay to give possession of flats?
- III. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in giving possession?



- IV. Whether the complainants are entitled to refund of all money paid to respondent?
- V. Whether the complainants are entitled for compound interest @ 24% per annum from date of booking till date?
- VI. Whether the complainants are entitled to compensation for mental agony?

11. Relief sought

- I. Direct the respondent to refund the amount Rs. 1,55,26,537/- paid by the complainants to the respondent party as instalments towards the purchase of flat along with interest @ 24% per annum compounded from the date of deposit.
- II. Direct the respondent to give the possession (with completion certificate) within 6 months from date of passing of order, also be directed to pay compensation @ 24% per annum compounded for the period of delay of possession.



Respondent's reply

Preliminary Objections:

12. The respondent submitted preliminary objections upon the maintainability of the complaint and also filed an application

for rejection of the complaint on the ground of jurisdiction. The respondent stated that the present complaint is not maintainable in law or facts and the Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain the present complaint. The complaints pertaining to compensation and interest for a grievance under sections 12,14,18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule 29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this Hon'ble Regulatory Authority under rule 28.

13. The respondent submitted that even though the project of the respondent is covered under the definition of "ongoing projects" and the respondent has already applied for the registration of the project with RERA vide application dated 23.04.2018, and as per the disclosure in the said application for grant of RERA certificate the project wherein the present tower is situated will be completed within the time specified therein or granted by the authority. The complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before the hon'ble authority under rule 28.



Reply on merits:

14. The respondent submitted that the statement of objects and reasons of the said Act clearly states that the RERA is enacted for effective consumer protection. The RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of “consumer” as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer.
15. It is submitted by the respondent that the Hon’ble Regulatory Authority has no jurisdiction to entertain the present complaint as the complainant have not come to the authority with clean hands and has concealed the material fact that the complainants have been wilful defaulters, having deliberately failed to make the payment of various instalments as and when it became or upon the demand raised as per the payment schedule.
16. The respondent submitted that the complainants were to pay the next instalment within three months of booking, thereafter, the complainants had to pay instalments every month on month to month basis at the percentage given in the payment plan, however the complainants had been negligent



since beginning in the payment of instalment as agreed between the parties. The first instalment was due on 13.10.2012 but the complainant failed to pay in time, similarly other instalments were also paid belatedly. Even the cheques paid towards the instalments as well as sales tax dated 12.05.2013 were bounced for the reason 'insufficient funds'.

17. Several demand notices dated 03.01.2015, 11.02.2015, 02.03.2015, 01.04.2015 were issued. The complainants were issued the BBA which was sent in two copies to the complainants but the complainants despite repeated request failed to return them. Various reminders were issued for clearing the outstanding amount when the pending construction work had started, on start of external plaster, but the complainants paid no heed to them.

18. The complainants were issued a letter dated 23.03.2018 wherein the flat was offered for fit outs and a rebate of Rs.14,00,000/- was offered for carrying out finishing work but they did not take any action and the total outstanding towards the complainants is to the tune of Rs.1,86,15,968 /.

19. The respondent submitted that the authority is deprived of the jurisdiction to go into the interpretation of or rights of the parties and no such agreement as referred to under the



provisions of said Act or said rules has been executed. The apartment buyer agreement dated 03.09.2012 was executed much prior to coming into force of said Act or said rules. The adjudication of the complaint for interest and compensation, has to be in reference to the agreement for sale executed in terms of said Act and said rules and no other agreement. Thus, no relief can be granted to the complainants.

20. The respondent submitted that they have made huge investments in obtaining approvals and carrying on the construction and development of 'Parsvnath Exotica' project and despite several adversities is in the process of completing the construction of the project and have already applied for registration of the project and also had to incur interest liability towards its bankers.

21. The delay and modifications if any have been caused due to the delay caused by the appropriate govt. authorities in granting the requisite approvals, which act is beyond the control of the respondent. The respondent has been diligently pursuing the matter with various authorities and hence no delay can be attributed to the respondent.



22. The complainants have made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in form of the agreement.

23. The respondent is not liable to pay any interest on the refund being claimed by the complainants. As the interest of 24% per annum compounding as claimed by the complainants is exorbitant and as per the clause 10(c) of the agreement, the respondent is not liable to pay any interest to the complainants as time is not of the essence of the agreement.

24. Written arguments on behalf of complainants

- I. The delay of more than 3 years is not an ordinate delay and till date also flat is not fully ready for occupancy.
- II. The complainants are not a wilful defaulter. As per oxford dictionary defaulter means "A person who fails to fulfil a duty, obligation or undertaking". The complainants paid fully the demanded money with interest etc till date when construction work was in progress.

III. The project of respondent comes under the definition of 'ongoing projects' and it is still unregistered in HARERA. As acknowledged by the respondent that application for the RERA registration is applied on 23.04.2018. It is pertinent to mention here that as per section 3(1) first proviso of the



Real Estate (Regulation and Development) Act 2016, respondent need to get register the project within three months from the date commencement of this Act. And section 3 came into force w.e.f. 01.05.2017. The said act of respondent also indicates towards his irresponsible and unprofessional behaviour.

- IV. That as on the date the respondent does not have occupation certificate of tower B-5. Fire Department N.O.C. etc is also not with respondent and common amenities are yet to be installed.
- V. It is nowhere written in agreement that time is not of the essence. It is pertinent to mention here that grace period can be given subject to force majeure and as far as knowledge/ information of complainants, there was, nor is any force majeure, which restrict the completion of project.
- VI. The averments of respondent are baseless and aim at misleading the Hon'ble Authority.
- VII. That the respondent issued a letter of offer for fit outs of flat. In this letter respondent increased the area of flat by 105 sq. ft. there is no description, where they increased their area. Hence, it is requested to the Hon'ble Authority to direct the respondent to submit that offer for fit does not amount to offer of possession. The complainants did not



place any request for allowing them to do interior and finishing work. Complainants bought the said flat with bundle of services with specification mentioned in flat buyer agreement.

VIII. The flat buyer agreement was one sided, unilateral, arbitrary and biased agreement, which was forcefully imposed on complainants. If complainants fail to execute the said unilateral agreement, respondent would forfeit 15 % earnest money. The respondent never discussed terms of agreement before drafting of agreement. The agreement was in pre printed form and under undue influence and coercion complainant signed the said agreement. Hence the terms which are unilateral, arbitrary, one sided and biased are voidable.

IX. The builder has charged 24% interest on delay payments, hence complainants/allottees are also entitled for 24% compoundable interest. That respondent failed to perform duly as given in section 17 of the RERA Act.



Determination of issues

25. In regard to the first issue raised by the complainants, the promoters have violated the agreement by not giving the possession on the due date as per the agreement, thus, 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, 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.”

26. Regarding the second issue raised by the complainants, the MD of the respondent company, Sh. Sanjeev Jain submitted that the delay on their part has been due to the beneficiary interest policy (BIP) laid down by the government wherein due to the fault on the part of the licensee company, their project got delayed and such delay was beyond their control. However, despite this contention, there has been an inordinate delay in handing over the possession.



27. Regarding the third issue in the complaint, the complainants have not furnished anything to prove any misrepresentation on the part of the respondent company.

28. In regard to fourth issue in the complaint, the respondent submitted before the authority that they will be applying for the RERA registration and the tower in question shall be completed in another 9-12 months time period. Keeping in view the interest of other allottees and the completion of the project, the authority is of the view that the time committed by the respondent must be granted for handing over the possession. Accordingly, refund cannot be allowed at this stage. By granting right to one party, rights of others shall not be jeopardised as refund at this stage shall adversely affect completion of the project and consequently all other allottees who intends to continue in the project will suffer. However, in case of default on the part of the respondent in delivery of possession on the committed date, the complainants will be entitled to claim refund.



29. In regard to the fifth issue raised by the complainants, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.45%, for

every month of delay till the handing over of possession.

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.

30. In regard to sixth issue in the complaint, the complainants can seek compensation from the adjudicating officer under the RERA.

31. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



“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."

32. The complainants 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."

Findings of the authority

33. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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 complainants at a later stage.



34. The delay compensation payable by the respondent @ Rs. 107.60 per sq meter or Rs.10/- per sq.ft. per month for the period of delay as per clause 10(c) of the builder buyer 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.”

35. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that Shri Krishan Soni, junior draftsmen who appeared on 13.09.2018 from the office of STP Gurugram submitted the photocopies of approval of building plans of the project bearing memo no. 3180 dated 10.04.2009 and occupation certificate bearing no. 15958 dated 31.10.2011 and 3254



dated 17.03.2011 and as per the respondent represented by Shri Sanjeev Jain, Managing Director of the respondent company, there are 18 towers out of which 11 are fully developed and occupation certificate has been obtained and possession is offered to buyers and occupation certificate w.r.t. 5 towers has also been applied and w.r.t. remaining 2 towers, they are in the process of completing the construction of the project and should be able to complete it by 31.12.2019 as per the date mentioned in the registration application submitted with the registration branch. Thus, in view of the interest of other allottees as well as the endeavour of the authority to get stalled projects completed, the respondent must be granted time to complete the project till the committed date and the complainants must wait till the date committed by the respondent. However, the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants for every month of delay on the 10th of every succeeding month from the due date of possession till the handing over the possession of the unit. The respondent is also directed to pay the amount of interest at the prescribed rate from the due date of possession till the date of this order on the deposited amount within 90 days from the day of this order. In case of any default in the handing over of possession,



penal consequences may follow and the complainants can approach this authority for redressal of their grievance. Further, the complainants must also complete the payment due on their part.

36. The complainants by an application for amendment of complaint reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of the authority

37. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to give the physical possession of the said flat to the complainants on the date committed by the respondent for handing over the possession.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay from the due date of possession till 13.09.2018 within 90 days of this order and thereafter



on 10th of every month of delay till the handing over of possession in their application for registration with Haryana Real Estate Regulatory Authority.

- (iii) If the possession is not given on the date committed by the respondent then the complainants shall be at liberty to further approach the Authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

38. The complaint is disposed of accordingly.

39. The order is pronounced.

40. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram