

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

Complaint No. : 236 of 2018
First date of hearing : 06.06.2018
Date of Decision : 13.09.2018

Mr. Anup Bhargava & Smt. Jaishree Bhargava,
R/o. D1/403, Parsvnath Exotica, Sector - 53
Golf Course Road, Gurugram- 122017

Complainant

Versus

M/s Parsvnath Developers Pvt. Ltd.
Regd. Office: Parsvnath Metro Tower,
Near Shahdara Metro Station,
New Delhi - 110032

And

M/s Parsvnath Hessa Developers Pvt. Ltd.
Regd. Office: 6th Floor, Arunachal Building 19,
Barakhamba Road, New-Delhi-110001

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Apoorva Jain
Shri Arun Kumar Yadav

Advocate for the complainant
Advocate for the respondent



ORDER

1. A complaint dated 08.05.2018, 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 complainants Mr Anup Bhargava and Mrs. Jaishree Bhargava against the promoters M/s Parsvnath Developers Pvt. Ltd. and M/s Parsvnath Hessa Developers Pvt. Ltd., on account of violation of the clause 10(a) of the flat buyer agreement executed on 11.07.2011, of the unit no. B-6 403, in the project 'Parsvnath Exotica' for not fulfilling the obligation of not handing over possession of the flat within the time stipulated in the agreement, which is an obligation under section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the Project	"Parsvnath Exotica", sector-53, Golf Course, Gurugram
2.	Flat/Apartment/Unit No.	B-6 403
3.	Flat measuring	3390 sq. ft.
4.	RERA Registered/ not registered.	Not registered
5.	Booking date	20.07.2011
6.	Date of execution of flat buyer's agreement	11.07.2011
7.	Payment plan	Construction linked plan
8.	Basic Sale Price	Rs.28,00,000/-
9.	Total amount paid by the complainant till date	Rs. 1,89,43,187/-
10.	Date of approval of sanctioned building plan	10.04.2009
11.	Date of delivery of possession as per clause 10 (a) of the flat buyers agreement.	10.10.2012 i.e- 36 months from the date of commencement of construction of the particular block, on receipt of sanctions with



		a grace period of 6 months on receipt of sanction of building plans and other approvals.
12.	Delay of number of years / months/ days till date	5 years 11 months and 3 days
13.	Penalty Clause as per clause 10 (c) the flat buyers agreement	@ Rs. 107.60/- per sq. meter or @ Rs.10/- per sq.ft. of the super area of the flat per month.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A flat buyers agreement is available on record for the aforesaid flat according to which the respondent was supposed to give possession of the flat within a period of 36 months of commencement of construction of the particular block with a grace period of 6 months as per clause 10(a) of the agreement. Neither the respondent has delivered the possession of the said unit till 12.09.2018 to the purchaser nor they have paid compensation @Rs.10/- per sq. ft. for the period of delay as per clause 10 (c) of the agreement. Therefore, the respondent 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 appearance. The respondent appeared on 06.06.2018, 12.07.2018, 21.08.2018,

13.09.2018. The case came up for hearing on 06.06.2018. The reply filed on behalf of the respondent was to be filed within 15 days of the last hearing i.e. on 06.06.2018. The respondent has supplied the details and status of the project along with the reply. The respondent has submitted an affidavit dated 29.06.2018 wherein the respondent has denied that the complainant has faced any harassment or he has suffered financially or that he needs to be compensated for every month delay.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that in 2011, the Complainants migrated from Singapore to Gurgaon for settling in India. That as soon as the Complainants shifted to India, they put their entire life long savings for a home in Gurgaon for his family, after doing detailed survey of Gurgaon where he and his family had desired to settle down, they made a purchase of an allotment of a flat under construction on a resale basis in a group housing scheme named Parsvnath Exotica (Tower B-6) at Golf Course Road, Gurgaon.
6. The Complainants got the transfer of flat allotment endorsed in his name from the Developer M/s Parsvnath Hessa



Developers Pvt. Ltd (Respondent No. 2) under an assurance of the Developer that they would get its possession within period of 36 months with a grace period of 6 months in accordance with the Flat Buyer Agreement (Para 10(a)) as reproduced below:-

“10(a) Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block in which flat is located, with a grace period of six (6) months, on receipt of sanction of building plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt. Traffic Deptt., Pollution Control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of Developers and subject to timely payments by the Flat Buyers in the Scheme. No claim by way of damages/compensation shall lie against the Developers in case of delay in handing over possession on account of the said reasons. The date of submitting application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the flat for the purpose of this clause/agreement.”

The transferor of the flat to the Complainants had opted for the payment plan B according to which the second demand for installment was to be raised at the time of starting of construction which was on 14/06/2010.



7. The Complainants purchased the allotment of the flat No. B6-403, in the group housing scheme named Parsvnath Exotica from one Mr. Nitin Chauhan, described as “Transferor”, on a

resale basis on a payment by the complainants of Rs. 76,03,750/- (Rupees Seventy Six Lakhs Three Thousand and Seven Hundred and Fifty only) after being duly approved/endorsed by the respondent No. 2 on 20.07.2011. The respondents, by this time, have already collected 95% of the total cost of the flat amounting to Rs. 1,89,43,187/- as on 11.03.2014. The Complainants, have been continuously asking the respondents for the progress as to within what time frame would they be able to deliver the possession of the flat since the time of transfer/purchase, but to of no avail.

8. The Complainants have been living in rented accommodation since their migration to India, hoping that they will get the flat soon and paying a rent of nearly Rs. 50,000 per month. The respondents have, by now, delayed the completion of the project by 5 years 11 months and 3 days and continuing with the construction half-heartedly which was started on 10.04.2009 onwards, the project according to Para 10(a) must have been completed by 10,October, 2012. The respondents, in addition to the basis cost of the flat, have also collected Rs. 2,71,271/- as delayed payment interest which has been charged from the complainants/transferor @ 24% p.a. The complainants have also taken a bank loan of Rs. one crore as against which they have been paying EMI of Rs. 1,22,122/- per



month. That the respondents have not even paid single penny till date as against their delay in the completion as well as the possession of the flat as per the clause 10(c) of the flat buyer's agreement.

Issues raised by the complainants are as follow:

- i. Whether there is unjustifiable delay in delivery of possession. reasonable justification for the same.
- ii. Whether the interest demanded by the respondent is unreasonable.

RELIEF SOUGHT:

- i. Direct respondent to to pay the complainant the penalty @24% for the delay of 5 years , 11 months and 3 days and continuing, from the commencement of the construction, because the respondents have been charging the same @ 24% p.a.
- ii. The respondents be also directed to refund to the complainants the interest charged by them for the delayed payment.
- iii. The respondents be also directed to pay a sum of Rs. 10,00,000/- towards the undue hardship and injury both physical and mental caused to the complainants due to their acts of omission/commission.



- iv. That the respondents be also directed to pay a sum of Rs. 2,00,000/- to the complainants towards the cost of litigation and,
- v. To pass such order or further order as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case.

Respondent's reply

9. The respondent contends that the complaint is liable to be dismissed as the complaint is not maintainable. This Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain the present complaint as the same is addressed to Adjudicating Officer. That the complaints pertaining to compensation and interest for a grievance under section 12, 14, 18, 19 of the RERA Act, 2016 are required to be filed before the Adjudicating officer under Rule 29 of the Haryana Real Estate (regulation and development) Rules, 2107 read with sections 31 and section 71 of the said Act and not before this Hon'ble Regulatory Authority under Rule 28. Sections 31, 71 and Rules 28 & 29 are also reproduced herein below:



Section 31(1)- " (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be."

Section 71(1)-“ (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard: Provided that any person whose complaint in respect of matters covered under section 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.”

Rule-28(1): “Any aggrieved person may file a complaint with the Authority for any violation of the provisions of the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form ‘CRA’, in triplicate, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of Authority.”

Rule- 29(1): “Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form ‘CAO’, in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of the Authority and payable at the branch of that bank at the station where the seat of the said Authority.”



10. The respondents have already applied for registration of the project with the RERA Authority vide application dated 23.04.2018 which is still pending before the Authority. That without prejudice it is stated that the statement of objects and



reasons of the said Act clearly state that the RERA is not enacted to protect the interest of the investors. The complainant is an investor and not a consumer. Besides, the complainant has not come to this Hon'ble Authority with clean hands and had concealed the material facts that the complainant has been a wilful defaulter, having deliberately failed to make the payment of various instalments as and when it became due or the demand raised as per agreed payment. The true facts pertaining to the present matter are that Mr. Nitin Chauhan approached the respondent and submitted an application form on 03.08.2006 for an allotment of flat in the upcoming project of the company, application form of advance registration dated 15.09.2006 was issued having super area of 3390 sq. ft. in the project " Parsvnath Exotica" being developed in sector 53, Gurugram was allotted to the complainant at the rate of Rs.5500/- per sq. ft. at a basic price of Rs.1,86,45,000/- plus Rs.400,000/- as parking area charges. The property was booked through 'Axion Estate' and an amount of Rs.28,00,000/- was paid at the time of booking.



11. The respondent further submits that the original allottee Nitin Chauhan transferred the said unit in favour of the complainant vide letter dated 11.07.2011 and endorsement in this regard was also made in the original flat buyer's agreement. After the



transfer of the said unit in favour of the complainant, the respondent issued a reminder for payment of fourth instalment along with service tax. The complainant despite repeated request failed to pay the next instalments and the reminder was again sent on 05.08.2011. the respondent issued a letter dated 05.07.2013 asking the complainant to deposit further amount in the ESCROW account opened by the respondent as per the law. As on date the total amount deposited by the complainant with the respondent is Rs.1,89,43,184/-. It is a matter of record and rather a conceded position that no such agreement as referred has been executed between the complainant and the respondent. Rather, the agreement that has been referred to, is the agreement dated 18.06.2007, executed much prior to coming into force of said Act or said Rules. Thus, in view of the submissions made above, no relief can be granted to the complainant.



12. The complainants have merely alleged in the complaint about the delay on part of the respondent in handing over the possession of the flat booked by the complainant. It is therefore, submitted that the respondent have been acting in consonance with the apartment buyer's agreement dated 18.06.2007 duly executed between the parties. The complainant has made false and baseless allegations with a

mischievous intention to retract from the agreed terms and conditions of the agreement. There is no cause of action in favour of the complainant to institute the present complaint. The respondent is not liable to pay any interest on the refund being claimed by the complainant. It is vehemently denied that the respondent failed to deliver the possession, the delay in completion of the project as alleged in the instant complaint is not due to the fault of respondent but due to the various factors which are beyond the control of respondents such as the failure of the concerned authorities to issue necessary permission in order to complete the said towers within the agreed time framed .

DETERMINATION OF ISSUES

1. Regarding the first issue, as per the 10 (a) of the apartment buyer's agreement, the possession of the flat was to be delivered within 36 months plus six months as grace period from the date of commencement of construction or receipt of sanctioned building plan i.e by 10.10.2012 but the promoter has failed to deliver the same . No justified reason is given by the respondent for the delay as the reason given by the respondents does not seem to be reasonable justification of the delay caused and hence as per the clause they are liable to get interest at the prescribed rate for such delay.



2. Regarding the 11th issue, the interest demanded by the respondent is not unreasonable according to the apartment buyer's agreement, as the complainant on multiple occasions have been found to be defaulting in the payment of instalments even after getting several reminders from the respondent.

Decisions and Directions of the Authority


1. The authority, exercising the 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 when the project is likely to be completed i.e 31.12.2019.
 - (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 with grace period i.e 10.10.2012 till handing over the actual possession of the project. The interest will be given from 10.10.2012 to 13.09.2018 on the deposited amount within 90 days from the day of this order & thereafter, on the 10th day of every succeeding month.



- (iii) If the possession is not given on the date committed by the respondent i.e 31.12.2019 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*.
2. The complaint is disposed of accordingly.
 3. The order is pronounced.
 4. 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

Date: 13.09.2018

