

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

Complaint No. : 316 of 2018
First date of hearing: 19.07.2018
Date of Decision : 17.09.2018

Mr. Sameer Agarwal,
R/o. 117, Kakadev, L Block, P.S. Kakadev,
Tehsil : Kanpur Nagar, Kanpur,
Uttar - Pradesh

Complainant

Versus

Bestech India Pvt. Ltd.
Regd. Office: Bestech House 124,
Sector 124, Gurugram

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sameer Agarwal
Shri Sumit Kumar Gaur
Shri Ishaan Dang

Complainant in person
Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 23.05.2018 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. Sameer Agarwal, against the promoter M/s Bestech India Pvt. Ltd., on





account of violation of the clause 12 of the terms and conditions of the application and clause 3(a) of the apartment buyer's agreement which is yet to be executed in respect of apartment number D-1001, 10th floor, block/tower 'D' in the project 'Park View Sanskruti' 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 case are as under: -

1.	Name and location of the project	"Park View Sanskruti", Sector-92, Gurugram
2.	Apartment/unit no.	D-1001 on 10 th floor, block/tower 'D'
3.	Apartment measuring	2475 sq. ft
4.	RERA registered/ not registered.	Not registered
5.	Booking date	01.07.2013
6.	Date of execution of apartment buyer's agreement	Not executed by the complainant.
7.	Payment plan	Construction Linked Plan
8.	Basic sale price	Rs.13,66,6,950/--
9.	Total amount paid by the complainant till date	Rs.22,00,000/-
10.	Percentage of consideration amount	Approx. 14 percent
11.	Date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 Months + 6 months grace period from the date of commencement of construction upon receipt of all approvals) [Consent to establish granted on 13.05.2011]	No apartment buyer's Agreement executed by the complainant
12.	Delay in handing over possession till date	No apartment buyer's agreement





13.	Penalty clause as per terms of provisional allotment application	Clause 12 (iii) of the application i.e. Rs.5/- per sq. ft per month of the super area of the said flat.
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3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is not available on record for the aforesaid apartment. Neither the respondent has delivered the possession of the said unit till 17.09.2018 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 12 (iii) of the terms and conditions of the allotment application dated 01.07.2013. 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 appearance. The respondent appeared on 19.07.2018 and 04.09.2018. The case came up for hearing on 19.07.2018. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply.



Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 1.07.2013 the complainant had booked his flat in the group housing complex in the name and style of "Park View Sanskruti" located at Sector 92, Gurugram. The complainant assails that the respondent company through false, fake assurances and promises tend to induce the complainant to purchase the flat, the respondent by giving examples of various works done by it in Delhi and Haryana assured the complainant timely completion of the construction work.
6. The complainant paid booking amount of Rs.22,00,000/-. On 01.07.2013, the complainant received allotment letter from the respondent. The terms and condition of the provisional application of allotment wherein the developer agreed to handover possession of the flat within 36 months plus 6 months grace period from the commencement of construction upon receipt of all approvals or from the date of the executing of the apartment buyer's agreement and the respondent failed to develop so called project within the said period. The complainant submitted that he has been visiting the project



site and it has been noted that the construction of the project is at very low pace and there is no possibility in near future of its completion. Therefore, the respondent company has cheated and frauded the complainant committing criminal offence of breach of trust and other offences. That the respondent company went on committing misdeed and wrongly sent a letter on 04.12.2014 demanding an amount of Rs.51,16,199/- and an interest amount of Rs.8,04,517 failing which the allotment may be cancelled and the amount deposited will get forfeited, the said letter is farcical trapping letter to siphon the remaining amount.

7. That respondent company is trying to exploit complainant even though an amount of Rs.22,00,000/- has been given by the complainant, there is no genuineness of the claim of the respondent company that the flats are ready for outs, as a matter of fact, the construction is far from completion or being ready for fit outs. The complainant is being harassed by the respondent. Having left with no other efficacious remedy, the complainant maintains this complaint.



8. **Issues raised by the complainants are as follow:**

- i. Whether the respondent has completely failed to complete the construction and is liable to refund the

amount paid by the complainant due to sheer negligence and ulterior motives?

- ii. Whether the allotment cancelled by the respondent is reasonable justifiable?
- iii. Whether the respondent company wanted to dupe the complainant on respect of the amount taken by the company and now trying to shift the burden of cause of delay on complainant?
- iv. Whether the claim made by the respondent that the flat is ready for fit outs genuine?

9. **Relief sought:**

The complainant is seeking the following relief:

- i. The respondent be directed to refund the amount of Rs.22,00,000/- with interest in terms of section 19 read with Rule 15 of Haryana Real Estate(regulation and development) Rules,2017.
- ii. The complainant is seeking compensation of Rs.2,00,000/- for mental agony, harassment and financial losses.
- iii. Such other relief as it may deem fit in the interest of justice, equity and good conscience.



Respondent's reply

10. The respondent submits that the present complaint is not maintainable in law or facts. The provision of the RERA Act, 2016 are not applicable to the project in question. The application of issuance of occupation certificate in respect of the apartment in question was made on 30.06.2017 i.e. well before the notification of the Haryana Real Estate Rules, 2017. Therefore, the project in question is not an "on-going" project as per the Rule 2(1)(o). the Hon'ble Authority does not have jurisdiction to entertain and decide the present complaint.
11. However, the respondent submitted that the complaint pertaining to refund and interest for a grievance under sections 12,14,18 and 18 of the RERA Act, 2016 are required to be filed before the adjudicating officer under Rule-29 of the HRERA Rules, 2017 read with section 31 and section 71 of the said Act and not before this Hon'ble Authority under Rule 28. The present complaint is liable to be dismissed.
12. The respondent further contends that the statement of accounts of the complainant as on 25.12.2014 showing the total outstanding liability amounting to Rs.73,96,221/- including the delayed payment charges and the complainant undertook to be bound by the terms and conditions of the



application form and undertook to make timely payment of instalments which he failed to do it, right from the beginning the complainant was extremely irregular in the payment of instalment. The respondent was compelled to issue demand notices, payment reminders etc. on various dates the respondent sent reminder letters to the complainant as to give instalment money with interest on time but the complainant on all occasions failed to do the same and hence, on 25.12.2014 the respondent was left with no option but to cancel the allotment of flat made to the complainant and forfeited the booking amount as paid by the complainant which he did not pay in full. That there is no default or lapse on the part of the respondent is false and baseless.

13. As a matter of fact there has been no delay in terms of construction of the project is concerned. The complainant never had sufficient funds to make payment of the sale consideration and has proceeded to make false and baseless allegations against the respondent so as to cover its own lapses. That the complaint files by the complainant is barred by limitation. The allotment of the flat was cancelled way back in the month of December, 2014. The complainant has not raised any dispute with respect to the cancellation in last 3.5 years. The present application is nothing but an abuse of the



process of law. Therefore, the present application deserves to be dismissed.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues raised by the complainant and arguments advanced by the counsels for the parties have been heard and it is decided that the present complaint is barred by the law of limitation.

Findings of the authority

14. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.

Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to register its project under the RERA Act 2016 and hence has violated section 3 of the Act, ibid attracting penalty under section 59 of the said Act



and penalty which may extend to 10 % of the total cost of project.

Decision and directions of the authority

15. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following order in the interest of justice :

- (i) The allotment of the apartment was cancelled in December, 2104. As per clause 11 of the application form, the cancelation was issued on 25.12.2014. apart from any objection taken by the respondent, the matter is time barred.
- (ii) Accordingly, the complaint is dismissed being barred by the limitation.


16. 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 by the registration branch.


17. The order is pronounced. Detailed order will follow.

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



(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 04.09.2018
Complaint No.	316/2018 Case titled as Mr. Sameer Agarwal V/S M/S Bestech India Pvt. Ltd.
Complainant	Mr. Sameer Agarwal
Represented through	Complainant in person with Shri Sumit Kumar Gaur Advocate
Respondent	M/S Bestech India Pvt. Ltd.
Respondent Represented through	Shri Ishaan Dang Advocate for the respondent
Last date of hearing	19.7.2018

Proceedings

The project is not registered.

It was brought to the notice of the authority that the project is registerable but so far it has not been registered which is in violation of Section 3 (1) of the Real Estate (Regulation & Development) Act 2016. The learned counsel for the respondent has been asked to advise the respondent to do needful at the earliest and this be treated as the notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of Section 3 (1) of the Act ibid, where under the penalty amount may extend upto 10% of the estimated costs of the Project.

Arguments advanced by the counsel for the parties have been heard. The allotment of the apartment was cancelled in December 2014. As per

clause 11 of the application format, the cancellation order was issued on 25.12.2014. Apart from any objection taken by the respondent, the matter is time barred. Accordingly, the complaint is dismissed being barred by limitation. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
04.09.2018