

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

**Complaint No. : 5 of 2018**  
**Date of Institution : 20.02.2018**  
**Date of Decision : 13.09.2018**

1. Mrs. Tanu Syal
2. Mr. Lavan Syal

**...Complainants**

R/o H.No. K-3/101, DLF Phase -II,  
Gurugram

Versus

1. M/s Parsvnath Hessa Developers Pvt.  
Ltd.

Office Parsvnath Metro Tower Near  
Shahdara Metro Station, Shahdara Delhi-  
110032

**...Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Abhimanyu Syal son of  
Complainant with Shri Sukhbir Advocate for the complainants  
Yadav

Shri Manoj Kumar authorized  
representative on behalf of  
company with Shri Arun  
Kumar Yadav

Advocate for the respondent



**ORDER**

1. A complaint dated 20.02.2018 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 Tanu Syal & Lavan Syal, against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd. on account of violation of Clause 10(a) of the builder-buyer agreement executed on 16.05.2011 for unit no. B-5-1001 on 10<sup>th</sup> floor in tower B5 having 3390 sq. Ft. approx. in the project "Parsvnath Exotica", Sector-53, Gurugram 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	Parsvnath Exotica Sector-53 Gurugram
2.	Registered/not registered	Not registered
3.	Unit no.	B5-1001
4.	Date of BBA	16.05.2011
5.	Date of booking	30.06.2010
6.	Total cost	Rs. 2,38,18,100/-
7.	Total amount paid by the complainant	Rs. 2,35,95,668/-
8.	Percentage of consideration amount	99% Approx.
9.	Date of delivery of possession.  <b>Date of construction i.e. 29.09.2010</b>	Clause 10(a)36 months from commencement of construction or 24 months from the date of booking of flat, whichever is later+6 months grace period i.e.



		<b>29.03.2014</b>
10.	Delay of number of months/ years upto 13.09.2018	4 years 5 months
11.	Penalty Clause as per builder buyer agreement dated	Clause 10 (c)- Rs. 10/- per sq. ft. per month
12.	Cause of delay in delivery of possession	Due to force majeure

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. B5-1001 according to which the possession of the aforesaid unit was to be delivered by 29.03.2014. The promoter has failed to deliver the possession of the said unit to the complainants by the due date as per builder buyer agreement dated 16.05.2014. 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 10.04.2018. The case came up for hearing on 10.04.2018, 02.05.2018, 17.05.2018, 22.05.2018, 29.05.2018, 26.06.2018, 5.07.2018, 12.07.2018. The reply has been filed on behalf of the respondent on dated 07.04.2018.

#### **FACTS OF COMPLAINT**

5. That on 27.04.2011, the complainants have purchased a flat in above said project in resale from Ms. Manju Mittal, bearing no. B5- 1001 (area admeasuring 3390 sq. ft.),in the township



i.e. (Prasvnath Exotica, Sector - 53 Gurugram) constructed/developed by the respondent party.

6. That the above said flat was booked by Ms. Manju Mittal on date 17.08.2010. On date 15.04.2011 Mrs. Tanu Syal & Mr. Lavan Syal (complainants) purchased the said flat from Mrs. Manju Mittal with permission of respondent(s). That thereafter complainant(s) had paid Rs. 1,05,00,000/- to original allottee and after making the payment to original allottee the re-allotment letter was issued in the name of complainants.
7. That thereafter, Flat buyer agreement was executed on 16.05.2011 between the complainants and the respondent. complainants continued to pay the remaining installment as per the payment schedule of the builder buyer agreement and have already paid the more than 95% amount i.e. Rs. 2,35,95,669/- along with interest and other charges.
8. The complainants submitted that the main grievance of the Complainants in the present complaint is that in spite of complainants paid more than 95 % of the actual cost of flats & ready and willing to pay the remaining amount, the respondent party has failed to deliver the absolute possession of flat. That the complainant has come to know through a RTI reply from Directorate of Town and Country Planning, Haryana, that all the licenses of said project has been expired as on date.



**9. Following issues have been raised by the complainant**

- i. Whether the respondent has violated the terms and conditions of flat buyer agreement?
- ii. Whether there is any reasonable justification for delay of possession?
- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers/respondent for delay in giving possession?
- iv. Whether complainants are entitled for 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?

**10. Following relief has been sought by the complainant**

- i. Refund of amount Rs 2,35,95,669/- which was paid by the complainant along with interest @24% per annum from date of deposit. (Condition 15a flat buyer agreement).
- ii. Respondent may be directed to hand over possession of the flats to the Allottees within 6 months from date of judgement.



- iii. Respondent may be directed to deposit all the amounts required for the completion of the said towers in an escrow account under the supervision of the complainant not later than 30 days from the date of judgement.
- iv. Respondent may be directed to hand over the club house and car parking complete in all respects while handing over the flats.

### REPLY

11. Respondent submitted that Mrs. Manju Mittal booked a flat bearing no. B5-1001 on 30<sup>th</sup> June 2010 with an area measuring 3390 sq. ft. in the project "Parsvnath Exotica" Gurugram through Blue Star Buildprop Ltd. An amount of Rs. 10,00,000/- received towards as basic cost & service tax vide cheque no. 543173 dated 28<sup>th</sup> June, 2010. The said payment was acknowledged dated 15.07.2010 is attached as annexure.
12. The respondent submitted that an agreement to sell was signed between the original allottee Mrs. Manju Mittal & the complainants on 15.04.2011, by which the rights of Ms. Manju Mittal is agreed to transfer in favour of the complainants. The respondent submitted that the complainants purchased the flat from the original allottee for a sale consideration amounting to Rs. 2,30,18,100/- and entered into an written agreement to sell with them on 15 April 2011.





13. The respondent submitted that the original allottee had paid the respondent Rs. 1,05,00,000/- and the same was paid by the complainant to the original allottee and it was agreed by the complainant that the complainant would pay the rest amount of the flat along with other charges as per the terms of the flat buyer agreement directly to the respondent, Accordingly the name of the complainants were endorsed in the records of the respondents with respect to the said flat. The respondent submitted that the respondent company raised the demand of instalments only in the accordance with the agreed construction liked payment plan allotted by them.
14. The respondent mentioned in his reply that the complainant was offered the unit for fit out purposes vide its letter dated 22.03.2018 duly credited a sum of Rs. 20,00,100/- on account of delay compensation in terms of clause no. 10(c) of the builder buyer agreement & have also offered a special rebate of Rs. 17,00,000/- on account of unfinished items to be carried out in the flat if the complainant desire finishes of their own choice.
15. It is pertinent to mention that the said project consists 18 towers out of which possession of flats in 11 towers have already been handed over to the buyers after receipt of occupancy certificate and the registration of flats have been done and the respondent already applied for the issuance of OC of 5 towers. As regards B5 & B6 towers the same got



delayed due to building plans revision pending before DTCP & submitted that 90% of the project is complete.

16. The respondent submitted that all the licences have been renewed by the department and the department has also accorded in the principal approved of the beneficiary market rights in the favour of the developer.
17. The respondent is not liable to pay any interest on the refund being claimed by the complainants. As per 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.

#### Determination of issues

- i. 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.”*

- ii. In regard to 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.
- iii. In regard to the **third issue** in the complaint, the complainants have not furnished anything to prove any misrepresentation on the part of the respondent company.
- iv. 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. 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.

- v. In regard to the **fifth issue** raised by the complainant, 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.*



vi. In regard to **sixth issue** in the complaint, the complainants can seek compensation from the Adjudicating Officer under the RERA Act.

18. 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.”*

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**

19. **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.

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

20. 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.”*



21. 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 10<sup>th</sup> 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.

22. The complainants 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

23. 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 i.e. 29.03.2014 till 13.09.2018 within 90 days of this





order and thereafter, on 10<sup>th</sup> of every month of delay till the handing over of possession.

- (iii) If the possession is not given on the date committed by the respondent in the registration application 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*.

24. The complaint is disposed of accordingly.
25. The order is pronounced.
26. 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

