

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

Complaint No. : 29 of 2018
**Date of First
Hearing : 12.04.2018**
Date of Decision : 13.09.2018

Mr. Sunil Paul

R/o H. No. B-8, Old DLF Colony, Gurugram,
Haryana

Complainant

Versus

M/s Parsvnath Hessa Developers Pvt. Ltd.,
Through its Directors, Parsvnath Metro Tower,
Near Shahadra Metro Station, Shahadra, Delhi-
110032,

Corporate Office: 6th Floor, Arunachal Building,
19, Barakhamba Road, New Delhi-110001

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri. Sukhbir Yadav
Ms. Divya Gupta, Authorised
Representative on behalf of
the respondent with Sh.
Sanjeev Jain, MD of the
respondent company

Advocate for the complainant
Advocate for the respondent



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 complainant Mr. Sunil Paul , against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd., on account of violation of clause 10(a) of flat buyer agreement executed on 11.06.2008, 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.	901, 9th floor, tower B-1
3.	Registered/ not registered	Not registered
4.	Date of booking	07.01.2006
5.	Payment Plan	Construction linked Plan
6.	Date of flat buyer agreement	11.06.2008
7.	Total consideration amount as per agreement dated 11.06.2008	Rs. 80,76,850/- (excluding parking charges which amounts to Rs. 4,00,000)
8.	Total amount paid by the complainants	Rs. 81,31,241 /-



9.	Date of delivery of possession from the date of execution of flat buyer agreement	03.04.2012(36 months from commencement of construction of the particular block with 6 months grace period) Clause 10(a)- 36 months from the commencement of construction of the block in which flat is located with 6 months grace period)
10.	Delay for number of months/ years upto date 13.09.2018	6 years 5 months
11.	Penalty clause as per flat buyer agreement dated 11.06.2008	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

HARERA
GURUGRAM



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 complainant 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 03.04.2012 along with 6 months

grace period. The respondent company made an offer of possession on 27.05.2018 for fit outs along with a rebate offer of Rs. 7,50,000/- 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 11.06.2008.

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, 29.08.2018 and 13.09.2018

Facts of the complaint

5. Briefly stated, the facts of the case the family members of complainant insisted to buy a flat and suggested to buy a flat in the project named "Parsvnath Exotica", Sector-53/54, Gurugram.
6. The complainant got to know from the company executive that the flats had already been booked in tower B1. The



complainant searched the property in the open market and then got a seller Mrs. Chandrima Mukherjee and Ms. Manjusha Chatterjee who had booked the flats in the aforesaid township for Rs. 80,76,850/- and who were willing to sell the allotment as they were in urgent need of money. The complainant agreed to purchase the flat from the original purchaser and paid Rs. 33,21,000. The complainant purchased the flat after getting necessary permission from the respondent party and got the rights transferred in his name.

7. As per the re allotment letter complainant has to pay the remaining amount to builder and amount already paid by original allottee has been already adjusted in the total price of the flat. The respondent confirmed that the possession of the flat will be given in 36 months i.e by November 2010. The complainant have already paid more than 95% amount i.e Rs. 81,31,241/-.
8. The respondent embezzled the hard earned money of the complainant and other co-owners. The first cause of action arose in or around 2008. Further, the cause of action arose on various occasions, including a) Dec. 2012, b) May 2004, c) June 2014, d) April 2016, e) Feb 2017, f) Dec 2017 g) Feb 2018 and on many times till date



9. The grievances of allottees against the builder was reported by leading newspapers on various dates.

10. Issues raised by the complainant

- I. Whether the respondent has violated the terms and conditions of the Builder Buyer 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 complainant is entitled to refund of all money paid to respondent?
- V. Whether the complainant is entitled for compound interest @ 24% per annum from date of booking till date?
- VI. Whether the complainant is entitled to compensation for mental agony?
- VII. Whether complainant is entitled for compensation as penalty for delayed possession? If yes, what amount?



11. Relief sought

- I. Pass an appropriate award directing the respondent parties to compensate with interest @24% from

November 2010 till date of possession on paid amount by the complainant to the respondent party.

- II. Respondent party may kindly be directed to hand over the possession of flats to the allottees immediately and not later than three months from the date of judgement, complete in all respects and execute all required documents for transferring the ownership of the respective flats. Direct the respondent to refund the amount Rs. 1,55,26,537/- paid by the complainant to the respondent party as instalments towards the purchase of flat along with interest @ 24% per annum compounded from the date of deposit.

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 has 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 original allottees approached the respondent and submitted an application form on 05.01.2006 which was allocated to the complainant at the basic price of Rs. 80,76,850/-. The respondent sent the flat buyers agreement to the complainant which was signed and returned on 11.06.2008.

17. Several demand notices dated 17.06.2008, 22.09.2009, 15.12.2009, 22.03.2010, 26.06,2010, 30.08,2010, 09.065,2011, 04,11.2011and 15.02.2012 were issued for clearing the outstanding amount. The complainant were issued a letter



dated 27.05.2018 wherein the flat was offered for fit outs and a rebate of Rs.7,50,000/- was offered for carrying out finishing work .

18. The respondent submitted that the construction was commenced diligently but due to recession setting in of the leading to customers not being in a position to pay their instalment timely therefore resulting in liquidity crunch which adversely affected the real estate sector, the construction work got hampered and slowed down. The respondent company protected the rights of the complainant for delay in handing over the possession of the flat and accordingly credited the delay penalty for a total sum of Rs. 9,15,300/- calculated at Rs 33,900/- per month starting from May 2011 till July 2013 in letter and spirit of the FBA.

19. The respondent set forth 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 11.06.2008 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 complainant 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 complainant. As the interest of 24% per annum compounding as claimed by the complainant is



exorbitant and as per the clause 10(c) of the agreement, the respondent is not liable to pay any interest to the complainant as time is not of the essence of the agreement.

24. Written arguments on behalf of complainants

- I. The delay of more than 7 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. 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-1. Fire Department N.O.C.



etc is also not with respondent and common amenities are yet to be installed.

- V. It is no where 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 complainant, 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 complainant did not place any request for allowing them to do interior and finishing work. Complainant 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 complainant. If complainant 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 complainant/allottees is 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 complainant, 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 complainant, 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 complainant has 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 complainant will be entitled to claim refund.

29. 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.

30. In regard to sixth issue in the complaint, the complainant 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 complainant 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 complainant 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 complainant 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 complainant 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 complainant can approach this authority for redressal of their grievance. Further, the complainant must also complete the payment due on their part.



Decision and directions of the authority

36. 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 complainant on the date committed by the respondent for handing over the possession.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.45% on the amount deposited by the complainant 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 complainant 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*.



37. The complaint is disposed of accordingly.

38. The order is pronounced.

39. 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



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