

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

Complaint No. : 71 of 2018
Date of Institution : 17.04.2018
Date of Decision : 29.10.2018

Mr. Anshul Kumar, R/o A-302, Rama
Apartments, Plot no. 25, Sector- 43,
Gurugram, Haryana-122009

...Complainant

Versus

M/s Adani M2K Projects LLP, having its
registered office at: Ground Floor, Adani
House, Plot no. 83, Institutional Area,
Sector- 32, Gurugram, Haryana- 122001

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri J.S. Dhull Advocate for the complainant
Shri Bidit Deka Advocate for the respondent

ORDER

1. A complaint dated 08.03.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Anshul Kumar, against the promoter M/s Adani M2K Projects LLP on account of violation of clause 5(A) of the builder-buyer



agreement executed on 06.11.2013 for unit no. E-1903 on 19th floor in the project “Oyster Grande” 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	Oyster Grande Sector-102A, Gurugram
2.	Area of the project	15.725 acres
3.	Payment plan	Construction linked payment plan
4.	RERA Registration	Tower G, H and J are Registered. But Tower E is not registered
5.	Date of receipt of OC for Tower E	11.12.2017
6.	Date of booking	18.10.2012
7.	Date of agreement	06.11.2013
8.	Unit no.	E-1903, 19 th floor
9.	Area of unit	1219 sq. ft. (tentative super area- 1689 sq. ft.)
10.	Total consideration	Rs. 1,14,98,504/-
11.	Total amount paid by the complainant	Rs. 1,09,17,233
12.	Date of delivery of possession. As per clause 5(A) – 48 months + 6 months’ grace from the date of execution or commencement of construction	05.05.2018
13.	Letter for handing over possession issued on	23.01.2018



3. As per the details provided above, which have been checked as per record available in the case file provided by the complainant and respondent. A builder buyer agreement is available on record for E-1903 on 19th floor according to which the possession of the aforesaid unit was to be delivered by 05.05.2018. The promoter has failed to deliver the possession of the said unit to the complainant. 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 17.04.2018. The case came up for hearing on 17.04.2018, 03.05.2018, 10.05.2018, 30.05.2018, 10.07.2018 and 21.08.2018. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE

5. Initially, M/s OPL Infrastructure private limited booked a 3 BHK apartment on 18.10.2012 with the respondent and thereafter, the respondent allotted apartment no. E-1903, measuring 1219 sq. ft in Oyster Grande situated in Sector-102, Gurugram for a total consideration of Rs 1,14,98,504/-



6. The respondent executed an apartment buyer agreement with M/s OPL Infrastructure private limited on 06.11.2013
7. M/s OPL Infrastructure Private Limited made payments as per the payment plan amounting to Rs 80,27,391/- to the respondent.
8. Thereafter, the said apartment was transferred in the name of the complainant vide provisional allotment letter and the complainant has made payments as and when demanded by the respondent by getting financing of Rs 30,00,000 at the rate of 10.10% p.a. from LIC Housing Finance ltd. vide tripartite agreement dated 02.12.2013.
9. The total amount received by the respondent is Rs 1,09,17,233/- which includes Rs 3,80,025/- as PLC charge and Rs 7,50,000/- as car parking, which is illegal.
10. The complainant is in shock after seeing at the project site that no basic amenities like water, sewer, road and light etc have not been provided till date by the respondent.



ISSUES RAISED BY THE COMPLAINANT

The following issues have been raised:

- i. Whether or not the developer is liable to hand over possession of the said apartment to the complainant by

- providing all the basic amenities like water, sewer, road, light etc. on the site?
- ii. Whether or not the respondent is liable to pay interest @ 18% p.a. as per payment made by the complainant to the respondent till handing over the possession of the said apartment to the complainant?
 - iii. Whether or not the respondent is liable to refund Rs 3,80,025 as PLC and Rs 7,50,000 received illegally for car parking with interest @ 18% p.a. from date of deposit till its realization.
 - iv. Whether or not the respondent is liable to pay Rs 20,00,000 towards compensation for mental pain, agony and physical harassment to the complainant?

RELIEF SOUGHT

The following reliefs have been sought:

- i. To direct the respondent to hand over possession of the said apartment to the complainant with all basic amenities.
- ii. To direct the respondent to pay interest @ 18% p.a. till handing over of the possession.
- iii. To direct the respondent to pay Rs 3,50,000 paid as PLC and Rs 7,50,000 received illegally for car parking with



interest @ 18% pa. from the date of deposit till realization to the complainant.

- iv. To direct the respondent to pay a sum of Rs 20,00,000 as compensation for mental pain, agony and physical harassment.
- v. To direct the respondent to show all the NOC's and approvals taken from the Govt. authorities for the said project to the complainant?

REPLY BY THE RESPONDENT

11. It is submitted that the respondent has undertaken to execute construction of the large scale project Oyster Grande in a phase-wise manner. In the first phase, approximately 656 apartments including 134 EWS apartment are ready for possession.
12. The respondent received the OC for tower D, E and Economic Weaker Section (hereinafter referred to as EWS) towers on 11.12.2017 which includes tower E, in which the apartment in question is situated and received the OC for towers A, B, C and F on 20.12.2017.
13. It is submitted that after obtaining the OC, the respondent vide letter dated 23.01.2018 sent a demand letter to the complainant to pay the outstanding instalment of Rs 17,04,180/- due and



- payable at the stage of offer of possession in order to receive notice for physical possession of the apartment.
14. The respondent submits that the present complaint is not maintainable as the complainant has failed to show any violation of HARERA Rules, 2017 under which the complaint has been filed.
15. The respondent submits that the total proposed period for delivery of possession would be 54 months from date of agreement which comes out to be 05.05.2018.
16. Respondent further submits that he is not liable for any delay in delivery till 05.05.2018.

DETERMINATION OF ISSUES:

17. In relation to **issue no. 1** of the complainant, as per clause 5A of the buyer's agreement, the possession of the unit was to be handed over within 48 months with a 6 months grace period from the date of execution of the said agreement. Accordingly, due date of possession is 05.05.2018. The clause regarding possession of the said unit is reproduced below:

"..and subject to all just exceptions will endeavour to complete the construction of the said apartment within a



period of 48 months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of 6months ...”

However, it is pertinent to note that the respondent had sent a letter to the complainant on 23.01.2018 for handing over possession i.e. prior to the expiry of the due date of delivery of possession.

18. In relation to **issue no. 2**, the authority is of the view that interest shall be granted at prescribed rate as per the proviso of Section 18, RERA and rule 15 of HARERA rules which have been reproduced below

Section 18: Return of amount and compensation

“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 the possession, at such rate as may be prescribed”

Rule 15: Interest payable by the promoter and allottee

“....the rate of interest payable by the promoter to the allottee or by the allottee to the promoter as the case may



be, shall be the State Bank of India highest marginal cost of lending rate plus two percent..”

19. In relation to **issue no 3**, the authority is of the view that the clause 3 of the apartment buyers agreement clearly stipulates the preferential location charges and towards computation of the total sale consideration for the unit. The agreement is executed by both the parties out of their own free will and volition. Therefore it cannot be said that such an amount is charged illegally.

The relevant clause has been reproduced below:

Article 3: Sale consideration

The sale consideration includes the following:

- a. *Basic sale price being Rs 9,281,055 calculated @Rs 5,495 per sq. ft. super area.*
- b. *PLC (preferential location charges) being at Rs 3,80,025 calculated @225 per sq. super area for the apartment.*
- c. *Parking charges being at Rs 7,50,000 towards 2 basement car parking.*



20. In relation to **issue no 4**, the complainant has made a statement vide order dated 10.07.2018 that he is not appearing before the

authority for compensation but for the fulfilment of the obligations by the promoter. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

FINDINGS OF THE AUTHORITY:

21. 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.

22. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions

- i. Since the builder had issued a letter dated 23.01.2018 for handing over possession to buyer i.e. prior to the expiry of due date of delivery of possession, the complainant is advised to take possession after making due payments.



ii. The buyer has already made a payment of Rs. 1,09,17,233 out of total consideration amount of Rs. 1,14,98,504. The complainant is advised to take possession after making due payments.

23. The authority has decided to take suo motu cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of Act by the registration branch.

24. The order is pronounced.

25. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 29.10.2018

HARERA
GURUGRAM

