

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

Complaint No. : 626 of 2018
First date of hearing: 25.09.2018
Date of Decision : 25.10.2018

Mr. Ashutosh Jyoti,
R/o. C-103, Park Grandeur,
Sector-82, Faridabad,
Gurugram

Complainant

Versus

1. Puri Construction Pvt. Ltd,
Regd. Office: 4-7B, Ground Floor
Tolstoy House, 15 and 17 Tolstoy Marg,
New Delhi- 110001

2. Florentine Estates Pvt. Ltd.,
Regd. Office: 4-7B, Ground Floor,
Tolstoy Marg, 15 and 17 Tolstoy Marg,
New-Delhi- 110001

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Ashutosh Jyoti
Shri Hemant Choudhary
Shri Himanshu Juneja

Complainant in person
Advocate for the complainant
Consultant on behalf of the
respondents

ORDER



1. A complaint dated 27.07.2018 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.Ashutosh Jyoti, against the promoter Puri Construction Pvt. Ltd. and Florentine Estates of India Ltd.,in respect of unit number B3-303, 3rd floor, block/tower 'B-3' in the project 'Emerald Bay' Sector 104 Gurugram for not handing over possession of the project on the due date which complainant had agreed upon at the first place.

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

1.	Name and location of the project	"Emerald Bay", Sector-104, Gurugram
2.	Apartment/unit no.	B3-303 on 3 rd floor, block/tower 'B-3'
3.	Apartment measuring	1700 sq. ft.
4.	RERA registered/ not registered.	Registered (136/2017)
5.	Date of completion as per Hrera registration certificate	28.02.2020
6.	Nature of project	Residential group housing colony
7.	DTCP license no.	68 of 2012
8.	Project area	15.337 acres
9.	Booking date	02.04.2015
10.	Date of execution of apartment buyer's agreement	13.04.2015
11.	Payment plan	Construction Linked Plan
12.	Total consideration	Rs.1,70,56,664/-
13.	Total amount paid by the	Rs. 86,59,037/-



	complainant till date	
14.	Percentage of consideration amount	Approx. 51 percent
15.	Date of delivery of possession as per clause 11(a) of apartment buyer's agreement (48 Months + 180 days grace period from the date of execution of the agreement)	13.10.2019 (as per the agreement 48 months + 180 days from the date execution of flat buyers agreement)
16.	Delay in handing over possession till date	Premature
17.	Penalty clause as per terms of provisional allotment application	Clause 14 and 15 of the agreement, simple interest @6% per annum.

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 respondents. An apartment buyer agreement was executed on 13.04.2015. The date of delivery of possession is due by 13.10.2019 and hence, there is no violation of clause 11(a) of the apartment buyers agreement, as the date is yet not lapsed.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents appeared on 25.09.2018. The case came up for hearings on 25.09.2018 and 25.10.2018. The reply filed by the respondents on 04/09/2018 has been perused. The



respondents have provided 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 02.04.2015 the complainant had booked his flat after going through the advertisement published by the respondents in the newspaper and as per the prospectus provided by him in the group housing complex in the name and style of "Emerald Bay" located at Sector 104, Gurugram. The complainant assails that the apartment buyers agreement was executed between them on 13.04.2015.
6. The complainant paid booking amount of Rs.1,00,000/-. On 13.04.2015, the complainant entered into the apartment buyer agreement with the respondents. The total cost of the apartment is Rs.1,70,56,664/-. That during the course of construction of the above said project, the respondents changed the sanctioned plan and layout plan in contravention of the brochure that was presented and shown to the complainant at the time of booking.
7. That the complainant so far has made the total payment of Rs.86,59,037/- to the respondents. That the letter dated 26.09.2017 was sent to the complainant by the respondents



intimating him regarding the change and revised building plans. After receiving the letter, complainant contacted the respondents and showed disinterest in the said revised plans and also conveyed to them that he booked the flat specifically on the basis of layout plan that was mentioned in the brochure at the time of booking.

8. The complainant further submits that when he visited the site during the course of construction, he came to know about the changed layout plan and noticed that the construction was not being done as per the brochure that was shown to him at the time of booking of the flat. The various amenities like internal connecting roads, civil structures, green areas, minor entry and exit points, water bodies were altered, removed or changed by the respondents.

9. The complainant showed his disinterest in the changed plans to the respondents and requested not to change the layout plan and if the plan is revised, then the complainant would like to withdraw his flat booking along with his entire amount paid by him so far. The complainant further contends that when he did not receive satisfactory reply from the respondents, he requested the respondents to cancel and refund the amount paid by the complainant along



with the appropriate interest. The complainant also sent letter to the respondents dated 25.11.2017 for the cancellation but the respondents did not pay any heed to the just and genuine request of the complainant. The respondents failed to return the amount received by him along with prescribed interest which is an obligation of the respondents under section 18(1) of the RERA Act, 2016.

10. The complainant contends that the acts of the respondents are malafide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to public policy, equity and fair play and is not sustainable in the eyes of the law and is liable to be prosecuted under section 12 and other relevant sections of the RERA Act, 2016.

Issues raised by the complainant are as follow:

- i. Whether the respondents violated the actual terms and conditions of the apartment buyer agreement by changing the sanctioned plan and the layout plans?
- ii. Whether the respondents are responsible for cheating the complainant?
- iii. Whether the respondents failed to deliver the agreed layout plan to the complainant?



- iv. Whether the respondents are liable to be prosecuted for the violation of RERA provisions other than section 12?

Relief sought:

The complainant is seeking the following relief:

- i. The respondents be directed to refund the total amount of Rs.86,59,8037/- along with the interest @18% per annum from the date of deposit till the realization of the amount, for false representation of layout plan.
- ii. To direct the respondents to pay litigation charges of Rs. 55,000/-.

Respondent's reply

11. The respondents submitted that the present complaint is not maintainable in law or facts. The provision of the RERA Act, 2016 are not applicable to the project and the hon'ble authority does not have jurisdiction to entertain the present complaint. Also, that at the outset and every averment, statement, allegations of the complainant is denied and false.

12. The respondents further submitted that the present complaint cannot proceed further being infructuous and there is no cause of action to file this complaint. The complainant himself has requested for cancellation of



allotment unit no. B3-303 vide letter dated 25.11.2017 and accepted/admitted the forfeiture of applicable amounts and also accepted and expressed his willingness to receive the balance amounts, which would be refunded to the complainant post resale of the unit as per terms and conditions of the clause 55 of the duly executed apartment buyer agreement dated 13/05/15 between the parties. Hence, the complainant has no cause of action to file the present complaint and seek full refund on flimsy grounds.

13. The respondents further contends that the complaint filed by the complainant is not maintainable under the provisions of RERA Act and applicable rules, as the complaint can only be filed for violation or for the breach of the provisions of the Act and Rules. In the present complaint no violation or breach of the provisions of the Act and Rules has been alleged or averred. Hence present complaint be dismissed. The relationship between the parties is governed by the binding terms of the buyers agreement dated 13.04.2015 and the respondents have not committed any default in terms of the buyers agreement rather the respondents shall be refunding the agreed balance amounts to the complainant post resale of the said unit. Hence, the present complaint cannot proceed further. The respondents has



followed due procedure of law while getting the building plans revised and the complainant had not filed any objections against the revision in building plans even after receiving the letter dated 26.09.2017 and the final approval for revised building plans was issued by the DTCP after following due procedure of law.

14. As a matter of fact the complainant has not come before the authority with clean hands and had concealed various facts and is also guilty of misrepresentation. Hence, the complainant is not entitled to any relief. The complainant had made two bookings i.e. the complainant booked two units with the respondents in the same project. The first unit i.e. the present unit B3-303 was swapped by the complainant in April 2015 and satisfied with the project, the complainant had made another booking i.e. in October 2016 for which also the complainant had filed the complaint on similar allegations. The complainant being an investor is interested only in making super normal profits and it has concealed all these facts from this hon'ble authority and hence, is not tilted for any relief.

Determination of issues:

- i Regarding the **first issue**, the respondents changed the actual plan of the project for which the complainant had not



made the booking and the complainant being unsatisfied with the changes wants to cancel the booking. Also, the apartment buyer agreement was entered between the parties about the layout initially represented to the complainant and changing those layout does amount to violation of the actual terms and conditions of the apartment buyer agreement.

ii Regarding the **second issue** and **third issue**, the complainant had made booking for the project which was represented to him by the respondents through brochure and website and after entering into the agreement and making payments the respondents have changed the sanctioned plan and layout plans which indeed amounts to cheating the complainant and the parties had agreed for different layout plans and respondents have failed to deliver the same to the complainant.

iii Regarding **fourth issue**, he should be prosecuted u/s 12 of the RERA Act.



Findings of the authority

15. The preliminary objections raised by the respondents 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.

16. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondents have registered their project under the RERA Act 2016 and hence has not violated section 3 of the Act *ibid* and does not attract penalty under section 59 of the said Act or the penalty which may extend to 10 % of the total cost of project.

Decision and directions of the authority

17. 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 :

Respondents are directed to submit the approval for revised layout plan approved by the competent authority alongwith compliance report of LOI by 26/10/2018. Complainant's request for refund of money alongwith the prescribed rate of interest. can not be acceded to at this juncture in view of the progress of the project. If the complainant is not satisfied with the decision of this authority, he has the remedy to avail as per law.

18. The order is pronounced.



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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 25.10.2018



HARERA
GURUGRAM

