

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 30.10.2018
Complaint No.	23/2018 Case titled as M/S Carara Construction & Engineering Pvt. V/S M/S Assotech Moonshine Urban Developers Pvt.
Complainant	M/S Carara Construction & Engineering Pvt.
Represented through	Shri Vaibhav Suri, Advocate for the complainant
Respondent	M/S Assotech Moonshine Urban Developers Pvt. Ltd.
Respondent Represented through	Shri Yogesh Sharma, authorized representative on behalf of the respondent with Shri Sanjeev Dhingra, Advocate.
Last date of hearing	17.10.2018
Proceeding Recorded by	

Proceedings

Shri Sanjeev Srivastava-Director of the respondent company has filed an affidavit as per previous order dated 17.10.2018.

Detailed order has already been passed on 17.10.2018. Complaint is disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush

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

Complaint No. : 23 of 2018
Date of Institution : 6.3.2018
Date of Decision : 30.10.2018

M/s Carara Construction and Engineering
Pvt. Ltd., through its director Shri Rahul
Singhal

...Complainant

Versus

M/s Assotech Moonshine Urban Developers
Pvt. Ltd.

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Himanshu Raj Advocate for the complainant
Shri Aashish Chopra Advocate for the respondent

ORDER

1. A complaint dated 6.3.2018 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 M/s Carara Construction and Engineering Pvt. Ltd. against the promoter



M/s Assotech Moonshine Urban Developers Pvt. Ltd. on account of violation of 19(i) of the allotment letter executed on 20.7.2012 for Flat No. G-804 having super area of 1685 sq. ft. and flat no. B-803 having a super area of 2310 sq. ft. in the project "Assotech Blith", for not giving possession by December 2016 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	"Assotech Blith" Sector 99, Gurugram
2.	Flat no.	G 804 and B 803
3.	Project area	12.062 Acres
4.	Registered/ not registered	Registered (83 of 2017)
5.	DTCP license	95 of 2011
6.	Date of allotment letter	20.07.2012
7.	Total consideration	Rs. 1,31,05,000/-
8.	Total amount paid by the complainant	Rs. 1,30,84,496/-
9.	Percentage of consideration paid	99% (approx.)
10.	Payment plan	Construction Linked Plan
11.	Date of delivery of possession.	Clause 19 (I) and (II) i.e. June 2017 plus 6 months grace period
12.	Delay of number of months/ years up to 30.10.2018	1 year 4 months
13.	Penalty clause as per allotment letter dated 20.7.2012	Clause 19 (II) i.e. Rs 10/-



	per sq. ft. per month
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3. As per the details provided above, which have been checked as per record of the case file. An allotment letter dated 20.07.2012 is available on record for the above mentioned two flats for which the promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till 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 10.4.2018. The case came up for hearing on 10.4.2018, 2.5.2018, 22.5.2018, 17.7.2018 and 30.8.2018. The reply has been filed on behalf of the respondent.



BRIEF FACTS OF THE CASE

5. The present complaint has been filed through its director Shri Rahul Singhal, who have been authorized vide board resolution dated 1.2.2018.

6. From the time period of 20.7.2012 to 10.11.2012, the complainant booked a residential flat in the project of the respondent namely the "Assotech Blith" at Sector 99, Gurugram. Initially the complainant had booked two flats and two allotment letters were executed but later the said two bookings/agreements were merged and flat no. B 803, tower B has been allotted to the complainant for which a sum of Rs 1,30,84,496/- has been paid.
7. The complainant had written letter for merging the flats and for adjusting the amount paid against flat 804 in tower G towards flat 803 in tower B.
8. On 20.7.2012, an allotment was entered into between the parties wherein as per clause 19(i), the possession of the apartment shall be delivered to the allottee by the company by December 2016. As per clause 19(ii), in case of failure of the company to construct the apartment within stipulated time for reasons other than as stated in sub clause (i), and further with a grace period of 6 months, the company shall compensate the intending allottee for delayed period @ Rs



10/- per sq. ft. per month subject to regular and timely payments of all instalments by the allottee.

9. After the merger, the new allotment letter dated 3.2.2016 was executed with respect to flat no. B-803 and the same was to be handed over till December 2016.

10. The complainant stated that the information given in the advertisement and website is false and incorrect. No proper permissions were taken from the competent authority and the construction related information was also incorrect.

11. The complainant states that they have approached the respondent company several times but they failed to give concrete schedule. Moreover, there has been no update on the website. There is no progress at site and the project is lying abandoned.

12. The complainant submitted that he seeks refund with interest along with interest. The complainant mentions that the initial allotment letters were executed in the year 2012 and the payments were made towards the aforesaid flats as and when



demands were raised and the complainant made no defaults in making payment in timely manner.

13. As per clause 19 of the flat-buyer agreement, the company proposed to hand over the possession of the said unit by December 2016 + 6months grace period. The clause regarding possession of the said unit is reproduced below:

“19 Possession

“The possession of the apartment shall be delivered to the allottee by the company by December 2016 subject to the force majeure, circumstances, regular and timely payments by the intending allottee.....”

14. ISSUES RAISED BY THE COMPLAINANT

- I. Whether the respondent is liable for unjustifiable delay in construction and development of the project in question?
- II. Whether the respondent is liable to refund the amount of Rs 1,30,84,496/- along with interest @ 15% p.a.?



15. RELIEF SOUGHT

- I. To direct the respondent to refund the amount of Rs 1,30,84,496/- along with interest @ 15% p.a.
- II. Any other order as the authority deems fit and proper as the case may be.

RESPONDENT'S REPLY

16. The respondent stated that the date of booking is 11.09.2012 and the date of allotment letter is 10.11.2012, but the fact that there had been another revised allotment letter which was also entered into between the parties on 03.02.2016 after incorporating the revised terms and conditions.
17. The respondent submitted that the complainant has defaulted on its payments as per the scheduled payment plan for both the first and second units. The company had sent a demand letter dated 28.10.2015 on casting of 12th floor slab of the second unit and the complainant vide its email dated 10.11.2015 requested the company to allow them a leeway by extending the payment of dues up to December 2015 for the second unit and extension up to March 2016 for payment of



dues on the basis of financial constraint faced by the complainant.

18. The respondent submits that on 24.12.2015, the complainant submitted a letter for cancellation of the second unit and requested adjustment of the amount paid by the complainant against the second unit with the outstanding amount of the booked unit i.e. B 803. The complainant also requested for a discount in the selling price of the booked unit citing slowdown in the real estate market in the country.

19. The respondent further submits that the company in good faith has not forfeited the booking amount paid on the second unit and transferred the entire amount paid by the complainant in respect of the second unit to the booked unit.

Clause 12(a) is reproduced below:

“..... the allotment shall be cancelled and 10% of the basic price of the apartment will be forfeited and balance amount shall be refunded without any interest within 90 days, thereafter.”

20. The respondent further submits that, in and around December 2015, the real estate market had totally crushed



and no sales happened in the Gurugram market. The gesture of the company and their consideration to the complainant's request is to be noted in this regard.

21. The respondent submits that all the information given in the website is correct and the company has all necessary materials for the smooth functioning the project. Moreover, the licenses and approvals have been kept valid and renewed, thus the false allegations by the complainant is denied.

22. The complainant submits that based on the Accounting disclosure of the company certified by CA submitted in RERA, the company has spent an amount of approximately Rs 350+ crores towards the acquisition and development of the project.

23. The complainant also submits that all EDC/IDC charges have been fully paid as per schedule and license conditions. This means that the proportionate share pertaining to the complainant's booked unit has also been paid on schedule.

24. As per clause 19 (ii), the agreement provides that no interest is payable on the deposited amount on account of any default



by the complainant in terms of the scheduled plan. If any penalty is to be paid it is only Rs 10/- sq. ft. per month for delayed period.

25. The respondent submits that all EDC/IDC charges due to HUDA department have also been fully paid against the complainant's booked unit.

26. The respondent submits that the construction schedule for tower B has been submitted to the RERA authority at the time of registration of the project. The company is diligently and religiously following the schedule submitted to RERA.

27. The respondent submits that the company is very close to offering part possession for the project (tower E and F). The company is working towards taking up other towers in a phased manner and towards completing the booked unit.



REJOINDER BY THE COMPLAINANT

28. The complainant denies the fact that the agreement contained payment plans for both the booked units which were mutually agreed and signed off between the parties. The complainant stated that they were forced to sign pre-printed

allotment letters which contained highly unjust and unfair terms. The respondent made it clear that the terms of the agreement which as per the complainant were unilateral will be as it is and no suggestion would be entertained.

29. The complainant states the fact that they have paid an excess amount of Rs 30,00,000/- towards the existing liability. The complainant stated that even today the respondent is in receipt of Rs 10,00,000/- of excess amount and no single penalty has been received by the complainant and the same is enjoyed by the promoter.

30. The complainant submitted that the discount condition of Rs 216 was only accepted by the complainant on the condition of financial constraint and on the condition that the amount paid towards flat no. G-804 shall be adjusted into the account of flat no. B-803 and any excess amount won't be refunded. The complainant agreed to this condition only on the assurance given by the respondent to handover the possession by December 2016, thus the discount of 216 was the brain child of the respondent and the complainant never made any request for the same.



31. The complainant denied the fact that the respondent had accepted any discount and the complainant never raised any demand for the discount. There had been no discount as the amount increased by two lakhs which is reflected in statement of accounts.

32. During the last proceedings i.e. on 30.8.2018, it was brought to the notice of the authority that the project is registerable and has not been registered so far. The respondent was asked to register the project at the earliest and this to be treated as notice as to why penal proceedings should not be initiated against the respondent for violation u/s 3 of RERA Act, 2016, the penalty amount may be extended up to 10% of the estimated costs of the project. Report of the local commission has been received.

33. The complainant denies the fact that the real estate market had been totally crashed and no sales were happening in the market. Moreover, the promoter had agreed for the cancellation on its own terms which were found to be arbitrary.



34. The complainant states the fact that the under construction Dwarka Expressway road was never the key highlight of the project. The construction of the road has no bearing on the project and further the complainant submits that the road is still under construction and the government has not cancelled or abandoned it.

35. The complainant denies the fact that the sales in the project are slow and the company is not enjoying a comfortable financial position. The respondent company is a cash rich company and is solely accountable for the gross delay in the project which is attributable to the mismanagement on the side of the respondent company.

36. The complainant states the fact that the respondent company has taken 90% of the sale consideration and still the project is nowhere complete. The complainant cannot be made to suffer on account of failure on the part of respondent to construct the project within promised time frame.



DETERMINATION OF ISSUES

37. With regard to the **first issue** raised by the respondent, the authority came across that as per clause 19(I) and (II) of buyer's agreement. The clause regarding the possession of the said unit is reproduced below:

"19 Possession

The possession of the apartment shall be delivered to the allottee(s) by the company within December 2016 months from the date of allotment with grace period of 6 months."

Accordingly, the due date of possession was June 2017 and the possession has been delayed by 1 year 4 months till date. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the super area of the unit for the period of delay as per clause 19(II) of buyer's 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.”

38. With regard to the **second issue** raised by the complainant,

The promoter is liable under section 18(1)(a) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1)(a) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.45% per annum on the amount deposited by the complainant with the promoter on the due date of possession till this date.

39. Thus, keeping in view the status of the project and assurance given by the respondent, it shall not be justified to allow refund to the complainant. However, respondent shall be bound to give interest at the prescribed rate on amount



deposited by the complainant for every month of delay till the realization of the actual amount.

FINDINGS OF THE AUTHORITY

40. As the possession of the apartment was to be delivered by June 2017, the authority is of the view that the promoter has provided late possession and has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.
41. In the present complaint, the complainants are seeking refund of the entire money paid till date i.e. 1,30,84,496/- along with interest @ 15% p.a. from the date of payments till actual realisation. However, keeping in view keeping in view the present status of the project and intervening circumstances and in the interest of natural justice, the authority has directed the respondent to file an affidavit specifying the completion of tower-B and handing over of possession within one year. However, the complainant will be entitled to a prescribed rate of interest if the builder fails to deliver the possession.



DECISION AND DIRECTIONS OF THE AUTHORITY

42. 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 directions to the respondent in the interest of justice and fair play:

- (i) The respondent has filed affidavit as per previous order dated 17.10.2018.
- (ii) The possession was to be delivered by June, 2017 however, the builder has failed to deliver possession as on date. If the builder fails to deliver possession as mentioned in the affidavit, in that case, the buyer can seek refund of the amount alongwith prescribed interest @10.45% per annum as per his own volition.



43. The order is pronounced.

44. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.10.2018



HARERA
GURUGRAM

