

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

Complaint No. : 327 of 2018
Date of First hearing : 24.07.2018
Date of Decision : 16.11.2018

1. Sh. Som Nath Batra
2. Smt. Om Batra
R/o C-3A/110C, Near Janak Cinema, Janak
Puri-110058

...Complainants

Versus

M/s Anant Raj Industries Limited
Office at: H-65, Connaught Circus, New
Delhi-110001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav
Shri Rajesh Kumar

Advocate for the complainants
Advocate for the respondent



ORDER

1. A complaint dated 24.05.2018 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 complainants Sh. Som Nath Batra and Smt. Om Batra, against the promoter M/s Anant Raj

Industries Limited, on account of violation of clause 7.1 of the apartment buyer's agreement executed on 12.07.2013 for unit no. B-1004, 10th Floor, tower no. B admeasuring 1862 sq. ft. super area in the project "Maceo" 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	"Maceo" in sector 91, Village Mewka, Gurugram
2.	Unit no.	B-1004, 10th floor, tower no. B
3.	Project area	15.575 acres
4.	RERA Registered/ not registered	Registered (63 of 2017)
5.	DTCP license	71 of 2008 dated 25.03.2008
6.	Nature of real estate project	Group housing colony
7.	Date of booking	22.06.2013
8.	Date of apartment buyer's agreement	12.07.2013
9.	Total consideration	Rs. 1,12,47,586/- (as per the agreement, pg 28 of the complaint)
10.	Total amount paid by the complainant	Rs. 34,62,599/- (as per the complaint)
11.	Payment plan	Payment Linked Plan- Maceo
12.	Date of delivery of possession	Clause 7.1 – 36 months from date of execution of agreement + 6 months grace period i.e.



		12.01.2017
13.	Delay of number of months/ years upto 15.11.2018	1 year 10 months
14.	Penalty clause as per apartment buyer's agreement dated 12.07.2013	Clause 7.7- Rs. 10/- per sq. ft. of super area of said apartment per month

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 complainants and the respondent. An apartment buyer's agreement dated 12.07.2013 is available on record for unit no. B-1004, 10th floor, tower B, admeasuring 1862 sq. ft. super area, according to which the possession of the aforesaid unit was to be delivered by 12.01.2017. The promoter has failed to deliver the possession of the said unit to the complainants. 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 24.07.2018. The case came up for hearing on 24.07.2018, 06.09.2018 and 11.10.2018, 15.11.2018 and 16.11.2018. The reply has been filed by the respondent on 16.08.2018.



Facts of the complaint

5. On 22.06.2013, the complainants booked a unit in the project named "Maceo" in Sector-91, Village Mewka, Gurugram by paying an advance amount of Rs 23,15,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing no. B-1004 on the 10th floor, tower B vide allotment letter dated 29.07.2013 issued by the respondent.
6. On 12.07.2013, an apartment buyer's agreement was entered into between the parties wherein as per clause 7.1, the construction of the project should have been completed within 36 months + 6 months grace period from the date of execution of agreement, i.e. by 12.01.2017. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondent. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs. 34,62,599/- on various dates as against the total consideration of Rs. 1,12,47,586/-.
7. The complainants submitted that due to this omission on the part of the respondent the complainants have been suffering from disruption on his living arrangement, mental torture, agony and also continues to incur severe financial losses.



8. The complainants submitted that despite repeated calls, meetings and visits to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainants decided to terminate the agreement.
9. The complainants further submitted that as per clause 7.7 of the apartment buyer's agreement dated 12.07.2013 it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.10/- per sq.ft per month of the super area of the apartment. It is however, pertinent to mention here that a clause of compensation at a such of nominal rate of @ Rs.10/- per sq.ft per month for the period of delay is unjust. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement thereby making a one-sided agreement. Further, on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants @18% per annum to be



compounded from the promise date of possession till the flat is actually delivered to the complainants.

10. As per clause 7.1 of the apartment buyer's agreement, the company proposed to hand over the possession of the said unit by 12.01.2017. The clause regarding possession of the said unit is reproduced below:

"7.1- The developer based on its present plans and estimates and subject to all just exceptions, proposes to handover the possession of the said unit within 36 months from date of execution of buyers agreement unless there shall be any delay or failure due to force majeure. The allottee(s) agrees and understands that the company shall be entitled to a grace period of six months. The developer after completing the construction shall apply and obtain the Occupation Certificate in respect of the residential apartment from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition."

The complainants submitted that due to failure of the respondent in not delivering the possession till date, the complainants were constrained to file the present complaint.

11. Issues raised by the complainants

- I. Whether the respondent has incorporated clauses under a



one-sided apartment buyer's agreement and if yes, whether it is justified or not?

II. Whether there is any reasonable justification for delay in delivery of possession?

III. Whether the higher interest cost demanded by the respondent @ 18% is unjustified and not reasonable?

12. Relief sought

I. Direct the respondent to fully refund the amount paid by the complainant amounting to Rs 34,62,599/- with interest @ 18% per annum on compounded rate from the date of booking of the flat in question.

II. Direct the respondent to pay interest calculated @18% per annum on compound rate from the committed date of possession i.e. 12.01.2017 on the entire sum paid by the complainants to the respondent and to continue paying such interest till the possession is handed over by the respondent to the complainants.

III. Direct the respondent to handover the possession of the respective flat to the complainants.

Respondent's reply

13. The respondent submitted that the payment towards the



original cost of the flat/apartment was made by the complainants with delay against which the respondent had issued demand notices dated 12.07.2013 and 02.08.2013.

14. The respondent submitted that the progress of the project was affected due to circumstances beyond the control of the respondent and the same is covered under the force majeure clause 19 of the agreement dated 12.07.2013. The delays were caused on account of the orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions to builders to take additional precautions and steps to curtail pollution. It is further submitted that all these events led to suspension and stoppage of works on several occasions which also resulted in labourers and contractors abandoning work thereby affecting the progress of the project.

15. Respondent further submitted that they have time and again informed the complainant about the progress of the project vide letters dated 28.12.2017, 10.04.2017 and 20.04.2017 and also vide email dated 30.11.2017. It is submitted that the project is nearing its completion and the process of handing over the apartment will begin soon.

16. The respondent submitted that if the complainants are



entitled to any interest under clause 7.7 of the agreement for delayed possession, the same shall be paid at the time of execution of conveyance deed and not earlier, as is understood on bare perusal of clause 7.7 of the agreement. It is further submitted that the clause awarding compensation of Rs. 10 per sq ft. per month is part of the agreement to which the complainants have agreed and signed. Hence, no belated objections can be taken by the complainants with respect to the terms of the agreement at this stage.

17. Respondent submitted that the complainants ought to have referred the disputes, if any, to the arbitration in view of clause 35 of the agreement executed between the parties wherein it is specifically agreed that in the event of disputes, claim and/or differences shall be referred to a sole arbitrator appointed by the respondent.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

18. In respect of the **first and third issue** raised by the complainants, the delay compensation payable by the



respondent @ Rs. 10/- per sq. ft. per month of super area of said apartment as per clause 7.7 of apartment buyer's agreement is held to be very nominal and unjust. On the contrary, on delayed payments, higher interest rate of 18% is demanded by the respondents which is unjust. The authority is of the view that 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."

19. In respect of **second issue** raised by the complainants, the due date of possession of the project in question was 12.01.2017 and the respondent delayed in handing over the possession. The respondent submitted that orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions to builders to



take additional precautions and steps to curtail pollution resulted in delay in handing over possession on time. However, there is no reasonable justification for the delay so caused.

20. 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.”

21. 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.”

22. The complainants reserve their right to seek compensation from the promoter for which they shall make separate



application to the adjudicating officer, if required.

Findings of the authority

23. **Jurisdiction of the authority-** The project “Maceo” is located in Sector 91, Village Mewka, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

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.

24. On perusal of the file and hearing arguments advanced by the parties, the authority is of the considered opinion that it has been submitted by the respondent in the reply that the project is almost complete and moreover, as per the registration certificate, the respondent has committed to complete the project by 17.08.2019. Thus, keeping in view the status of the project and the interest of other allottees, it will not be just to allow refund at this stage. However, as per



section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% on the deposited amount on account of delayed delivery of possession w.e.f the due date of possession, i.e. 12.01.2017. It is pertinent to mention that since the complainants have made only a part payment of Rs.34,62,599/-, as such as per the provisions of Section 11 (a) of the Real Estate (Regulation and Development) Act, 2016, they are under obligation to pay the full amount and an equivalent interest @ 10.75% on account of delayed payment to be charged from the complainants.

Decision and directions of the authority

25. 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:

- (i) The respondent is directed to give interest to the complainants at the prescribed rate of 10.75% per annum on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from 12.01.2017 to 16.11.2018 on the deposited amount within 90 days from the date of this



order and thereafter, for every month of delay on the 10th of every succeeding month till the handing over of possession.

- (ii) If the possession is not given on the date committed by the respondents, i.e. 17.08.2019, 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*.
- (iii) Since the complainants have made only a part payment of Rs.34,62,599/-, as such as per the provisions of Section 11 (a) of the Real Estate (Regulation and Development) Act, 2016, they are under obligation to pay the full amount and an equivalent interest @ 10.75% on account of delayed payment to be charged from the complainants.

26. The complaint is disposed of accordingly.

27. The order is pronounced.

28. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 16.11.2018

PROCEEDINGS OF THE DAY

Day and Date	Friday and 16.11.2018
Complaint No.	327/2018 case titled as Mr. Som Nath Batra & another Vs. M/s Anant Raj Industries Ltd.
Complainant	Mr. Som Nath Batra & Another
Represented through	Shri Sushil Yadav, Advocate for the complainant.
Respondent	M/s Anant Raj Industries Ltd.
Respondent Represented through	Shri Rajesh Kumar, Advocate for the respondent.
Last date of hearing	15.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Complainant has alleged that he had booked a flat bearing No.B-1004, Tower -B in project "Maceo" and BBA to this effect was executed inter se the parties on 12.7.2013. As per clause 7.1 of BBA, the possession of the unit was to be handed over within a period of 36 months + 6 months grace period which comes out to be 12.1.2017. As on date, the complainant had paid a sum of Rs.34,62,599/- out of total sale consideration of Rs.1,12,47,586/- to the respondent but the respondent has not yet delivered the possession of the unit to the complainant.

On perusal of the file and hearing arguments advanced by the parties, the authority is of the considered opinion that the project is almost complete and the possession shall be delivered in January 2019. As such, as per section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, the complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% on the deposited amount on account of delayed delivery of possession w.e.f **12.1.2017**. Since the complainant has made only a part payment of Rs.34,62,599/-, as such as per the provisions of Section 11 (a) of the Real Estate (Regulation & Development) Act, 2016, he is under obligation to pay the full amount and an equivalent interest @ 10.75% on account of delayed payment to be charged from the complainant.

Accordingly, it is directed that arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10th of subsequent month till handing over the possession.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)