

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

Complaint no. : 204 of 2018

Date of first hearing: 30.05.2018

Date of decision : 13.09.2018

Mr. Mohit Khirbat

R/o Flat no. D1/703, Parsvnath Exotica,
Sector-53, Gurugram

...Complainant

Versus

M/s Parsvnath Hessa Developers Pvt. Ltd.
(R1)

M/s Parsvnath Developers Ltd. (R2)

Office at: Parsvnath Metro Tower, Near
Shahdara Metro Station, Shahdara, Delhi-
110032

...Respondents

CORAM:

Dr. K.K. Khandelwal

Shri Samir Kumar

Shri Subhash Chander Kush

Chairman

Member

Member

APPEARANCE:

Shri Sukhbir Yadav

Advocate for the complainant

Shri Sanjeev Jain, Managing
Director of the respondent
company with Ms Divya Gupta,
authorized representative and
Pranay Malhotra, Manager

Shri Krishan Soni

representative of the office of
Senior Town Planner,
Gurugram

Advocate for the respondents



RESPONDENT NO. 2 – Ex parte proceedings has been initiated

ORDER

1. A complaint dated 27.04.2018 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. Mohit Khirbat, against the promoter M/s Parsvnath Hessa Developers Pvt. Ltd. and Anr., on account of violation of clause 10(a) of the flat buyer agreement executed on 07.04.2007 for unit no. B5-401 in the project “Parsvnath Exotica” 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	“Parsvnath Exotica”, Sector-53/54, Gurugram
2.	Unit no.	B5-401
3.	Registered/ not registered	Not registered
4.	Date of booking	09.10.2006
5.	Date of flat buyer agreement	07.04.2007
6.	Total consideration amount as per agreement dated 07.04.2007	BSP- Rs. 1,97,29,800/- (as per customer ledger dated



		18.01.2018 in annexure p-3)
7.	Total amount paid by the complainant	Rs. 1,94,74,147/-
8.	Payment plan	Construction link plan
9.	Date of delivery of possession from the date of execution of flat buyer agreement	Clause 10(a)- 36 months from the commencement of construction of the block in which flat is located, i.e. 17.02.2010 (on start of foundation, instalment no.3- annexure P-3) + 6 months grace period, i.e. 07.10.2010
10.	Delay for number of months/ years upto date 13.09.2018	7 years 11months and 6 days
11.	Penalty clause as per flat buyer agreement dated 07.04.2007	Clause 10(c) of BBA i.e. Rs. 107.60 per sq meter or Rs.10/- per sq.ft. of the super area per month for the period of delay



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 respondents. 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 07.10.2010. The respondents

company made an offer on 20.03.2018 for fit outs along with a rebate offer of Rs. 17,00,000/- 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. The promoter has 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 07.04.2007.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents appeared through their counsel on 30.05.2018. The case came up for hearing on 30.05.2018, 12.07.2018, 21.08.2018, 29.08.2018 and 13.09.2018.

Facts of the complaint

5. The complainant submitted that the above said flat was booked by Mr. Man Mohan Garg (first buyer) on 09.10.2006 and a flat buyer agreement was executed on 07.04.2007. On 12.01.2012, the complainant purchased the said flat in resale from Mr. Man Mohan Garg.



6. On 09.10.2006, the first buyer booked a unit in the project named "Parsvnath Exotica", Sector-53/54, Gurugram by paying an advance amount of Rs 30,51,000/- to the respondents. Accordingly, the complainant was allotted a unit bearing B5-401 on 4th floor.
7. On 07.04.2007, a flat buyer agreement was entered between the parties wherein as per clause 10(a), the construction should have been completed within a period of 36 months from the commencement of construction of the block in which flat is located with additional 6 months grace period, i.e. 07.10.2010. 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 respondents.
8. The complainant submitted that thereafter he continued to pay the remaining instalment as per the payment schedule of the agreement and has already paid more than 95% of the consideration amount i.e. Rs 1,94,74,147/- till 19.06.2013 along with interest and other charges. The main grievance of the complainant in the present complaint is that despite complainant having paid 95% of the actual cost of flats, the



respondents failed to deliver the possession of flat as per the provisions of terms and conditions of the agreement.

9. The complainant submitted that the work on other amenities, like external, internal MEP (Services) not yet started. It has been more than 11.5 months from the date of booking and even the construction of towers is not completed clearly showing the negligence of the builder.

10. The complainant submitted that despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown to timely completion of the project nor any heed was paid to repeated demands of payment of EMI and thus, no appropriate action was taken to address the concerns and grievances of the complainant. Complainant further submitted that given the inconsistent and lack of commitment to complete the project on time, deficiency in services and unfair and restrictive trade practices, the complainant decided to file the present complaint.

11. As per clause 10(a) of the flat-buyer agreement, the company proposed to hand over the possession of the said unit by 02.08.2013. The clause regarding possession of the said unit is reproduced below:



“10(a)- Construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular block in which the flat is located, with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities.....”.

12. Issues raised by the complainant

- I. Whether the developer has violated the terms and conditions of the BBA 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 for compound interest @ 24% per annum from date of booking till date?
- V. Whether the complainant is entitled to compensation for mental agony and as penalty for delayed possession?



13. Relief sought

- I. Direct the respondents to pay interest @ 24% per annum compounded from April 2010 till the date of possession.

- II. Direct the respondents to give the possession (with completion certificate) within 3 months from date of passing of order.

Respondent's reply

Preliminary Objections:

14. The respondents 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 respondents 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.



15. The respondents submitted that even though the project of the respondents is covered under the definition of "ongoing projects" and the respondents have 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 to 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:

16. The respondents 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 per 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.

17. It is submitted by the respondents that the hon'ble regulatory authority has no jurisdiction to entertain the present complaint as the complainant have not come to the authority with clean hands and has concealed the material fact that the complainant has been wilful defaulter, 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.

18. The respondents submitted that at the start of construction of third floor slab, the respondents issued notice to substituted allottee on 09.05.2011 for making payment of next instalment. On start of external plaster, a demand notice and subsequent reminder was issued on 06.08.2012 and 20.11.2012 respectively. On scrutiny of the account, it was found that an amount of Rs 2,89,241/- remained balance towards the substituted allottee and a letter to this effect was issued on 15.04.2013.

19. The complainant was issued a letter dated 20.03.2018 wherein the flat was offered for fit outs and a rebate of Rs.17,00,000/- was offered for carrying out finishing work but they did not take any action and the respondents also credited a sum of Rs 17,62,800/- on account of delay possession compensation in terms of clause 10(c) of the agreement for the delay starting from September, 2013 till December, 2017.

20. The respondents submitted that the authority is deprived of the jurisdiction to go into the interpretation 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 flat buyer agreement dated 07.04.2007 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 complainant.

21. The respondents 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.

22. 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 respondents. The respondents have been diligently pursuing the matter with various authorities and hence no delay can be attributed to the respondent.



23. The complainant has made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in form of the agreement.

24. The respondents are 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 respondents are not liable to pay any interest to the complainant as time is not of the essence of the agreement.

25. Written arguments on behalf of complainants

- I. The delay of more than 5 years is not an ordinate delay and till date also flat is not fully ready for occupancy.
- II. The project of respondents comes under the definition of 'ongoing projects' and it is still unregistered in HARERA. As acknowledged by the respondents that application for the RERA registration is applied on 23.04.2018. 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



respondents also indicates towards his irresponsible and unprofessional behaviour.

III. That as on the date the respondents do not have occupation certificate of tower B-5. Fire Department N.O.C. etc is also not with respondents and common amenities are yet to be installed.

IV. It is nowhere 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 not is any force majeure, which restrict the completion of project.

V. The averments of respondents are baseless and aim at misleading the Hon'ble Authority.

VI. That the respondents issued a letter of offer for fit outs of flat. In this letter respondents 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.



VII. 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, respondents would forfeit 15% earnest money. The respondents never discussed terms of agreement before drafting of agreement. 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.

VIII. The builder has charged 24% interest on delay payments, hence complainant/allottee are also entitled for 24% compoundable interest. That respondents failed to perform duly as given in section 17 of the RERA Act.

Determination of issues

26. Regarding the **first issue** raised by the complainant, the developers 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.”

27. 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.

28. Regarding the **third issue** in the complaint, the complainant has not furnished anything to prove any misrepresentation on the part of the respondent company.



29. In regard to the **fourth 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 **fifth issue** in the complaint, the complainant can seek compensation from the adjudicating officer under the RERA.



31. The complainant 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 respondents 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 respondents @ 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 respondents 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 respondents represented by Shri Sanjeev Jain, Managing Director of the respondents company, there are 18 towers out of which 11 are fully developed and occupation certificate has been obtained and possession has 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 respondents must be granted time to complete the project till the committed date and the complainant must wait till the date committed by the respondents. However, the respondents are 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 are 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.

36. The complainant by an application for amendment of complaint reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of the authority

37. 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 respondents are directed to give the physical possession of the said flat to the complainant on the date committed by the respondents for handing over the possession.



(ii) The respondents are 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.

(iii) If the possession is not given on the date committed by the respondents i.e. 31.12.2019 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*.

38. The complaint is disposed of accordingly.

39. The order is pronounced.

40. 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
Dated : 13.09.2018



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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 13.09.2018
Complaint No.	204/2018 Case titled as Mr. Mohit Khirbat V/S Parsvnath Hessa Developers Pvt. Ltd.
Complainant	Mr. Mohit Khirbat
Represented through	Shri Sukhbir Yadav, Advocate for the complainant.
Respondent	M/S Parsvnath Hessa Developers Pvt. Ltd & Another
Respondent Represented through	Shri Sanjeev Jain, Managing Director of the respondent company with Ms Diya Gupta, authorized representative and Pranay Malhotra Manager. Shri Krishan Soni representative of the office of Senior Town Planner, Guru gram
Last date of hearing	29.8.2018
Proceeding Recorded By	

Proceedings

The project is not registered.

Shri Krishan Soni, junior draftsman has appeared from the office of STP Gurugram and submitted the photo copies of approval of building plans of the project bearing Memo No.3180 dated 10.4.2009 and alongwith occupation certificate bearing Nos.15952 dated 31.10.2011 and 3254 dated 17.3.2011 which have been placed on record.

Shri Sanjeev Jain, Managing Director of respondent-company is present and apprised the authority regarding the progress of the project till date. He pointed out that there are 18 towers in this project out of which 11 towers are fully developed and occupation certificate has been obtained and possession is being offered to the flat buyers. It has further been stated that occupation certificate with regard to 5 towers has also been applied for which is still pending in the office of DTCP. Construction in respect of remaining two towers has not been completed so far which is likely to be completed by 31.12.2019 as per date mentioned in the registration application submitted with the registration branch. The counsel for the complainant has categorically pointed out that the statement given by Mr Sanjeev Jain Managing Director is far from facts because the construction in tower where the flat of the complainant is located has been pending for the last many years and no work is in progress. Therefore, they doubt about the completion of their tower by the due date as mentioned by the promoter in registration application. Therefore, they may be given refund of the deposited amount alongwith interest.

After hearing both the counsel for the parties, the authority is of the opinion that keeping in view the progress of the project and the endeavor of the authority to get stalled projects completed in order to hand over the possession to the complainant, the authority is not inclined to order refund of the amount deposited by the complainant rather he is entitled for interest of the delayed period of possession.

The agreement between the parties was executed on 7.4.2007. As per clause 10 (a) of the agreement, the respondent was to handover



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

possession within 36 months + six months as grace period i.e. 7.10.2010. The project is likely to be completed by 31.12.2019. Keeping in view that there is failure on the part of the promoter to hand over the possession by due date, accordingly in terms of Section 18 (1) of the Real Estate (Regulation & Development) Act 2016, the allottee shall be paid interest by the promoter for every month of delay at the prescribed rate i.e. 10.45% till handing over the possession (i.e. from 7.10.2010 till handing over the actual possession of the project). (Once the offer of possession is made by the builder, the allottee shall take possession within one month). In case of default in giving possession by 31.12.2019, the complainant shall be at liberty to exercise his right as per section 19 (4) of the Act ibid. The complaint is disposed of accordingly. Order is pronounced. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
13.09.2018