

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 06.12.2018
Complaint No.	521/2018 Case Titled As Mr. Jatin Khetarpal V/S M/S Blackberry Realcon Pvt Ltd.
Complainant	Mr. Jatin Khetarpal
Represented through	Complainant in person.
Respondent	M/S Blackberry Realcon Pvt Ltd.
Respondent Represented through	Shri Jasdeep Singh Dhillon, Advocate for the respondent.
Last date of hearing	11.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

As per clause 7 (a) (i) of the Builder Buyer Agreement executed inter-se the parties on 31.12.2013 for unit/flat No.ST/07 02, 7th floor, in Paras Square, Sector 63-A, Gurugram, the possession of the said unit booked by the complainant was to be delivered to the complainant within a period of 36 months + 180 days grace period from the date of start of construction which commenced on 13.2.2014, the due date of possession comes to **13.8.2017**. Complainant/buyer has already paid an amount of Rs.79,11,679/-against the total sale consideration amount of Rs.80,66,490/-. However, it is admitted by both the parties that delivery of possession has been delayed till today. Counsel for the respondent has stated that they have

received occupation certificate dated 23.7.2018. The buyer has produced a copy of Newspaper “ Hindustan Times” dated 8.10.2018 wherein it was advertised by the respondent that the project Paras Square has been delivered. However, the project is delayed by 1¼ years. As such, the complainant is entitled for delayed delivery payment charges at prescribed rate of interest i.e.10.75% per annum till the offer of possession. Complainant is also duty bound to pay the deficient amount payment with interest at the same rate i.e. 10.75% per annum. Both the parties are advised to be truthful before the authority.

The arrears of interest accrued so far after adjustment of due payment, shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

Complaint is disposed of accordingly. Detailed order will follow.
File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. 521 of 2018
Date of first hearing 11.09.2018
Date of decision 06.12.2018

Jatin Khetarpal
E-804, 8th floor, Blovk E, Ambience Lagoon
Apartments, Ambience Island, NH-8, Gurugram. **..Complainant**

Versus

M/s Black Berry Realcon Pvt Ltd
11th floor, Paras Twin Towers (tower B),
Sector 54, Golf Course Road, Gurugram. **...Respondent**

CORAM:

Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Complainant in person Advocate for the complainant
Shri Jasdeep Singh Dhillon Advocate for the respondent



ORDER

1. A complaint dated 10.07.2018 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 complainants Mr. Jatin

Khetarpal against the promoter M/s Black Berry Realcon Pvt. Ltd. in respect of apartment/unit described below in the project "Paras Square" on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 31.12.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016
3. The particulars of the complaint are as under: -

- **Nature of the project-** Commercial Complex
- **DTCP license no.-** 23 of 2013 dated 17/05/2013
- **Renewed till:** 16.05.2017
- **License holder:** Commander Realtors Pvt Ltd
- **Joint Development Agreement:** 16.12.2011

1.	Name and location of the project	Paras Square, Sector 63 A, Gurugram.
2.	Registered/Unregistered	Registered



3.	Registration number	NO. RC/REP/HARERA/GGM/ 2018/13 Dated 06.09.2018
4.	RERA registration valid up to	31.12.2018
5.	Payment plan	Construction Linked
6.	Occupation certificate received on	23.07.2018
7.	Date of builder buyer agreement	31.12.2013
8.	Unit no.	ST/07 02, 7 th floor
9.	Area of unit	870 sq. ft.
10.	Total sale consideration	Rs 80,66,490/-
11.	Total amount paid by the complainant	Rs 79,11,679/-
12.	Status of the project	Complete
13.	Commencement of construction	13.02.2014
14.	Possession as per clause 7(a)(i): 36 months+ grace period of 180 days from the date of start of construction	13.08.2017
15.	Delay till date	1 year 3 months 24 days
16.	Penalty as per clause 9(a)	9% p.a. simple interest on amount paid by the complainant



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 11.09.2018 and

30.08.2018. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE:

5. That respondent had launched service apartments/retail shop/ studio apartments known as “Paras Square” in Sector-63-A,Village-Behrampur,Tehsil Sohna-Gurugram-Haryana in the year 2013.
6. That the respondent company had spent a huge amount of money for the launch of the above project and assured the interested buyers that it will be a dream project for the investors. That complainant, being a simple person, believed the promise of the respondent company and became inclined towards the project, invested in the above project.
7. That complainant booked a studio apartment in above mentioned project and vide allotment letter dated 05/08/2013, the respondent allotted one unit bearing no. ST/0702, 7th floor, Type-A, Tower-A, Studio, super area admeasuring 870 Sq. ft. in Paras square sector-63A, village-Behrampur, Tehsil Sohna-Gurugram-Haryana (hereinafter



referred to as “said property”). That the total cost of the said property was Rs. 80,66,490/-

8. That despite the fact that the complainant had made the first payment on 30/03/2013 and a total amount of Rs. 14,97,780/- was paid by complainant till October-2013, the respondent had entered into builder buyer agreement with the complainant only on 31.12.2013 i.e. after expiry of more than eight months from the date of first payment made to the respondent company.
9. This clearly shows that the intention of the respondent company from the very beginning was to cheat the complainant as the above act was nothing but to illegally gain additional time for handing over possession by delaying the signing of the builder buyer agreement.
10. That as per clause 7 of the said agreement the respondent company assured the complainant that the physical possession of the said plot would be handed over to the complainant within 36 months i.e. by 31.12.2016 and in case of delay respondent will pay late possession charges.



11. That the complainant visited the said property on 1/05/2018 and was shocked and surprised to see that there was lot of work pending on the 7th floor and it is merely the four walls constructed till date.
12. That complainant having gone through immense mental agony, stress and harassment has written numerous mails and constantly raising the issue of huge delay with respondent office upon meetings with Mr. Amit Singh, Mr. Nitin Bhatia, Mr. Rajesh Kaul, but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay has come forth from respondent's end.
13. That now vide letter dated 15.05.2018 respondent had again raised a demand of Rs. 4,05,273/- as the second last demand. As per the agreement the second last demand was to be raised after completion of "On Installation of Services", but contrary to it, lot of work is pending on the seventh floor not only in his studio apartment but all common areas on 7th floor are nowhere near completion and there is no possibility that the same will be completed in the near future. That the above



demand raised by the respondent is nothing but illegal and amounts to cheating and harassment upon the complainant.

14. That complaint on 29.05.2018 also wrote a letter sent via e-mail, speed post, registered AD to the respondent detailing serious concern on the above project. The complainant in its letter asked the respondent to give explanation regarding the delay in construction work on the 7th floor. The complainant also informed that the demand raised by respondent vide letter dated 15.05.2018 amounting to Rs. 4,05,273/- is not proper. The complainant also requested for the site visit but surprisingly till today neither of the above queries has been answered nor arrangement has been made for the site visit by the respondent.

15. That despite the fact that above demand raised by the respondent was illegal, complainant still made the above payment of Rs. 4,05,273/- in duress and strictly under protest, so that respondent do not have any excuse to impute any plea against complainant.



16. That since the respondent failed to fulfil its promise to deliver the project by 31.12.2016 the complainant is no more interested in the project and wants refund of his money invested in the above project along with interest @ 24 % per annum from the date of payment till realization from respondent/opposite party. The respondent is also liable to compensate the complainant for the cheating and harassment done by them.

ISSUE RAISED BY THE COMPLAINANT:

17. The following issue have been raised by the complainant:

Whether or not the respondent is entitled to refund the amount invested by the complainants till date?

RELIEF SOUGHT BY THE COMPLAINANT:

18. In view of the facts mentioned the following reliefs have been sought by the complainants:

- i. Respondent be directed to return the money paid by the complainant i.e. Rs. 79,11,679/- along with interest @ 24 % per annum from the date of payment till realization.



- ii. Respondent/opposite party be directed to pay late possession charges along with interest and the fraud and harassment at the hands of respondent company.
- iii. To pass such other order/direction/relief as deemed fit and proper in the facts and circumstances of the present case.

REPLY BY THE RESPONDENT:

19. At the outset, it is submitted that the entire contents of the present complaint under reply are wrong and specifically denied unless specifically admitted hereinafter by the respondent
20. At the further outset, the respondent says and submits that the complainant has not come with clean hands. The complaint has suppressed vital facts and on this ground alone, the complaint is liable to be dismissed.
21. It is submitted that the complainant herein is not a genuine flat purchaser or a consumer and has purchased the said flat for commercial and investment purposes.



22. The same is also brought out from the fact that the complainant herein is has made frivolous and baseless allegations in the complaint and is asking for refund of the amounts paid despite the fact that the construction of the project is complete and even the occupation certificate has been granted by the authorities on 23.07.2018.

23. It is submitted that the complainant herein has repeatedly delayed in paying the amounts as per the construction linked payment schedule which was opted for and agreed to by the complainant.

24. It is submitted that the construction of the flat is complete and the even the occupation certificate has been received on 23.07.2018. It is pertinent to point out that the complainant herein has agreed to comply with clause 3(ii) of the builder buyer agreement which provides that the possession of the unit shall be handed over to the allottee only upon payment of the outstanding dues

25. It is submitted that the present complaint is premature since the excavation work for the project was started towards the



end of January 2014 and the demand letter for the same was sent on 25.01.2014. In terms of clause 7(a) of the apartment buyers agreement the seller is to handover within a period of 36 months + 180 days grace period from the start of construction thereof, which is subject to force majeure and any other reason beyond the control of the developer, subject to the complainant not being in default under any provision of the builder buyer agreement

26. In the present case four months were taken due non supply of steel, cement, water and due to the dispute with the contract engaged.
27. Further the respondent had completed the construction along with all formalities and approvals and had applied for the occupation certificate on 11.05.2018. Whereas, the occupation certificate was received only on 23.07.2018 after a delay of almost three months. Thus the respondent cannot be held liable for the delay caused by the authorities for the grant of occupation certificate



28. In view of the above submissions it is apparent that the present complaint has been filed before the expiry of the period mandated under the builder buyer agreement for offer of possession and thus the complaint merits outright dismissal in view of the same.

DETERMINATION OF ISSUES:

29. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the authority is of the view that as per clause 7 (a)(i) of the builder buyer agreement, the possession of the said apartment was to be handed over within 36 months+ grace period of 180 days from the date of start of construction. The construction commenced on 13.02.2014. Therefore, the due date of possession shall be computed from 13.02.2014. The clause regarding the possession of the said unit is reproduced below:

*“Clause 7(a)(i): Time of handing over the possession
The date of completion of project shall be 36 months from the date of construction subject to force majeure or/and any other reason beyond the control of developer, subject to all allottees having strictly complied with all the terms and conditions of this buyers agreement and not being in default...”*



Accordingly, the due date of possession was 13.08.2017 and the possession has been delayed by 1 year 3 months 24 days till the date.

Pertaining to the issue relating to refund, it has been noted that the construction of the flat is complete and the occupation certificate has been received on 23.07.2018. Photographs of the status of the project had been provided after which it is said that refund at this stage may not be granted as granting refund at such an advanced stage will hamper the remaining work of the project. It shall also hamper the interest of other allottees who wish to further continue with the project. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession

FINDINGS OF THE AUTHORITY:

30. 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.

31. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.

32. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

33. As per clause 7 (a) (i) of the Builder Buyer Agreement executed inter-se the parties on 31.12.2013 for unit/flat no.ST/07 02, 7th floor, in Paras Square, Sector 63-A, Gurugram, the possession of the said unit booked by the complainant was to be delivered to the complainant within a period of 36 months + 180 days grace period from the date of start of construction which commenced on 13.2.2014, the due date of possession comes to **13.8.2017**. Complainant/buyer has already paid an amount of Rs.79,11,679/-against the total sale consideration amount of Rs.80,66,490/-. However, it is admitted by both the parties that delivery of possession has been delayed till today.



Counsel for the respondent has stated that they have received occupation certificate dated 23.07.2018. The buyer has produced a copy of Newspaper “Hindustan Times” dated 8.10.2018 wherein it was advertised by the respondent that the project Paras Square has been delivered. However, the project is delayed approximately by 1¼ years

DECISION AND DIRECTIONS OF THE AUTHORITY:

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

- (i) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e 1st 13.08.2017 till 06.12.2018 within 90 days of this order amounting to Rs 11,19,055/-
- (ii) Thereafter monthly interest amounting to Rs 70,875/- on 10th of every month of delay till the handing over of possession.



- (iii) The complainant is also duty bound to pay the deficient amount payment with interest at the same rate.
- (iv) If the possession is not given on the date committed by the respondent 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*.

35. The order is pronounced.

36. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Date: 06.12.2018

Judgement Uploaded on 05.01.2019

