

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 04.12.2018
Complaint No.	303/2018 case titled as M/s Priyaranjan Mohanty Vs. M/s KNS Infracon Pvt. Ltd. & Ors.
Complainant	Mr. Priyaranjan Mohanty
Represented through	Complainant in person.
Respondent	M/S KNS Infracon Pvt. Ltd. & others
Respondent Represented through	<b>None for the respondent.</b>
Last date of hearing	19.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Today the case was fixed for arguments but none has appeared on behalf of the respondent. Since nobody has appeared on behalf of the respondent despite complete service of summons/notice, the respondent be proceeded ex-parte.

Arguments heard.

As per clause 2.1 of the Builder Buyer Agreement dated 13.1.2014, the flat/unit No.1203, Tower-E, 12<sup>th</sup> floor, in project "CAPITAL GATEWAY", Sector 111, Gurugram was to be handed over to the complainant within a period of 36 months plus 180 grace period which comes out to be 13.7.2017. However, the respondent has not delivered the unit to the complainant in

time. Complainant has already deposited a sum of Rs.77,09,012/- out of total sale consideration of Rs.81,14,749/-. As such, complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the actual handing over the possession failing which the complainant is entitled to withdraw from the project and to get back entire amount deposited with the respondent with interest.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly interest shall be paid to the complainant till actual handing over the possession before 10<sup>th</sup> of subsequent month.

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

Samir Kumar  
(Member)  
4.12.2018

Subhash Chander Kush  
(Member)  
4.12.2018

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

**Complaint no. : 303 of 2018**  
**First date of hearing : 18.7.2018**  
**Date of decision : 4.12.2018**

Mr. Priyaranjan Mohanty  
R/o: House No. 590, Block C1,  
Palam Vihar- 122017

**Complainant**

**Versus**

M/s KNS Infracon Pvt. Ltd and  
M/s Tashee Land Developers Private Limited  
Address: 517 A, 5<sup>th</sup> floor, Narain Manzil  
23, Barakhamba Road, Connaught Place,  
New Delhi-110001

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Priyaranjan Mohanty  
complainant in person  
None

Complainant in person  
Advocate for the respondent

**ORDER**

1. A complaint dated 22.5.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Priyranjan Mohanty, against M/s KNS Infracom Pvt Ltd. in respect of



apartment/unit described below in the project 'Capital Gateway', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 13.1.2014 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 case are as under: -

1.	Name and location of the project	"CAPITAL GATEWAY", Sector-111, Gurugram
2.	RERA registered/ not registered	<b>Registered (12 of 2018)</b>
3.	RERA registration valid up to	<b>31.12.2020</b>
4.	Unit no.	1203, 12 <sup>th</sup> floor, tower-E
5.	Unit measuring	1760 sq. ft.
6.	Buyer's agreement executed on	13.1.2014
7.	Total consideration	Rs.81,14,749/-
8.	Total amount paid by the complainants till date	Rs.77,09,012/-
9.	Percentage of consideration amount	95 %
10.	Payment plan	Construction linked plan
11.	Date of delivery of possession (36 months from the date of execution of agreement + 180 days grace period) clause 2.1	13.7.2017
12.	Delay in handing over possession	1 year 4 months 22 days



	till date	
13.	Penalty clause as per buyer's agreement dated 13.1.2014	Clause 2.3 of the agreement i.e. Rs.5 per sq. ft' of the super area.

4. 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 respondent. A buyer's agreement is available on record for the aforesaid unit. The possession of the said unit was to be delivered by 28.10.2017 as per the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed the reply on 31.5.2018

#### **BRIEF FACTS OF THE COMPLAINT**

6. That the complainant booked a flat in Sector 68 on 25.10.2010 by paying Rs. 25 lakhs at time of booking. But the complainant was forced to opt for another in Sector 111 at higher price.
7. A letter dated 6.3.2017 demanded for Rs. 10,47,795/- due to sudden increase in flat size. The area of flat was increased by 289 sq. ft' and the complainant's consent was not taken for this. This demand was raised despite taking 95% of payment plan. A loan has been taken from ICICI bank and EMI of Rs.



55,889/- is being paid every month which has impacted by family life adversely.

8. That relief was sought from the CM office vide grievance no. CMOFF/N/2017/039171 and the builder was asked to make payment immediately. Irrelevant talks happened at the Delhi office of the builder but no resolution was offered.

9. **ISSUES RAISED BY THE COMPLAINANT**

- I. Whether the buyer has option to surrender the property if area is increased more than 15% as per clause 1.5(i)?
- II. Whether the respondent is liable to refund the money to the complainant?

10. **RELIEF SOUGHT**

The complainant is seeking the following reliefs:

- I. That the respondent be directed to refund the amount of Rs.77,09,012.
- II. That the builder should refund with interest @18% for the payment received which is Rs.53,13,607.64/-.
- III. That the respondent shall pay compensation of Rs. 20,00,000 for mental torture since 2010.

**RESPONDENT'S REPLY**



11. That the complainant has failed to specify any cause of action and the complaint is liable to be disposed. The complainant has not approached this forum with clean hands and has abused the process of law.
12. That the respondent company was granted licence no 34 of 2011 by DTCP, Haryana and the project is registered with RERA vide registration number 12 of 2018.
13. That the complainant was allotted an apartment which was tentative and subject to change as per clause 1.2 and 1.5 of the buyer's agreement dated 13.1.2014.
14. That the revision in building plans as approved by DGTCP, Haryana vide memo no. ZP-723/AD (RA)/2016/26863 dated 9.12.2016 led to the increase/change in super area of the allotted flat. Also, the complainant has paid the composition fee towards revision of the said building plans. The provisions of the deal are there in clause 1.5(i) of the buyer's agreement which is reproduced hereunder:

*".....In case there is variation greater than +/- 15% in the agreed super area, as contained in para 1.2 above and the purchaser is unwilling to accept the changed area, then the allotment shall be treated as terminated and the payments received against the consideration of the flat shall be refunded with simple interest at the rate of 6% per annum after due execution of the documents as required by the*





*first party and no other compensation shall be demanded by the purchaser from the first party.”*

That the buyer’s agreement was signed by the complainant out of his free will so he is bound by the terms and conditions. That even otherwise the claim of the complainant is outside the purview of section 18 of RERA.

### DETERMINATION OF ISSUES

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

15. With respect to the **first and second issue**, the authority came across clause 1.5(i) of buyer’s agreement regarding the alteration of the said unit which is reproduced below:

*“1.5(i) - .....In case there is variation greater than +/- 15% in the agreed super area, as contained in para 1.2 above and the purchaser is unwilling to accept the changed area, then the allotment shall be treated as terminated and the payments received against the consideration of the flat shall be refunded with simple interest at the rate of 6% per annum after due execution of the documents as required by the first party and no other compensation shall be demanded by the purchaser from the first party.”*

In the present case, the area of the unit has been increased from 1760 sq. ft’ to 2049 sq. ft’ but the authority is of the view that the complainant shall continue with the project.





16. The respondent is liable to pay interest to the complainant @10.75% p.a. instead of 6% provided in clause 1.5(i). 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.”*

17. 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 10.75% per annum on the amount deposited by the complainant with the promoter.

#### FINDINGS OF THE AUTHORITY

18. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage.

19. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants 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.
20. In the present complaint, the complainants are seeking refund of the entire money paid till date i.e. 77,09,012/- along with interest and cancel the allotment upon entire refund.
21. The authority is of the considered opinion that the complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the actual handing over the possession.

#### **DECISIONS AND DIRECTIONS OF THE AUTHORITY**

22. 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) As per clause 2.1 of the Builder Buyer Agreement dated 13.1.2014, the flat/unit No.1203, Tower-E, 12th floor, in project "CAPITAL GATEWAY", Sector 111, Gurugram was to be handed over to the complainant within a period of 36 months plus 180 grace period which comes out to be 13.7.2017. However, the respondent has not delivered the unit to the complainant in time. Complainant has already deposited a sum of Rs.77,09,012/- out of total sale consideration of Rs.81,14,749/-. As such, complainant is entitled for delayed possession charges of **Rs.11,52,638** calculated @ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the actual handing over the possession failing which the complainant is entitled to withdraw from the project and to get back entire amount deposited with the respondent with interest.
- (ii) The arrears of interest of **Rs.11,52,638** accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly



interest of **Rs.69,059.90** shall be paid to the complainant till actual handing over the possession before 10<sup>th</sup> of subsequent month.

23. The order is pronounced.

24. Case file be consigned to the registry.

**(Samir Kumar)**

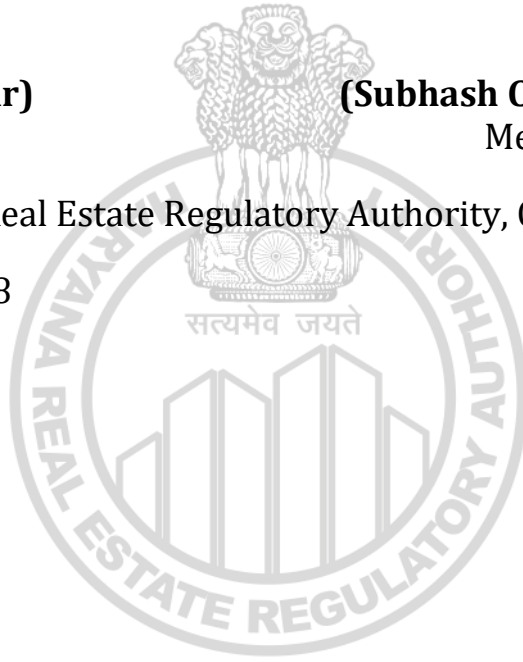
Member

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 4.12.2018



HARERA  
GURUGRAM



Judgement uploaded 05.01.2019