

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 19.12.2018
Complaint No.	393/2018 case titled as Mr. Shrikant Kumar V/S M/S Pyramid Infratech Pvt. Ltd.
Complainant	Mr. Shrikant Kumar
Represented through	Complainant in person
Respondent	M/S Pyramid Infratech Pvt. Ltd.
Respondent Represented through	Shri D.R. Janghu proxy counsel for Shri Sanjeev Sharma, Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	H.R.Mehta

Proceedings

Project is registered with the authority.

Arguments heard.

There is dispute inter-se the parties w.r.t. payment plan. Arguments extended by the parties are tenable and beyond the pale of any judicious provisions of law. The buyer is obligated under section 19 (6) and (7) to make payment timely to the respondent failing which the respondent is at liberty to cancel the allotment.

Since the complainant has failed to make timely payments to the respondent, the respondent is entitled to forfeit Rs.25,000/- under the provisions of affordable housing scheme from the total amount deposited by the complainant and refund the balance amount to the buyer alongwith prescribed rate of interest i.e. 10.75% per annum.

Accordingly, the respondent is directed to refund the amount deposited by the complainant **by deducting Rs.25,000/- within 90 days** from today.

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

Samir Kumar
(Member)
19.12.2018

Subhash Chander Kush
(Member)
19.12.2018

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

Complaint no. : 393 of 2018
First date of hearing : 2.8.2018
Date of decision : 19.12.2018

Mr. Shrikant Kumar
R/o: N-87, 1st floor,
Hargovind Enclave, Rajpur,
Chhattarpur, New Delhi-110068

Complainant

Versus

M/s Pyramid Infratech Pvt. Ltd.
Address: H-38, ground floor,
M2K white house, sector-57,
Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Shrikant Kumar
Shri D.R. Janghu

Complainant in person
Proxy counsel for Mr. Sanjeev
Sharma

ORDER

1. A complaint dated 6.6.2018 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. Shrikant Kumar, against M/s Pyramid Infratech Pvt. Ltd. in respect of



apartment/unit described below in the project 'Urban 67-A', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 20.9.2010 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: -

***Nature of project:** affordable group housing colony

***DTCP license no.:** 10 of 2016 dated 13.11.2017

1.	Name and location of the project	"Urban 67-A", Sector-67A, Gurugram, Haryana-122001.
2.	RERA registered/ not registered	Registered (350 of 2017)
3.	Revised date as per RERA registration certificate	31.10.2022
4.	Unit no.	404, tower-4, 4 th floor
5.	Unit measuring	Carpet area - 579.79 sq. ft' Balcony area - 100 sq. ft'
6.	Allotment letter provided on	15.3.2018
7.	Buyer's agreement executed on	Not executed
8.	Basic sale price as per buyer's agreement	Rs.25,58,692/-
9.	Total amount paid by the complainants till date	Rs.1,15,000/- (as asserted by complainant)



10.	Percentage of consideration amount	4.49%
11.	Payment plan	Time linked plan
12.	Due date of delivery of possession (4 years from the date of approval of building plans or grant of environment clearance, whichever is later) clause 8.1	Cannot be ascertained
13.	Date of offer of possession	Cannot be ascertained
14.	Delay in handing over possession till date	Cannot be ascertained
15.	Penalty clause as per buyer's agreement	Clause 8.2- the agreement will be terminated and the allottee will be refunded the entire amount paid.

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 which has not been executed.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.

BRIEF FACTS OF THE COMPLAINT

6. The complainant agreed to purchase a 2 BHK flat in "Urban 67A" at Sector-67A, Sohna Road, Gurugram. A draw was held on 15.3.2018 and apartment no.404 in tower-4 was allotted to the complainant.



7. The respondent didn't tell the complainant about the result of the draw and the complainant came to know from the reception. Subsequently, the complainant approached the respondent for loan process and he was directed to SBI bank which sanctioned a loan of Rs.19,36,000 via letter dated 13.4.2018.
8. After signing the agreement, the complainant requested the respondent for the date of registration of the agreement with the concern Sub-Registrar office. The respondent didn't convey it to the complainant and demanded instalment before execution of the agreement. When the complainant approached SBI it came to know that the respondent had shared a different construction plan with SBI and on the basis of construction at the site, the bank will disburse the loan amount.
9. The complainant requested the respondent that he cannot contribute the second and third instalment personally but the CRM team threatened that allotment may be cancelled by the respondent. The complainant sent an e-mail to the respondent on 5.5.2018 along with payment plan shared with SBI and conveyed that the respondent is at fault to which the respondent admitted the difference in payment plan and that



SBI will not release 25% on time. Due to this reason there was delay and the respondent charged interest.

10. The respondent did not execute the agreement which clearly shows the ill motive of respondent. The complainant is suffering from mental torture and agony by the acts of respondent.

11. The developer has added para no.2.4 in the buyer's agreement for demanding electric connection charges and as per the affordable housing policy, the developer cannot demand any extra charges from the purchaser.

12. The developer has deleted some essential terms and conditions of para 9.2 of the agreement to sell provided in annexure-A of the HRERA rules. The complainant was coerced into executing a fixed set of paper and no change was entertained by the respondent.

13. **ISSUES RAISED BY THE COMPLAINANT**

- I. **Whether the respondent is liable for cheating and misrepresentation for sharing different payment plan with SBI and the complainant?**
- II. **Whether the complainant is entitled to refund of money paid to the respondent?**



III. Whether the complainant is entitled to interest @15% p.a. from the date of booking till the date of actual realization of the amount?

IV. Whether the complainant is entitled for compensation for mental agony and harassment?

14. RELIEF SOUGHT

The complainant is seeking the following reliefs:

- I. That the respondent be directed to refund the amount of Rs.1,15,000/- with simple interest @15% p.a. from the date of payment made to the respondent.
- II. To direct the respondent to pay Rs.1,00,000 as damages suffered on account of harassment, breach of contract and mental agony.
- III. To pass an order for removal of terms and conditions which are derogatory to the law.
- IV. To direct the respondent to pay the litigation expenses of the complainant.
- V. To pass any other relief which this authority deems fit and proper.



RESPONDENT'S REPLY

15. The complainant has not approached this authority with clean hands and is guilty of suppressing material facts. The complainant has made this complaint on the ground that there was lack of action on the part of the respondent due to which the complainant could not get approval for his loan.

16. It is nowhere mentioned under the allotment letter and buyer's agreement that the respondent is under an obligation to get the loan sanctioned for the unit in question however, the respondent has given support at every stage to the complainant.

DETERMINATION OF ISSUES

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

17. With respect to the **first issue**, the complainant has made allegations without proving them in material particulars. So this issue cannot be determined.

18. With respect to the **second and third issue**, the buyer's agreement has not been executed between the parties and the allotment letter does not talk about the due date of possession. Therefore, the due date of possession cannot be



determined. Since the complainant has failed to make timely payments to the respondent, the respondent is entitled to forfeit Rs.25,000/- under the provisions of affordable housing scheme from the total amount deposited by the complainant and refund the balance amount to the buyer alongwith prescribed rate of interest i.e. 10.75% per annum.

19. With respect to the **fourth issue**, as held in the case of **Simmi Sikka v/s Emaar MGF**, the authority has no jurisdiction to entertain this issue whereas, the complainant reserves his right of compensation before the adjudicating officer.

FINDINGS OF THE AUTHORITY

20. 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 complainant at a later stage.

DECISIONS AND DIRECTIONS OF THE AUTHORITY

21. 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) There is dispute inter-se the parties w.r.t. payment plan. Arguments extended by the parties are tenable and beyond the pale of any judicious provisions of law. The buyer is obligated under section 19(6) and (7) to make payment timely to the respondent failing which the respondent is at liberty to cancel the allotment.
- (ii) Since the complainant has failed to make timely payments to the respondent, the respondent is entitled to forfeit Rs.25,000/- under the provisions of affordable housing scheme from the total amount deposited by the complainant and refund the balance amount to the buyer alongwith prescribed rate of interest i.e. 10.75% per annum.
- (iii) Accordingly, the respondent is directed to refund the amount deposited by the **complainant by deducting Rs.25,000/- within 90 days** from today.



22. The order is pronounced.
23. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.12.2018



HARERA
GURUGRAM



Judgement uploaded On 05.01.2019