

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

Complaint no. : 262 of 2018
First date of hearing : 27.06.2018
Date of decision : 30.10.2018

Mr. Ajay Pal Singh,
R/o. H.No.887, Block-B,
Ansal Sushant City, Sector-19, Panipat.

Complainant

Versus

M/s Blackberry Realcon Pvt. Ltd.
Office Address: 11th floor, Paras Twins
Towers (Tower B), Sector-53, Golf Course
Road, Gurugram-122001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Ajay Pal Singh Complainant in person
Shri Rajan Gupta Advocate for the complainant
Shri Jasdeep S. Dhillion along Advocate for the respondent
with Shri Jay Savla

ORDER

1. A complaint dated 14.05.2018 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 complainant Mr. Ajay Pal





Singh, against the promoter M/s Blackberry Realcon Pvt. Ltd., on account of violation of the clause 7 of the builder buyer agreement executed on 31st December 2013 in respect of unit described below in the project 'Paras Square' for not handing over possession by 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 case are as under: -

| | | |
|-----|---|---------------------------------------|
| 1. | Name and location of the project | "Paras Square", Sector 63A, Gurugram. |
| 2. | Project area | 2.20 acres |
| 3. | DTCP license no. | 23 of 2013 dated 17.05.2013 |
| 4. | Date of approval of building plans | 30.07.2013 |
| 5. | RERA registered/ not registered. | Not registered |
| 6. | Occupation certificate granted on | 23.07.2018 |
| 7. | Apartment/unit no. | 01 on 3 rd floor, type 'B' |
| 8. | Apartment measuring | 1225 sq. ft. |
| 9. | Booking date | 20 th May 2013 |
| 10. | Date of execution of apartment buyer's agreement | 31 st December 2013 |
| 11. | Payment plan | Construction linked payment plan |
| 12. | Total unit cost as per payment plan annexed to the said agreement | Rs.1,12,35,575/- |
| 13. | Total amount paid by the complainant till date | Rs.69,50,444/- |
| 14. | Percentage of consideration amount | Approx. 61 percent |
| 15. | The demand raised by the respondent 'on start of excavation' | 13.02.2014 |





| | | |
|-----|---|--|
| 16. | Date of delivery of possession as per clause 7 of BBA (36 months from start of construction + 180 days of grace period) | 13.08.2017 |
| 17. | Delay in handing over possession till date | 1 year 2 months 18 days |
| 18. | Penalty clause as per the said builder buyer's agreement | Clause 9(a) of the agreement i.e. interest calculated @ 9% p.a. (simple interest) on the amount paid by the allottee for such period of delay. |

3. 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 builder buyer agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 13th August 2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @9% p.a. (simple interest) on the amount paid by the allottee for such period of delay as per clause 9(a) of builder buyer agreement dated 31st December 2013. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 02.08.2018. The





case came up for hearing on 27.06.2018, 26.07.2018, 18.09.2018, 26.09.2018 and 30.10.2018. The reply filed on behalf of the respondent on 26.07.2018 has been perused.

Facts of the complaint

5. Briefly stated, the facts of complaint are that the respondent had launched studio apartments known as "Paras Square" in Sector-63A, Gurugram in the year 2013. The complainant submitted that he booked a studio apartment in above mentioned project and paid booking amount of Rs.5,00,000/- vide cheque dated 20th May 2013. Vide allotment letter dated 30th August 2013, the respondent allotted one studio apartment bearing no. ST/0301, unit type: studio, super area measuring 1225 sq. ft. The total cost of the said property was Rs.1,12,35,575/- i.e. Rs.8,300/- per sq. ft.
6. The complainant submitted that the complainant had paid first payment in May 2013 and an amount of Rs.21,08,943/- was paid by complainant till August 2013. The respondent had entered into builder buyer agreement with the complainant only on 31st December 2013 i.e. after expiry of more than eight months from the date of first payment made to the respondent company. 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.

7. The complainant submitted that as per clause 7 of the said agreement the respondent company assured the complainant that the physical possession of the said unit would be handed over to the complainant within 36 months i.e. by 31st December 2016. That complainant had already made a payment of Rs.69,50,444/- from May 2013 to February 2017 but surprisingly there was no work at site as per the agreement rather there is no road till today which leads to the said towers.
8. The complainant submitted that despite the fact that respondent had failed to fulfil its promise by timely delivering the project had again raised a demand of Rs.36,80,211/- on 4th June 2016. That the complainant having no other option send a legal notice dated 07.02.2017 to the respondent and stated that since the respondent had failed to fulfil its promise to hand over the possession as per the terms and conditions of the agreement and there are no chances of handing over the same in near future asked the respondent to refund the amount invested by the complainant along with



interest at the rate 24 % per annum. However, till today the respondent had not returned the hard-earned money of the complainant and is continuously harassing the complainant.

9. **Issue raised by the complainant is as follow:**

Whether the complainant/petitioner is entitled to recover Rs.69,50,444/- along with interest @ 24 % from the date of payment till realization from respondent/opposite party.

10. **Relief sought by the complainant:**

The complainant is seeking refund of the money paid by the complainant/petitioner i.e. Rs.69,50,444/- along with interest @ 24 % from the date of payment till realization.

Reply by the respondent:

11. The respondent submitted that the complainant has not come with clean hands. The complainant has suppressed vital facts and, on this ground alone, the complaint is liable to be dismissed.

12. The respondent 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. The same is also brought out from the fact that the complainant has defaulted in making timely payments of the outstanding instalment as per the agreed schedule which is clearly





indicative of the fact that the complainant had booked the apartment with the sole motive of selling the same at a premium. Since the complainant has not been successful in selling the flat at a premium he has stopped making payments as per the agreed schedule and has now filed this frivolous complaint just to avoid taking possession of the property and making the rest of the payments.

13. The respondent submitted that the complainant is a defaulter and has failed to pay the last four instalments in the construction linked payment schedule which was opted for and agreed to by the complainant. The complainant had booked apartment for total consideration of Rs.1,12,35,575/- and the complainant has made last payment only on 14.9.2015. Thereafter, the complainant was called upon to make payments on completion of 6th floor slab/9th floor slab/top floor and on installation of services. Despite repeated notices issued to the complainant, the complainant has failed to make payment and the current outstanding amount payable is Rs.40,61,015/- and interest thereon is aggregating to Rs.18,11,846/-.

14. The respondent submitted that the construction of the flat is complete and the respondent is willing to handover possession to the complainant subject to payment of the



outstanding dues as per the builder buyer agreement. Moreover, the occupation certificate has also been applied by the respondent in January 2018 itself. 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 and thereby violating section 19(6) of the Act. Thus, the complainant cannot hold the respondent liable for not handing over possession when he himself has failed to make the payments since September 2015 as per the agreed schedule and is in breach of the builder buyer agreement.

15. The respondent submitted that the respondent has suffered due to the breaches committed by the complainant since the respondent has completed the construction of the apartment despite the complainant failing to make the payments as per the agreement. Due to the failure of the complainant in making the payments the respondent has suffered immense monetary hardship.

16. The respondent submitted that the present complaint is not maintainable since the complainant have not filed the present complaint as per the correct form of the Haryana Real Estate (Regulation and Development) Rules, 2017 and the





complainant in the complaint is seeking relief of refund and interest/compensation for which a complaint under Form CRM in terms of rule 29 of the Rules should have been filed.

17. The respondent denied that there was any delay on the part of the respondent in executing the builder buyer agreement. It is submitted that the complainant herein is making submissions without any valid factual or legal basis and the complainant is put to strict burden of proof regarding the same. The respondent further submitted that it is an admitted fact that it is the complainant herein has defaulted in making payments as per the agreed schedule.
18. The respondent denied the fact that the possession was to be handed over by 31st December 2016. It is denied that complainant had already made a payment of Rs.69,50,444/- from May 2013 to February 2017. It is also denied that there was no work at site as per the agreement and that there is no road till today which leads to the said towers. However, the respondent submitted that the complainant is making submissions without any valid factual or legal basis. In terms of clause 7 of the builder buyer agreement the possession of the flat was to be handed over within a period of 42 months subject to timely payments by the complainant and the complainant not being in breach of any of the terms of the





builder buyer agreement. It is submitted that the construction of the flat is complete and the respondent is willing to handover possession to the complainant subject to the payment of the outstanding dues as per the builder buyer agreement.

19. The respondent denied that he had failed to complete the project on time. It is also denied that the complainant sent any legal notice to the respondent. It is submitted that the complainant is making submissions without any valid legal or factual basis and is put to strict burden of proof regarding the same.

Determination of issues:

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

20. With respect to the **issue** raised by the complainant, as per clause 7(a) of builder buyer agreement, the possession of the flat was to be handed over within 36 months from start of construction (with a grace period of 180 days). The respondent raised demand on account of "on start of excavation" on 13th February 2014. Thus, the due date of handing over the possession shall be computed from 13th





February 2014. The clause regarding the possession of the said unit is reproduced below:

"7(a) Time of handing over the possession

- (i) *The date of completion of project shall be 36 months from start of construction hereof subject to force majeure or/and any other reason beyond the control of developer subject to all allottee(s) having strictly complied with all the terms and conditions of this builder buyer agreement and not being in default under any provisions of the same and all amounts due and payable by the allottee(s) under this builder buyer agreement having being paid in time to developer, the developer immediately upon the receipt of OC/CC, shall give notice to all the allottee(s), in writing, to take possession of the unit for its fit-outs and occupation and use ("notice of possession"), on furnishing certain documents by the allottee.*
- (ii) *The allottee(s) agrees and understands that the developer shall be entitled to a grace period of 180 days over and above the aforesaid period more particularly specified here-in-above in sub-clause(a)(i) of clause 7, for completion of the project."*

21. Accordingly, the due date of possession is 13th August 2017 and the possession has been delayed by one year two months and eighteen days till the date of decision. But keeping in view that the present status of the project, the authority is of the view that in case refund is allowed in the present complaint, it shall adversely affect the right of allottees who wish to continue with the project. Further, it will also hamper the completion of the project as the project is almost



complete and the respondent has applied for occupation certificate of the project in January 2018 and the same was granted on 23.07.2018. Therefore, the authority is of the considered opinion that refund of the amount paid by the complainant should not be allowed.

Findings and directions of the authority

22. 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. As per notification no.1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of the Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint. The complainant is an allottee as per definition under section 2(d) of the Act and the respondent is well





within the definition of promoter as per section 2(zk) of the Act. Once there is allottee-promoter relationship, the complaint is maintainable before this authority.

23. The possession of the said unit was to be delivered by 13.08.2017, the authority is of considered view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Act *ibid*. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate i.e. 10.45% p.a., for every month of delay till the handing over of possession.
24. Also, the complainant has defaulted in making timely payments and the complainant made last payment only on 14.09.2015, thereafter the complainant has not paid any amount. Therefore, the complainant be also directed to make timely payment as the allottee is also obligated under section 19(6) to make timely payment in the manner and within the time as specified in the said agreement. Also, under section 19(7), the allottee shall be liable to pay interest, at such rate as may be prescribed, for the delay in payment towards any amount or charges to be paid under section 19(6). Section 19(6) and section 19(7) are reproduced as under:



"Section 19. Rights and duties of the allottees.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

The builder has issued umpteen notices to the complainant for payment of due instalments, however, complainant disputed the veracity of these notices. The respondent curtailed his averment by stating that numerous notices have been issued to the complainant. However, the builder who is well within his right under clause 27.2(i) of the said agreement, to cancel the allotment of the flat after deducting earnest money as per the said agreement, the respondent has not done so till date. Since the matter w.r.t. dispute of default in making payment and the builder has delayed in delivery of possession, as such it is advisable that the builder should take final action in this context.

Directions of the authority

25. 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) The respondent is directed to handover the possession of the said unit within 7 days from the pronouncement of this order.
- (ii) The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. ~~13.08.2018~~ ^{13.08.2017} till the actual date of handing over of the possession.
- (iii) The complainant is also directed to pay the due instalments and to pay the interest at the prescribed rate i.e. 10.45% for the delay in making payment towards the demand raised by the respondent.
- (iv) In case complainant does not pay dues, action for cancellation may be taken as per provisions of agreement for sale.



26. The authority takes suo-moto cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take suo-moto cognizance for not getting the project registered and for that separate *corrected vide order dated 20/12/18.*



proceeding will be initiated against the respondent u/s 59 of the Act.

27. The order is pronounced.

28. Case file be consigned to the registry. Copy of this order be endorsed to registration branch to initiate the proceedings under section 59.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.10.2018

Corrected copy uploaded on 07.01.2019

