

PROCEEDINGS OF THE DAY

Day and Date	Friday and 07.12.2018
Complaint No.	535/2018 Case titled as Ms. Neerja Dhanwani V/S M/S Godrej Projects Development Pvt Ltd.
Complainant	Ms. Neerja Dhanwani
Represented through	Shri Kuldeep Mansukhani, Advocate for the complainant.
Respondent	M/S Godrej Projects Development Pvt Ltd.
Respondent Represented through	Shri Amit Kimothi, Advocate proxy counsel for Shri Kapil Madan, Advocate for the respondent.
Last date of hearing	13.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Arguments heard.

Complainant has booked unit No.603 Tower-A, 6th floor in Godrej Summit, Sector104, Gurugram, vide application form dated 30.3.2016 and allotment letter was issued on 7.7.2016. He has paid an amount of Rs.1,46,92,306/- to the respondent against total sale consideration of Rs.1,88,86,486. It was a construction linked plan. No Builder Buyer Agreement has been executed inter-se the parties as on date.

Respondent has stated that the project is registered and the revised date of possession is March 2019, hence the complaint is pre-mature.

In view of the facts and circumstances of the case, the complaint is pre-mature. As per registration certificate, revised date of possession is March 2019. In case builder fails to give possession of the flat on revised date in that case complainant will be eligible for refund alongwith prescribed rate of interest.

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

Samir Kumar
(Member)
7.12.2018

Subhash Chander Kush
(Member)
7.12.2018

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

Complaint no. : 535 of 2018
Date of first hearing : 13.09.2018
Date of decision : 07.12.2018

Neerja Dhanwani
C/o Ms Geeta Matta 104, Tagore Villa, 1st floor Chakrata Road Dehradun-248001
Uttanchal **...Complainant**

Versus

Godrej Projects Development Pvt. Ltd.
Office: 3rd floor, UM house tower A, Plot no:35 P, gate no. 1, Sector- 44, Gurgaon,
Haryana **...Respondent**

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Kuldeep Mansukhani Advocate for the complainant
Shri Amit Kimothi, proxy Advocate for the respondent
counsel for Shri Kapil Madan



BRIEF

1. A complaint dated 16.07.2018 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 complainant Neerja Dhanwani, against Godrej Projects Development Pvt. Ltd.

2. Since, the allotment letter has been executed on 07.07.2016 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot 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 project:** Group housing colony

***DTCP licence no.:** 102 of 2011 dated 07.12.2011.

1.	Name and location of the project	"Godrej Summit" Sector-104, Gurugram
2.	Unit No.	603,tower no. A, 6 th floor
3.	Unit area	2692 sq. ft.
4.	RERA Registration	Registered
5.	Registration number	75 of 2017
6.	Date of execution of builder buyer agreement	Not executed
7.	Application form dated	30.03.2016
8.	Allotment letter dated	07.07.2016
9.	Total consideration	Rs. 1,88,86,486/-
10.	Total amount paid by the complainant	Rs. 1,46,92,305/-



11.	Payment plan	Construction linked plan
12.	Due date of delivery of possession. Clause 13 of application form	March, 2019
13.	Delay of number of months/ years	Pre-mature complaint
14.	Penalty clause as per application form	Clause 14 i.e. Rs 5 per Sq. ft. per month of the Super area

4. The details provided above, which have been checked as per record of the case file. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 13.09.2018 and 07.12.2018. The reply has been filed on behalf of the respondent.

Facts of the case

5. The complainant submitted that on 30.03.2016, she had booked an apartment bearing no. 603, tower no. A, 6th floor, admeasuring super built up area 2692 sq. mtr, in construction linked residential project called Godrej Summit, Sector-104, Gurgaon. The total cost of the apartment was Rs.1,88,86,486 and the complainant paid an amount of Rs.18,88,650 towards 10% of the total cost of the apartment. The said unit was allotted by the respondent vide allotment letter dated 07.07.2016.



6. Complainant submitted that she has paid a sum of Rs. 1,46,92,305/- which is approximately 80% of the total cost till date in accordance with the demands made by the respondents from time to time.
7. The complainant submitted that in accordance with the terms and conditions of the agreement, the respondent had committed to complete the construction and handover the possession by March, 2018. However, the project has not been completed till date.
8. The complainant submitted that on 07.06.2018, when the complainant went to the apartment, she was shocked to find the quality of the construction was nowhere close to what was committed by the respondents at the time of agreement. The complainant had put her hard earned money and lifesavings on the above project as she had seen another project, namely "Frontier" by the respondent which had decent quality of construction and she had expected similar quality. However, to her utter shock, disbelief and disappointment, the quality and general appearance of the end product was nowhere close to what was promised to her.
9. The complainant submitted that complainant was very disappointed to find that approach to her apartment is



through a village and garbage dumps which is not in accordance with what was promised by the respondents at the time of agreement. Further, the roads in the abovesaid project were not only very narrow but they were constructed with substandard material. At the time of entering into the agreement, respondent had committed to build broader roads but have failed to do so. The respondents have also failed in their commitment to build a shorter and cleaner road next to "India Bull Apartments" providing direct access to the abovesaid project.

10. Complainant submitted that she found that doors of the apartment have been made using poor quality cardboard with wooden frame. The same was in complete violation of the commitment of providing high quality wooden doors which the respondents had made at the time of agreement. Furthermore, the kitchen in the complainant's apartment has obnoxious exhaust pipes which should have been inbuilt or covered with false ceiling in accordance with the model house which was shown to her at the time of booking.

11. The complainant submitted that when she discovered that there is no regular supply of water in the abovementioned project and it is being supplied through tankers to the



residents. Also, on 13.06.2018 the complainant sent an email to the respondent informing him about the various deficiencies in the above said project and sought refund of the entire amount paid by her till date. Further, the respondents have failed to address issues related to safety concerns pertaining to fire, stray dog menace and other dangers of open access to villagers living in nearby surroundings.

12. The complainant submitted that she had applied for booking of an apartment in the above said project on 25.03.2016. Subsequently, payments were made by the complainant in accordance with demands made by the respondent. The builder buyer agreement was not signed by the respondent at the time of entering into the agreement with the complainant. As such, he should have demanded or accepted a sum more than ten percent of the cost of the apartment. The respondent has demanding and accepting an amount of Rs.1,46,92,305/- from the complainant which is approximately 78% of the total cost without first entering into agreement for sale.



13. Issues raised by the complainant

- I. **Whether or not the respondent is bound to execute a BBA and whether or not is liable to refund the amount collected by the complainant ?**

14. Relief sought

- I. **The entire amount along with interest @ 15% paid by the complainant should be refunded by the respondent as BBA has not been signed till date as provided in section RERA Act.**
- II. **The quality of construction is a atrocious and is not habitable in the present condition.**
- III. **The developer be directed not to send any fresh demands till the matter is settled.**

Respondent's reply

15. The respondent submitted that the present complaint is bad for non-joinder of necessary party M/s Magic Info Solutions Pvt. Ltd., and other land owners of the land on which the project land is developed and has been detailed in the agreement annexed by the complainant in the complaint.
16. The respondent submitted that the complainant has booked an apartment with an application from dated 25.03.2016. The respondent has duly allotted the apartment no. A 0603 on 6th floor in tower A vide an allotment letter dated 07.07.2016. It may be important to mention that application form (clause 13) clearly stipulated that the tentative completion date will



be March, 2019. Tentative completion date is also mentioned in the allotment letter.

17. The respondent submitted that the he has not yet offered the possession, as per contract is March, 2019. Further, submitted that the respondent is committed to deliver the apartment with all the amenities and confirming to the specification as promised within the promised delivery date i.e. March, 2019. Thus, the present complaint is premature as the promised date of delivery is not yet arrived. Also, mention that the other nine towers (out of eleven residential towers) in the project are ready and 278 apartment owners have even taken possession.

18. The respondent submitted that all the allegations made by the complainant pertaining to the quality of material used for construction, roads and interior of the house have been denied. It is important that respondent is ensuring 24*7 water supply of water in the project. True copy of the photographs of the project and the apartment in question are annexed.

19. The respondent submitted that respondent was required to ensure arrangements for water supply till the external services are available from external infrastructure to be laid



by HUDA. Since, water pipelines were not laid down by HUDA, respondent with approval of HUDA was making arrangement through tankers. Thereafter, vide letter dated 27.03.2017, HUDA made drinking/domestic water available to respondent at Boosting Station Sector 16 and Basai WTP, Gurugram for the said letter, HUDA further apprised respondent that "... The regular water supply of 700KLD will be given after completion of water supply line, which will take one year or so for availability of land clearance of land..." Respondent is assuring availability of domestic water as per directions issued by HUDA. Thereafter, vide letter dated 20.11.2017, HUDA apprised that the work of providing and laying the master water supply is in progress. It was further informed by HUDA that there is a gap in the master line (1600mm diameter) near Village Dhankot along GWS of approximately 672 meter length and the connection at the main rising line is to be done at WIP Chandu Budehra, Gurugram. Further there is a structure in alignment of pipeline near junction of Daulatabad Flyover Road and NPR in Sector 103 due to which approximately 110 meter (1200 mm dia) is not laid. Also, respondent has been in touch with the concerned authorities and have also written a letter dated 20.03.2018 to the Executive Engineer, HUDA requesting an



update on the status of the points referred to in the letter dated 07.11.2017.

20. The respondent submitted that it is the complainant who has committed an act of default in as much as she has failed to provide the signed copy of the agreement to the respondent despite repeated reminders and email dated 20.12.2016. It is submitted that the complainant is trying to take advantage of its own wrong in order to mislead this hon'ble authority. Infact, it is the complainant who has failed to sign and send back the agreement to respondent.

Determination of issues

21. With respect to the **first issue**, raised by the complainant it is noted that no BBA has been executed between the parties. However, there is an application form dated 26.03.2016 based on which the due date of possession. As per clause 13 of the same the due date of possession will be March, 2019. Hence, the complaint is premature. Keeping in view the status of the project refund may not be granted at this stage as granting the same shall hamper the construction of the project and adversely affect the interest of other allottees who wish to continue with the same.



Findings and decision of the authority

22. 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.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of 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 complainants.



23. 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.

24. Complainant has booked unit no. 603 tower-A, 6th floor in Godrej Summit, Sector104, Gurugram, vide application form dated 30.03.2016 and allotment letter was issued on 07.07.2016. He has paid an amount of Rs.1,46,92,306/- to the respondent against total sale consideration of Rs.1,88,86,486. It was a construction linked plan. No builder buyer agreement has been executed inter-se the parties as on date.
25. In the present complaint, the complainant is seeking refund of the entire money paid till date i.e. 1,46,92,305/- along with interest at the rate of 15%. However, in view of the facts and circumstances of the case, the complaint is pre-mature. As per clause 13 of application form date of possession is March, 2019. In case builder fails to give possession of the flat on revised date in that case complainant will be eligible for refund alongwith prescribed rate of interest.
26. The complaint is disposed of accordingly.
27. The order is pronounced.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.12.2018

Judgement Uploaded on 08.01.2019