

PROCEEDINGS OF THE DAY

Day and Date	Friday and 14.12.2018
Complaint No.	445/2018 case titled as Ms. Abha Jain V/S M/S DLF Ltd. & Ors.
Complainant	Ms. Abha Jain
Represented through	Complainant in person with S/Shri Abhey Jain and Kamal Sharma, Advocates.
Respondent	M/S DLF Ltd. & Ors.
Respondent Represented through	S/Shri J.K.Dang and Ishaan Dang, Advocates for the respondent.
Last date of hearing	21.11.2018
Proceeding Recorded by	Naresh Kumari & H.R.Mehta

Proceedings

The project is not registered.

Arguments heard.

As per clause 11 (a) of the Builder Buyer Agreement dated 5.5.2014 for unit No.UTE-091, in the "Ultima", Sector-81, Gurugram possession was to be handed over to the complainant within a period of 60 months from the date of application i.e. 13.3.2013 and as per clause 15, **six months** grace period which comes out to be **13.9.2018**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,67,35,980 /- to the respondent.

However, as per clause 14 of the BBA which reads as under:-

Failure to deliver possession by Company: Remedy to Allottee (s)

If for any reasons other than those given in clauses 11 (b), 11 (c) and clause 46, the Company is under to or fails to offer possession of the Said Apartment to the Allottee (s) within sixty (60) months from the date of Application or within any extended period or periods as envisaged under Agreement, then in such case, the Allottee (s) shall be entitled to give notice to the Company, within ninety (90) days from the expiry of said period of sixty (60) months or such extended period, as case may be, for terminating this Agreement. In that event, the Company shall be at liberty to and/or dispose of the Said Apartment and the Parking Space (s) to any other party at such price upon such terms and conditions, as the Company, may deem fit and thereafter the Company shall within ninety (90) days from the date of full realization of the sale price after sale of 5 Apartment and the Parking Space refund to the Allottee (s), without any interest, the amounts paid by the Allottee (s) in respect of the Said Apartment and the Parking Space without deduction Earnest Money but after deduction of brokerage paid by the Company to the broker/ organizer in case the booking is done through a broker/sales organizer. For the avoidance of doing it is stated that the Allottee (s) shall have no other right to claim against the Company in response of the Said Apartment and Parking Space (s)''.

Complainant is entitled for refund of the amount. However, counsel for the respondent has stated at bar that they are ready to offer possession to the complainant even on today subject to the condition that the outstanding amount due to the complainant may be paid. As per provisions of the Real Estate (Regulation & Development) Act, 2016, both the builder as well as complainant are under obligation to fulfill their commitment. Possession is being offered within a period of 60 months from the date of application/signing of the BBA. In view of the provisions of the Act ibid, since the possession is being offered, as such complainant is liable to fulfil his part

of obligation. However, the complainant is at liberty to seek refund from the Company as per the provisions of BBA.

Application for refund of the amount may be decided by DLF within 15 days as per clause 14 of BBA, otherwise the complainant shall have to deposit the balance amount and take over the possession of flat/unit within one month's time period.

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

Samir Kumar
(Member)
14.12.2018

Subhash Chander Kush
(Member)
14.12.2018

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

Complaint no. : 445 of 2018
First date of hearing: 09.08.2018
Date of decision : 14.12.2018

1. Mrs. Abha Jain
2. Mr. Aditya Jain
R/o G-89, second floor, Saket,
New Delhi-110017

Complainants

Versus

1. M/s DLF Ltd.
DLF Shopping Mall, 3rd floor Arjun Marg,
DLF City Phase-I, Gurugram, Haryana
2. M/s Sahastrajit Builders & Developers Pvt.
Ltd.
R/o P 39, Basement, NDSE Part 11, New
Delhi 110049.
3. M/s Beyla Builders & Developers Pvt. Ltd.
R/o E 1, Jhandewalan Extension, New
Delhi 110055

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant in person with
Shri Abhay Kumar Jain
Shri Abhishek Singh Assistant
Manager of the company with
Shri Ishaan Dang

Advocate for the complainants
Advocate for the respondents



ORDER

1. A complaint dated 15.06.2018 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 Mrs. Abha Jain & Mr. Aditya Jain, against the promoter M/s DLF Ltd., on account of violation of clause 11(a) of the builder-buyer agreement executed on 05.05.2014 for unit no.UTE091, tower No. E, floor 09, having 157.617 sq. mtrs. approx. in the project “The Ultima”, Sector-81, DLF Gardencity, Gurugram for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.
2. Since, the buyer’s agreement has been executed on 05.05.2014 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: -

1.	Name and location of the Project	“The Ultima”, Sector 81,
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		Gurugram.
2.	DTCP license no.	61 of 2011 and 114 of 2012
3.	Flat/apartment/unit no.	UTE091
4.	Occupation certificate issued	11.06.2018
5.	Flat measuring	157.617 sq. mtrs.
6.	RERA registered / not registered.	Not registered
7.	Date of execution of BBA	05.05.2014
8.	Date of booking	13.03.2013
9.	Total amount paid by the complainant till date	Rs. 1,67,35,980/-
10.	Total consideration	Rs. 2,19,18,803/-
11.	Due date of possession	Clause 11(a)- 60 months from the date of application and as per clause 15-6 months grace period i.e. 13.09.2018
12.	Date of application	13.03.2013
13.	Renewal of license	61 of 2011 upto 29.06.2019 and 114 of 2012 upto 14.11.2018
14.	Occupation certificate	11.06.2018
15.	Application for OC	26.07.2017
16.	Delay in possession	1 month



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

09.08.2018. The case came up for hearing on 09.08.2018, 20.09.2018, 23.10.2018, 20.11.2018 and 14.12.2018. The reply has been filed on behalf of the respondent on 20.08.2018 which has been perused.

Facts of the complaint

5. The complainants as the Hindu undivided family are living in a rented house at Delhi and paying Rs. 85,000/- per month. They have dream of having their own house in upcoming societies with all facilities and standards, situated around and peaceful environment for children. They have booked the apartment in March 2013 with the great expectations that they would shift to their own house within three years.
6. However, after numerous personal visits, calls by the complainants, the respondents after 13 months got signed an apartment buyer's agreement between the complainants and the respondents on 05.05.2014 allotting the apartment no. UTE091, floor-9, block no. E, apartment area 157.617 sq. mtr., 1697 sq. ft. approximate, rate @ Rs. 88264.80 per sq. mtr., Rs. 8200 per sq. ft. of super area, the project called "The Ultima" in Sector 81, DLF Gardencity, District Gurugram, Haryana.



7. The total cost of the apartment is mentioned 1,83,17,570 including preferential location charges (PLC) and other charges. The complainants submitted that at the time of application in March 2013, the respondents had mentioned in the letter dated 25 March 2013 that they would send shortly the apartment buyers agreement but the respondents took thirteen (13) months to get it signed and the respondents fraudulently changed the possession period from three years (36 months) to five years (60 months).
8. The complainants took a loan of Rs, 145.15,000- from ICICI bank in December 2014 and the ICICI Bank had already disbursed Rs. 1,34,00,000/- to the respondents. The complainants have to pay Rs.1,05,000/- per month, only as interest, for the loan taken for buying the apartment
9. That, the ICICI Bank has stopped releasing balance amount of sanctioned loan of Rs. 1,45,15,000 after disbursing Rs. 1,34,00,000/- to the respondents on the ground that the respondents are not offering possession of the apartment in time to the complainants. The complainants for the faults and lapses of the respondents are not offering possession of apartment in time is being faced to a very critical situation. In



total, the complainants have paid Rs.1,67,35,980/- till today out of Rs. 1,83,17,570/- but no possession of the apartment had been offered to the complainants till date, five years have expired in March, 2018.

10. That M/s DLF ltd. has mentioned in its ABA that the land owning companies are owners of the land measuring 22.231 acres, and the Director General, Town Planning, Government of Haryana Chandigarh vide two licenses bearing no. 61 of 2011 dated 30. 06.2011 in respect of land measuring 11.668 acres and License No. 114 of 2012 dated 15.11. 2012 in respect of land measuring 10.563 acres have granted permission for setting up a residential group housing complex on the said land. The Town and Country Planning Department, Government of Haryana has issued two licenses to three respondents. The complainants are still not aware about the agreement/ memorandum of understanding (MOU) between these three license holders for developing the said project and under which license and on which part of the land their tower falls. The respondents have taken multiple licenses from the concerned authorities fraudulently for different projects on the same said land, confusing the complainants completely.



11. That the complainants are not in a position to pay Rs. 1,05,000/- per month as interest to the ICICI Bank for the loan taken for buying the apartment and simultaneously pay Rs RS.85000/- per month as rent of the house in which they are currently living. That was why, various cheques issued by the complainants to their bank for paying interest amount of Rs 1,05,000 have got bounced due to the shortage of funds .The complainants are in a debt position due to the delay of the offer of possession.
12. That the complainants submitted that they were shocked to notice that only a few workers were engaged at the site. The construction activities in a couple of the towers have been moving at a snail speed and at most of the towers the construction activities have been stopped altogether for the reasons best known by the respondents. Photo taken at site on 10 June 2018 is enclosed as annexure-6. That the respondents have never informed the complainants about the increase and escalation of the cost of the apartment. However all of a sudden a letter dated 18.042018 is received by the complainants whereby the auditor, S.R Batliboi and Co. LLP of the



respondents informed an increase in the total value of property from Rs 1,83,17,570/- to Rs. 2,13,80,452/- thereby increasing more than Rs. 30,50,000/- cost of the apartment without assigning any reasons for such huge increase and escalation. This huge increase of the cost of apartment was done by the Respondents without explaining the reasons for the increase to the complainants and without seeking consents of the complainants.

13. Issues raised by the complainants

- i. **That the respondents despite promising the complainants that the project would be delivered within a period of 36 months from the date of application of booking, resorted to changing terms in apartment buyers agreement by incorporating clause 11 (a) in buyers agreement stating that apartment would be delivered within a period of 60 months. Thus it constitutes an unfair trade practices and deficiencies in services and cheating.**
- ii. **The delivery of the apartment was promised within three years to the complainants at the time of**



application of the booking of the apartment in March 2013. The complainants, being a senior female citizen and her young son would not have thought of purchasing the apartment if the delivery was not time bound. The time of the delivery of the apartment is an essence. However, more than five years have passed from the date of application of booking of the apartment. But the apartment has not yet been handed over to the complainants by the respondents despite taking more than 90% cost of the apartment by March 2016. This is deliberate, bad cheating and duping of gullible and naive citizens of the country. It speaks the volume about the ulterior motives and mala fide intentions on the part of the respondents and thus constitutes unfair trade practices and deficiencies in services and cheating.

- iii. By delaying possession as promised, the respondents have unjustly enriched themselves by taking more than ninety per cent (90%) of sale consideration and additional charges in lump sum from the buyers way



back by March 2016 and thereafter sitting over crores of rupees and utilizing this huge money on other projects and left the complainants and other buyers high and dry at their own fate. This conduct and behaviour of the respondents are deplorable constitute unfair trade practices and deficiencies in services and cheating.

iv. The Respondents have utilised huge money, collected from the complainants and other buyers, for their other projects, and have not used said funds for construction of apartments on time as promised by the respondents at the time of booking of apartment in March 2013.

v. The complainants are the worst sufferer due to the greed of the respondents /builders. The complainants have already paid more than Rs.38,00,000/- only as interest to the ICICI Bank against the loan amount of Rs. 1,34,00,000/- which the bank had disbursed to the respondents for the apartment. complainants are forced to pay Rs.



1,05,000/- as only interest per month for the loan taken for the apartment, for the faults of the respondents. Besides, the complainants have to pay Rs. 85,000/- as rent of the house in which they are living. The complainants have to both of the house in which they are living, and the interest on the loan taken for buying the apartment, for the lapses and faults of the respondents.

- vi. That the apartment buyer's agreement executed on 05.05.2014, the total cost of apartment is mentioned as Rs.1,83,17,570/-including preferential location charges (PLC), however, all of a sudden, in April 2018, The cost of the apartment was increased to Rs 2,13,80,452/-, without assigning any reasons and causes for such huge escalation, thereby creating burden of more than Rs. 30,00,000/- to the complainants. Such huge increase of cost of apartment is illegal, unjust and thus constitutes unfair trade practices.



14. Relief sought by the complainants

- i. Direct the respondents / builders to return the principal sum of Rs. 1,67,35,980/- already received by the respondents from the complainants for the sale consideration amount and additional charges for the aforesaid apartment with interest 18 % per annum or at such rate under the RERA ACT, 2016**
- ii. Direct the respondents to pay Rs 38 to the complainants for the interest which the complainants had already paid to the ICICI Bank for the loan amount taken by the complainants for buying the apartment. The complainants are currently paying Rs. 1,05,000/- as interest only per month against the loan taken for buying the apartment.**
- iii. Direct the respondents to pay rent of the house to the complainants, which the complainants were forced to pay, being living in a rented house for the last three years, due to the indolence on the part of the**



respondents in delaying the possession of the apartment.

- iv. Any other damages, compensations, relief which the hon'ble authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainants and against the respondents.

Respondent reply

Preliminary objections and submissions

15. That the present complaint is not maintainable in law or on the facts. The provisions of the real estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupancy certificate in respect of the apartment in question was made on 26.07.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017. The occupation certificate in respect of the project was issued by the competent authority on 11.06.2018. This hon'ble authority does not have the jurisdiction to entertain and decide the



present complaint The complaint is liable to be dismissed on this ground alone.

16. The respondent submitted that the complaint is not maintainable before this authority. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this hon'ble authority.
17. The respondent submitted that the complainants have no locus standi or cause of action to file the present complaint. Further, the answering respondent has developed a residential group housing complex known as The Ultima, situated in Sector 81 DLF Gardencity, Gurgaon in accordance with permissions, approvals and sanctions from the competent authorities. License no. 114 of 2012 and memo dated 20.01.2017 and license no 61 of 2011 and memo dated 4.10.2017. Since it is the answering respondent which has been authorized by respondents no. 2 and 3, the land owning companies, to



undertake development of the project, as such the present reply is being filed on behalf of respondent no. 1. Respondents no. 2 and 3 reserve their rights to file an additional, independent reply should the necessity so arise. Infact, respondent no-2 company i.e. M/s Builders & Developers pvt. Ltd. had been merged with M/s DLF Real Estate Builders Ltd. by virtue of the order dated 10th April, 2017 passed by the hon'ble national company law tribunal.

18. The complainants took an independent and informed decision, uninfluenced in any manner by the answering respondent to book the part in question, after making extensive inquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per the complainant's needs and requirements as well as the capability of the answering respondent to undertake the project.



19. That it is pertinent to mention that that it was clearly specified in the application form at clause 2 that that construction would commence only after receipt of all approvals from the competent authorities including the environmental clearance from the State Environmental Impact Assessment

Authority(SEIAA), which had not been obtained from the date of booking. Furthermore, it is explicitly provided in clause 19 (a) of the application form.

20. That vide allotment letter dated 25.03.2013, apartment bearing no. UTE091, admeasuring 2078 sq. ft. super area approx. located in tower-E of the project was provisionally allotted to the complainants. The construction of the tower in which the apartment of the complainants is situated (as well as five other towers of the project) stand completed and the answering respondent had made an application on 26.07.2017 to the competent authority for issuance of the occupation certificate in respect thereto. Occupation certificate has been issued by the competent authority on 11.06.2018. The answering respondent will shortly begin the process of delivery of the apartment in question and possession of the same will be delivered after receipt of complete payment, and completion of all necessary formalities.



21. The respondent submitted that in terms of clause 11(a) of the buyer's agreement executed by the parties possession of the apartment was proposed to be handed over within a period of

60 months plus grace period of 6 months from the date of application, subject to the timely compliance by the complainants of all the terms and conditions of the agreement.

22. The respondents submitted that an amount of Rs 1,73,32,139/- (Inclusive of delayed interest and service tax amount) has been paid by the complainants till amount of Rs 51,82,823 /- is still due and payable by the complainants. The respondent denied that the total value of the apartment has been increased from Rs. 1,83,17,570/- to Rs. 2,13,80,452/- the respondent contended that the cost has been increased by Rs 30,00,000 / - without assigning any reason. Infact, the aforesaid amount of Rs. 2,13,80,452 / -also includes the following: -

EDC / IDC which as per the payment plan ...	6,23,400/-
Service-tax	...7775/-
Delayed interest applicable till that time ...	24,31,707/-
Total	Rs. 30,62,882/-

23. The respondent will shortly commence to hand over process after completing the necessary formalities and receipt of balance payments. The respondent submitted that the date of execution of the apartment buyers agreement is



inconsequential in as much as the time period of delivery of possession is calculated from the date of booking and not from the date of apartment buyer agreement.

24. The ABA was sent to the complainants for execution on 06.06.2013 the complainants themselves delayed the execution. The complainants have deliberately refrained from annexing a copy of the application form, from the perusal of which it is evident that the allegations made by the complainants are absolutely false and fabricated. Insofar as EDC and IDC are concerned, these charges are payable to the government which the answering respondent is collecting from the allottee in accordance with the terms and conditions of the ABA & ultimately paid to the government.

25. Clause 35 of the ABA clearly states that the complainants will remain bound by their obligation to make payment for apartment irrespective of their ability to obtain financial support from any institution or bank.



26. **Determination of issues**

- i. With respect to **first and second issue** the complainant, has not adduced any evidence in substantiation of the

verbal warranty regarding the date of possession being 36 months as given by the builder. Therefore, the contractual date i.e. is 60 months plus 6 months of grace period will prevail and the rights of the allottee will be determined accordingly.

- ii. With respect to **third issue** by the complainant, the due date of possession as per the agreement i.e. 13.09.2018. Accordingly, no cause of action has arisen on the date of filing of complaint i.e. 15.06.2018. Furthermore, the respondent has also received occupation certificate on 11.06.2018 and is in position to deliver the apartment. With passage of time the cause of action has accrued and till date possession not offered.
- iii. With respect to **fourth issue** raised by the complainant, no evidence is provided by the complainant in support of the following issue. He may be at liberty to file the same.
- iv. With respect to **fifth issue** raised by the complainant, ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd. (7 of 2018), on 21.08.2018*** has held that this authority is not



the appropriate forum for providing compensation and the same shall be filed with the adjudicating officer.

- v. With respect to **sixth issue** raised by the complainant, as per clause 1.3 of the said agreement reproduce hereinafter

“ The allottee(s) understands and agrees to pay increases, if any, due to increase in super area as explained in clause 1.6 increase in EDC, IDC, IAC as mentioned in clause 1.12, increase on account of additional fire safety measures undertaken as mentioned in clause 1.13....”

The respondent has provided total breakup of the charges which are mentioned below:

EDC / IDC which as per the payment plan ...	6,23,400/-
Service-tax	...7775/-
Delayed interest applicable till that time ...	24,31,707/-
Total	Rs. 30,62,882/-

Hence, the total amount of said apartment demanded by the respondent is just and not illegal.

As per clause 11(a) of the builder-buyer agreement, the company proposed to hand over the possession of the said unit by 13.09.2018. The clause regarding possession of the said unit is reproduced below:



“ 11(a) POSSESSION OF UNIT

...the said apartment within a period of 60 months from the date of the application unless there shall be delay or failure due to force majeure conditions....

Findings and directions of the authority

28. 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 14.12.2017 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.

29. The authority is view that as per clause 11 (a) of the builder buyer agreement dated 5.5.2014 for unit no.UTE-091, in the “Ultima”, Sector-81, Gurugram possession was to be handed over to the complainant within a period of 60 months from the date of application i.e. 13.3.2013 and as per clause 15, six months grace period which comes out to be 13.09.2018. However, the respondent has not delivered the unit in time. Complainant has already paid



Rs.1,67,35,980/- to the respondent. However, as per clause 14 of the BBA which reads as under:-

Failure to deliver possession by Company: Remedy to Allottee (s)

If for any reasons other than those given in clauses 11 (b), 11 (c) and clause 46, the Company is under to or fails to offer possession of the Said Apartment to the Allottee (s) within sixty (60) months from the date of Application or within any extended period or periods as envisaged under Agreement, then in such case, the Allottee (s) shall be entitled to give notice to the Company, within ninety (90) days from the expiry of said period of sixty (60) months or such extended period, as case may be, for terminating this Agreement. In that event, the Company shall be at liberty to and/or dispose of the Said Apartment and the Parking Space (s) to any other party at such price upon such terms and conditions, as the Company, may deem fit and thereafter the Company shall within ninety (90) days from the date of full realization of the sale price after sale of 5 Apartment and the Parking Space refund to the Allottee (s), without any interest, the amounts paid by the Allottee (s) in respect of the Said Apartment and the Parking Space without deduction Earnest Money but after deduction of brokerage paid by the Company to the broker/ organizer in case the booking is done through a broker/sales organizer. For the avoidance of doing it is stated that the Allottee (s) shall have no other right to claim against the Company in response of the Said Apartment and Parking Space (s)".

Complainant is entitled for refund of the amount. However, counsel for the respondent has stated at bar that they are ready to offer possession to the complainant even on today subject to the condition that the outstanding amount due to the complainant may be paid. As per provisions of the Real Estate (Regulation And Development) Act, 2016, both the builder as well as complainant are under obligation to fulfil their commitment. Possession is being offered within a period of 60 months from the date of



application/signing of the BBA. In view of the provisions of the Act ibid, since the possession is being offered, as such complainant is liable to fulfil his part of obligation. However, the complainant is at liberty to seek refund from the company as per the provisions of BBA.

Application for refund of the amount may be decided by DLF within 15 days as per clause 14 of BBA, otherwise the complainant shall have to deposit the balance amount and take over the possession of flat/unit within one month's time period.

30. The authority may takes suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated u/s 59 of Act.
31. The order is pronounced.
32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 14.12.2018

Judgement Uploaded on 11.01.2019

