

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 15.01.2019
Complaint No.	508/2018 Case titled as Mr. Pramod Kumar & Anr V/S M/S Anjali Promoters And Developers Limited & Anr
Complainant	Mr. Pramod Kumar & Anr
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	M/S Anjali Promoters And Developers Limited & Anr
Respondent Represented through	Shri Shashank Bhushan Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

The counsel for the respondents placed on record copy of the offer of possession of the unit No.010-1015 on 10th admeasuring 808 square ft. in project "Centra One" at Sector 61, Gurugram The complainant seems ignorance about any such change. Such kind of mal practices are being

adopted by promoters to change unit number without taking their concurrence. Although the complainant kept on depositing the payment as demanded by the promoters from time to time after an intimation regarding change of unit was supposedly sent to the complainant. The letter of offer of possession as placed before the authority is also mischievous as it absolves promoter from the criminal delay that has occurred regarding completion of this project. Keeping in view the fact that there is abnormal delay in delivery of possession of the unit (due date of delivery of possession 31.12.2011 date of offer of possession 14.1.2019), the authority hereby directs to make adjustment of the interest at the prescribed rate of interest for every month of delay from the due date of possession 31.12.2011 till the date of offer of possession 14.1.2019. As area of unit has been reduced from 1000 to 808 square feet, the complainant shall be charged for reduced area by the promoter. Necessary refund be made to the complainant within 90 days from this order. The complainant shall submit calculation sheet regarding refund to the respondent and a copy to the authority. Based on above the calculation sheet shall be exchanged by the complainant and respondent within a week.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
15.01.2019

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

Complaint no. : 508 of 2018
First date of hearing : 06.09.2018
Date of decision : 15.01.2019

1. Dr. Pramod Kumar Garg.
2. Dr. Rita Garg
R/o D1- G02, Exotica, sector 53,
Golf Course road, Gurugram.

Complainants

Versus

1. M/s Anjali Promoters and Developers Pvt.
Ltd.
2. M/s BPTP Pvt. Ltd.
M-11 , Middle circle, Connaught circle,
New Delhi - 110001.

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sushil Yadav
Shri Shashank Bhushan

Advocate for the complainants
Advocate for the respondents

ORDER

1. A complaint dated 09.07.2018 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 complainants Dr. Pramod Kumar Garg and Dr. Rita Garg, against the promoters M/s



Anjali Promoter and Developer Pvt. Ltd. and M/s BPTP Pvt Ltd., on account of violation of the clause 14, 1.5 of space buyer's agreement executed on 08.12.2008 in respect of unit described as below 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. Since, the buyer's agreement has been executed on 08.12.2008 i.e. and due date of possession was 31.12.2011 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 promoters/respondents 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	Centra One, sector 70 A, Gurugram
2.	Nature of project	Commercial project
3.	DTCP license no.	277 of 2007
4.	Registered/Unregistered	Not registered
5.	Date of execution of space buyer's agreement	08.12.2008

6.	Unit no.	903, 9 th floor
7.	Unit measuring	1000 sq. ft.
8.	Payment plan	Construction linked
9.	Total consideration amount as per agreement	Rs. 67,12,167.12/- (as per statement of account on 12.12.2016)
10.	Total amount paid by the complainant as per statement of account dated 24.10.2017	Rs. 6739151.39/- (as per statement of account on 12.12.2016)
11.	Date of delivery of possession as per clause 2.1 - to be delivered by 31.12.2011	31.12.2011
12.	Delay in handing over possession till date	Approximately 7 year 2 months
13.	Penalty clause 6.1 of floor buyer's agreement	Rs. 15/- per sq. ft. per month of carpet area
14.	Occupation certificate	09.10.2018 (Annexure 7)

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondents. A space buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 31.12.2011. Neither the respondents have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.15/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 2.2 of space buyer's



agreement dated 08.12.2008. Therefore, the promoters have not fulfilled their committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 06.09.2018. The case came up for hearing on 06.09.2018, 16.10.2018 and 15.01.2019. The reply filed on behalf of the respondents have been perused. The respondents have supplied the details and status of the project along with the reply.

BRIEF FACTS:

6. Briefly stated, the complainants booked a commercial space in the Faridabad and made initial payment on 04.12.2016 of Rs. 11,55,000/-.
7. The complainants submitted that on 27.02.2007 the respondents again asked to pay for second instalment of the said commercial property in Faridabad and complainant paid instalment of Rs. 8,66,250/-
8. The complainants submitted that on 21.11.2007 they received an allotment letter of commercial space in project at village Ghata District Gurugram from the respondent Anjali Promoters and developer Pvt. Ltd that upon inquiring about that complainants asked that they had booked the



commercial space in Faridabad and with BPTP but they have received the allotment letter of commercial space in project. The respondent stated that it was the soft launch and complainants unit has been transferred to Gurugram and upon being asked by complainants that they made the payments to M/s BPTP limited but the letter has given by M/s Anjali Promoters and Developer Ltd., the respondent replied that it is sister concern. The complainants felt cheated because these all were done without their knowledge, consent and permission. The complainant asked for refund of their money from the respondent but respondent flatly refused to do so and stated that our money will be forfeited as that was the soft launch, and finding no way out the complainants chose to remain silent and continued with the further payments.

9. The complainants submitted that thereafter on 10.06.2008 they received the allotment cum demand letter regarding the allotment of commercial space in the upcoming project "Centra One" at sector 61, Gurgaon and allotted unit no. 903 on 9th floor measuring 1000 sq. ft. and complainants made various payments as and when demanded by the respondents on various dates.



10. The complainants submitted that on 08.12.2008 the space buyer's agreement was executed between the respondent and complainants. As per space buyer's agreement the respondent had allotted a unit bearing no. 903 on 9th floor having super area of 1000 sq. ft. to the complainant for a total sale consideration of Rs. 57,75,000/- but later on, the total sale consideration was increased to Rs. 67,12,167/- and the complainants paid Rs. 67,39,151/- in total. It is further submitted that as per para no. 2.1 of the space buyer agreement, the respondent had agreed to deliver the possession of the space by 31.12.2011 with an extended grace period till 30.06.2012.

11. The complainants visited the construction site and noticed that the project for which construction linked demands were raised was infact stuck up. Thus, no construction work is going at the site and respondent is failed to deliver the possession of the allotted commercial space within time.



12. The complainants submitted that as per clause 2.2 of the space buyer's agreement dated 08.12.2008 it was agreed by the respondent that in case of delay, the respondent shall pay to the complainant a compensation @ Rs. 15 per sq. ft. per of the super area. The respondent has exploited the complainants by not providing the shop even after a delay

from the agreed possession plan. It could be seen here that the respondent has incorporated the clause in one sided buyer agreement and offered to pay a sum of Rs. 15/- per sq. ft. for every month of delay. if we calculated the amount in terms of financial charges it comes to approximately 1% per annum rate of interest whereas the respondent charges 18% per annum interest on delayed payment.

13. It is submitted that on the ground of parity and equity the respondent be subjected to pay the same rate of interest as paid by the complainant @ 18% per annum to be compounded from the promised date of possession till the shop is actually delivered to the complainant.

ISSUES RAISED BY THE COMPLAINANTS:

14. The following issues have been raised by the complainant:

- i. Whether the respondents are liable to refund the amount of Rs. 67,39,151/-?
- ii. Whether there has been unjustified delay on the part of respondents?
- iii. Whether the respondents are liable for charging unjustified interest rate @18% per annum?



RELIEF SOUGHT BY THE COMPLAINANTS:

15. The complainants are seeking the following reliefs:

- i. The respondents be directed to refund a sum of Rs. 67,39,151/- along with interest @18% p.a. from the date when payments were made till realization of the amount in full.
- ii. Any other order this hon'ble authority deem fit to meet the ends of justice.

RESPONDENT'S REPLY:

16. The respondents submitted before this hon'ble authority that Director, Town and Country Planning Department (Haryana) has issued occupation certificate dated 09.10.2018 to the respondents for the project in question 'Centra One' located in Sector-61, Gurugram . A copy of the occupation certificate dated 09.10.2018 is annexed herewith and marked as annexure- 7.



17. The respondents submitted that the present complaint has been filed by one Dr. Pramod Kumar Garg and Dr. Rita Garg (being the allottees of the unit in question. It is further submitted that the complainants have filed a joint affidavit @pg.13 of the complaint paperbook, whereas, as per the due procedure of law, the complainants have to file separate affidavits in support of the

complaint. Therefore, the present complaint is not properly instituted and suffers from an incurable defect and as a result thereof, the complaint deserves dismissal without any further adjudication.

18. The agreements that were executed prior to the registration of the project under RERA shall be binding on the parties and cannot be reopened. As contemplated in section 13 of the Act, subsequent to the commencement of the Rules, a promoter has to enter into an agreement for sale with the allottees and get the same registered prior to receipt of more than 10 percent of the cost of the plot, or building.
19. The parties had agreed under the space buyer's agreement (SBA) to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration
20. That the complainants have alleged that the respondents have delayed the project and even in terms of the SBA whereby the respondent had agreed to handover possession by 31.12.2011, there has been a huge delay. It is submitted that the respondent with a view to create a world class commercial space, engaged renowned architects Cervera and Pioz of Spain and renowned contactor M/s Ahluwalia Contracts (P) Ltd. for the said project.



21. The respondent submitted that under space buyer agreement to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration as per clause 20 of space buyer agreement.
22. The respondent had conceived that the project would be deliverable by 31.12.2011 based on the assumed cash flows from the allottees of the project. However, it was not in the contemplation of the respondents that the allottees including the complainants herein would hugely default in making payments and hence, cause cash flow crunch in the project. The complainants also knew that as per the agreement, timely payment of the instalments was the essence of the contract who are well known for their timely commitment as well.
23. The complainants, relied upon clause 2.1 of the agreement for the timelines, it is submitted that the said timelines for possession till 31.12.2011 were subject to compliance of all terms and conditions of the agreement, including but not limited to timely payment of all the dues. A further grace period of 6 months was also agreed to between the parties. As detailed above, the complainants hugely defaulted in making timely payments of the various instalments and despite grant of numerous opportunities, failed to clear dues.



It is further submitted that the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant were well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Hence, the timelines for possession stood diluted because of the acts/ defaults of the various allottees.

24. It is further submitted that in case the complainants want to withdraw the booking of the unit in question, the same shall be governed by the duly agreed clauses of the agreement executed between both the parties

DETERMINATION OF ISSUES:

25. In respect to **first issue** raised by the complainant as the occupation certificate received on 09.10.2018 and the structure of the project is almost complete. So, the refund cannot be granted at this belated stage. However, project has already been delayed thus as such, the builder is liable for payment of interest at the prescribed rate.



26. With respect to the **second issue** raised by the complainants, the authority came across that as per clause 2.1 of space buyer's agreement, the possession of the flat was to be

handed over by 31.12.2011. The clause regarding the possession of the said unit is reproduced below:

2.1 *"The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31.12.2011 however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of possession, and in the event the intending purchaser with regard to the date of handing over of possession...."*

As the possession of the flat was to be delivered by 31.12.2011 as per the clause referred above, the authority is of the view that the possession has been delayed by 7 years 9 days till date and the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

27. With respect to the **third issue**, the interest demanded by the respondent @18% on the overdue payments is exorbitant. 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), delivered by 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."

FINDINGS OF THE AUTHORITY:

28. The application filed by the respondents 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 promoters 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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 complaint.



29. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
30. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

DECISION AND DIRECTIONS OF THE AUTHORITY:

31. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority is of the view that since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent.
32. The counsel for the respondents placed on record copy of the offer of possession of the unit no. 010-1015 on 10th floor admeasuring 808 sq. ft. in project "Centra One" at Sector 61, Gurugram. The complainant seems ignorance about any such change. Such kind of malpractices are being adopted by promoters to change unit number without taking their concurrence. Although the complainant kept on depositing the payment as demanded by the promoters from time to time after an intimation regarding change of unit was



supposedly sent to the complainant. The letter of offer of possession as placed before the authority is also mischievous as it absolves promoter from the criminal delay that has occurred regarding completion of this project. Keeping in view the fact that there is abnormal delay in delivery of possession of the unit (due date of delivery of possession 31.12.2011 date of offer of possession 14.01.2019).

33. 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 directs the respondent to make adjustment of the interest at the prescribed rate of interest for every month of delay from the due date of possession 31.12.2011 till the date of offer of possession 14.01.2019. As area of unit has been reduced from 1000 to 808 sq. ft., the complainant shall be charged for reduced area by the promoter. Necessary refund be made to the complainant within 90 days from this order. The complainant shall submit calculation sheet regarding refund to the respondent and a copy to the authority.



34. The order is pronounced. The file be consigned to the registry.

35. The copy of this order consigned to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

—
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.01.2019

Judgement Uploaded on 16.01.2019

