

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 18.12.2018
Complaint No.	730/2018 Case Titled As Abhishek Gupta V/S Thousand Trees Housing Private Limited
Complainant	Abhishek Gupta
Represented through	Shri Amit Kumar Advocate for the complainant.
Respondent	Thousand Trees Housing Private Limited
Respondent Represented through	Ms. Priti Mohan Sharma representative on behalf of the respondent-company with Shri Amit Kumar Pandey, Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

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 ibid be issued to the respondent. Registration branch is directed to do the needful.

As per clause 4.1 of the Builder Buyer Agreement dated 3.2.2014 for unit No.F201, 2nd Floor, Tower-F in 1000 Trees at Sector 105, Gurugram , possession was to be handed over to the complainant within a period of 42 months which comes out to be 3.8.2017. However, the respondent has not

delivered the unit in time. Complainant has already deposited Rs.58,14,613/- with the respondent.

However, neither the project has been completed nor registered nor any specific date has been given for completion of the project. As such, respondent/builder has completely defaulted in keeping his commitment for delivery of said unit in the project. However, as per clause 4.5 of the BBA, as suggested by the respondent, he can make offer for an alternate property in a specific manner to the complainant for which he has already paid Rs.58,14,613/- and if the complainant does not agree to purchase the same, in that case, respondent is directed to refund the amount alongwith prescribed rate of interest.

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

Samir Kumar
(Member)
18.12.2018

Subhash Chander Kush
(Member)
18.12.2018

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

Complaint no. : 730 of 2018
First date of hearing : 18.12.2018
Date of decision : 18.12.2018

1. Mr Abhishek Gupta
2. Mrs Neha Gupta
R/o flat no 303, tower 8, Omaxe Nile,
sector 49, Gurugram-122001

Complainants

Versus

1. M/s Thousand Trees Housing Private
Limited
2. Mohammad Muzaffar Hussain,
Managing Director
3. Kuldeep Sharma, Director

Office : DSC 319, DLF South Court,
Saket, New Delhi-110017

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE

Shri Amit Kumar
Ms Priti Mohan Sharma
representative on behalf of the
respondent company with Shri
Amit Kumar Pandey

Advocate for the complainant
Advocate for the respondents



ORDER

1. A complaint dated 20.08.2018 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 Mr Abhishek Gupta and Mrs Neha Gupta against the promoter M/s Thousand Trees Housing Private Limited on account of violation of the clause 4.1 of builder buyer agreement executed on 03.02.2014 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 builder buyer agreement was executed on 03.02.2014 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	"1000 Trees" at Sector 105, Gurgaon
2.	Nature of real estate project	Group housing colony
3.	Project area	13.078 acres
4.	DTCP license no.	127 of 2012 dated 27.12.2012
5.	Registered/not registered	Not registered
6.	HRERA registration no.	Not available
7.	HRERA registration valid upto	Not available
8.	Date of execution of buyer's agreement	03.02.2014
9.	Unit no.	F-201, Second floor, Tower F
10.	Unit measuring	1738 sq. ft super area
11.	Payment plan	Construction linked plan
12.	Total consideration amount	Rs 88,22,789/-
13.	Total amount paid by the complainant	Rs. 58,14,613/-
14.	Date of delivery of possession (As per clause 4.1 of BBA i.e. 42 months from the date of signing of BBA)	03.08.2017
15.	Delay in handing over possession upto 18.12.2018	1 year 4 months 15 days
16.	Penalty clause (As per clause 4.3 of BBA)	Rs 5 per sq. ft per month of super area for the period of delay



4. The details provided above have been checked on the basis of record available in the case file which has been provided by

the complainants and the respondents. 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 03.08.2017. Neither the respondents have delivered the possession of the said unit as on date to the complainants nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of till the notice of possession as per clause 4.3 of the builder buyer agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondents through his counsel appeared on 18.12.2018. The case came up for hearing on 18.12.2018. The reply filed on behalf of the respondents have been perused.

Facts of the case

6. The complainants submitted that they are related to each other as husband and wife and are law-abiding citizens of India and allottees within the meaning of definition of "allottee" in the Real Estate Regulatory Authority Act and thus the complainants are entitled to invoke the jurisdiction of this authority under the said Act and further submitted



that the complainant number 1 is working in the Information Technology sector and presently working in Gurugram, Haryana.

7. The complainants submitted that the respondents company claimed itself to be pioneer in the business of development of various residential and commercial projects in different cities of India and published advertisements to develop a project by the name and style of “1000 Trees” at sector 105, Gurugram, Haryana, (*hereinafter referred to as “the said project”*). The respondent number 2 and 3 are the persons involved and responsible for the day-to-day operations and business of the respondent number 1 company.
8. That in the year 2012, the complainants were searching for a house for their residential purpose and therefore were looking to buy a residential house/flat suitable to their requirements and preferences. It is submitted that in the process of searching the said flat/house, they came across an advertisement floated by the respondents in different media and locations across Delhi NCR about the said project.
9. That the complainants found the advertisement suitable for their need for the residential house and were deceived by the deceptive advertisement with lush green environment and



other amenities as shown in the said advertisement and consequently visited the office of the respondents in order to enquire about the said project. It is submitted that during the meeting with the sales representatives/ officials of the respondents, the sales representatives/ officials of the respondents boasted a lot about the quality of construction and other facilities to be made available in the said project. The respondents even assured the complainant that about 80% of the units have already been booked by the respondent company and the construction of the said project is going to start very soon and the possession of the said project shall be handed over to the allottees latest by the end of 2015 i.e. within a period of 3 years from booking the flat in the said project.

10. That the complainants got very impressed with the assurances and the deadlines for possession as informed by the respondents. It is submitted that the complainants made up their mind to purchase residential flat in the said project of the respondents and therefore booked a flat in the said project of the respondents. While making the booking of the said flat, the complainants handed over 2 cheques bearing number 575349 dated 19.07.2012 and cheque Number 575350 dated 20.08.2012 both drawn on HDFC bank, Nelson



Mandela Road, Sector C, Vasant Kunj, New Delhi-110070 for a sum of Rs. 7,00,000/- each which were duly encashed by the respondents.

11. That while handing over the above-mentioned cheques to the respondents, the complainants asked for the receipt of the said cheques from the respondents, however, the respondents delayed the same by stating that they are established business venture and are not fly by night operator and will hand over the receipt stood them. It is submitted that after much persuasion by the complainants the receipt for the said cheques were issued by the respondents only on 10.09.2013, whereas the payments were taken in August 2012.
12. That it is pertinent to mention here that even after receiving a substantial amount of Rs. 14,00,000/- from the complainants, the respondent did not give any allotment letter nor the builder buyer agreement was executed with the complainants for the said flat for more than one year i.e. from 19.07.2012 to 10.09.2013. Therefore the complainants were very dejected at the conduct of the respondents during the initial stages while dealing with the respondents. It is submitted that after much persuasion and chase by the complainants, the respondents issued a letter of allotment in



favour of the complainant on 19.09.2013 and vide the said allotment letter a residential unit bearing number F-201, 2nd Floor, Tower F in the said project was allotted to the complainants.

13. The complainants submitted that vide the said allotment letter, the complainants were also informed that the excavation work at the site of the said project has started. It is submitted that along with the said allotment letter, the respondents raised a further demand of Rs. 11,68,964/- from the complainants vide demand letter dated 19.09.2013, without discussing any payment schedule with the complainants herein. It is submitted here that the respondents also threatened the complainants to impose an interest at the rate of 18% per annum for the delayed payments whereas it is the respondents who was at the fault and were delaying the said project.

14. That till the time the above said demand of Rs. 11,68,964/- was raised from the complainants, there was no agreed payment schedule between both the parties. It is submitted that the complainants were assured that a builder buyer agreement would be executed between them before raising any further demand of money. However, contrary to the same the above said demand was raised from the complainants



without having entered into any builder buyer agreement or any agreed payment schedule with the complainants herein.

15. That since the complainants did not want any confrontations or bad relations with the respondents who were to deliver them their dream home in the said project, the complainants made a payment of Rs. 11,68,964/- vide 2 cheques bearing numbers 575354 dated 23.10.2013 for a sum of Rs. 8,18,964/- from the bank account of complainant number 1 and cheque bearing number 000002 dated 23.10.2013 for a sum of Rs. 3,50,000/- drawn on HDFC bank, New Delhi branch from the account of complainant number 2.
16. That by 23.10.2013, the complainants had made a total payment of Rs. 25,68,964/- for the respondents and despite that the respondents did not execute the builder buyer agreement with the complainants herein. However, later on in the month of February 2014 after about 2 years from the date of taking the advance booking amount of Rs. 14,00,000/- the respondents sent a builder buyer agreement to the complainants with the directions to sign on the place marked with 'X'.
17. It is submitted that the complainants were shocked to see that the respondent company had very cleverly mentioned



that the time of possession as 42 months from the date of the said agreement contrary to what was stated to them while taking the advance money of Rs. 14,00,000/- and while handing over allotment letter dated 19.09.2013 and a demand letter dated same.

18. That on the request of the respondents, the complainants made a payment of Rs. 6,76,685/- on 28.11.2014, whereas the due date of the said amount was 13.12.2014. However the complainants made the payment in good faith thinking that they are paying the money for the house in which they will be going to live very soon as assured by the respondents. The bona fides of the complainants as evident from the fact that the demand letter dated 28.11.2014 and the payments are dated same as the demand letter was raised only after the payment was made to the respondents on their request. It is therefore submitted that by 28.11.2014 the complainant had paid a sum of Rs. 32,45,649/- (Rupees Thirty Two lakhs Forty Five Thousand Six Hundred and Forty Nine only) to the respondents.

19. That by the start of year 2015, the complainants were really annoyed and fed up with the conduct of the respondents and therefore wanted the money paid by them to the respondents to be refunded back to them and therefore had approached



the respondents for the same. In the meantime, the complainant also got to know that one of their friends, namely Shri Sumit Kumar Gupta who had also booked a flat in the same project and had paid a substantial amount for the residential unit number E- 401 to the respondents, was also trying to get his money refunded from the respondents. During interactions with their friend Sumit, it transpired that he had also claimed refund of the money paid by him to the respondents. However the representatives of the respondents informed the complainants that the management will terminate their services from their job profile of sales representative in case 2 units are cancelled at the same time and therefore convinced them not to cancel both the bookings and malafidely represented that the amount paid by Shri Sumit Kumar Gupta would be adjusted in the amount of the complainant by making payment to Shri Sumit Kumar Gupta. The representatives of the respondent further requested the complainants that if the amount paid by Shri Sumit Kumar Gupta is adjusted in the account of the complainants and then the refund is sought, It would reflect the refund of 1 unit only and their jobs will not be in danger and they would be saved of the livelihood. Feeling emotional at the plight of sales representatives of the respondents, the



complainants agreed to have the amount paid by Shri Sumit Kumar Gupta adjusted in their account vide receipt dated 14.08.2015.

20. That after the adjustment of the amount paid by Shri Sumit Kumar Gupta, the complainants have been approaching the respondents for the refund of the total amount paid by them, which amounts to Rs. 58,14,613/-, however to the utter shock and surprise of the complainants, the respondent have flatly refused to refund the aforesaid amount to the complainants. It is submitted that as of today the complainant had paid a total sum of Rs. 58,14,613/- out of Rs. 88,22,789/- to the respondents, which comes about more than 70% of the total sale consideration for the residential unit, which is nowhere near completion.
21. It is submitted that with the hope of getting the possession of the residential unit booked by the complainants, the complainants keep on visiting the project site and have also taken some photographs of the work done at the project site which shows there has not been any progress on the work site. It is submitted that the complainant visited the work site last on 24.12.2017 and there has been no progress whatsoever from the last visit of the complainants till date on the worksite.



22. That after visiting the project site, the complainants visited the office of the respondents, and on this visit the representatives of the respondents informed the complainants that they will definitely going to develop their project and accordingly they have even got themselves registered under the Real Estate Regulation Authority under The Real Estate (Regulation and Development) Act 2016 and rules framed thereunder for the state of Haryana. However when the complainant visited the website of Haryana Real Estate Regulatory Authority (HARERA), the complainant was again shocked to see that the name of the said project of the respondent was not there in the list of projects registered for Gurugram district. It is therefore crystal clear that the intention of the respondents was not to develop the said project and the respondents have deceived the complainants of their hard earned money and have been avoiding the refund of the total amount so far paid by the complainants to the respondents.



23. That in view the above said circumstances, it has become abundantly clear that the respondent has wrongfully and mischievously misappropriated the money paid by the complainants herein and has no intention of refunding the same, despite numerous just and fair requests made by the

complainants herein. It is submitted that every time the complainants visited the office of the respondents, the respondents made the complainant meet a new person and therefore even after repeated visits by the complainants to the office of the respondents, the respondents have failed to adhere to the just and genuine requests of the complainant, whereas the amount was paid by the complainants to the respondent way back in the year December 2014. It is submitted that every time the complainants would visit the office of the respondent and enquire about the flat, the official/representatives of the respondent would mislead the complainants that the construction at the site is in full swing and they will be intimated as and when the process with respect to the possession of the flat in tower in which their flat is situated will start. However, till date no communication or invitation has come forth from the respondent to offer possession of the flat to the complainants.



24. It is submitted that the conduct of the respondents have resulted in wrongful loss to the complainants and wrongful gain to the respondent herein, for which the respondents are also liable to be prosecuted under Indian Penal Code.
25. It is submitted that it is the reasonable apprehension of the complainants that the respondents have not taken necessary

approvals/ compliances for the said project which is in itself a violation of the buyer agreement entered with the complainants.

26. It is submitted that the modus operandi of the respondents has caused tremendous financial pressure upon the complainants herein for which the complainants are entitled to be reimbursed forthwith as well as for the mental agony caused to the complainants by the acts, omissions and malafide conduct on the part of the respondents.

27. The complainants also suspect that such serious level fraud and cheating has been pulled off by the respondents by using illegal means like falsification of accounts and fabrication and forgery of documents, particularly so while obtaining the requisite sanctions and approvals for the project.

28. That the respondents have misappropriated the huge amount to the tune of rupees Rs. 58,14,613/- received from the complainants for their wrongful gain and has caused wrongful loss to the complainants and therefore complainants are also entitled to get refund of their aforementioned amount of Rs. 58,14,613/- along with interest at the rate of 18% per annum from the date of payment till the date of actual realisation.



29. It is submitted that it is absolutely clear that the respondents have played unfair trade practices and efficiency in their services. Firstly on account of receiving huge amount from the complainants starting from the year 2012, but no development of the said project has taken place as promised at the time of taking advance money and issuing allotment letter.
30. That the complainants have also made complaint to the Town & Country planning department for the violation made by the respondents and consequently an FIR number 0397 dated 22.11.2017 has also been registered against the respondents.
31. That the respondents vide letter dated 18.01.2018 have admitted in writing about the delay in the development of the said project and have offered an alternate apartment to the complainants which is not at all acceptable to the complainants herein. The complainants have duly replied to the said letter vide reply dated 26.02.2018 and has categorically requested the respondents to refund the entire paid amount of Rs. 58,14,613/- with interest at the rate of 18% per annum from the date of respective payments of instalments till the realisation within 15 days from the receipt of the said reply. However despite receiving the said



reply of the complainants, the respondents have not paid the aforesaid amount to the complainants and therefore the present complaint is being filed.

32. The cause of action arose in favour of the complainants and against the respondents when the respondents received the money in the year 2012, but no agreement was executed till 2014. It further arose when the respondents failed to deliver the possession of the residential unit to the complainants within the promised period of 3-4 years from the date of application. The cause of action further arose when the respondents did not refund the money so paid by the complainants to the respondents and is still continuing as the money paid by the complainants are still lying with the respondents and cause of action is still continuing subsisting and thus the present complaint is well within the prescribed period of limitation.

33. The complainants also submitted that the total sale consideration of the said residential unit was ascertained at Rs. 88,22,789/- out of which the complainants have already paid a sum of Rs. 58,14,613/- for which the complainants have been requesting the respondents to refund the same along with interest at the rate of 18% per annum.



Issues raised by the Complainants

34. The issues raised by the complainants are as follow:

- i. Whether the respondent are liable to deliver the possession of the booked unit by August 2017 as per builder buyer agreement?
- ii. Whether the respondents are liable to refund the total amount paid by the complainants i.e Rs 58,14,613/- along with interest @ 18 % per annum from the respective date of receipt of the amount from the complainants?

Relief sought

35. The complainant is seeking the following relief :

- I. To refund the total sum of Rs. 58,14,613/- (Rupees Fifty Eight Lakhs Fourteen Thousand Six Hundred and Thirteen only) to the complainants along with interest at the rate of 18% per annum from the date of respective payments made to the respondents till realisation.
- II. To grant the liberty to the complainants to seek compensation in accordance with law as assessed by the learned adjudicating officer in terms of the Real Estate (Regulation and Development) Act 2016.



Respondent's reply:

36. The respondents submitted that in the present matter the complainants have approached to this authority without any cause of action. It is submitted that the complainants have concealed true facts of the case before this authority and not stated true and correct facts reason best known to the complainants.
37. The respondents submitted that the true facts of the case are that initially the complainants had invested their money with the respondent company as unsecured loan carrying an interest of 15% P.A. for a period of 1 year. However, at the end of the period of unsecured loan the complainant Sh. Abhishek Gupta took the decision to invest his unsecured loan in the respondent project namely 1000 Trees Housing Pvt. Ltd. and submitted an application in September 2013 for booking of flat which was accepted by the respondent company on 09th September 2013 and the principal amount of the loan was adjusted against the booking amount of the above mentioned flat at a discounted rate of Rs. 4,025.50 per sq. ft. after taking into consideration the amount payable as interest upon the loan @ 3% as discount on the then prevailing selling price of Rs. 4,150.00 per sq. ft. That the interest on unsecured loan was calculated at the rate of 15%



from the date of amount received till the date of complainants' application for the flat for approx.. 375 days and an amount of approx. 2,16,000.00 against interest was offered as discount in the allotment of flat. It is submitted that said discount is clearly mentioned in application form submitted by the complainants for the flat in said project.

38. That upon the submission of application to book an apartment by the complainant, Mr. Abhishek Gupta, the company proceeded to adjust the loan amount of Rs. 14 lacs towards the booking of apartment in its project. That it was specifically instructed by Mr. Abhishek Gupta that the amount of interest accrued should be given as discount rather than being added to the principle as interest accrued. This was specifically done in order to save liability of income tax which would have accrued if such an interest amount was paid.

39. That upon the instruction of the complainants, the respondent company agreed to give a discount of 3% on its existing rate of Rs 4150/- per sq. ft since 3% discount on the apartment of 1738 square feet being booked by the complainant would amount to Rs 2,16,000/-, thus matching the interest accrued.



40. The respondents submitted that the complainants have also concealed that he is a hard core investor lending money on interest had taken this step primarily to take gains of the tax that was payable by him to the government authorities accrued on the interest that was receivable from the company on his investment. On request of the complainants, the application for allotment was made on 09th September 2013 and the builder buyer agreement was signed on 03rd February 2014, a date much after obtaining the license which was granted to us on 27th December 2012 and the approval of the building plans dated 13th July 2013. The complainants had invested their money as unsecured loan with the company @ 15% per annum however, later on, after the company launched the project the complainant decided to apply for a flat in the company's project finding it as an attractive investment opportunity and applied for the same, and all the amount and interest was adjusted against the booking of the flat No. F-201 in the project.



41. That the complainants are chronically investor mind set and invest their money with various projects to earn the benefit/profit on their money and evade the taxes payable to the Govt. of India/ State Govt. It is submitted that herein this matter also the complainants had invested their money with

the respondent company as unsecured loan and later on converted it into booking of flat to save the tax.

42. That the complainant and his business partner had written a mail dated 09.03.2015 in this regard to the respondent company. It is submitted that from the perusal of mail correspondence it is evident that Mr. Abhishek Gupta and his partner Mr Sumit Gupta were only the investors and not home buyers. That they have been investing in other projects also which put them into a financial crunch and lead them to surrender one apartment out of the two apartments booked by them. In this the complainants Mr. Abhishek Gupta and Mr. Sumit Gupta along with their spouses had sent a letter dated 10.10.2015 requesting for cancelling the booking of one apartment and merging the investment of two apartments into one apartment. Therefore, it is clear from the perusal of the documents that initially the complainants were only the investors as they had invested their money as unsecured loan but later on the complainant along with Mr. Sumit Gupta and their wives applied for the flat in the project.

43. That the project of the respondent company was launched after obtaining the licence and other formatives/ NOC's were obtained from the concerned authorities. It is submitted that the respondents had asked the complainants to take the



money invested with the company but the complainants refused to take the money and booked a flat in the project of the Respondent and the entire money were adjusted against the flat booked by them. It is submitted that the complainant deposited money was also adjusted against the booking of the flat and for the interest amount, the discount of 3% was given to the complainant as he wanted evade the tax payable to the government.

44. The respondents submitted that at no point of time, the respondent had violated or breached the provisions of "Buyer's Agreement". The present complaint, as filed on behalf of the complainants is without any cause of action and filed only for extort the money illegally from the respondent. Therefore, the complaint is liable to be dismissed with exemplary cost.

45. That the dispute, as alleged in the present complaint involves complicated questions of facts and law, which cannot be adjudicated in the present summary proceedings. It is submitted that the facts alleged herein by the complainant are required to be tested and proved in evidence and the same can solely be done in the Civil Court after examining relevant witnesses and conducting trial. Hence the complaint is liable to be dismissed.



46. The respondents submitted that the dispute alleged herein by the complainant are required to be adjudicated by an arbitrator duly appointed as per the Arbitration and Conciliation Act 1996. It is pertinent to mention that the same was duly agreed upon between the parties in the clause 14 of the builder buyer agreement. As the complainants have duly signed the builder buyer agreement they are bound by the terms of the agreement and in case any dispute an arbitrator is required to be appointed for proper adjudication of disputed facts and allegations. Hence this authority lacks the jurisdiction to entertain the present complaint in the light of clause 14 of the builder buyers agreement.
47. That the present complaint, as filed on behalf of the complainant is bad on account of the fact that the complainants have deliberately and intentionally concealed the true and material facts from this authority and therefore, the present complaint is liable to be dismissed on this ground alone.
48. That on account of global recession, which has hit the economy across the world including the Indian economy and particularly in the real estate business, the pace of construction has slowed down for almost all real estate companies. The respondent had taken time to come out of



recession which has resulted in the project being delayed. The project undertaken by the respondents have been delayed due to circumstances beyond the control of the respondents and therefore, any allegation pertaining to delay is not maintainable and even as per “buyer’s agreement” which has been duly signed and agreed by all the complainants.

49. That the delay in project was also attributed to the fact that the respondents’ project was passed by the DTCP on 60mtr. wide road and the zoning plan was approved accordingly. This fact is also convincingly shown in the Master Plan “Gurgaon - Manesar Urban Complex - 2031 AD, Final Development Plan for controlled areas denoted on Drg. No. D.T.P. (G) 1936 dated 16.04.2010 under section 5 (7) of Act No. 41 of 1963. The respondent company raised this issue of widening the road in front of their project with all the competent authorities several times but no action has been taken by the authorities. To further make things complex the MCG completely closed the existing 6m. wide road which barely permits single car to cross simultaneously (single directional) in front of the project by constructing a link road from Chauma Road to Daulatabad Flyover to the extent that no construction material can now reach to the respondent’s



site. This illegal construction of MCG is being challenged by the respondent in the Hon'ble High Court of Punjab & Haryana vide case no. CWP-17920-2018. A decision on the petition was granted by the Hon'ble High Court of Punjab & Haryana clearly issuing direction to DTCP to ascertain the facts and to hear the representatives of petitioners and MCG to take an appropriate decision. The next steps are still pending on this direction with DTCP.

50. The respondents submitted that as per buyer's agreement it was agreed that in case the respondent is not in a position to hand over the allotted apartment to the complainant, then in that eventuality the respondent shall have every right to allot alternative property to the allottee. Clause No. 4.5 of the buyer's agreement clearly stipulates the right of the respondent to offer alternative unit to the allottee in case the respondent fails to allot the agreed unit.

51. The respondents had written a letter dated 18.10.2017 to the complainant in the present case to accept the alternative offer of property in another project. However, the complainants refused to accept without any reason despite agreed terms. It is submitted that as per buyer's agreement it was clear that the complainant were required to accept the alternative apartment in case of delay in handing over the



possession of the apartment, so allotted. Hence, it is clear that very proposal of offering of alternative apartment to the complainant was agreed and accepted by the complainant in buyer's agreement and there has not been any breach of any terms of the contract/agreement by the respondent. In the present case the respondent herein has approached the complainant to accept an alternate allotment from choice of 5 other projects which the complainant has without any cogent reason refused. It is submitted that the complainant as per duly signed buyer agreement was required to accept the alternate allotment. That the offered alternate property were on much better location on Dwarka Expressway & other places compared to the respondent's project (which is currently located on inaccessible 6mtr wide single directional very cramped road).

52. That the fact is the complainants have been approached time and again for alternate accommodation they have instead of genuinely considering the proposal filed the present vexatious complaint. It is pertinent to mention that the complainants have deliberately filed the present complaint for refund which in itself reflects the malafide intention of the complainants who at no point of time was interested in the property. The complainants from the very inception were



only interested in investment and now when the respondent is offering them an alternate apartment they are blackmailing the respondent for appropriate action before the Court of law.

53. That the present complaint is not maintainable before this authority in the eyes of law. It is submitted that it is settled law that multi-litigation cannot run concurrently before different authorities. It is submitted that the complainant cannot file the present complaint before this authority when any prior complaint having interest and relief is already pending before any court of law/ tribunal/ authority.

54. The respondents submitted that some of the complainants have filed a consumer complaint against the respondent before Hon'ble National Consumer Commission prior to the present complaint and same is pending for adjudication. It is submitted that some other allottees in the same project i.e. 1000 Trees Pvt. Ltd. have filed a complaint" bearing CC No. 2932/2017 titled as "Vaibhav Kumar & Others. Vs. 1000 Trees Housing Pvt. Ltd. & Others." It is submitted that the nature and interest of the complaint and even the relief sought by the complainant is said matter is similar to the present complaint. Therefore, the complaint



filed by the complainants is not maintainable before this authority.

55. That as per the section 12(1)(c) of the Consumer Protection Act, 1986, the multi-litigation cannot run concurrently against the same project where the allottees have same interest and relief sought by the allottees are similar. Herein this case also the interest and relief sought by the complainant are similar, therefore the present complaint is liable to be dismissed with exemplary cost.

56. The respondents submitted that the present complaint is liable to be returned and either the complainant can approach to Hon'ble National Consumer Commission in said complaint or this complaint is liable to transferred to Hon'ble National Consumer Commission.

57. The respondents also submitted that the respondents have not been served with the entire complaint along with the list of dates and documents. Therefore, the respondents are not able to file proper reply due to non-supplying of list of dates and documents. It is submitted that the respondents have every right to alter and/ or amend the reply on receiving the list of dates and documents.



Determination of issues

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

59. With respect to the **first issue** raised by the complainants, as per clause 4.1 of buyer's agreement, the possession of the unit was to be handed over within 42 months from the date of execution of the said agreement. The buyer's agreement was executed on 03.02.2014. Therefore, the due date of possession shall be computed from 03.02.2014.

60. Accordingly, the due date of possession was 03.08.2017 and the possession has been delayed by 1 year 4 months and 15 days. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area till the date of notice of possession as per clause 4.3 of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided and unilateral. It has also been observed in para 181 of *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein 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.”

61. With respect to the **second issue** raised by the complainants, keeping in view the present status of the project the refund cannot be allowed. However as the respondent company failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid*, to pay interest to the complainants at prescribed rate i.e. 10.75% per annum for every month of delay till the handing over of possession. However, compensatory interest @ 18% p.a. cannot be allowed and the complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.



Findings of the authority

62. 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 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.
63. As per notification no. 1/92/2017-1TCP dated 14.12.2018 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.
64. As per clause 4.1 of the builder buyer agreement dated 3.2.2014 for unit No.F201, 2nd Floor, Tower-F in 1000 Trees at Sector 105, Gurugram , possession was to be handed over to the complainants within a period of 42 months which comes out to be 3.8.2017. However, the respondents have



not delivered the unit in time. Complainants have already deposited Rs.58,14,613/- with the respondents. However, neither the project has been completed nor registered nor any specific date has been given for completion of the project. As such, respondent company has completely defaulted in keeping his commitment for delivery of said unit in the project. However, as per clause 4.5 of the BBA, as suggested by the respondent, he can make offer for an alternate property in a specific manner to the complainants for which they have already paid Rs.58,14,613/- and if the complainants does not agree to purchase the same, in that case, respondent company is directed to refund the amount along with prescribed rate of interest.

Decision and directions of the authority

65. 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 company can make an offer for an alternate property in a specific manner to the complainants for which they have already paid Rs. 58,14,613/- and if the complainants does not agree to purchase the same, in that case, respondent is directed to refund the amount paid by the complainants i.e Rs. 58,14,613/- along with prescribed rate of interest @ 10.75% p.a. from the date of each payment till 18.12.2018 (date of issuance of this order) amounting to Rs. 26,54,632.12/- to the complainant within a period of 90 days.
- ii. Interest component in a tabular form is given below

Date of payment	Principal amount paid	Interest payable on paid amount @ 10.75% p.a. from date of payment till 18.12.2018
10.09.2013	Rs 7,00,000/-	Rs 3,96,711.81/-
10.09.2013	Rs 7,00,000/-	Rs 3,96,711.81/-
22.10.2013	Rs 8,18,964/-	Rs 4,53,800.97/-
20.10.2013	Rs 3,50,000/-	Rs 1,93,940.56/-
23.12.2014	Rs 6,76,685/-	Rs 2,89,895.03/-
14.08.2015	Rs 25,68,964/-	Rs 9,23,571.94/-
Total amount	Rs. 58,14,613/-	Rs. 26,54,632.12/-



66. Since the project is not registered, the authority has decided to take suo moto cognizance to initiate penal proceedings under section 59 of the Act against the respondent for not getting the project registered in under provision of section 3 of the Act.

67. The order is pronounced.

68. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 18.12.2018

Judgement Uploaded on 28.01.2019

HARERA
GURUGRAM

