

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 30.01.2019
Complaint No.	358/2018 Case titled as Mr. Aditya Sharma & Anr. Vs M/s Vatika Ltd.
Complainant	Mr. Aditya Sharma & Anr.
Represented through	Shri Arun Kumar, Advocate for the complainant.
Respondent	M/s Vatika Ltd.
Respondent Represented through	Shri Gopal K. Yadav, Manager Legal on behalf of respondent-company with Shri Venkat Rao, Advocate for the respondent.
Last date of hearing	9.1.2019
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.

As per clause 10.1 of the Builder Buyer Agreement dated 30.12.2010 for unit No.36, Ground floor, Street 4th Block-E, in project "Emilia Floors" Sector-83, Gurugram, possession was to be handed over to the complainant within a period of three years from the date of execution of BBA

which comes out to be 30.12.2013. However, even after lapse of five years, the respondent is unable to hand over the possession of the flat/unit as per the terms and conditions of BBA. Complainant has already paid Rs.10,30,003/- to the respondent against a total sale consideration of Rs.29,28,428.10. It was a construction linked payment plan. It has come on record that license of the respondent is not renewed as on date. There had been some correspondence inter-se both the parties for change of flat/unit, however that has not been materialized inter-se both the parties, as such, any material fact in this regard cannot be taken on record. There is no option left with the authority but order to refund the amount alongwith prescribed rate of possession i.e. 10.75% per annum. Complainant is an Army man and serving the nation, as such, his interest must be protected. Counsel for the complainant states that he intends to amend his complaint at this belated stage which is not tenable in the eyes of law, hence it is declined.

The amount shall be paid to the complainant within 90 days from the date of this order.

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

Samir Kumar
(Member)
30.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 358 of 2018
First date of hearing: 26.07.2018
Date of Decision : 31.01.2019

Mr. Aditya Sharma and Mrs. Anupama Sharma ,
R/o. 19/262, Arjan Vihar, Delhi Cantt, New
Delhi-110010

Complainants

Versus

M/s. Vatika Ltd.
Regd. Office: 7th Floor, 'Vatika Triangle',
Mehrauli- Gurugram road, Lok Phase-I
Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Arun Kumar Advocate for complainant
Shri Venkat Rao with Shri Advocate for the respondent
Gopal K. Yadav, Manager Legal
on behalf of respondent-
company

ORDER

1. A complaint dated 30.05.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr.



Aditya Sharma and Mrs. Anupama Sharma against the promoter M/s Vatika Ltd. on the violation of clause 10.1 of the floors buyers agreement dated 30.12.2010 by not handing over possession of the plot no. 36 , ground floor , block E within stipulated period which is obligation of respondent u/s 11 (4)(a) of the Act ibid.

2. Since the builder buyer agreement dated 30.12.2010 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act ibid
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"Emilia Floors", Sector 83, Gurugram.
2.	Flat/Apartment/Unit No.	36, Ground floor, Street 4 th , Block E.
3.	Nature of project	Residential colony
4.	DTCP license no.	113 of 2008
5.	Flat measuring	781.25 sq. ft.
6.	RERA Registered / Not registered.	Not registered
7.	Date of booking	26.09.2009
8.	Date of execution of BBA	30.12.2010
9.	Total amount paid by the	Rs.10,30,003/-



	complainant till date	
10.	Date of possession Clause 10.1 – 3 years from the execution of agreement	30.12.2013
11.	Delay in handing over of possession till date	5 years
12.	Payment plan	Construction linked payment plan
13.	Penalty clause (clause 11.5)	Rs. 5/- per sq. ft. of the built-up area
14.	Total Consideration	Rs.29,28,428.19/-(annx. P/12)
15.	Amount Paid	Rs. 10,30,003/-(annx. P/12)

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 respondent.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 26.07.2018. The case came up for hearing on 26.07.2018, 06.09.2018, 21.12.2018, 09.01.2019 and 30.01.2019. The reply has been filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainants submitted that application form for Emilia floors was filled on 26.09.2008 by the complainants for the total sale consideration of Rs. 24,02,544 for build-up



area of 781.25 sq. ft. The final allotment was done vide dated 15.11.2010 for unit type Emilia Sector -83, block E, 4th street, ground floor, plot no. 36.

7. The complainants submitted that on 30.12.2010 a unit buyer agreement for the allotted unit was executed between both the parties . As per clause 10.1 of the agreement respondent was under an obligation to complete the construction and deliver the possession of the unit within a period of three years from the date of execution of agreement. Almost eight years have been passed but the builder has not started the construction.
8. The complainants submitted that as per agreement clause the total cost of dwelling should be Rs.24,02,544/- plus IFMS Rs. 39,063/-. And the complainant has already paid 42%of the total payment i.e. Rs10,30,002.97/- and Rs. 82,725/- towards the club payment.
9. The complainants submitted that the area of the dwelling unit was arbitrarily changed from 781.25 sq. ft. to 929.02 sq. ft. Moreover, the basic sale price for beyond 15% was charged at the price Rs. 5,288/- which is also arbitrary. This resulted in escalation of the cost of dwelling unit to Rs.29,02,544/-, whereas the agreement done was for



Rs.24,02,544/- . It is submitted that the respondent has also asked for extra money Rs.3,00,000 for elevator and Rs. 73,566/- for the change in area at new rate.

Issues to be decided

- i. Whether the promoter is liable for not handing over the possession within the stipulated time that is on 30.12.2013?
- ii. Whether the respondent is liable to pay interest @ 18% for six years on the amount of Rs. 10,30,002.97/- deposited by the complainant?
- iii. Whether the cost demanded on account of increase of area should be charged from the claimant and such cost should not be more than sale price i.e. Rs. 24,02,544/- plus IFMS (Rs. 50/- per sq. ft.) Rs. 39,063,00?

Relief sought

- i. Direct the respondent to withdraw the demand for additional cost and to allot ready to move property to the complainants at the original cost of Rs.24,02,544/- as agreed upon in the agreement.
- ii. Direct the respondent to annual the extra cost of Rs.5,79,450/- for the increase in the area as demanded.



Respondent's reply

10. The respondent submitted that the present complaint filed by the complainants is bundle of lies and hence liable to be dismissed as it is filed without cause of action.
11. The respondent submitted that the present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainants have not approached this Id. authority with clean hands and is trying to suppress material facts relevant to the matter.
12. The respondent submitted that the complainant was contacted and offered new unit many times by the respondent as the old unit construction was delayed due to reasons beyond the control of the respondent.
13. The respondent further submitted that the complainants have been regularly updated about the status of the project.
14. The respondent submitted that it was clear to the complainants through the clause 7 of the booking form that the area allotted to the complainants is tentative and the complainants are bound to accept the change in size of area allotted.



15. The respondent denied that the unit booked was allotted on disputed land. It is submitted that the re allotment of a new unit/floor was offered to the complainants with their consent. It is also pertinent to note that complainants had visited the site and agreed for such re allotment. The new unit opted by the complainants had better facilities including lifts, increased area etc and accordingly, respondent company made further demands commensurate with type of unit.
16. The respondent submitted that the demand was made as the proposed re-allotted unit has upgraded facilities including stilt, elevator and increased area.
17. The respondent submitted that construction of the old unit and development of some parts of the project was delayed due to extraneous reasons beyond the control of the respondent. Accordingly, complainants were offered/allotted a new unit, with consent for enabling a speedy delivery. It is pertinent to note that the project got delayed inter alia due to passing of GAIL pipeline corridor through the project, shifting of HT lines with resultant changes in sector roads, changes in alignment by authority due to change in master plan 2021 to master plan 2031, respondents had to feverishly follow up with GAIL



authorities for shifting/diversion of the pipeline and other authorities for resolving various issues.

18. The respondent submitted that the change in construction plan was done according to the terms and conditions mentioned in booking form, which the complainants had agreed upon. As per clause 2 and 3 of the application form it is clearly mentioned that layout plans are based on the current building by -laws and may be modified to conform to various by-laws and design norms of the statutory authority and exact location shall be confirmed upon finalization of the master layout.

Determination of issues

19. In regard to **first and second issue** raised by the complainants as per clause 10.1 of the agreement dated 30.12.2010 the possession was to be handed over within three years of execution of agreement which comes out to 30.12.2013. Thus, the respondent company was liable to handover the possession on 30.12.2013 and since the respondent has failed to deliver the possession on the due date, thus the respondent company is liable to pay interest per month at the prescribed rate on the amount deposited by the complainant i.e. Rs. 10,30,003/-. As the promoters



have failed to fulfil their obligation under section 11, the promoters are liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

20. In regard to **third issue** raised by the complainants, as per annexure P9 the respondent has intimated the complainants about the change in numbering system and change of area of floors in the project from 781.25 sq. ft. to 929.02 sq.ft. vide letter dated 09.01.2012. Moreover, as per clause 7 of the booking form it was clear to the complainants that the allotted area was tentative and they were bound to accept the change in size of the allotted area. Therefore , the complainants cannot dispute the cost on account of increase in area.

Findings of the Authority

Jurisdiction of the authority-

Subject Matter Jurisdiction

21. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be



decided by the adjudicating officer if pursued by the complainants at a later stage.

Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

22. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observed 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. Registration branch is directed to do the needful.

23. As per clause 10.1 of the builder buyer agreement dated 30.12.2010 for unit no.36, ground floor, Street 4th Block-E, in project "Emilia Floors" Sector-83, Gurugram, possession



was to be handed over to the complainant within a period of three years from the date of execution of BBA which comes out to be 30.12.2013. However, even after lapse of five years, the respondent is unable to hand over the possession of the flat/unit as per the terms and conditions of BBA. Complainant has already paid Rs.10,30,003/- to the respondent against a total sale consideration of Rs.29,28,428.10. It was a construction linked payment plan. It has come on record that license of the respondent is not renewed as on date. There had been some correspondence inter-se both the parties for change of flat/unit, however that has not been materialized inter-se both the parties, as such, any material fact in this regard cannot be taken on record. Complainant is an army man and serving the nation, as such, his interest must be protected. Counsel for the complainant states that he intends to amend his complaint at this belated stage which is not tenable in the eyes of law, hence it is declined.



Decision and directions of the authority

24. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby

issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to refund the amount paid by the complainant of Rs. 10,30,003 along with the interest at the prescribed rate of 10.75% per annum within a period of 90 days from the date of this order.
- (ii) The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

25. The order is pronounced.

26. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Dated: 30.01.2019

Judgement Uploaded on 08.02.2019