



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम हरियाणा

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Wednesday and 09.01.2019
Complaint No.	512/2018 Case titled as Mr. Narender Pal Riat Vs. M/s Anjali Promoters and Developers Limited & anr.
Complainant	Mr. Narender Pal Riat
Represented through	Complainant in person with Shri Garv Malhotra, Advocate
Respondent	M/s Anjali Promoters and Developers Limited & anr.
Respondent Represented through	Shri Sachin Ghai proxy counsel for Shri Shanshank Bhushan Advocate for the respondent
Last date of hearing	11.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

### **Proceedings**

#### **Project is not registered with the authority.**

Shri Garv Malhotra Advocate has appeared on behalf of the complainant and filed power of attorney.

Project is not registered with the authority. It seems that the builder is taking the provisions of the Real Estate (Regulation & Development) Act, 2016 in a non-serious manner. As such, a show cause notice be issued to the respondent/builder on account of violation of section 3 (1) of the Act ibid under section 59 of the Act for imposing a penalty of Rs.1 crore.

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

As per clause 2.1 of the Builder Buyer Agreement dated 29.12.2011 for unit/shop No.09-904 (old 1204-A, 12<sup>th</sup> floor) in project "Centra One, Sector 61, Gurugram possession was to be handed over to the complainant on 31<sup>st</sup> December 2011. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.65,85,156/- to the respondent against a total sale consideration of Rs.57,75,000/- Possession was offered by the respondent to the complainant in November 2018. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 31.12.2011 till November 2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

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

Samir Kumar  
(Member)  
9.1.2019

Subhash Chander Kush  
(Member)

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

Complaint no. : 512 of 2018  
First date of hearing : 09.01.2019  
Date of decision : 09.01.2019

Mr. Narender Pal Rait,  
R/o. N-2/4, DLF Phase-II,  
Gurugram, Haryana.

**Complainant**

Versus

M/s Anjali Promoters & Developers Pvt. Ltd.  
Address: M-11, Middle Circle,  
Connaught Circus, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Narender Pal Rait  
Shri Garv Malhotra  
Shri Sachin Ghai

Complainant in person  
Advocate for the complainant  
Proxy counsel for Shri Shashank  
Bhushan, Advocate for the  
respondent

**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 complainant Mr. Narender Pal Rait, against the promoter M/s Anjali Promoters & Developers Pvt. Ltd. on account of violation of the clause 2.1



of space buyer's agreement executed on 29.12.2011 in respect of shop/unit described 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 space buyer's agreement has been executed on 29.12.2011 i.e. prior to the commencement of the Act *ibid*, 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 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	"Centra One", Sector 61, Gurugram.
2.	Nature of the project	Commercial complex
3.	Project area	3.675 acres
4.	Registered/ not registered	<b>Not registered</b>
5.	DTCP license no.	277 of 2007
6.	Occupation certificate granted on	<b>09.10.2018</b>
7.	Shop/unit no. as per letter dated 06.05.2014	09-904, 9 <sup>th</sup> floor (old-1204A, 12 <sup>th</sup> floor as per the said agreement)
8.	Unit measuring	1028 sq. ft. (old unit-1000 sq. ft.)
9.	Date of execution of space buyer's agreement	29.12.2011 (Annexure 10)
10.	Payment plan	Construction link payment plan



11.	Consideration amount as per agreement dated 29.12.2011	Rs.57,75,000/-
12.	Total amount paid by the complainant till date as alleged by the complainant	Rs.65,85,156/-
13.	Due date of delivery of possession as per clause 2.1 of space buyer's agreement dated 29.12.2011.	31.12.2011
14.	<b>Possession offered to the complainant</b> (as per proceeding of the day dated 09.01.2019)	November 2018
15.	Delay in handing over possession till offer of possession	6 years and 10 months 30 days
16.	Penalty clause as per space buyer's agreement dated 29.12.2011	Clause 2.2 of the said agreement i.e. Rs.15/- per sq. ft. per month up till the date of handing over of the said premises by giving appropriate notice to the intending purchaser.

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. A space buyer's agreement dated 29.12.2011 is available on record for the aforesaid unit/shop according to which the possession of the said unit was to be delivered by 31.12.2011. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation for the delay in handing over possession of the said unit as per clause 2.2 of the said agreement duly executed between the



parties. However, during proceeding dated 09.01.2019, the counsel of the respondent stated that the possession of the said unit has been offered to the complainant in November 2018.

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

#### **Facts of the complaint**

6. Briefly stated, the facts of the complaint are that on 31.10.2006, the complainant applied for booking in BPTP's the then upcoming project in Faridabad and made a payment of Rs.12,00,000/-. A further payment of Rs.8,21,250/- was made till 07.02.2007. The complainant submitted that sometime in December 2007, BPTP informed that its project is stuck and would not see the light of day and that the monies paid by us would be adjusted in another project that was being developed at village Ghata, Gurugram.
7. The complainant submitted that in June 2008, M/s Anjali Promoters and Developers Pvt. Ltd. sent them a letter allotting unit 012-1202A measuring about 1000 sq. ft. in the upcoming



project 'Centra One' Sector 61, Gurugram and further demanded a sum of Rs.8,89,750/- towards EDC, IDC, PLC and car parking charges which was duly paid by the complainant. Even after payment of Rs.34,88,500/- which is more than 50% of the cost of the unit, no agreement to sell was signed. After repeated written follow ups and personal visit to the respondent's office, the complainant was given a draft space buyer's agreement on 29.12.2008, which had certain onerous and legally untenable clauses.

8. The complainant submitted that on 05.01.2009, he requested for refund of money with interest in view of an unfair space buyer's agreement. On 15.05.2009, the complainant received a letter informing rebate of 10% on timely payment of future instalments and that the delayed possession charges have been enhanced from Rs.15/- to Rs.30/- per sq. ft. per month.
9. The complainant submitted that on 12.05.2010, a demand letter was received by the complainant for Rs.12,99,375/- which was paid after deduction of timely payment rebate. The complainant submitted that as per statement of account dated 26.05.2010 interest @18% was charged even though no space buyer's agreement was signed.
10. The complainant submitted that finally the space buyer's agreement was executed on 29.12.2011 wherein the



respondent promised to give possession by 31.12.2011. On 18.09.2014, he made payment of overdue interest under protest and on 08.12.2016, he made payment of Rs.68,541/- towards VAT as demanded. As on date the possession is overdue by more than 6 years and 5 months.

**11. Issues raised by the complainant are as follow:**

- i. Whether the respondent is justified in delaying the possession by more than 6 years and 5 months?
- ii. Whether the complainant is entitled for refund of entire money paid along with interest for delaying in giving possession?
- iii. Whether the respondent has been fair and within their legal rights to demand 18% interest on overdue payments without signing the agreement to sell is in violation of section 13 of the Act ibid?
- iv. Whether the respondent has violated section 13 of the Act ibid by demanding more than 50% of the total cost without signing contract with the buyer?

**Relief sought by the complainant:**

12. In view of inordinate delay in giving possession as per the space buyer's agreement, the complainant is seeking refund of entire amount paid along with interest at the prescribed rate





from the date of payment of each instalment till the date of payment i.e. Rs.1,73,65,289/-.

**Respondent's reply:**

13. Preliminary objections raised by the respondent are as follows: The respondent submitted that Director, Town and Country Planning Department (Haryana) has issued occupation certificate dated 9.10.2018 to the respondent for the said project. The respondent further submitted that they would be shortly sending the offer of possession to the complainant in terms of the duly executed space buyer's agreement dated 29.12.2011.
14. The respondent submitted that the unit in question i.e. 09-904 was allotted to the complainant along with Ms. Urmala Rani Riat, as co-allottee. Also, the space buyer's agreement was executed between the complainant and Ms. Urmala Rani Riat and the respondent. It is further submitted that the present complaint has been filed only by the complainant and there is no authority letter from the co-allottee authorising the complainant to file the same. Therefore, the present complaint has not been instituted properly and the defect of non-joinder of necessary party goes to the root of the matter and the same warrants dismissal of complaint for non-joinder of necessary party.



15. The respondent submitted that the agreements that were executed prior to the registration of the project under Act ibid shall be binding on the parties and cannot be reopened.
16. **Arbitration-** The respondent submitted that the parties had agreed under clause 20 of the space buyer's agreement to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration. The respondent admitted that the complainant has raised dispute but did not take any steps to invoke arbitration. The allegations made requires proper adjudication by tendering evidence, cross examination etc. and therefore, cannot be adjudicated in summary proceedings.
17. The respondent submitted that the complainant has alleged that in terms of the said agreement the respondent has agreed to handover possession by 31.12.2011 and there has been a huge delay. In this context, the respondent submitted that with a view to create a world class commercial space, has engaged renowned architects Cervera and Pioz of Spain for the said project. The respondent launched the project with a vision of creating an iconic building and hence, engaged the best professionals in the field for same who are well known for their timely commitment as well. 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 respondent that the allottees including the complainant herein would hugely default in making payments and hence, cause cash flow crunch in the project. The complainant also knew that as per the agreement, timely payment of the installments was the essence of the contract.

18. The respondent submitted that in the 1<sup>st</sup> year (FY 07) demands amounting to Rs.20.84 crores were raised by the respondent in accordance with the payment plans chosen by customers, and only Rs.15.83 crores was paid by the customers. Over 43% customers defaulted in making timely payment in FY2007, and percentage of defaulting customers swelled to 56%, 40% and 68% in the FY 09, 10 and 11 respectively.
19. The respondent submitted that with the sole intention of completing the project within reasonable time, the respondent offered additional benefit of timely payment discount (TPD) which was not in the contemplation of the respondent while launching the project and hence, caused further outflow of funds, just to seek timely payments from the customers. In fact, in May 2009, the respondent offered the following discounts and incentives to its customers, in excess of the



terms and conditions of the agreement, in huge favour of the customers:

- i. The respondent offered an additional timely payment discount (TPD) of 10% in basic sale price (BSP) to those customers who would make the payments of the various installments within the stipulated time stated in the said demand letters. This amounted to a substantial discount of Rs.257/- per sq. ft. had the customers made all their remaining payments within time. Unfortunately, this scheme did not have a favorable result as only few customers availed this benefit. The customers who availed this scheme and paid their installments on time were given the TPD amounting to Rs.1.42 Crores.
- ii. The respondent also offered an additional discount of 10% on net inflow of uncalled BSP in case any customer decided to opt for pre/upfront payment. The aim of this scheme was to get adequate cash flow for construction of the said project. Unfortunately, this significant discount didn't produced fruits as it attracted only few customers.
- iii. Further, in order to express seriousness of its commitment to complete the project, the respondent doubled the delayed possession penalty from the agreed



amount of Rs.15/- sq. ft. per month to Rs.30/- sq. ft. per month, for the eligible customers in light of the terms and conditions of the said agreement.

20. The respondent submitted that the complainant approached BPTP Ltd. through a broker namely Kapur Estates out of its own volition and after conducting due diligence, proceeded to book a unit in the commercial property of BPTP Ltd. in Faridabad based on the terms and conditions contained in the application for provisional allotment. That the complainant filed an application with BPTP Ltd. for booking of a unit in the upcoming commercial project in Faridabad by paying Rs.12,00,000/-. It was further submitted that the payment of Rs.8,21,250/- was made by the complainant as per the agreed payment plan for the allotment of the unit in the commercial project of BPTP in Faridabad.

21. The respondent denied that in December 2007, BPTP informed the complainant that its project in Faridabad, Haryana is stuck and would not see the light of day or that any offer was made to the complainant regarding transfer of amount to the project being developed at Ghata, Gurugram. The respondent further denied that Rs.25,98,750/- was approximately 45% of cost of the unit. Respondent submitted that in December 2007, the complainant, through the same



property broker, approached the respondent out of its own volition and after conducting due diligence, he filled an application for allotment in the upcoming project of the respondent in the Ghata Village, Gurugram. Thereafter, the respondent sent a letter dated 21.12.2007 to the complainant for payment of Rs.5,77,500/- towards registration amount and also informed that the allotment would be done on first come first served basis. It is at this point, that the complainant sent cancellation/surrender letter dated 29.12.2007 to respondent for surrendering the booking made in the project at Faridabad and requested the respondent to transfer the funds to the present booking in the upcoming project at Ghata, Gurugram.

22. The respondent submitted that the payments were demanded from the complainant as per the agreed payment plan that was initially time linked, however, vide letter dated 06.12.2008, the respondent offered to get the same converted to construction linked payment plan subject to certain conditions mentioned in the said letter. It is submitted that as per complainant's own admission, the draft space buyer's agreement was handed over for signing to the complainants on 29.12.2008, however, for the reasons best known to the complainant, the execution was delayed.



23. The respondent denied that there were any reminders from the complainant for execution of the agreement. It is further submitted that vide demand letter dated 12.05.2010, the respondent demanded payment of installment due as per the payment schedule upon reaching the milestone 'start of raft' for an amount of Rs.4,33,125/- and along with the said demand, the respondent also raised the demand of the previous outstanding balance of Rs.8,66,250/-, thereby totaling to Rs.12,99,375/-. The respondent submitted that even at the time of booking, he was aware of the fact that he would be liable to pay 18% interest on the delayed payment and accordingly, the complainant proceeded with the booking. In this regard, reference may be made to the clause-17 of the application for allotment.

24. The respondent denied that the complainant made all the payments of installments as and when demanded on time. It is submitted that the delay on the part of the complainant in making payment is substantiated from the fact that delayed payment interest was paid by the complainant.

#### **Determination of issues**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue



wise findings of the authority are as under:

25. With respect to the **first issue** raised by the complainant, 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. Possession**

*2.1 The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31<sup>st</sup> December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser..."*

26. Accordingly, the due date of possession is 31.12.2011. However, the respondent sent a letter of offer of possession to the complainant in November 2018 after the receipt of occupation certificate dated 09.10.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till letter of offer of possession. The possession has been delayed by 6 years 10 months and 30 days from due date of possession till the offer of possession. The delay compensation payable by the respondent @ Rs.15/- per sq. ft. per month up till date of handing over the said premises as per clause 2.2 of space 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. 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."*

27. With respect to the **second issue** raised by the complainant, the complainant is seeking refund of the entire money paid towards the said unit along with interest for delay in handing over possession. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it will hamper the completion of the project as the project is almost complete and the occupation certificate was granted to the respondent on 09.10.2018 by the competent authority. Moreover, for protecting the right of one allottee, right of other allottees who wish to continue with the project cannot be jeopardised by allowing refund in the present case. Therefore, the refund of the deposited amount cannot be allowed. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 of the Rules *ibid*, to pay



interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

28. With respect to the **third and fourth issue** raised by the complainant, respondent has taken more than 10% of cost of apartment without first entering into agreement for sale. However, section 13 does not apply upon retrospective transactions. Therefore, these issues are decided in negative.

#### Findings of the authority

29. **Jurisdiction of the authority**-The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

30. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.
31. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in ***civil appeal no.23512-23513 of 2017*** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.



32. An amendment to the complaint was filed by the complainant along with the complaint wherein he has stated that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act and reserve his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
33. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
34. As per clause 2.1 of the space buyer's agreement dated 29.12.2011 for unit/shop no.09-904 (old 1204-A, 12<sup>th</sup> floor) in the project 'Centra One', Sector 61, Gurugram possession was to be handed over to the complainant on 31.12.2011. It was construction linked plan. The complainant has already paid Rs.65,85,156/- to the respondent against the total sale consideration. However, the respondent has not delivered the unit in time and the possession was offered by the respondent to the complainant in November 2018. As such, complainant is entitled for delayed possession charges at prescribed rate of



interest i.e.10.75% per annum w.e.f. 31.12.2011 till November 2018 as per section 18 of the Act ibid.

**Directions of the authority**

35. 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 pay the interest so accrued on the amount paid by the complainant i.e. Rs.65,85,156/- at the prescribed rate for every month of delay from the due date of possession i.e. 31.12.2011 till offer of the possession i.e. November 2018.

(ii) The respondent is directed to pay accrued interest to the complainant from the due date of possession till the date of offer of possession, on account of delay in handing over of possession to the complainant within 90 days from the date of decision.

36. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that



separate proceeding will be initiated against the respondent under section 59 of the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

37. The order is pronounced.

38. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 09.01.2019

**Judgement Uploaded on 08.02.2019**

