

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 05.02.2019
Complaint No.	1008/2018 Case Titled As Vivek Bisht V/S Parsvnath Developers Limited
Complainant	Vivek Bisht
Represented through	Complainant in person with Shri Sukhbir Yadav Advocate.
Respondent	M/S Parsvnath Developers Limited
Respondent Represented through	<b>None for the respondent</b>
Last date of hearing	02.01.2019
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 (a) of the Builder Buyer Agreement dated 3.2.2007 for unit No.B5-302, 3<sup>rd</sup> floor, Tower-B5, in project "Parsvnath Exotica" Sector 53-54, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction of the block in which the flat of the complainant is located i.e.

17.2.2010 + 6 months grace period which comes out to be 17.8.2013.

However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,83,19,139/- to the respondent against a total sale consideration of Rs.1,82,72,100/-. It was a construction linked plan.

Reply has been received vide which the respondent has admitted that they have not given the possession of the unit on committed date. Counsel for the complainant has stated that project is not registered with the authority.

As such, complainant is entitled for refund of the deposited amount alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 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)  
5.2.2019

Subhash Chander Kush  
(Member)

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

**Complaint No. : 1008 of 2018**  
**Date of First Hearing: 02.01.2019**  
**Date of Decision : 05.02.2019**

Mr. Vivek Bisht  
R/o H.no. 3051, Sector 23, Gurugram,  
Haryana-122017

Versus

**...Complainant**

M/s Parsvnath Developers Limited  
Registered office: Parsvnath Metro Tower,  
near Shahdara Metro station, Shahdara,  
Delhi-110032  
M/s Parsvnath Hessa Developers Pvt. Ltd.

**...Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sukbir yadav with  
complainant in person  
None for the respondent

Advocate for the complainant

Advocate for the respondent



**ORDER**

1. A complaint dated 17.09.2018 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 was filed by the complainant Mr. Vivek Bisht, against the promoters M/s Parsvnath Developers Ltd. and Parsvnath Hessa Developers Pvt. Ltd., on account of violation of clause 10(a) of the flat buyer agreement executed on 03.02.2007 for flat no. B5-302, 3<sup>rd</sup> floor, tower B5 having a super area of 3390 sq. ft. in the project "Parsvnath Exotica" for not giving possession on the due date i.e. 17.08.2013 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer agreement dated 03.02.2007 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	"Parsvnath Exotica", Sector-53/54, Gurugram
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2.	Unit no.	B5-302, 3 <sup>rd</sup> floor, tower B5
3.	Project area	26.905 acres
4.	DTCP license	69 to 74 of 1996, 52 to 57 of 1997, 1079 of 2006, 1080 of 2006
5.	Nature of real estate project	Residential (Group housing)
6.	Registered/ not registered	<b>Not registered</b>
7.	Date of booking	23.06.2006
8.	Date of flat buyer agreement	03.02.2007
9.	Total sale consideration	Rs 1,82,72,100/-
10.	Total amount paid by the complainants	Rs. 1,83,19,139/-
11.	Payment plan	Construction linked plan
12.	Date of delivery of possession	Clause 10(a)- 36 months from the commencement of construction of the block in which flat is located, i.e. 17.02.2010 (on start foundation, instalment no.2- annexure P-6) + 6 months grace period, i.e. 17.08.2013
13.	Delay for number of months/ years	5 years months
14.	Penalty clause	Clause 10(c) of flat buyer agreement i.e. Rs. 107.60 per sq



		meter or Rs.10/- per sq.ft. of the super area per month for the period of delay
15.	Date of allotment letter	11.12.2009
16.	Offer for fit outs	22.03.2018

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. A flat buyer agreement dated 03.02.2007 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 17.08.2013. The promoter has not fulfilled their committed liability by neither giving possession as per the terms of the flat buyer agreement nor paying any compensation i.e. @ Rs. 107.60/- per sq. meter or Rs.10/- per sq. ft. per month for the period of delay as per flat buyer agreement dated 03.02.2007.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 02.01.2019 and 05.02.2019. The respondents filed by the respondent has been persuaded.



### **Facts of the complaint**

6. The complainant submitted that flat bearing flat no. B5-302 was booked by M/S Kalista Realtors Pvt. Ltd. on date 23.06.2006 under construction link payment plan for sale consideration of Rs. 1,82,72,100/-. A flat buyer agreement was executed on 03.02.2007.
7. The complainant submitted that on date 08.12.2008, the complainant has purchased the flat in above said project in resale from M/S Kalista Realtors Pvt. Ltd., bearing no. B5- 302 (4 bed rooms, one drawing / dining, one kitchen, 4 toilets, area admeasuring 3390 sq. ft.), in the township i.e. (Prasvnath Exotica, sector 53/54 Gurugram) constructed / developed by the respondent party.
8. The complainant submitted that on 11.12.2009 respondent issued a new allotment letter in favour of complainant and informed that FDI has been made in the project.
9. The complainant submitted that on 11.02.2010, respondents raised the demand / instalment no. 2 of Rs. 18,27,210/- on "start of foundation" and complainant paid the said demand on 11.02.2010 vide cheque no. 366035.
10. The complainant submitted that on date 30.08.2010 respondent sent a letter, informing that "we have brought in



foreign direct investment in our project "Parsvnath Exotica" at Gurgaon, so as to ensure fast completion and delivery of project".

11. The complainant submitted that he continued to pay the remaining instalment as per the payment schedule of the flat buyer agreement and has already paid the more than 95% amount i.e Rs. 1,83,19,139/- till date 25.05.2013 along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, he raised his grievance to respondent(s). Though complainant was always ready and willing to pay the remaining instalments provided that there is progress in the construction of flat.

12. The complainant submitted that since February, 2013 complainant is regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flats, but all in vain, in spite of several visits by the complainant.

13. The complainant submitted that he paid more than 95% of the actual amounts of flats and ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of flat.





14. The complainant submitted that on 30.10.2015, respondent issued another letter informing that "This is to inform you that we have already availed a loan from ECL Finance Limited, for developing the above mentioned project and therefore we have undertaken to them to deposit all proceeds, considerations, advance and or other receivables to be received by us from you under the agreement in the separate escrow account no. 00030350021054 maintained with I-IDFC Bank, K G Marg, Connaught Place, New Delhi — 110001".
15. The complainant submitted that on 22.03.2018, respondents sent a letter "offer for fit outs" with increase in super area by 105 sq. ft. in which they acknowledged delay in possession from September, 2013.
16. The complainant submitted that he wrote a grievance email on 07.09.2018 to respondents alleging non-completion of construction and risk involved in access to the tower and asked for possession of unit with occupation certificate.
17. The complainant submitted that the work on other amenities, like external, internal MEP (Services) not yet completed. Now it is more than 12 years from the date of booking and even the constructions of towers are not completed, clearly it



shows the negligence towards the builder. As per project site conditions it seems that project takes furthermore than one year to complete in all respect.

18. The complainant submitted that the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondents and as such they are liable to be punished and compensate the complainant.
19. The complainant submitted that due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, the complainant have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
20. The complainant submitted that there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of the respondent party which makes them liable to answer this hon'ble authority.



21. The complainant submitted that for the first time cause of action for the present complaint arose in February, 2013, when the respondent party failed to handover the possession of the flat as per the flat buyer agreement. Further the cause of action arose in September 2013 when the respondent party failed to handover the possession of flat as per promise. Further the cause of action again arose on various occasions, including on: a) Nov. 2014; b) Jan. 2015; c) June, 2016, d) November, 2016; e) March. 2017, f) December 2017, g) March, 2018 and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

### Issues raised by the complainants

- I. Whether the developer has violated the terms and conditions of the flat buyer agreement by causing delay in giving possession ?
- II. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for



delay in giving possession?

- III. Whether the complainant is entitled for refund along with compound interest @ 24% per annum from date of booking till date?
- IV. Whether the complainant is entitled to compensation for mental agony and as penalty for delayed possession?

### Relief sought

- I. Direct the respondent to refund the principal amount paid by them of Rs.1,83,19,139/- along with interest @ 24% per annum compounded from date of booking till the date of refund.

### Respondent's reply

22. The respondents submitted that the respondent no.1/Parsvnath Developers Ltd. is not a necessary party in the present complaint and hence the complaint is bad for misjoinder of parties. Respondent no.1 has brought in foreign direct investment in the project in question so as to ensure fast completion and delivery of the project. As such an agreement has been executed between the respondent no.1 and respondent no.2, a joint venture company of respondent no.1. Under the terms of the said agreement, development,



construction and marketing of built up areas in towers B1, B2, B3, B5, B6 and C4 have been transferred to respondent no.2 company. In this regard an intimation letter was sent to all the allottees of the project by the respondent no.1 in which it was specifically stated that the respondent no.1 shall be remained only as a confirming party and all other responsibilities were already transferred to respondent no.2. Hence, the name of the respondent no.1 is liable to be deleted from the party array.

23. The respondents submitted that the project construction is already completed. It is submitted that the respondent companies under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. Out of the said 18 towers, 11 towers were duly developed and completed and the occupancy certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. It is further stated that respondent no.1/ Parsvnath Developers Ltd. has already applied for the occupancy certificate with respect to remaining 5 towers i.e. D4, D5, D6 on 01.11.2011 and with respect to towers no. B1, and C4 on 13.08.2013 for



which review were also filed by the respondent no.1 on 24.11.2017 before DTCP.

24. It is further submitted that the occupancy certificate (OC) is not being granted by DTCP for want of beneficiary interest/right in favour of the developer under the policy dated 18.02.2015. It is pertinent to state that in principal DTCP has accorded his approval on the transfer of the beneficiary interest in favour of the developer. However, the formal approval is in process.

25. The respondents submitted that they have applied for registration of the part of the said project with respect to tower no. B5, B6 and EWS with HARERA wherein the revised declaration date of handing over the possession of the project is stipulated as 31.12.2019.

26. The respondents submitted that the tower no. B5, in which the flat of the complainants is located, has been completed. The respondents have duly completed all the construction work/development work in the part of the project and tower B5 and are under the process of applying for the occupancy certificate with respect to the said tower.



27. It is submitted by the respondents that due to pendency of the beneficiary interest in favour of the respondents, the delay is being caused in handing over the possession of the flat. It is submitted that the respondents have been pursuing the authority with all its possible efforts to get the formal approval. However, the same is still pending with the concerned authority. It is submitted that the respondent company shall immediately handover the possession of the flat upon receipt of the occupancy certificate from the authority. Moreover, the respondents have duly complied with all the norms and bye-laws required for obtaining the occupancy certificate with the authority and have developed the project in complete adherence of the building bye laws prevailing in Haryana.
28. The respondents submitted that the complainants are only subsequent purchasers. They have purchased the allotment from the original allottee M/s Strategic Overseas Pvt Ltd. in the year 2011 and the complainants were well aware about the status of the construction at the time of purchasing the said flat from the open market.
29. The respondents submitted that refund at this advanced stage of project is not in the interest of the other allottees at



large as the same will hamper the completion of the project. Further, the interest of complainants is duly protected in terms of clause no. 10(c) of the flat buyer agreement for the delay in delivering the possession of the flat.

30. The respondents submitted that the respondent company has invested a huge amount on the construction and development of the said project and in case the refund is allowed to the complainants, it would cause financial loss to the project as well as loss to the genuine customers in the said project. Further, the purpose of implementation of RERA would be defeated as RERA has been enacted in order to ensure smooth functioning of the real estate sector and to regulate the same for its better functioning.

31. The respondents submitted that under clause 10(c) of the flat buyer agreement, the delay compensation has been specifically mentioned and agreed by the complainant and hence contending the date of offering the possession as the contention for refund and payment of interest and compensation is incorrect wherein “time is the essence of the contract” stands contravened and hence proviso of section 18 is not applicable in the captioned matter as the respondents have agreed to abide by the obligations made under the flat





buyer agreement duly executed between the complainant and the respondents.

32. The respondents submitted that allowing refund to one individual would further jeopardize the project as a whole and simultaneously adversely affect the interest of other allottees as well. It is further pertinent to mention here that collected fund from the buyers has been invested into the purchase of the land, construction material, construction of the towers, getting approvals/sanction etc. from the competent authority.

33. The respondents submitted that the delay in handing over the possession on due date was because of reasons beyond their control, namely: -

(i) The construction of the project is dependent on money being received from the bookings made and subsequent instalments. However, as a prolonged effect of global recession, number of bookings made by prospective purchasers reduced drastically.

(ii) Lack of adequate sources of finance.

(iii) Rising manpower and material costs.

(iv) Approvals and procedural difficulties.



- (v) Extreme shortage of water in the region which affected the construction work.
- (vi) Shortage of bricks due to restrictions imposed by Ministry of environment and forest on bricks kiln.
- (vii) Unexpected sudden declaration of demonetization policy by the central government. Non-availability of cash-in-hand affected the availability of labours.
- (viii) Recession in economy also resulted in availability of labour and raw-materials becoming scarce.
- (ix) There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).

It may be noted that the respondents had at many occasions orally communicated to the complainants that the construction activity at the subject project had to be halted for some time due to certain unforeseen circumstances which were completely beyond the control of the respondent.

34. It is further submitted that the complainants as well as the original allottee of the flat in question are chronic defaulters in making payment on time contrary to the agreed terms.



### Determination of issues

35. Regarding the **first issue** raised by the complainant, the developers have violated the agreement by not giving the possession on the due date as per clause 10(a) of the agreement, i.e. by 17.08.2013, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. It has been submitted by the respondent company that the delay on their part has been due to the beneficiary interest policy (BIP) laid down by the government wherein due to the fault on the part of the licensee company, their project got delayed and such delay was beyond their control. However, despite this contention, there has been an inordinate delay in handing over the possession. Hence, this issue is answered in affirmative.

36. Regarding the **second issue** in the complaint, the complainant has not furnished any concrete document to prove the alleged misrepresentation on the part of the respondent company. Hence, this issue is answered in negative.

37. Regarding the **third issue** raised by the complainants, as the promoter has failed to fulfil his obligation under section 11,



the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.75%, for every month of delay till the handing over of possession. As no refund can be granted as the project is near completion.

38. Regarding **fourth issue** in the complaint, the complainant initially sought compensation for mental agony. But during the pendency of complaint, the complainant has filed an application for amendment of complaint with the permission to reserve their rights to seek compensation by filing separate application to the adjudicating officer. Hence, this issue became infructuous.

39. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.



### Findings of the authority

40. **Jurisdiction of the authority-** The project 'Parsvnath Exotica' is situated in Sector-53, Gurugram. As the project in question is situated in planning area of Gurugram, therefore

the authority has complete territorial jurisdiction vide notification no. 1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. 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.

42. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe 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.



43. As per clause 10 (a) of the builder buyer agreement dated 3.2.2007 for unit No.B5-302, 3<sup>rd</sup> floor, Tower-B5, in project "Parsvnath Exotica" Sector 53-54, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction of the block in which the flat of the complainant is located i.e. 17.2.2010 + 6 months grace period which comes out to be 17.8.2013. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,83,19,139/- to the respondent against a total sale consideration of Rs.1,82,72,100/-. It was a construction linked plan.

44. Reply has been received vide which the respondent has admitted that they have not given the possession of the unit on committed date. Counsel for the complainant has stated that project is not registered with the authority.



#### **Decision and directions of the authority**

41. 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 respondents:

- (i) The respondent is directed to refund the deposited amount along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.
- (ii) The respondents are directed to give interest to the complainants at the prescribed rate of 10.75% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from date of receipt of payments till actual date of refund of the deposited amount within 90 days from the date of this order.

42. The order is pronounced.

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

HARERA  
GURUGRAM



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 05.02.2013

Judgement uploaded on 12.02.2019