

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 05.02.2019
Complaint No.	1028/2018 Case titled as Prem Dalal V/S DLF Limited
Complainant	Prem Dalal
Represented through	Shri Vijender Parmar Advocate for the complainant.
Respondent	M/S DLF Limited
Respondent Represented through	Shri Chandra Shekhar, DGM – legal on behalf of respondent-company with Shri Ishaan Dang, Advocate for the respondent.
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.

Occupation certificate has been received by the respondent on **11.6.2018**

As per clause 11 (a) of the Builder Buyer Agreement dated 26.11.2013 for unit No.UTS-093, 9th floor, Block-S, in project “The Ultima”,

Sector-81, Gurugram, possession was to be handed over to the complainant within a period of 60 months from the date of application i.e. 30.3.2013 which comes out to be 30.3.2018. Complainant has already paid Rs.1,82,96,819/- to the respondent against a total sale consideration of Rs.1,96,92,790/-. However, the respondent has not delivered the unit in time. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 30.3.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the offer of possession failing which the complainant is entitled to seek refund of the amount.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

Both the parties are directed to hand over and take over the possession of the unit within a period of 30 days. Conveyance deed may also be got registered simultaneously.

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. : 1028 of 2018
First date of hearing: 02.01.2019
Date of Decision : 05.02.2019

Mr. Prem Dalal
R/o 1013-P, Sector 1, Rohtak, Haryana

Complainant

Versus

M/s DLF Limited
Registered office: Shopping mall, 3rd floor,
Arjun marg, DLF city, phase 1, Gurugram-
122002

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Vijender Parmar Advocate for the complainants
Shri Ishaan Dang Advocate for the respondent
Shri Chandra shekhar DGM- legal on behalf of
respondent company



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 by the complainant Mr. Prem Dalal,

against the promoter M/s DLF limited on account of violation of clause 11(a) of the apartment buyer's agreement executed on 26.11.2013 for unit no. UTS-093, 9th floor, block S having a super area of 1697 sq. ft. in the project "The Ultima" sector 81, Gurugram for not giving possession by the due date i.e. on 30.03.2018 which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since the floor buyer agreement dated 26.11.2013 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	"The Ultima" sector 81, Gurugram
2.	Nature of the real estate project	Residential group housing colony
3.	Project area	11.668 acres
4.	DTCP license no.	61 of 2011 and 114 of 2012



5.	Apartment no.	UTS093, 9 th floor, block S
6.	Apartment area measuring	1697 sq. ft.
7.	Date of booking (as alleged by the complainant)	30.03.2013
8.	Date of execution of apartment buyers agreement	26.11.2013
9.	RERA registered / unregistered.	Unregistered
10.	Payment plan	Construction linked plan
11.	Total sale consideration (annex C4 Pg 121)	Rs 1,96,92,790/-
12.	Total amount paid by the complainant till date	Rs 1,82,96,819/-
13.	Percentage of consideration paid	93%
14.	Due date of possession (Clause 11(a) i.e. 60 months from the date of application which is 30.03.2013)	30.03.2018
15.	Delay in years/months/days	10 months approx
16.	Penalty clause (Clause 15)	Rs 20/- per sq. ft. of the super area per month
17.	Status of the project	Not known

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. An apartment buyer's agreement dated 26.11.2013 for apartment no. UTS093, 9th floor , block S . According to which possession was to deliver on 30.03.2018. However, responded has failed its contractual obligation till date.



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

Facts of the complaint

6. The complainant submitted that the respondent while launching and advertising any new housing project always committed and promised to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. It was assured to the complainant that they the respondent has secured all necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project .
7. The complainant submitted that in the end of 2013, the respondent through its various marketing executives and advertisement through various means and medium approached the complainant with an offer to invest and buy the apartment in the proposed project of the respondent,



which the respondent was going to launch namely “The Ultima, DLF Garden City.”

8. The complainant submitted that the respondent assured him that the allotment letter and the apartment buyers’ agreement for the said project would be issued to the complainant within one week of booking to be made by him. The complainant while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent to book the residential flat in the project of the respondent.
9. The complainant submitted that relying upon the assurances and believing them to be true, the complainant booked a residential flat bearing no. UTS093 on 9th floor, block S in the proposed project of the respondent measuring a super area of 2112 sq. ft. in the said project to be developed by the respondent vide application dated 30.03.2013.
10. The complainant accordingly paid Rs 12,97,000/- through cheque bearing no. 084616 as booking amount on 30.03.2013.



11. The complainant submitted that the respondent assured that it would execute the apartment buyers' agreement at the earliest and maximum within one week. However, the respondent did not fulfil its promise and assurance and has issued only the allotment letter dated 01.04.2013.
12. The complainant time and again requested the respondent to execute the apartment buyer agreement as per the promise and assurance given by the respondent but the company ignored the requests and after delaying the execution for nearly 8 months, the agreement was executed on 26.11.2013.
13. The complainant submitted that the respondent by misusing its dominant position had coerced and pressurized the complainant to sign the arbitrary, illegal and unilateral terms of the said agreement and when the complainant had objected to those arbitrary terms and refused to sign the same, the respondent threatened to forfeit the amount already paid by the complainant as sale consideration in respect of the said flat and also to cancel the booking.
14. The complainant submitted that as per clause 11(a) of the agreement dated 26.11.2013; the possession was to be



delivered within a period of 60 months from the date of application i.e. 30.03.2018. The relevant portion is reproduced below:

Clause 11(a) "The company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said building/apartment with a period of 60 months from the date of the application."

15. The complainant submitted that he had paid the entire amount demanded sale consideration to the respondent for the said flat. As per the statement dated 14.09.2018, issued by the respondent upon the request of the complainant, the complainant had already paid Rs 1,82,96,819/- towards sale consideration as on today to the respondent as demanded by it from time to time and now nothing major is pending to be paid on the part of complainant.

16. The complainant submitted that he kept running from pillar to post asking for the delivery of his home but could not succeed



as the construction of the said flat and said project was nowhere near to completion and still has not been completed.

17. The complainant submitted that he had also informed the respondent about his financial hardship of paying monthly rent of Rs 40,000/- due to delay in getting possession of the said flat citing the extreme financial and mental pressure he was going through, but the respondent never cared to listen to his grievances and left him with suffering and pain on account of its default and negligence.

18. The complainant submitted that the respondent has not completed the construction of the said project till date and the possession has not been provided despite all promises done and representations made by the respondent. Hence, the present complainant has been filed before the hon'ble authority.



ISSUES TO BE DECIDED

- i. Whether the complainant is entitled for the compounding interest @18% p.a. on the total sale consideration of Rs 1,82,96,819/- paid by him for the

delay caused in handing over of the possession of the flat?

RELIEF SOUGHT BY THE COMPLAINANT

- i. Direct the respondent to pay interest @18% p.a. from the date of payment till the date of delivery of possession of the the said flat in question on the amount of Rs 1,82,96,819/- deposited by the complainant for the delay caused in handing over of the possession?

RESPONDENT'S REPLY

Preliminary Objections and Submissions

19. The respondent submitted that the present complaint is not maintainable in law or on the facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of occupancy certificate in respect of the apartment in question was made on 27.07.2017, i.e. well before the notification of the Real Estate (Regulation and Development) Rules 2017. The occupation certificate in respect of the project was issued by the competent authority on 11.06.2018. This hon'ble authority does not have the jurisdiction to



entertain and decide the present complaint. The complaint is liable to be dismissed on this ground alone.

20. The respondent submitted that the complaint is not maintainable before this authority. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this hon'ble authority.
21. That the complainants have no locus standi or cause of action to file the present complaint.
22. The respondent submitted that the answering respondent has developed a residential group housing complex known as The Ultima, situated in Sector 81 DLF Garden city, Gurgaon in accordance with permissions, approvals and sanctions from the competent authorities. license no. 114 of 2012 and memo dated 20.01.2017 and license no 61 of 2011 and memo dated 04.10.2017



23. The respondent submitted that the complainants took an independent and informed decision, uninfluenced in any manner by the answering respondent to book the part in question, after making extensive inquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per the complainant's needs and requirements as well as the capability of the answering respondent to undertake the project.
24. The respondent submitted that it is pertinent to mention that that it was clearly specified in the application form at clause 2 that that construction would commence only after receipt of all approvals from the competent authorities including the environmental clearance from the State Environmental Impact Assessment Authority (SEIAA), which had not been obtained from the date of booking. Furthermore, it is explicitly provided in clause 19 (a) of the application form.
25. The respondent submitted that vide allotment letter dated 01.04.2013, apartment bearing no. UTS093, admeasuring 2112 sq. ft. super area approx. located in tower-S of the project was provisionally allotted to the complainants. The



construction of the tower in which the apartment of the complainants is situated (as well as five other towers of the project) stands completed and the answering respondent had made an application on 26.07.2017 to the competent authority for issuance of the occupation certificate in respect thereto. Occupation certificate has been issued by the competent authority on 11.06.2018. The answering respondent will shortly begin the process of delivery of the apartment in question and possession of the same will be delivered after receipt of complete payment, and completion of all necessary formalities.

26. The respondent submitted that in terms of clause 11(a) of the apartment buyer's agreement executed by the parties possession of the apartment was proposed to be handed over within a period of 60 months plus grace period of 6 months from the date of application, subject to the timely compliance by the complainants of all the terms and conditions of the agreement.



DETERMINATION OF ISSUES

i. With respect to **sole issue** raised by the complainant, the respondent has delayed the delivery of possession of apartment in question. This issue is forfeited from the fact that as per clause 10(a) of the apartment buyer's agreement dated 26.11.2013 possession was to deliver within 60 months from the date of booking which is calculation comes out to be 30.03.2018. However, there is a delay of 10 months approx. in the delivery of possession. Therefore, the respondent is liable to pay interest at prescribed rate @ 10.75 % as per the provision of section 18(1) of the Act. As the occupation certificate has been granted to the respondent on 11.06.2018, so interest will be levied on the respondent on the amount of Rs 1,82,96,819/- at the prescribed rate of interest from the due date of possession i.e. 30.03.2018 till the offer of possession per month within a period of 90 days.

27. 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.

28. 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. Occupation certificate has been received by the respondent on **11.06.2018.**

29. As per clause 11 (a) of the builder buyer agreement dated 26.11.2013 for unit No.UTS-093, 9th floor, Block-S, in project "The Ultima", Sector-81, Gurugram, possession was to be handed over to the complainant within a period of 60 months from the date of application i.e. 30.3.2013 which comes out to be 30.3.2018. Complainant has already paid Rs.1,82,96,819/- to the respondent against a total sale consideration of Rs.1,96,92,790/-. However, the respondent has not delivered the unit in time.



DECISION AND DIRECTIONS OF THE AUTHORITY

30. 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) As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 30.3.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession .
- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.



- (iii) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.
- (iv) Both the parties are directed to hand over and take over the possession of the unit within a period of 30 days. Conveyance deed may also be got registered simultaneously.
- (v) The authority has developed to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated u/s 59 of Act.

31. The order is pronounced.

32. 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:05.02.2019

Judgement uploaded on 12.02.2019