

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 22.01.2019
Complaint No.	862/2018 Case Titled As M/S Gravity Rail Infra And Advisory Private Limited V/S M/S Sana Realtors Pvt Ltd
Complainant	M/S Gravity Rail Infra And Advisory Private Limited
Represented through	Shri Gaurav Singh Director of the complainant in person with Shri Sushil Yadav, Advocate
Respondent	M/S Sana Realtors Pvt Ltd
Respondent Represented through	Shri Amit Kumar proxy counsel for Shri Ashish Upadhyay, Advocate for respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

As per clause 15 of the Builder Buyer Agreement dated 15.2.2010 for unit No.430, 4th floor, in project "Precision SOHO Tower, Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of BBA which comes out to be 15.2.2013. Complainant has already paid Rs.22,46,740/- to the respondent against a total sale consideration of Rs.24,14,500/-.

The respondent has already offered possession to the complainant on 24.7.2017.

The occupation certificate of the project was received by the respondent on 18.7.2017. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 15.2.2013 to 24.7.2017, 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)
22.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 862 of 2018
First date of hearing : 22.01.2019
Date of decision : 22.01.2019

M/s Gravity Rail Infra and Advisory Pvt. Ltd.
Regd. office: 32-E, Patparganj, Mayur Vihar,
Phase-I, Delhi-110091.
Address: Flat no.201, Meditech Apartments,
Plot no.59, Sector 56, Gurugram-1220011.

Complainant

Versus

M/s Sana Realtors Pvt. Ltd.
Regd. office: H-69, upper ground floor,
Connaught Place, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Gaurav Singh

Director of the complainant in
person

Shri Sushil Yadav
Shri Amit Kumar

Advocate for the complainant
Proxy counsel for Shri Ashish
Upadhyay, advocate for the
respondent

ORDER

1. A complaint dated 08.10.2018 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 M/s Gravity Rail Infra and Advisory Pvt. Ltd., against the promoter M/s



Sana Realtors Pvt. Ltd., on account of violation of the clause 15 of flat buyer agreement executed on 15.02.2010 in respect of 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 flat buyer agreement has been executed on 15.02.2010 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 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	"Precision SOHO Tower", Sector 67, Gurugram, Haryana.
2.	Nature of the project	Commercial colony
3.	Project area	2.456 acres
4.	Registered/not registered	Not registered
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	Occupation certificate granted on	18.07.2017



8.	Date of execution of flat buyer agreement	15.02.2010
9.	Office space/unit no. as per the said agreement	430, 4 th floor
10.	Unit measuring as per the said agreement	525 sq. ft.
11.	Vide payment demand "at the time of possession" dated 01.08.2015, the respondent has unilaterally changed unit no as well as super area	423, 4 th floor measuring 546 sq. ft. [as per annexure A of letter dated 01.08.2015]
12.	Payment plan	Construction linked payment plan
13.	Total consideration amount as per clause 1 of the said agreement	Rs.24,14,500/-
14.	Total amount paid by the complainant till date as per receipts annexed with the complaint	Rs.22,46,740/- [as per receipts annexed]
15.	Percentage of consideration amount	Approx. 93.05 percent
16.	Date of delivery of possession as per clause 15 of flat buyer agreement i.e. 3 years from the date of execution of buyer agreement i.e. 15.02.2010	15.02.2013
17.	Letter of offer of possession	24.07.2017
18.	Delay in handing over possession from due date of possession till date of offer of possession	4 years 5 months 9 days
19.	Penalty clause as per flat buyer agreement	Not given the agreement



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 flat buyer agreement

dated 15.02.2010 is available on record for the aforesaid unit. As per clause 15 of the flat buyer agreement dated 15.02.2010, the due date of handing over possession was 15.02.2013 and the possession was offered to the complainant on 24.07.2017. The respondent has not paid any interest for the period he delayed in handing over the possession. Therefore, the promoter has not fulfilled their committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 22.01.2019. The case came up for hearing on 22.01.2019. The reply filed on behalf of the respondent on 14.11.2018 has been perused.

Brief facts

6. Briefly stated, the facts of the complaint are that the respondent through local brokers and brochures advertised about their forthcoming project namely "Precision SOHO Tower" Sector 67, Gurugram promising various advantages including in-house world class amenities like health club & spa, laundry, etc. and timely completion/execution of the project. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements, M/s



Gravity Rail Infra and Advisory Pvt. Ltd. (formerly known as: Gravity Retail India Pvt. Ltd.) booked a commercial office admeasuring 525 sq. ft. in aforesaid project of the respondent for total sale consideration of Rs.24,14,500/- which included BSP, EDC + IDC, car parking, etc. The complainant made a payment of Rs.22,46,740/- to the respondent vide different cheques on different dates.

7. The complainant submitted that as per clause 15 of the buyer agreement, the respondent had delivered the possession of the office space within 3 years from the date of signing of the flat buyer agreement dated 15.02.2010. On 01.08.2015, the complainant received the letter of payment demand at the time of possession wherein the developer M/s Sana Realtors Pvt. Ltd. unilaterally and arbitrarily changed the originally allotted unit no.430 to unit no.423 and also increased the super area from 525 sq. ft. to 546 sq. ft. and accordingly demand notice was issued on inflated basis. Before the issuance of demand notice for the enhanced area by the respondent, the complainant was neither informed nor any consent for enhancement and/or extension of area was ever obtained.
8. The complainant submitted that after receiving the letter of payment demand at the time of possession dated 01.08.2015,



the complainant visited the site to check the actual status of the project. On visiting the site, the complainant was dismayed and utterly shocked to see that the construction was not completed. The design, elevation as well as façade at site was different from what was shown to the complainant at the time of booking of the office. Occupation certificate, completion certificate, fire safety and other pre-requisite approvals were not obtained and finishing work was only in preliminary stages.

9. The complainant submitted that the construction of the block in which the complainant office is situated was booked with a promise by the respondent to deliver the office by 15.02.2013 but the same was not completed within time for the reasons best known to the respondent which clearly shows ulterior motive of the respondent was to extract money from the innocent people fraudulently.

10. The complainant submitted that the respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. The respondent has incorporated one-sided clauses in flat buyer agreement. It is submitted that the respondent has charged interest @18% per annum from the complainant for delay in payment of one instalment by a month. It is further submitted that on the ground of parity



and equity, the respondent be subjected to pay the same rate of interest. Hence, the respondent is liable to pay interest on the amount paid by the complainant @18% per annum to be compounded from the promise date of possession till the office is actually delivered to the complainant.

Issue to be decided

11. The sole relevant issue in the present complaint is whether the respondent has not completed the construction as per plan and has not handed over the possession to the complainant as on date?

Relief sought by the complainant

12. The complainant is seeking refund of the entire amount Rs.22,46,740/- along with interest @ 18% per annum on compounded rate from the date of booking of the office in question.

Respondent's reply:

13. The respondent submitted that the present complaint is liable to be dismissed as the present project does not fall within the purview of the Act ibid. The occupation certificate in respect of the project in question was issued by the competent authority vide memo no. ZP-589/SD(BS)/



2017/17063 dated 18.07.2017. The occupation certificate also contains the description of the building with license no.72 of 2009 dated 26.11.2009 for total area measuring 2.456 acres developed by M/s Sana Realtors Pvt. Ltd.

14. The respondent submitted that the present complaint is liable to be dismissed as the complainant has made wrong averments in the complaint and has made wrong allegations against the respondent without any substantial evidence. Hence, the present complaint is not maintainable.

15. The respondent submitted that the present complaint is not maintainable as it is not filed before the competent authority i.e. adjudicating officer as the relief sought by the complainant does not fall within the jurisdiction of this hon'ble authority. Hence, the present complaint is liable to be dismissed.

16. The respondent submitted that the present complaint is not maintainable as the possession of the property in question was offered to the complainant after receipt of the occupation certificate. Further, the complainant was also intimated that the sale deed of the property in question is ready for



execution, but the complainant is deliberately not coming forward to take the possession and to get the conveyance deed executed.

17. The respondent submitted that section 19(6) of the Act ibid was not complied by the complainant, which says that every allottee who has entered into an agreement for sale to take an apartment, plot or building shall be responsible to make the necessary payments including registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges etc. But no necessary payments were made by the complainant after the completion of the project. Hence, the present complaint is not maintainable and is liable to be dismissed.

18. The respondent submitted that as per clause 41 and 42 of the flat buyer agreement, the complainant shall be liable to pay as and when demanded by the respondent, the stamp duty, registration charges and other legal and incidental charges for execution and registration of conveyance deed. It is also submitted that the complainant is also liable to pay any loss or damages suffered by respondent for non-payment or delay



in payment, non-performance of the terms and conditions of the agreement. Hence, the present complaint is not maintainable and is liable to be dismissed.

19. The respondent submitted that clause 8 of the flat buyer agreement incorporates that “the time of payment of installments as stated in schedule of payment (annexure -I) and applicable stamp duty, registration, fee, maintenance and other charges payable under this agreement as and when demanded is the essence of this agreement”.
20. The respondent submitted that the delay in handing over possession of the project was beyond the control of the respondent. It is submitted that clause 15 of the said agreement, relied upon by the complainant, also provide for the exemption for delay, if any, caused is beyond the control of the respondent, the same shall be excluded from the time period so calculated. It is not out of place to mention here that the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented. It is worth to note here that initially there were high tension



wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised. Since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start.

21. The respondent submitted that initially there was a 66 KV electricity line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL for shifting of the said electricity line. HVPNL subsequently demanded a sum of Rs.46,21,000/- for shifting the said electricity line and lastly even after the deposit of the said amount, HVPNL took about one and half years for shifting the said electricity line. It is pertinent to mention here that until the electricity line was shifted, the construction on the plots was not possible and hence the construction was delayed for about two years. It is pertinent to note here that the diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the removal



of high tension wires in the year 2008 i.e. a year even before the license was granted to the respondent so that the time can be saved and project can be started on time.

22. The respondent submitted that the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. It is submitted that in the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water. Thereafter, the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December 2012 and the dispute was settled by the respondent by paying more to the



earlier contractor and thereafter appointed a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January 2013 immediately to resume the work at the site without delay.

23. The respondent submitted that the project was complete in all respect in the year 2015 when the occupation certificate was applied. Lastly in July 2017, occupation certificate was issued, and the delay of two years was on account of the delay in compliances by the authorities and as such the respondent is not responsible for any delay. The development and construction has been diligently done by the respondent and the obligations which the respondent was to discharge have been onerously discharged without failure. The respondent has diligently done his part and requisite documents to prove its diligence are annexed with reply, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

24. The respondent submitted that the payments to be made till date are outstanding and the complainant was proposed to take the possession and to get the sale deed registered after making the payment of outstanding amount. The area of the



office space was changed and the fresh demand was raised. However, the complainant deliberately is not making payment of outstanding amount of Rs.4,48,794/-.

25. The respondent submitted that the complainant deliberately is not taking possession of the property in question and has filed the present complaint with the sole purpose to harass the respondent and to create undue pressure to extort illegal money from the respondent. Hence, the present complaint is not maintainable and is liable to be dismissed with heavy cost.

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:

26. With respect to the **sole issue**, as per clause 15 of the flat buyer agreement, the possession of the said unit was to be handed over within 3 years from the date of this agreement i.e. 15.02.2010. Therefore, the due date shall be computed from 15.02.2010. The relevant clause is reproduced as under:

“15. That the possession of the said premises is proposed to be delivered by the developer to the allottee within 3 years from the date of this agreement.”



27. Accordingly, the due date of possession was 15.02.2013. However, the respondent sent a letter of offer of possession to the complainant on 24.07.2017 after the receipt of occupation certificate dated 18.07.2017. 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 4 years 5 months and 9 days from due date of possession till the offer of possession, thereby violating the terms of the said agreement. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act *ibid* 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.

Findings of the authority

28. 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.

29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. 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.
30. The authority observed that as per clause 15 of flat buyer agreement dated 15.02.2010 for the said flat in "Precision SOHO Tower", Sector 67, Gurugram possession was to be handed over to the complainant within a period of three years from the date of the agreement i.e. 15.02.2010 which comes out to be 15.02.2013. However, respondent has not delivered the apartment in time. Complainant has already paid Rs.22,46,740/- to the respondent against a total sale consideration of Rs.24,14,500/-. However, the refund cannot be allowed in the present case, as the respondent has completed the project and has obtained occupation certificate dated 18.07.2017 from the competent authority. Thereafter,



the respondent has also offered possession to the complainant on 24.07.2017. As the promoter has failed to fulfil his obligation by not handing over the possession within the stipulated time, the promoter is liable under section 18(1) proviso of the Act ibid 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 offer of possession.

Directions of the authority

31. 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 at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 15.02.2013 till the offer of the possession by the respondent i.e. 24.07.2017.
- ii. The respondent is directed to pay interest accrued from the due date possession i.e. 15.02.2013 till the date of offer of possession by the respondent i.e. 24.07.2017, on



account of delay in handing over of possession to the complainant within 90 days from the date of decision.

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

32. The order is pronounced.

33. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.01.2019

Judgement uploaded on 25.02.2019

(Subhash Chander Kush)

Member

HARERA
GURUGRAM

