

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 07.02.2019
Complaint No.	1171/2018 Case titled as Ashok Kumar Soni & Others Vs Tata Housing Development Co. Limited
Complainant	Ashok Kumar Soni & Others
Represented through	Shri Rajendra Nath Dixshit Advocate for the complainant
Respondent	Tata Housing Development Co. Limited
Respondent Represented through	Mohd. Salim Rakhangi Advocate for the respondent.
Last date of hearing	2.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Respondent has already offered the possession of the unit to the complainant on 28.6.2017 which the complainant fails to take.

As per clause 4.2 of the Builder Buyer Agreement dated 16.8.2014 for unit No.3501, 34<sup>th</sup> floor, tower-2, in project Tata Primanti, Sector 72, Gurugram, possession was to be handed over to the complainant by 2.5.2016. Complainant has already paid Rs.2,77,74,702/- to the respondent against a total sale consideration of Rs.2,84,20,125/-. Respondent has already offered the possession of the unit to the complainant on 28.6.2017 which the complainant fails to take over. But the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f

2.5.2016 till 28.6.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

It has been alleged by the respondent that they have duly offered letter of possession on 28.6.2017 alongwith copy of occupation certificate, as such, the matter w.r.t. delivery of possession should be reckoned from this date. However, the complainant did not take the possession offered to him. In view of the prevailing circumstances the complainant is obligated to take possession of the unit.

Both the complainant and respondent are directed to hand over/take over possession of the unit but the rate of interest to be charged by the respondent for any delay in making payment on the part of the complainant and delayed interest to be paid by the respondent to the complainant shall not be more than 10.75% p.a. after incoming of RERA. Certain allied issues have been raised by the complainant in the matter which do not fall within the purview of RERA authority and the same can be agitated before the Adjudicating Officer. As per photographs the tower and the flat in which the flat of the complainant is located is complete and is habitable. In view of the circumstances, taking a lenient view the respondent is directed not to charge any holding charges.

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

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

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

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

Samir Kumar  
(Member)  
7.2.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 1171 of  
2018**  
**First date of hearing: 02.01.2019**  
**Date of decision : 07.02.2019**

1. Ashok Kumar Soni
2. Nishant Soni
3. Nandita Soni Malik  
All r/o C-5, Gulmohar Park,  
New Delhi: 110049

**Complainants**

Versus

Tata Housing Development Co. Ltd.  
Registered office at: 3 Ground floor,  
Naurang House, 21 K.G. Marg,  
New Delhi: 110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Rajendra Nath Dixshit Advocate for the complainants  
Mohd. Salim Rakhangi Advocate for the respondent



**ORDER**

1. A complaint dated 18.09.2018 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 complainants Mr. Ashok

Kumar Soni and others against the promoter Tata Housing Development Co. Ltd. on account of violation of clause 4.2 of the apartment buyer's agreement executed on 16.08.2014 for unit no. 3501 in building 2 in the project "Tata Primanti" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 16.08.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 case are as under: -

- **Nature of project: Residential group housing colony**
- **DTCP License No.: 155 of 2008 dated 14.08.2008 and 200 of 2008 dated 08.12.2008**

1.	Name and location of the project	Tata Primanti, Sector 72 Gurugram
2.	RERA registered/ Not registered	<b>Registered</b>



		98 of 2017 dated 28.08.2017
3.	RERA registration valid up to	30.06.2020
4.	Apartment/unit no.	T2, 3501, 34 <sup>th</sup> floor building 2
5.	Apartment measuring	2905 sq. ft.
6.	Date of execution of apartment buyer's agreement	16.08.2014
7.	Payment plan	Construction linked
8.	Total consideration per account statement dated 21.09.2018	Rs 2,84,20,125/-
9.	Total amount paid by the complainant till date as per account statement dated 21.09.2018	Rs. 2,77,74,702/-
10.	Date of delivery of possession as per clause 4.2 of apartment buyers agreement i.e. 01.11.2015+ grace period of 6 months as per clause 4.3	02.05.2016
11.	Delay in handing over possession till date	1 year 1 month 28 days
12.	Offer of possession	28.06.2017
13.	Occupation certificate	23.06.2017

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 01.05.2016. Neither the respondent



has delivered the possession of the said unit as on date to the purchaser. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The reply filed on behalf of the respondent has been perused. Rejoinder is filed by the complainants wherein they have reasserted the facts.

**FACTS OF THE COMPLAINT:**

6. That the complainant no 1 is a reputed senior citizen of the country and is a victim of misleading advertisement by TATA Housing Development Co. Ltd. who intentionally increased cost of the flat by 30 lakhs by making excuses for delay in project due to non availability of raw material . The respondent has not offered possession till date.
7. The complainants have paid an amount of Rs. 2,77,74,702/- till date against total sales agreement of Rs. 2,84,20,125/-





8. The completion certificate has not been received by the respondent from the competent authority till date.
9. There is no direct access to play ground area which is about 200 to 300 meters far away from the tower and it is inconvenient to senior citizens and children to utilise that place and this fact was concealed.
10. The most serious concern of the whole deal of that flat of the same area has been sold to a PSU bank on 01.01.2018 for a total consideration of Rs. 2,17,97,802/- being less for Rs. 66,22,323/- from the consideration claimed from me/other buyers after about six years. Despite that common cost of the construction escalates considerably every year.
11. That the respondent has violated the terms of apartment buyers agreement by escalating the cost of the project by making unjustified excuses like non availability of raw material is not acceptable.
12. That the builder has also not handed over the flat on the date agreed upon/charged interest unlawfully and selling the same product to other buyers for much less price.





13. This act of respondent has given the complainants shock/mental agony/depression .
14. That a total amount of Rs 2,77,74,702/- deposited by the complainants be refunded with interest.

**ISSUES RAISED BY THE COMPLAINANTS:**

15. The following issue has been raised by the complainants:

Whether or not the respondent is bound to refund the amount deposited by the complainants with interest @18% from the date of deposit till date?

**RELIEF SOUGHT BY THE COMPLAINANTS:**

16. The complainant is seeking the following reliefs:
- i. The respondent be directed to refund the amount deposited by the complainants i.e. Rs. 2,77,74,70,200/- along with 18% interest as the respondent has violated terms and agreement dated 16.08.2014



**RESPONDENT'S REPLY:**

17. The respondent submitted that the present complaint filed by the complainants does not disclose any cause of action prima facie or otherwise, same is misconceived bad in law and not maintainable and as such deserves to be dismissed with costs. The respondent submitted that the complainants have booked the apartment in the respondent project and accordingly issued the allotment letter dated 31.10.2012.

18. Further the respondent submitted that the said apartment the respondent had sent the copies of the draft apartment buyers agreement on 20.11.2012 for signature purpose. However the complainants did not initially did not execute the agreement and thus the respondent vide letter dated 02.01.2013 requested the complainants to execute the said agreement.

19. The complainants claim in the complaint is contrary to the terms and conditions of the agreement as the complainants did not make the payment despite giving ample opportunities and in the aforesaid event the respondent as per clause 3.6 of the said agreement at its sole discretion becomes entitled to cancel the booking of the said



apartment and the respondent upon cancellation, is under obligation to refund the money paid to the complainants without interest subject to forfeiture.

20. The respondent also submitted that under clause 4.2 of the said agreement the respondent shall handover the possession on or before 02.05.2016 subject to force majeure circumstances and reasons beyond control of the respondent. The complainants are well aware of the reasons for delay as informed by the respondent from time to time and has also offered possession vide letter dated 28.06.2017 and adjusted compensation of Rs 5,82,434 towards delay.

21. Despite offering the compensation for delay as per the terms of the agreement the complainants instead of making the balance payment and taking possession of the said apartment, chose to file the complaint and sought relief for refund of money with interest which is contrary to the agreed terms and conditions of the agreement.

22. The respondent submitted various reasons because of which there was delay in handing over the possession.



23. The respondent denied that he sold the apartments to Oriental Bank of Commerce at lesser price.
24. The respondent submitted that the project is being developed in two phases, phase 1 comprised of towers 1-4 with executive apartments etc. and has received occupation certificate on 09.03.2018. The respondent submitted that he has adopted all measures to complete the project on time and has completed towers 5,6,7 well within the time.
25. The respondent submitted that 4 children's playgrounds are provided in phase 1 and 2 playground in phase 2 which is sufficient to cater to the residents of the project. The respondent further submitted that it has constructed the play area that as per the approved plan which is attached to the agreement of the customers. Hence the claim of the complainants is baseless, frivolous and devoid of merits.
26. The respondent submitted that the delay in construction and handing over the said apartment if any is due to reasons beyond the control of the respondent.



## DETERMINATION OF ISSUES:

27. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

- i. With respect to the **sole issue** raised by the complainants, the authority came across that as per clause 4.2 of apartment buyer's agreement, the possession of the flat is to be handed over by 02.05.2016. The respondent has offered possession on 28.06.2017. The clause regarding the possession of the said unit is reproduced below:

***"4.2: Possession time:***

***The respondent shall endeavour to give possession of the said premises to the purchasers on or before 01.11.2015 and after providing necessary infrastructure in the sector by the government but subject to force majeure ...."***

Accordingly, the due date of possession was 02.05.2016 and the possession has been delayed by 1 year 1 month 28 days. As far as refund is concerned, it is submitted by the respondent that occupation certificate has been received on 23.06.2017 and he has offered possession vide letter dated 28.06.2017. Thus, the complainants are



bound to pay the outstanding dues, if any and thereby take possession of the said unit. Refund at this stage shall not be granted as granting the same will hamper the remaining work of the project and will also prejudice the rights of the other allottees who wish to continue with the said project.

It has been alleged by the respondent that they have duly offered letter of possession on 28.06.2017 along with copy of occupation certificate, as such, the matter w.r.t. delivery of possession should be reckoned from this date. However, the complainants did not take the possession offered to him. In view of the prevailing circumstances the complainants is obligated to take possession of the unit.

**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 complainants at a later stage.

29. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.

30. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.

31. As per clause 4.2 of the apartment buyer agreement dated 16.08.2014 for unit no. 3501, 34<sup>th</sup> floor, tower-2, in project Tata Primanti, sector 72, Gurugram, possession was to be handed over to the complainants by 02.05.2016. Complainants have already paid Rs. 2,77,74,702/- to the respondent against a total sale consideration of Rs.2,84,20,125/-. Respondent has already offered the possession of the unit to the complainants on 28.06.2017 which the complainants fails to take over. But the complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f





02.05.2016 till 28.06.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

32. It has been alleged by the respondent that it has offered possession vide letter dated 28.06.2017 along with copy of occupation certificate, as such, the matter w.r.t. delivery of possession should be reckoned from this date. However, the complainants did not take the possession offered to them. In view of the prevailing circumstances the complainants are obligated to take possession of the unit.

33. Certain allied issues have been raised by the complainants in the matter which do not fall within the purview of RERA authority and the same can be agitated before the adjudicating officer.

34. As per the photographs the tower and the flat in which the flat of the complainants is located is complete and is habitable. In view of the circumstances, taking a lenient view the respondent is directed not to charge any holding charges



**DECISION AND 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 in the interest of justice and fair play:

- i. Both the complainants and respondent are directed to hand over/take over possession of the unit but the rate of interest to be charged by the respondent for any delay in making payment on the part of the complainants and delayed interest to be paid by the respondent to the complainants shall not be more than 10.75% p.a.
- ii. The respondent is directed to pay delayed possession charges to the complainant at prescribed rate of interest i.e. 10.75% per annum w.e.f 02.05.2016 till 28.06.2017.
- iii. The respondent is directed not to charge any holding charges.



- iv. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- v. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

36. The order is pronounced.

37. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

Date: 07.02.2019

Judgement uploaded on 26.02.2019

**(Subhash Chander Kush)**  
Member

HARERA  
GURUGRAM

