

PROCEEDINGS OF THE DAY

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| Day and Date | Wednesday and 06.02.2019 |
| Complaint No. | 1021/2018 Case titled as Ms. Rekha Yadav & Mr. Gajender Singh V/S M/S Haamid Real Estates Private Limited |
| Complainant | Ms. Rekha Yadav & Mr. Gajender Singh |
| Represented through | Complainant No.2 in person with Ms. Joohi Advocate for Shri V.V.Manoharam Advocate. |
| Respondent | M/S Haamid Real Estates Private Limited |
| Respondent Represented through | Shri Nishit Khandelwal Vice President on behalf of the respondent company in person. |
| Last date of hearing | |
| Proceeding Recorded by | Naresh Kumari & S.L.Chanana |

Proceedings

Project is not registered with the authority.

Arguments heard.

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. Proceedings for imposing penalty of Rs.50 Lakhs may be initiated against the respondent for violation of Section 3 (1) of the Act ibid. Mr. Nishit Khandelwal authorized representative of the company has stated that they will get the project registered within 30 days.

As per clause 11 (a) of the Builder Buyer Agreement dated 6.1.2015 for unit No.B-173, 17th floor, Tower-B in project "The Peaceful Homes" Sector-70A, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction i.e. 10.5.2014 + 6 months grace period which comes out to be 10.11.2017. Complainant has already paid Rs.1,40,31,580/- to the respondent against a total sale consideration of Rs.1,54,73,342/-. However, the respondent has not delivered the unit in time. Counsel for the respondent is taking the plea that the company has applied for occupation certificate. However he has not produced any documentary proof to corroborate his contention. The complainant has alleged that the respondent is taking this plea ever since two years. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 10.11.2017 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.

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

Samir Kumar
(Member)
6.2.2019

Subhash Chander Kush
(Member)

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

**Complaint no. : 1021 of
2018**
First date of hearing: 06.02.2019
Date of decision : 06.02.2019

1. Ms. Rekha Yadav
2. Mr. Gajender Singh
Both r/o house no: 1795, sector 4, urban
estate, Gurugram: 122001,
Haryana.

Complainants

Versus

1. M/s Haamid Real Estates Private
Limited
2. Tirath Lal Anand, (Director)
3. Bala Krishna Pandey, (Director)
Regd. Office: 232 B, 4th floor, Okhla
Industrial Estate Phase-III, New Delhi-
110020.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Mr. Gajender Singh
Ms. Joohi Advocate for Shri
V.V. Manoharam
Shri Nishit Khandelwal

Complainant in person
Advocate for complainants
Vice President on behalf of the
respondent company in person



ORDER

1. A complaint dated 20.09.2018 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 Ms. Rekha Yadav and Mr. Gajender Singh against the promoters M/s Haamid Real Estate Private Limited and others on account of violation of the clause 11(a) of the flat buyer's agreement executed on 06.01.2015 in respect of flat/no. B 173, 17th floor, tower B, admeasuring 2150 sq. ft. super area, in the project 'The Peaceful Homes' for not handing over possession which is an obligation under section 11(4)(a) of the Act *ibid*.
2. Since, the flat buyer agreement has been executed on 06.01.2015 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 real estate project: Residential group housing colony

DTCP license no: 16 of 2009

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| 1. | Name and location of the project | "The Peaceful Homes", Sector 70A, Gurugram |
| 2. | Apartment/unit no. | B 173, 17 th floor, tower B |
| 3. | Apartment measuring | 2150 sq. ft. super area |
| 4. | RERA registered/ unregistered | Not registered |
| 5. | Date of execution of flat buyer agreement | 06.01.2015 |
| 6. | Payment plan | Construction linked payment plan |
| 7. | Total sale consideration as per account statement dated 11.09.2018 | Rs. 1,54,73,342/- |
| 8. | Total amount paid by the complainant per account statement dated 11.09.2018 | Rs. 1,40,31,580/- |
| 9. | Due date of delivery of possession as per clause 11(a) of builder buyer's agreement dated (36 months from the date of commencement of construction + 6 months grace period) i.e. 10.05.2014 | 10.11.2017 |
| 10. | Delay in handing over possession | 1 year 2 months 27 days |
| 11. | Penalty clause as per flat buyer agreement As per clause 14: | Rs.5/- per sq. ft per month of the super area (delay up to 6 months) Delay between 6 and 12 months than Rs.7.50/- per sq. ft. of the super area Delay beyond 12 months from end of |



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| | | grace period Rs.10/- sq. ft. of the super area |
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4. The details provided above have been checked as per the case file available on record provided by complainants and respondents. A flat buyer agreement dated 06.01.2015 executed between both the parties is available on record.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents counsel appeared 06.02.2019. The case came up for hearing on 06.02.2019. The reply filed by the respondents has been perused.

FACTS OF THE COMPLAINT

6. The complainant submitted that the flat was booked by the complainants on 05.10.2012 and the builder buyer agreement was executed on 6.1.2015. As per clause 11(a) of the flat buyer agreement, the possession of the said flat was to be handed over within 36 months from the date of commencement of excavation of the project, with a grace period of six months under force majeure situation . The respondents commenced the excavation on or around April 2014, which was confirmed by the respondents in their letter



dated 21.04.2014 addressed to the complainants confirming the beginning of the project and also demanding the instalments. Accordingly, the possession of the flat should have been given to the complainants by 20.04.2017 and/or 20.10.2017.

7. The booking of the flat (3 BHK apartment) was for 2150 sq. ft. as super built up area and they paid Rs.26 lakhs as advance booking amount. However the flat dimensions shown in the carpet area was just approx. 1400 sq. ft. which is just 65%.
8. As per the agreement, the tiles were to be of a good quality. However, tiles in bathroom and balcony installed are different and inferior quality as compared to the tiles of the sample flat shown by the marketing team. The respondents are using very poor quality of tiles in the floor also. They deployed broken tiles in the dinning/drawing area.
9. Rs. 8 lakhs was charged just for the two car parking. To get rid of separate charges, this cost was included in the flat's basic sale price while allotting the flat to the complainants. The BSP of the flat allotted to the complainants was Rs.6,050/- sq.ft. and total area of the flat was 2150 sq. ft. However, adding Rs.



8 lakh to the said amount an amount of Rs.373/- was added to the BSP bringing it to Rs.6,423/- sq. ft.

10. The flat buyer agreement has a clause stating that they will charge 18% p.a. interest for delay in payment from the investors, while the compensation for delay in possession is only Rs.5/- per sq. ft per month for first 6 months. It comes out to be $Rs5 \times 2150 \text{ sq. ft.} = Rs 10750$ per month. As of date the complainants paid Rs.1,40,31,580/- Hence, the penalty for delay in possession the respondent will be paying will be just $(10,750 \times 12) / 14031580 \times 100\% = 0.92\%$ p.a. As of date the respondents have failed to pay the penalty of even the meagre sum at the rate of Rs.5/- per sq. ft. to the complainants. Hence, the respondents are equally liable to pay same interest (18%) for delay for handing over possession of the flat to the complainants on their part.



11. Under the new GST regime, the respondent is not passing on the benefit of input tax credit to the investors/flat buyers.

12. Despite the clear directions on the subject, the respondents have taken money from the flat buyers/investors for construction without having HARERA registration. The

complainants were put to grave hardship due to this as the bank (SBI) refused to disburse the instalment amount without H-RERA number.

ISSUES TO BE DECIDED:

13. The following issues have been raised by the complainants:

- i. Whether the respondents have breached the flat buyer agreement by not delivering the possession of the apartment and there is no reasonable justification for the delay?
- ii. Whether or not the complainants are eligible for refund of the amount paid i.e., Rs.1,40,31,580/- along with interest, in view of the delay in handing over of the possession of the flat by the respondents.
- iii. Whether or not the quality of construction is sub-standard and not in accordance with the provisions of the flat buyer agreement?
- iv. Whether there has been deliberate or otherwise, misrepresentation on the part of the respondents



wherein higher covered area was promised and lesser covered area has been allotted?

- v. Whether the respondents are not passing the benefit of input tax credit to the complainants under the new GST regime?

RELIEF SOUGHT BY THE COMPLAINANTS:

14. The complainants are seeking the following reliefs:

- i. Refund of entire amount of Rs. 1,40,31,580/- paid by the complainants to the respondent with interest @18% p.a.
- ii. Damages be granted for giving less than the covered area as agreed as per the agreement, i.e. 2150 - 1400 sq. ft. = 750 sq. ft.
- iii. Any other relief as the hon'ble court may deem fit and proper in the facts and circumstances of the case.



REPLY BY RESPONDENT NO 1:

15. It is submitted at the very outset that the instant complaint is completely frivolous and vexatious being based on false and fabricated facts. The complainants have filed the instant complaint with unclean hands in a clear attempt to abuse the

process of the hon'ble authority to meet their own ulterior motives. Moreover, material facts and documents required for a proper adjudication of the instant complaint have been withheld by complainants.

16. The respondent no. 1 is a company incorporated under the Companies Act, 1956 having its registered office at 232-B, 4th floor, Okhla Industrial Estate, Phase – III, New Delhi – 110020. The present reply is being filed for and on behalf of the respondent no. 1 company by Mr. Jasneet Singh, who has been authorized by the respondent no. 1 company vide resolution dated 12/12/2018 passed by in the meeting of the board of directors of respondent no. 1 company.
17. The respondent nos. 2 and 3 seek leave and liberty of this hon'ble authority to adopt the submissions made by the respondent no.1 hereinunder as sufficient response to the complaint under reply.
18. It is to be noted that the complainants, in terms of the application form dated 04.10.2012 and the flat buyer's agreement dated 06.01.2015 had expressly undertaken to strictly abide by the terms of the construction linked payment



plan. However, it is relevant to note that despite agreeing to and acknowledging the terms and conditions contained under the FBA, the complainants have willingly chosen to not make the payments as contemplated in terms of the construction linked payment plan.

19. The respondents submitted that the complainants herein have admittedly defaulted in payments as contemplated under the agreement entered into between the complainants and the respondent no.1. Since the complainants are themselves in violation of Section 19 of the RERA 2016 as aforesaid, no relief (whether in equity or law) can be granted to the complainants and the instant complaint should be dismissed at the outset on this ground alone

20. It is to be noted that the Real Estate (Regulation and Development) Act 2016 came into force in the State of Haryana with all sections and rules w.e.f. 28.07.2017. However, the Act has penal consequences and it is trite law that any penal law cannot be implemented from retrospective date i.e. that developers/promoters ought not to be penalized in relation to the old projects for purported past deficiencies.



21. In view of applicable law, it is incumbent upon this hon'ble authority to provide a reasonable time to builders/developers for removing deficiencies of old/incomplete/ongoing projects within a prescribed time, and the respondent no.1 craves the liberty of this hon'ble authority to make further appropriate submissions in this regard. The respondent no.1 seeks an appropriate extension of time in this regard since the project in question is likely to be completed within the next 3-4 months. The instant submission is without prejudice to the stand of the respondent no.1 that the delays in the completion of the said project are not attributable to the respondent no.1 at all.

22. The respondent seeks extended time for completion of its project in question. Similar view has been taken by the hon'ble Bombay High Court in its judgment and order dated 06.12.2017, passed in writ petition number 2737 of 2017 (Neel Kamal Realtors Suburban Pvt. Ltd. and another Vs. Union of India and others). In paragraph 256 of the judgment, the hon'ble Bombay High Court has observed as under:



“256. Section 4(2)(1)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh time line Independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(1)(C) he is not absolved of the liability under the agreement for sale”

23. It is submitted that the respondent no.1 had already made adequate representations to the concerned authorities for procurement of an occupation certificate (with requisite documents) – prior to coming into force of the provisions of RERA, 2016 (as applicable to Haryana). However, the same has been delayed on account of the relevant authorities – and the liability for the same cannot anyway be fastened upon the respondents.

24. It is further submitted that there have been several unforeseeable events (beyond the control of the respondent no.1) in the intervening period which have materially and adversely affected the timely completion of the project and



were beyond the control of the respondent. The same are being summarized herein under:

- I. More than 60% of the allottees to the instant project have defaulted in their payments, leading to unrealized amount of more than Rs 150 Crores as on date in the project. Due to defaults on part of the allottees, the respondent no.1 was constrained to approach financial institutions to raise funds to complete the construction of the project. Further, the said financial institutions have their own internal compliances before such funds are disbursed to entities like the respondent no.1 – which lead to further delay in procurement of funds. Since there were times when the fund flow was not very positive, there were subsequent delays in payments to the contractors and suppliers, which severely affected the pace of construction of the instant project. Had the allottees made the payments in time, the respondent no.1 would have completed the construction within the time prescribed under the FBA and delay could have been avoided.



- II. It is submitted that most of the flat buyers/allottees, in the instant project (The Peaceful Homes) have willfully defaulted in terms of their payment obligations as contemplated under the FBA – all of which has severely affected the timely completion of the project. It is submitted that since the buyers, including the present complainants, were defaulters in high numbers, the same has gravely affected the development of the project.
- III. Further, the primary reason for default in the payments as contemplated under the FBA is the fact that the flat buyers (much like the complainants herein) had initially applied for the said units in the project solely for investment purposes at a time when the real estate market was giving high returns. However, the said flatbuyers/allottees (like the complainants herein) sought to withdraw from making timely payments on account of recession in the real estate market – all of which cannot be attributed to the respondent no.1



IV. During the course of construction, various disputes in relation to quality and delay in work on the project arose with the civil contractors of the respondent no.1 viz. Shri Balaji Buildmate Private Limited. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time (around 6 months). During the said period, Shri Balaji Buildmate Private Limited did not allow any other contractor to carry on with the construction as was contemplated in the FBA, and the project was put to a complete standstill. A police complaint was also filed by the respondents herein against the aforesaid civil contractor. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders Private Limited was awarded the work. The new contractor thereafter took further time to mobilize its resources and deploy its personnel – and carry forward the work from the previous contractor.

V. Unfortunately, there was a major accident at the project site which resulted in the untimely death of two



labourers and three labourers were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month, since the labour union had started raising various demands etc. after the unfortunate incident. The respondent no.1 was accordingly constrained to make payments to the said labourers as compensation towards the aforesaid incidents and arrive at an amicable settlement – all of which further took considerable time and resulted in delay in completion of the project.

- VI. It is submitted that besides the aforesaid reasons, the demonetization of currency notes of INR 500 and INR 1000 announced vide executive order dated 08.11.2016 further affected the pace of the development of the project. Due to the said policy change by the central government, the pace of construction of the project was severely affected for a period of approximately six months from November 2016 to April 2017 - since the withdrawal of money was restricted by Reserve Bank of India as the



availability of new currency was limited and unavailable with the banks. It is well known that the real estate sector deploys maximum number of construction workers who are paid in cash – which wasn't readily available with the respondent no.1. The effect of such demonetization were that the labourers were (on some occasions) not paid within the stipulated time which consequently – which consequently resulted in a huge labour crisis in Delhi and NCR which was widely reported in the media.

VII. Further, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period – which further affected the timely completion of the said project.

25. A bare perusal of the averments made by the complainants in the complaint under reply shall reveal that the same are in the nature of raising substantial questions of fact and law – all of which can only be adjudicated by an appropriate civil court.



Accordingly, the disputes at hand are not amenable to the jurisdiction of this hon'ble authority.

DETERMINATION OF ISSUES:

23. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issues wise findings of the authority are as under:

- I. In respect of the **first and second issues** raised by the complainants, the authority is of the view that the respondent has delayed the delivery of possession of the booked unit. This is fortified from the fact that as per clause 11(a) of the agreement dated 06.01.2015, the possession was to be offered within a period of 36 months with a grace period of 6 months from the date of start of the construction (construction started on 10.05.2014). The due date of possession comes out to be 10.11.2017 and there is a delay of 1 year 2 months and 28 days till date which has already lapsed but the possession has not been delivered till date and therefore, the respondents is liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed



possession at the prescribed rate of 10.75% p.a. under the Act.

Further there are photographs of the status of the project attached. At such a stage, refund shall not be granted as granting refund will hamper the interest of other allottees who wish to continue with the project.

- II. With respect to the **third and fourth issues**, the complainants have merely made an assertion and no documentary proof have been attached for the same. So the issues are decided in negative.
- III. With respect to the **fifth issue** raised by the complainants, the authority does not have the jurisdiction to entertain the same. The complainants are advised to approach appropriate forum for the same.



FINDINGS OF THE AUTHORITY:

24. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-

compliance of obligations by the promoter as held in ***SimmiSikka 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.

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

26. 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 respondents. Registration branch is directed to do the needful. Proceedings for imposing penalty of Rs.50 Lakhs may be initiated against the respondents for violation of Section 3 (1) of the Act *ibid.* Mr. Nishit Khandelwal authorized



representative of the company has stated that they will get the project registered within 30 days.

27. As per clause 11 (a) of the flat buyer agreement dated 06.01.2015 for unit no.B-173, 17th floor, tower-B in project "The Peaceful Homes" sector-70A, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of commencement of construction i.e. 10.05.2014 + 6 months grace period which comes out to be 10.11.2017. Complainants have already paid Rs.1,40,31,580/- to the respondents against a total sale consideration of Rs.1,54,73,342/-. However, the respondents have not delivered the unit in time.

28. Counsel for the respondents is taking the plea that the company has applied for occupation certificate. However he has not produced any documentary proof to corroborate his contention. The complainants have alleged that the respondents are taking this plea ever since two years



DECISION AND DIRECTIONS OF THE AUTHORITY:

29. 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 respondents in the interest of justice and fair play:

- (i) The respondents are duty bound to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession w.e.f. 10.11.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession failing which the complainants are entitled to seek refund of the amount.
- (ii) The arrears of interest accrued so far shall be paid to the complainants 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.



30. As the project is registerable and has not been registered by the promoters, 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.

31. The order is pronounced.

32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 06.02.2019

Judgement uploaded on 26.02.2019

HARERA
GURUGRAM

