

PROCEEDINGS OF THE DAY

Day and Date	Friday and 08.02.2019
Complaint No.	654/2018 case titled as Sachin Kumar Vs M/s Apex Buildwell Pvt. Ltd.
Complainant	Sachin Kumar
Represented through	Ishan Mukherjee advocate on behalf of the complainant.
Respondent	M/s Apex Buildwell Pvt. Ltd.
Respondent Represented	None appeared on behalf of the respondent.
Last date of hearing	27.9.2018
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.

Complaint was filed on 1.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 27.8.2018, 4.12.2018 and 19.12.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 4.12.2018 and on 19.12.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the

matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.

As per clause 3(a) of the Builder Buyer Agreement dated 12.07.2013 for unit No.343, 3rd floor, Tower Orchid in project "Our Homes" in village Gadoli-Khurd, Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction + 6 months grace period and consent to establish was granted on 02.12.2013. Therefore, the due date of handing over possession will be computed from 02.12.2013 which comes out to be 02.06.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.15,20,000/- to the respondent against a total sale consideration of Rs. 16,00,000/-. In view of the failure on the part of the respondent to deliver the booked unit to the complainant in time, complainant shall be entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 02.06.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

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 offer of possession shall be paid before 10th of subsequent month.

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

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Samir Kumar

(Member)

8.2.2019

Subhash Chander Kush

(Member)

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

Complaint no. : 654 of 2018
Date of First hearing : 08.02.2019
Date of decision : 08.02.2019

Mr. Sachin Kumar
R/o Mohalla Khojawara, Near Badadorwaja,
Mohinder Garh, Haryana

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd. (through its
directors)
Regd. Office at 14A/36, W.E.A. Karol Bagh,
New Delhi 110005
Marketing office at plot no.25B, 2nd floor
Sector-32, Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Ishan Mukherjee
None for respondent

Advocate for the complainant
Advocate for the respondent



ORDER

1. A complaint dated 01.08.2018 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 Mr. Sachin Kumar against

the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of clause 3(a) of the apartment buyer's agreement executed on 12.07.2013 for unit no. 343, 3rd floor, tower- 'Orchid' in the project 'Our Homes' for not giving possession on the due date, i.e. 02.06.2017 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 01.08.2018. Notices w. r. t. hearing of the case were issued to the respondent on 27.08.2018, 04.12.2018 and 19.12.2018 for making his appearance. Besides this, a penalty of Rs. 5,000/- was imposed on 04.12.2018 and a penalty of Rs. 10,000/- was imposed on 19.12.2018. However, despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that it does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter



on merits by taking into account legal/factual propositions as raised by the complainant in his complaint

3. Since, the apartment buyer's agreement has been executed on 12.07.2013 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
4. The particulars of the complaint are as under: -

**Nature of real estate project: Multi-storey apartments
(Low cost group housing project)**

Registered/ Not registered: Not registered

DTCP license: 13 of 2012 dated 22.02.2012. License expired on 22.02.2016.



1.	Name and location of the project	"Our Homes" in Village Gadoli-Khurd, Sector 37-C, Gurugram
2.	Unit no.	343, 3 rd floor, tower-Orchid
3.	Project area	10.144 acres

4.	Date of booking	13.06.2013
5.	Date of apartment buyer's agreement	12.07.2013
6.	Total consideration	Rs. 16,00,000/- plus applicable taxes
7.	Total amount paid by the complainant	Rs. 15,20,000/- + applicable taxes (as per the complaint)
8.	Payment plan	Time linked payment plan
9.	Date of delivery of possession	Clause 3(a) – 36 months from date of commencement of construction + 6 months grace period, i.e. 02.06.2017 [Consent to establish granted on 02.12.2013]
10.	Delay of number of months/ years upto 08.02.2019	1 year 8 months and 6 days
11.	Penalty clause as per apartment buyer's agreement dated 12.07.2013	Clause 3(c)(iv)- Rs. 10/- per sq. ft. per month



5. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A apartment buyer agreement is available on record for unit no. 343, 3rd floor, tower-Orchid according to which the possession of the aforesaid unit is to be delivered by 02.06.2017. Neither the

respondent has delivered the possession of the said unit till date to the purchaser nor it has paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 12.07.2013. Therefore, the promoter has not fulfilled his committed liability as on date.

6. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Thereafter, again notice was send to respondent but despite service of notice the respondent neither appeared nor file its reply to the authority and complaint. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondent.



Facts of the complaint

7. The complainant submitted that relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under government of Haryana affordable housing scheme and was allotted apartment no. 343, 3rd floor, tower-Orchid having a carpet area of approximately 48 sq. metres vide apartment buyer's agreement dated 12.07.2013.
8. The complainant submitted that sale price of the apartment was of Rs.16,00,000/-, payable by the apartment allottee as per payment plan and consequently the complainant had made the payment of Rs. 15,20,000/- in total.
9. The complainant submitted that as per the apartment buyer's agreement, the respondent had promise the complainant to handover the physical possession of the apartment within a period of thirty six months with a grace period of 6 months.
10. The complainant submitted that he several times requested the respondent telephonically as well as made personal visits at the office for the delivering the possession of the apartment.



The complainant met with the officials of the respondent in this regard and completed all the requisite formalities as required by the respondent but despite that the officials of respondent company did not give any satisfactory reply to the complainant.

11. The complainant submitted that quality of construction is also a concern as the internal wall plaster of the allotted unit sand came to the hand and it seems that it was not mixed with the right proportion of cement. It is pertinent to note that this is not a private project and the licence is issued under a government affordable housing scheme. This is the utmost factor of the complaint as this is not related to hard earned money/ financial losses of the buyer but it is directly related to the life of buyer and his family.

12. The complainant submitted that some buyer of this projects have filed complaint about this delay in CM window and one of the complaint has been forwarded to DTP office, Sector 14, Gurugram. On request of some buyer Mr. R.S Batt visited the site along with ATP Mr. Manish on 15.01.2018 and at that



point we came to know that builder licence has been expired and not renewed.

13. Issues raised by the complainants are as follows:

- i. Whether the respondent delayed in handing over the possession of the unit to the complainant?
- ii. Whether the quality of construction/building material is of low quality due to which by touching the wall plaster its sand comes in hand?
- iii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?

14. Relief sought:

The complainant is seeking the following reliefs:

- i. Interest charged by the builder @ 18% p.a. on delayed payment therefore respondent should pay as per below details:

Respondent be directed to pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to be calculated as and when the thirty six months was completed and



thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente -lite.

- ii. To pay a sum of Rs.10,000/- as cost of litigation
- iii. To direct the builder to offer immediate possession of the said flat along with any interest as the hon'ble authority may deem fit.
- iv. Any other relief, which the hon'ble authority may deems fit and proper be also granted in favour of the complaint and against the respondent.

Determination of issues

After considering the facts submitted by the complainant and perusal of record on file, the authority decides seriatim the issues raised by the parte as under:

15. In respect to the **first and third issues** raised by the complainant the authority came across that as per clause 3(a) of apartment buyer's agreement dated 12.07.2013 which states that the possession of the flat was to be handed over



within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent on 2.12.2013. Therefore, the due date of handing over possession will be computed from 2.12.2013.

Accordingly, the due date of possession comes out to be 02.06.2017. Thus, the possession has been delayed by one year eight months and six days till the date of decision. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said flat as per clause 3(c)(iv) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on



delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

16. As the possession of the flat was to be delivered by 02.06.2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Therefore, under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 02.06.2017 upto the date of offer of possession.



17. With respect to the **second issue** raised by the complainant, the complainant has provided no proof but only assertion with respect to sub-standard quality of construction. Therefore, the allottee may visit the site to ascertain the quality of

construction. The counsel for the respondent is also directed to submit a certificate that construction is being carried out according to the provisions of the Haryana Building Code with further directions to file an affidavit regarding payment of EDC, IDC to the competent authorities. As per section 14 of the Real Estate (Regulation and Development) Act, 2016, the promoter is duty bound to comply with the specifications as approved by the competent authority. The District Town Planner, Gurugram is directed to visit the site along with the Superintendent Engineer, HUDA Gurugram to ascertain the quality of the construction and in case, quality of construction is found to be of sub-standard or not as per the specifications, action shall be taken against the promoter as per terms and conditions of the license. The promoter is also directed to carry out construction as per approved specifications. In case, it comes to the notice of the authority that quality of construction is not as per specifications, it will be treated as violation of the directions of the authority and necessary penal proceedings shall be initiated against them.



Findings of the authority

18. **Jurisdiction of the authority-** The project “Our Homes” is located in Village Gadoli-khurd, sector 37-C, 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 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 ***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.

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



20. The complainant 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.
21. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
22. 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.
23. Complaint was filed on 01.08.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 27.08.2018, 04.12.2018 and 19.12.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 04.12.2018 and on 19.12.2018 respectively for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated



conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint.

24. A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.
25. As per clause 3(a) of the apartment buyer's agreement dated 12.07.2013 for unit no. 343, 3rd floor, tower Orchid in project "Our Homes" in village Gadoli-Khurd, Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction + 6 months grace period and consent to establish was granted on 02.12.2013. Therefore, the due date of handing over possession will be computed from 02.12.2013 which comes out to be 02.06.2017. However, the respondent has not delivered the unit in time. Complainant has already



paid Rs.15,20,000/- to the respondent against a total sale consideration of Rs. 16,00,000/-. In view of the failure on the part of the respondent to deliver the booked unit to the complainant in time, complainant shall be entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 02.06.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY:

26. 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 issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the respondent from



the due date of possession i.e. 02.06.2017 upto the date of 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 offer of possession shall be paid before 10th of subsequent month.

27. 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. A copy of this order be endorsed to registration branch for further action in the matter.

28. The order is pronounced.

29. Complainant stands disposed of.

30. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 08.02.2019

Judgement uploaded on 27.02.2019

