

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 31.01.2019
Complaint No.	1420/2018 Case Titled As K N Pandey V/S M/S Tulip Infratech Private Limited
Complainant	K N Pandey
Represented through	Shri Sanjeev Sharma Advocate for the complainant.
Respondent	M/S Tulip Infratech Private Limited
Respondent Represented through	Shri Sudesh Ranjan Singh Advocate for the respondent.
Last date of hearing	First hearing
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.

As per clause 16 (a) of Builder Buyer Agreement dated 12.11.2012 for unit No.B-10/701, 7<sup>th</sup> floor, in project "Tulip Violet" Sector-69, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commence of construction of particular tower or

sanctioned of other approvals such as environment. It was a time linked payment plan. Now considering all aspect of the matter including the date of environment clearance given by the competent authority, the period of 36 months were to be counted from the date of environment clearance i.e. 15.3.2016. However, in view of prevailing circumstances, it has been stated at bar by counsel for the complainant that they have taken possession on 31.3.2018. No conveyance deed has been got registered so far. The respondent is demanding unnecessarily maintenance charges which has been denied by the respondent's counsel on an affidavit. As such, this point is nullified. It has been stated at bar by counsel for respondent that they have received occupation certificate vide No.ZP-663/SD(B5)/2017 6098 dated 30.3.2017. As per environment certificate dated 15.3.2016, the due date of offer of possession is 15.3.2019. As such, since the respondent has handed over the possession of the flat/unit apriori, as such, no delay charges can be allowed. The allottee/complainant is directed to get his conveyance deed executed within a period of three months.

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

Samir Kumar  
(Member)  
31.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no.** 1420 of 2018  
**Date of first hearing** 31.01.2019  
**Date of decision** 31.01.2019

Mr. K.N. Pandey  
R/o 82, Arjun Marg, DLF Phase I, Gurugram-  
122001, Haryana

**Complainant**

versus

M/s Tulip Infratech Private Limited  
**Office** : 12<sup>th</sup> floor, Indra Prakash Building,  
Barakhamba Road, New Delhi

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Sharma Advocate for the complainant

Shri Sudesh Ranjan Singh Advocate for the respondent

**ORDER**

1. A complaint dated 23.10.2018 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 Mr. K.N. Pandey against the promoter M/s Tulip Infratech Private Limited, on



account of violation of clause 16 (a) of the agreement executed on 12.11.2012 for unit no. B10/701 on 7<sup>th</sup> floor, admeasuring super area of 1578 sq. ft. in the project “Tulip Violet” for violation of obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the agreement was executed on 12.11.2012 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 are as under: -

1.	Name and location of the project	“Tulip Violet” in Sector 69, Gurugram
2.	Nature of real estate project	Residential group housing colony
3.	Project area	25.44 acres
4.	Current status of the project	Occupation certificate dated 31.03.2017 received and Possession offered vide letter dated 31.03.2018
5.	Unit no.	B10/701, 7 <sup>th</sup> floor



6.	Unit area	1578 sq. ft super area
7.	Registered/ not registered	Not registered
8.	Registration certificate no	Not applicable
9.	Completion date as per registration certificate	Not applicable
10.	DTCP license	78 of 2010
11.	Date of agreement	12.11.2012
12.	Date of agreement to sell	17.05.2013
13.	Total sale consideration	Rs 97,57,450/- (as per agreement to sell dated 17.05.2013)
14.	Total amount paid by the complainant	Rs 92,69,769/- (as per statement of accounts attached to letter of offer of possession dated 15.09.2016)
15.	Payment plan	Time linked payment plan
16.	Date of delivery of possession (As per clause 16 (a) - 36 months from the date of commencement of construction of the particular tower in which the flat is located, on receipt of sanction of the building plans/revised building plans and all other approvals. The date of receipt of all sanctions, approvals shall be treated as date of commencement of particular tower) <b>(Date of environment clearance : 15.03.2016)</b>	<b>15.03.2019</b>
17.	Delay of number of months/ years upto 31.01.2019	Premature



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An agreement dated 12.11.2012 is available on record for unit no. B10/701 on 7<sup>th</sup> floor admeasuring super area of 1578 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 15.03.2019.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The reply has been filed on behalf of the respondent and has been perused.

#### **Facts of the complaint**

6. The complainant submitted that the original buyer Mr Ashok Kumar purchased a residential flat bearing no B-10/701 from the respondent and allotment letter dated 12.11.2012 of the above said flat was issued by the respondent. Agreement was executed between the respondent and the Mr. Ashok Kumar on 12.11.2012 on the assurance that construction shall be complete in time and possession would be handed over in time as per clause 16 of the agreement was to be handed over within 36 months i.e lastly by November 2015.



7. The complainant also submitted that the original buyer Mr Ashok Kumar vide agreement to sell dated 17.05.2013 sold the above said flat in question to the complainant herein and surrendered all his rights in flat in favour of the complainant herein.
8. The complainant also submitted that the factum regarding the sale of the flat in question by the said Mr Ashok Kumar was informed to the respondent vide duly filled application dated 21.05.2013 and endorsement to above said extent was made on the original agreement.
9. The complainant also submitted that he paid all instalments as demanded by the company time and again. However the flat in question was still far away from completion.
10. The complainant also submitted that the respondent issued offer of possession letter on 15.09.2016 to the complainant herein calling upon him to take possession of the flat in question. However when the complainant went to take possession, he was shocked to see that the flat was not ready for possession and the occupation certificate and completion



certificate was still not received by the respondent. Hence the complainant did not take possession.

11. The complainant again and again requested the respondent to get the finishing work of the flat in question completed, the same factum also finds mention in the email dated 25.10.2017 sent by the complainant to the respondent in which email the complainant requested the respondent to issue the possession letter at the earliest.
12. The complainant also submitted that aggrieved by the deficiency in service by the respondent, he had also made complaint to the CM Grievances Redress.
13. The complainant also submitted that he requested the respondent for sometime to arrange money for the stamp duty payable for the execution of the sale deed and also gave PDC for the same.
14. The complainant finally submitted that the respondent issued possession handing over letter dated 31.03.2018 to the complainant after a delay of almost 3 years finally received the possession of the unit in question.





15. The complainant also submitted that though the possession of the unit in question was received on 31.03.2018, the respondent forcibly charged maintenance charges from the complainant from 01.12.2016 to 30.11.2018.

### Issues raised by the complainant

16. The relevant issues raised in the complaint are:

- i. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant?
- ii. Whether the respondent is liable to pay interest @ 24 % per annum to the complainant on amount received by the respondent from the complainant?
- iii. Whether open parking space and parking in common basements be sold to the allottees as separate unit by the promoter, which the respondent has sold as separate units in certain cases and if not than the amount so collected be returned back to the allottees from whom charged?



- iv. Whether the respondent can sell super area in place of carpet area to the allottees, if no then whether the respondent is liable to return the extra money if charged from allottees on account of selling super area for monetary consideration?
- v. Whether the respondent can charge maintenance charges from the complainant from 2016 through the possession of the unit has been in actual handed over on 31.03.2018?
- vi. Whether actions should be taken against the respondent for their failure of not obtaining insurances as prescribed under section 16 of the Act?

**Relief sought**

17. The reliefs sought by the complainant are as follows :-

- i. To direct the respondent to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas and which sale of common area is in total contradiction of



the Act, for the reason as per the Act the monetary consideration can only be for the carpet area.

- ii. To direct the respondent to pay interest accrued at the rate of 24% per annum on amount collected by the respondent from the complainant, on account of delayed offer for possession.
- iii. To refund money collected on account of selling any common area car parking including basement car park, which is not garage.
- iv. To order the respondent to adjust the maintenance charges collected for the period before the handing over the possession to the complainant against the future maintenance charges.
- v. To direct the respondent to pay litigation cost @ Rs. 50,000/- to the complainant.
- vi. To pass order against the respondent in terms of section 59 of the RERA Act, 2016 for the failure on part of the respondent to register itself with this authority under the Act, 2016



### Respondent's reply

18. The respondent submitted that this authority lacks the jurisdiction to entertain, decide and adjudicate upon the matter in controversy as alleged vide this purported complaint. In fact as a matter of fact the project namely "Tulip Violet" wherein the flat and tower subject matter of the dispute didn't come within the purview of this authority, as alleged. Pertinently, the receipt of part occupancy certificate dated 31.03.2017 curtails the jurisdiction of this authority to entertain any such dispute with respect to the aforesaid tower/flat in question.
19. The respondent submitted that the complainant is guilty of supprecio materia who has deliberately withheld and suppressed and concealed various material documents including the conveyance deed.
20. The respondent submitted that the complainant has approached this authority with unclean hands, dishonestly, disentiing him from getting any relief in this case
21. The respondent submitted that the complainant is himself a wrongdoer and has committed not only criminal breach of



trust but also breached the contractual terms and conditions as embodied under the contract duly agreed and endorsed by the complainant and thus can't claim any entitlement for any equitable relief.

22. The respondent submitted that it is apparent on the face of record seems that the complainant is incapable of purchasing the flat. Therefore, in order to cause undue harassment to the respondent the complainant has oppressed various facts and meticulously knitted this web around the respondent to trap it and henceforth has filed this present complaint on the frivolous and fabricated grounds which deserves dismissal straightaway.

23. The respondent also submitted that the present complaint is hopelessly barred by the law of estoppels. Since on the one hand the complainant prays for handing over physical possession of the flat without the execution of the conveyance deed and filing complaints before the authorities and once receiving physical possession at his own wits and whims that too without execution of the conveyance deed renders his acts mischievous and cheating.



24. The respondent also submitted that the respondent's right to sue survives in favour of the respondent against the complainant firstly for trespassing in the flat in question without the execution of the conveyance deed dishonestly and secondly for payment of holding charges, IBMS including other related & allied charges but not limited to use and occupation charges to be in illegal possession without the execution of the conveyance deed as mandate vide relevant rules and regulations.

25. The respondent also submitted that the respondent respectfully submits that the delay, if any, under consideration was made by the complainant voluntarily and consciously. Therefore, if his voluntarily acts result into some injury to the complainant he cannot be allowed to blame the respondent for the consequences and ensuing there from. The principle of "Voluntee non-fit injuria" squarely applies to the complainant.



### **Determination of issues**

26. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the

authority decides seriatim the issues raised by the parties as under:

27. In respect of the **first issue and second issue**, as per clause 16 (a) of the agreement dated 12.11.2012 the respondent is bound to deliver the possession of the booked unit within 36 months from the date of commencement of construction of the particular tower in which the flat is located, on receipt of sanction of the building plans/revised building plans and all other approvals i.e due date of 15.03.2019. However the respondent has offered possession on 31.03.2018. As the respondent has not caused any delay, therefore the respondent is not liable to pay any delay interest.
28. In respect of the **third issue**, the authority is of the opinion that according to clause 9 (c) of the agreement dated 12.11.2012 executed between both the parties, open parking spaces and parking in common basements cannot be sold by the promoter as separate units independently.
29. In respect of the **fourth issue**, the agreement was executed between both the parties on 12.11.2012 i.e before the date of commencement of Real Estate (Regulation and Development) Act, 2016 and the provisions of the Act ibid are prospective in



nature. Therefore, the respondent is not bound to sell the booked unit at carpet area.

30. In respect of the **fifth issue**, the respondent is demanding unnecessary maintenance charges which has been denied by the respondent counsel on affidavit. As such this point is nullified.

35. In respect of the **sixth issue**, the agreement was executed between both the parties on 12.11.2012 i.e before the date of commencement of Real Estate (Regulation and Development) Act, 2016 and the provisions of the Act ibid are prospective in nature. Therefore the respondent is not liable under obligation to obtain insurance under section

#### **Findings of the authority**

36. **Jurisdiction of the authority**- The project "Tulip Violet" is located in Sector 92, 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.

37. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.

38. In the present case, as per clause 16 (a) of builder buyer agreement dated 12.11.2012 for unit no B-10/701, 7<sup>th</sup> floor, in project "Tulip Violet" Sector-69, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of commencement of construction of particular tower or sanctioned of other approvals such as environment. It was a time linked payment plan. Now considering all aspect of the matter including the date of environment clearance given by the competent authority, the period of 36 months were to be counted from the date of environment clearance i.e. 15.3.2016. However, in view of prevailing circumstances, it has been stated at bar by counsel



for the complainant that they have taken possession on 31.3.2018. No conveyance deed has been got registered so far. The respondent is demanding unnecessarily maintenance charges which has been denied by the respondent's counsel on an affidavit. As such, this point is nullified. It has been stated at bar by counsel for respondent that they have received occupation certificate vide no. ZP-663/SD(B5)/2017 6098 dated 30.3.2017. As per environment certificate dated 15.3.2016, the due date of offer of possession is 15.3.2019. As such, since the respondent has handed over the possession of the flat/unit as such, no delay charges can be allowed.

### **Decision and directions of the authority**

38. 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 allottee/complainant is directed to get his conveyance deed executed within a period of three months



39. The order is pronounced.

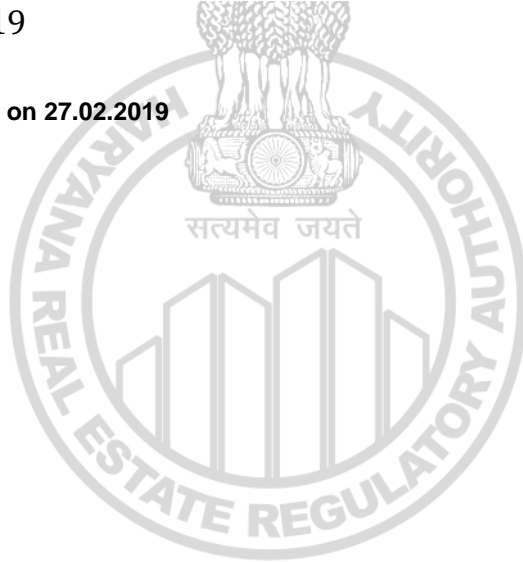
40. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 31.01.2019

Judgement uploaded on 27.02.2019



HARERA  
GURUGRAM

