

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 14.02.2019
Complaint No.	884/2018 Case Titled As Satya Prakash V/S M/S Mapsko Builders Pvt. Ltd.
Complainant	Satya Prakash
Represented through	S/Shri Abhay Jain and Kamal Sharma Advocates for the complainant
Respondent	M/S Mapsko Builders Pvt. Ltd.
Respondent Represented through	Shri Sanjeev Dhingra Advocate for the respondent.
Last date of hearing	15.1.2019
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

Proceedings
Project is registered with the authority.

Arguments heard.

As per clause 18 (a) of the Builder Buyer Agreement dated 20.11.2012 for unit No.1901, 18th floor, Block-G, in project "Mapsko Mount Villa" Sector-78-79, Gurugram, possession was to be handed over to the complainant within a period of 48 months from the date of execution of BBA + 6 months grace period which comes out to be **20.5.2017**. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.74,92,039/- to the respondent against a total sale consideration of Rs.87,84,804/-. The respondent has not delivered the possession of the unit to the complainant as on date. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f

20.5.2017 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.

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

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

Samir Kumar
(Member)
14.02.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 884 of 2018
First date of hearing : 21.12.2018
Date of Decision : 14.02.2019

Mr. Satya Prakash
H.no. 39/6, Hans Park, near A- Block, Palam
Vihar, Gurugram

Complainant

Versus

M/s Mapsko Builder Pvt Ltd.
Office: 125, 1st floor, Vipul Agora, MG Road,
Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Abhay Jain and Shri Kamal Sharma Advocates for the complainant

Shri Sanjeev Dhingra Advocate for the respondent



ORDER

1. A complaint dated 09.09.2018 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 complainant Mr. Satya

Prakash, against the promoter M/s Mapsko Builder Pvt. Ltd. on account of violation of the clause 18(A) of flat buyer's agreement executed on 20.11.2012 in respect of retail space described as below for not handing over possession on the due date i.e. 20.05.2017, which is an obligation under section 11(4)(a) of the Act ibid.

2. Since, the flat buyer's agreement has been executed on 20.11.2012 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 are as under: -

DTCP licence no. 38 of 2012 dated 12.04.2012 valid upto 21.04.2016

DTCP licence renewed on 30.08.2016 valid upto 21.04.2018



**DTCP licence renewed on 06.08.2018 valid upto
21.04.2020**

Nature of project: residential group housing colony

1.	Name and location of the project	Mapsko Mount Ville, Sector 78 -79, Gurugram
2.	Project area	16.369 acres
3.	Unit No.	1901, 18 th floor, tower G
4.	Unit area	1490 sq. ft.
5.	Registered/unregistered	Registered (328of 2017) dated 23.10.2017
6.	Revised date of completion as per registration certificate	30.11.2019
7.	Date of agreement	20.11.2012
8.	Basic sale price	Rs. 68,08,704/-
9.	Total consideration	Rs. 87,84,804/- as per agreement
10.	Total amount paid by the complainant	Rs.84,86,804/-as per applicant ledger dated 01.08.2018
11.	Payment plan	Instalment linked plan
12.	Date of delivery of possession as per clause 18(A) (48 months from date of execution of the agreement plus 6 months grace period)	20.05.2017
13.	Delay in handing over possession from due date till offer of possession	1 year and 9 months
14.	Penalty clause as per flat buyer's agreement	Clause 18(A) of the agreement i.e Rs.5 per sq. ft. per month for such period of delay



4. As per the details provided above, which have been checked as per record of the case file. An flat buyer's agreement is available on record for unit no. 1901, 18th floor, block G. The promoter has failed to deliver the possession of the said unit to the complainant. 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 for appearance. Accordingly, the respondent appeared on 21.12.2018. The case came up for hearing on 21.12.2018, 15.01.2019 and 14.02.2019. The reply has been filed on behalf of the respondent.

Facts of the case

6. The complainant submitted that his grievance relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent, M/s Mapsko Builders Pvt. Ltd. in regards to flat / unit no.-1901, floor-18, block / tower - G, admeasuring 1490 sq. ft. bought by him, spending his hard earned money,



in the project called 'Mapsko Mount Ville' in Sector 78-79, Gurugram, Haryana.

7. The complainant submitted that he has paid, as and when demanded, Rs.74,87,687/-, 99% payable amount, which is more than 88% of the total consideration of the said flat. The respondent has failed to deliver the possession of the flat as per the flat buyer's agreement, i.e. by 20.05.2017. Even after a delay of more than one (1) year and nine (9) months, till date the company, M/s Mapsko Builders Pvt. Ltd. had failed in offering possession of the flat.
8. The complainant submitted that since no construction activities are in progress at the project site, the complainant has lost complete faith in the respondent, withdraws from the project and demands refund of deposited amount with interest.
9. The complainant submitted that respondent/ seller/ builder/ promoter published very attractive brochure highlighting the residential group housing complex "Mapsko Mount Ville" at Sector - 78-79, Gurugram, Haryana. The respondent claimed to be one of the best and finest in



construction and one of the leading real estate developers of the country in order to lure prospective customers to buy flats / apartments in the said Mapsko Mount Ville. There are fraudulent misrepresentations, incorrect and false statements in the brochure as is appended as annexure-01.

The complainant invites attention of the hon'ble chairman of Haryana Real Estate Regulatory Authority, Gurugram to section 12 of the Act, 2016 regarding the same. Mapsko Mount Ville project was launched in 2012 with the promises to deliver in time and huge funds were collected over the period by the respondent. Even after taking more than eighty eight per cent (88%) payments, the builder fails to offer the possession of the flat, which was scheduled to be delivered by 20.11.2016.



10. The complainant submitted that he was approached by the representatives of the company. Their sale representatives claimed and boasted of the project 'Mapsko Mount Ville' as the world class project. The complainant was invited to the sale office and was lavishly entertained and promises were made to them that the project would be completed by

November 2016, including parking, horticulture, parks, club, and other common area facilities. The complainant was impressed by their statements and oral representations and ultimately lured to pay Rs.14,03,818/- as booking amount of the flat by July 2012.

11. The complainant submitted that the flat buyer's agreement, the respondent has fraudulently and illegally charged from the complainant such charges separately which ought to be inclusive in basic sale price as the parking charges, club membership charges, preferential location charges, thereby violates the basic nature of the agreement between the parties.
12. The complainant submitted that he has taken substantial amount of loan of Rs.59,00,000/- from the State Bank of India (SBI) for buying his flat in May 2013, and thereafter the complainant is paying rupees fifty two thousand six hundred fifty five (Rs.52,655/-) as equated monthly instalments (EMI).
13. The complainant submitted that respondent has in an unfair manner siphoned of funds meant for the project 'Mapsko



Mount Ville' and utilised the same for company's own benefit for no cost. The respondent being builder and developer, whenever in need of funds from bankers or investors ordinarily has to pay heavy interest per annum. However in the present scenario, the respondent utilised funds collected from the complainant and other such buyers for company's own good in other projects, being developed by the respondent, due to which the project is not yet complete and is not in a position to be completed soon.

14. The complainant submitted that he intends to withdraw from the project. As per obligations on the respondent/promoter under section 18(1), the promoter is obligated to pay the complainant interest at the prescribed rate per annum as per the Act, 2016 from the date of booking. The respondent/promoter has not fulfilled his obligations. The complainant reserves his right to seek compensation from the promoter for which the complainant shall make a separate application to the adjudicating officer, in case if it is required.



15. The complainant submitted that the Haryana Real Estate Regulatory Authority, Gurugram has the requisite jurisdiction to entertain the present complaint in view of the provisions of sections 12, 13, 18, 19, 31, 34(F), 37 of the Real Estate (Regulation and Development) Act, 2016.

Relief sought and issues raised by the complainant:

16. The complainant, most humbly and respectfully prays in the interest of justice:

- i. Direct the respondent to return/refund full amount deposited by the complainant amounting rupees seventy four lakh eighty seven thousand six hundred eighty seven only (Rs. 74,87,687/-) with an interest of 21% per annum, as the builder has already charged interest at the rate of 21% per annum from the complainant for the delay payment or at the rate prescribed by the Act, 2016
- ii. Direct the respondent to pay legal expenses of Rs.1 lakh incurred by the complainant.
- iii. Any other damages, interest, relief which the hon'ble authority may deem fit and proper under the



circumstances of the case may kindly be passed in the favour of the complainant and against the respondent.

Respondent's reply

17. The respondent submitted that company duly incorporated under the Companies Act, 1956 and being sued through its chairman cum managing director. It is admitted that company is engaged in the business of development and construction activities. It is submitted that project namely "Mapsko Mount Ville" being developed over an area of 16.369 acres after obtaining licence no. 38 of 2012 from the office of the Director General Town and Country Planning, Haryana, Chandigarh. The said residential group housing project registered under RERA bearing RERA registration no. 328 of 2017 dated 23.10.2017 being developed by the respondent at village Naurangpur, Sector 78-79, Gurugram-122001. The above said registration shall be valid for a period commencing from 23.10.2017 to 30.11.2019. It is further submitted that as per clause 18 of the agreement dated 20.11.2012 the promoter shall endeavour to complete the construction of the said flat within a period of 48 months



from the date of signing of this agreement with the buyer or within an extended period of six months, subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of promoters.

18. The respondent denied that present complaint lies due to gross indifference, refusal, failure of the various obligations on the part of the respondent, firstly enticing various customers including the complainant to spend their hard earned money in the purchase of a residential flat in the said project known as "Mapsko Mount Ville" in Sector 78-79, Gurugram. It is admitted that flat buyer's agreement was signed on 20.11.2012. It is matter of record that complainant has already paid more than 88% cost of the flat as and when demanded by the respondent on the promises and commitments that offer of possession of the flat, in the said residential complex, will be delivered in time to the complainant. Further it is pertinent to mention that complainant opted construction link payment plan and the



respondent demanded due instalment as per the status or level of the construction.

19. The respondent submitted that he constructed the project as the same was published in the brochure or advertisement and provide the all facility as per brochure or advertisement.

It is further submitted that structure work of all the towers in the project is completed, brick work along with internal plaster is at completion stage and finishing work is going on. On the pace and status of construction, the respondent will be able to offer the possession of the flat within next few months.

20. The respondent submitted that as per clause 18 of the agreement dated 20-11-2012 the promoter shall endeavour to complete the construction of the said flat within a period of 48 months from the date of signing of this agreement with the buyer or within an extended period of six months, subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of promoters. It is further submitted that structure work of all the towers in the project is completed, brick work along



with internal plaster is at completion stage and finishing work is going on. On the pace and status of construction, the respondent will be able to offer the possession of the Flat within next few months.

21. The respondent submitted that it has spent the huge amount on the project towards the acquisition and development of the project and for which they borrowed the loan from the bank. The respondent submitted the complete details in RERA at the time of registration of project and all the external and internal development charges (EDC/IDC payable by the company to HUDA) have been fully paid as per schedule and license conditions. This means that the proportionate share pertaining to the complainant's booked unit has also been paid on schedule. In turn the amount received by the company from its clients is much lesser than the amount spent. It is further submitted that structure work of all the towers in the project is completed, brick work along with internal plaster is at completion stage and finishing work is going on. On the pace and status of construction, the



respondent will be able to offer the possession of the Flat within next few months.

22. The respondent submitted that as per clause 18 of the agreement dated 20-11-2012 the promoter shall endeavour to complete the construction of the said flat within a period of 48 months from the date of signing of this agreement with the buyer or within an extended period of six months, subject to force majeure conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of promoters. It is further submitted that structure work of all the towers in the project is completed, brick work along with internal plaster is at completion stage and finishing work is going on. On the pace and status of construction, the respondent will be able to offer the possession of the flat within next few months.



23. The respondent submitted that hon'ble authority has no jurisdiction to decide the claim of complainant and interest as falsely prayed by the complainant.

Determination of issues

24. With respect to the **issues raised** by the complainant, it is observed that as per clause 18(A) of the flat buyer's agreement dated 20.11.2012 the possession of the said unit is supposed to be delivered within 48 months + grace period of 6 months from the date of signing of the said agreement. Thus, the due date shall be computed from 20.11.2012 and the possession date comes out to be 20.05.2017. Thus, the clause regarding the possession of the said unit is reproduced below:

"18(a)Schedule for the possession of the said unit

The developer based on its present plans and estimates and subject to all just exceptions/force majeure/ statutory prohibitions/court's order etc., contemplates to complete the construction of the said building/said unit within a period of 48 months from the date of execution of this agreement plus 6 months grace period."

Accordingly, the due date of possession was 20.05.2017 and the possession has been delayed by one year seven months till the date of decision. As the promoter has failed to offer possession by the due date, the complainant will be entitled to delayed possession charges at prescribed rate of interest



from due date of possession till offer of possession. The respondent shall adjust delay payment charges, if any.

25. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. As the project is also registered with the authority vide registration no. 328 of 2017 and is valid upto 30.11.2019. Therefore, the relief sought by the complainant cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainant shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.



Findings of the Authority

26. **Jurisdiction of the authority-**

Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

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.

Territorial Jurisdiction

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 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.

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.

27. As per clause 18 (A) of the flat buyer's agreement dated 20.11.2012 for unit no.1901, 18th floor, block-G, in project "Mapsko Mount Villa" Sector-78-79, Gurugram, possession was to be handed over to the complainant within a period of 48 months from the date of execution of BBA + 6 months grace period which comes out to be 20.05.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.74,92,039/- to the respondent against a total sale consideration of Rs.87,84,804/-. The respondent has not delivered the possession of the unit to the complainant as on date. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 20.05.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.



28. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.
29. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the 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 its obligation.

Decision and directions of the authority

31. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- 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 w.e.f 20.05.2017 till 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 on or before 10th of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

32. The complaint stands disposed of.

33. The order is pronounced.

34. Case file be consigned to the registry.

(Samir Kumar)

(Subhash Chander Kush)

Member

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated 14.02.2019

Judgement Uploaded on 01.03.2019

