

**PROCEEDINGS OF THE DAY**

|                                |   |
|--------------------------------|---|
| Day and Date                   | Tuesday and 26.02.2019  |
| Complaint No.                  | 647/2018 case titled as Mr. Avinash Gupta Vs M/s Apex Buildwell Pvt. Ltd. |
| Complainant                    | Mr. Avinash Gupta   |
| Represented through            | Complainant in person with Shri Ashutosh Kumar Advocate.                  |
| Respondent                     | M/s Apex Buildwell Pvt. Ltd.  |
| Respondent Represented through | Shri Sandeep Choudhary Advocate for the respondent.                       |
| Last date of hearing           | 22.1.2019   |
| 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.

Averments made by the counsel for the respondent shall be adjudged at the time of registering of the project.

Report of Local Commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

**"Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%."**

As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

A plea has been taken by the counsel for the respondent that the licence could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.1.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

As per clause 3(a) of the Builder Buyer Agreement dated 18.02.2012 for unit No.815, 8<sup>th</sup> floor, Tower Jasmine in project 'Our Homes', Sector 37-C Gurugram, possession was to be handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 2.12.2013 + 6 months grace period which comes out to be 2.6.2017. However, the respondent has not delivered the unit in time. It was a construction linked

plan. Complainant has already paid Rs.14,85,512/- to the respondent against a total sale consideration of Rs. 16,00,000/-. As such, complainant is 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 10<sup>th</sup> 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)  
26.2.2019

Subhash Chander Kush  
(Member)

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

**Complaint No. : 647 of 2018**  
**Date of First**  
**Hearing : 13.12.2018**  
**Date of Decision : 26.02.2019**

Sh. Avinash Gupta  
R/o House no. 113, Sector-5, Part-6,  
Gurugram, 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 Avinash Gupta Complainant in person  
Shri Ashutosh Kumar Advocate for the complainant  
Shri Sandeep Choudhary 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 complainant Sh. Avinash Gupta, 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 18.02.2013 for unit no. 815, 8<sup>th</sup> floor, tower-'Jasmine' in the project 'Our Homes' for not giving possession on the due date, i.e. 2<sup>nd</sup> June, 2017 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

|    |                                     |   |
|----|-------------------------------------|---|
| 1. | Name and location of the project    | "Our Homes" in Village Gadoli- khurd, Sector 37-C, Gurugram   |
| 2. | Unit no.                            | 815, 8 <sup>th</sup> floor, tower-Jasmine   |
| 3. | Project area                        | 10.144 acres  |
| 4. | Nature of real estate project       | Multi-storey apartments (Low cost group housing project)  |
| 5. | Registered/ Not registered          | <b>Not registered</b>   |
| 6. | DTCP license                        | 13 of 2012 dated 22.02.2012. License expired on 22.02.2016. Renewal fees submitted but not renewed. |
| 7. | Date of booking                     | 28.12.2012  |
| 8. | Date of apartment buyer's agreement | 18.02.2013  |
| 9. | Total consideration                 | Rs. 16,00,000/- (BSP, as per clause 1.2 of the agreement, pg 20 of the                              |



|     |  |   |
|-----|--|---|
|     |  | complaint)  |
| 10. | Total amount paid by the complainant                               | Rs. 14,85,152/- (as per the complaint)  |
| 11. | Payment plan   | Construction linked payment plan (as per pg 61 of the complaint)  |
| 12. | Date of delivery of possession                                     | Clause 3(a) – 36 months from date of commencement of construction of complex upon receipt of all project related approvals + 6 months grace period, i.e. <b>02.06.2017</b><br><br><b>[Consent to establish granted on 02.12.2013]</b> |
| 13. | Delay of number of months/ years upto 13.12.2018                   | 1 year 3 months   |
| 14. | Penalty clause as per apartment buyer's agreement dated 22.02.2017 | Clause 3(c)(iv)- Rs. 10/- per sq. ft. per month   |

3. 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 builder buyer agreement is available on record for unit no. 815, 8th floor, tower-Jasmine 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 they have 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 18.02.2013. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 13.12.2018, 22.01.2019 and 26.02.2019. The reply filed on behalf of the respondent has been perused. A rejoinder has been filed by the complainant on 12.12.2018 wherein he has re-asserted the facts stated in the complaint and has denied the assertions of the respondent made in his reply.

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

5. On 28.12.2012, the complainant booked a unit in the project named "Our Homes" in Village Gadoli-khurd, Sector 37-C, Gurugram by paying an advance amount of Rs 4,12,360/- to the respondent. Accordingly, the complainant was allotted a unit bearing 815, 8<sup>th</sup> floor, tower-Jasmine having a carpet area of approximately 48 sq. mtrs.
6. On 18.02.2013, apartment buyer's agreement was entered into between the parties wherein as per clause 3(a), the construction should have been completed within 36 months





+ 6 months grace period from the date of commencement of construction. However, till date the possession of the said unit has not been handed over to the complainant despite the launch of the project on 31.08.2012. The complainant made payments of all instalments demanded by the respondent amounting to a total of Rs 14,85,152/-.

7. The complainant submitted that since the date of booking, he has been visiting at so called proposed site, where he found that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
8. The complainant submitted that on several occasions, he requested the respondent telephonically as well as through personal visits at their office for delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondent but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and the lingered the on one pretext or the other and refused to deliver the possession of the above said flat.





9. The complainant submitted that the respondent by providing false and fabricated advertisement, thereby concealed true and material facts about the status of the project and mandatory regulatory compliances, and thus wrongfully induced the complainant to deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat him and cause wrongful loss to him and in this process the respondent gained wrongfully, which is purely a criminal act.
10. The complainant submitted about his concerns about the construction quality as when he checked the internal wall plaster of his allotted unit, its sand came to his hand and it seemed as if the sand was not mixed with right proportion of cement. The complainant requested that some concerned authority which issued license to the builder be held accountable and there should be adopted some mechanism in order to check the basic construction quality as otherwise there will be a risk of life of more than 1100 families who will start living there. It is thus requested to check the basic construction quality of the structure built till now and for further remaining important work like like electrification, lifts, fire safety etc. that is still pending as respondent might



try to use / deploy cheapest and lowest category material in absence of any such checks from the civic authority.

11. The complainant submitted that thereafter, he tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying monthly rent and extra interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

12. The complainant submitted that some buyers of the project in question have filed complaint about this delay in CM window & one of the complaints has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15.01.2018 and at that point the complainant came to know that builder license has been expired and not renewed. Thereafter, many buyers requested Mr. R.S. Batt to please



take some action and help them to get this project complete as early as possible. This is respondent's responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.

13. The complainant submitted that it seems that the funds collected from this project buyers has been moved outside in buying other assets for their own interest. Even the new office building of respondent at Sec-32, Gurugram has been commenced in the year of 2014.

14. **Issues to be determined**

The relevant issues as culled out form the complaint 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?

15. **Relief sought:**

The complainant is seeking the following relief:



- i. Respondent should 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.

### Respondent's reply

16. The respondent submitted that the respondent is very well committed to the development of the real estate object and the delay being occasioned for delivering the possession of the project as a whole is only because of explainable and excusable causes beyond the control of the respondent. Firstly, on grant of license bearing no. 13/2012 dated 22.02.2012 the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 07.05.2013 and the consent to establish by the office of Haryana State Pollution Control Board, Panchkula was only granted on 02.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the license so granted expired on



21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016 the respondent is seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana which is yet to be received despite best efforts of the respondent. Further the provisions of Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13/2012 the same got dismissed vide orders dated 19.01.2018 leading to further operational obstacles in completion of the project. And since then the respondent is hard trying to avail all the approvals, permissions and sanctions from the relevant authorities. It is submitted that had the approvals and license be granted in time the respondent, given the speed and efficiency of construction would have duly completed the project within the permissible time period by May 2017.



17. The respondent submitted that the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully. Further, the respondent has contended that the complainant is estopped from filing the present complaint as the

complainant himself defaulted in making payments in timely manner which is sine qua non of the performance of the obligations by the respondent. This default has led multiple problems to the respondent company and extra costs being incurred by the respondent.

18. The respondent submitted that the construction of the said project is in full swing. It is submitted that the respondent company is very much committed to develop the real estate project and as on date the status of construction is as under:

- (a) Civil structure : Complete
- (b) Internal plaster: Complete
- (c) White wash : Under process
- (d) Floorings : Under process 68% complete
- (e) Electric fittings : Under process 70% complete

19. The respondent submitted that he has scheduled to deliver the possession of the first phase of the project in December 2018 which comprises of 432 flats in 10 towers and complete delivery of 2nd phase by March 2019 comprising of 16 towers having 704 flats.

20. Respondent further submitted that they are committed to completing the said project and the delay is neither





intentional nor deliberate but beyond the control of the respondent and due to extraneous circumstances. First, the respondent could get the consent to establish from HSPCB only on 2.12.2013 due to which the construction could not be started and upon receiving, the construction work has been duly carried out. The overall industrial climate of the real estate sector had been abysmally low. The availability of skilled manpower and material is also at all time low and their cost has only increased manifold since the launch of the project.

21. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent cannot be penalised for the delay being occasioned. In any case the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. On the other hand even the respondent company due to the uncontrollable delay in the delivery of the project is suffering because it has to pay the huge licence fees as for renewal of licenses. More so it is quite evident that the price of the flats in the project had already been fixed in the year 2009 as per the policy on the basis of





estimated costs but the costs of men and material has only increased manifold and the respondent company is suffering immense loss of margins due to the delay so occasioned without there being any compensation to the respondent company. More so the respondent company had to pay higher renewal charges as per the higher EDC charges due to the uncontrollable delays. Thereby, the suffering of the respondent company are manifold and the developer margins are shrinking on every account and on the other hand the complainant taking advantage of the precarious situation of the respondent company has filed the present complaint to harass the respondent company and to gain wrongfully and avoid interest payments against the amounts outstanding. However, against the odds the respondent company is duty bound to deliver the project very soon.

22. The respondent submitted that clause 3(b) of apartment buyer's agreement enumerates certain situations in which the date of possession shall get extended which states that the completion of the said low cost/ affordable group housing project including the apartment is delayed by reason of non-availability of steel and cement or other building materials or water supply or electric power or slow down, strike or lockout or civil commotion or by reason of war or



enemy action or terrorist action or earthquake or any act of God or due to circumstances beyond the power and control of the developer.

23. The respondent submitted that though the said project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bona fide manner and the delay occasioned had been beyond the control of the respondent and due to multifarious reasons and given the agreed terms between the parties the complainant have no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

#### Determination of issues

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:

24. In respect to the **first issue**, the authority came across that as per clause 3(a) of apartment buyer's agreement, 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 was 2<sup>nd</sup> June 2017 and the possession has been delayed by one year three months and three days till the date of decision. As the possession of the flat was to be delivered by 02<sup>nd</sup> June 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.

25. With respect to the **second issue**, the complainant has provided no proof but only assertion with respect to sub-standard quality of construction. However, the authority has issued detailed order in following paras.

26. Regarding the **third issue**, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.75% per annum, for every month of delay from the due date of possession till the offer of possession.



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

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.

28. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

#### Findings of the authority सत्यमेव जयते

29. **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.

30. During the proceedings dated 13.12.2018, local commissioner was appointed in order to ascertain the correct status of the project in question. Accordingly, the report of local commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under: -

*“Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%.”*

31. As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of license by DTCP Haryana. The



authority expects that the matter will be expedited for renewal of the license by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch. A plea has been taken by the counsel for the respondent that the license could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.01.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

32. As per clause 3 (a) of the agreement dated 18.02.2013 for the unit in question, possession was to be handed over to the complainant by 02.06.2017. Thus, the respondent has not delivered the unit in time. However, keeping in view the report of local commissioner, status of project and other intervening circumstances, the authority is of the considered view that the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f due date of possession, i.e. 02.06.2017 till the date of offer of possession.





### Decision and directions of the authority

33. 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:

- (i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainants from due date of possession, i.e. 02.06.2017 till the offer of possession.
- (ii) The respondent is directed to pay the accrued interest till date at the prescribed rate to the complainants within a period of 90 days from the date of this order.
- (iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10<sup>th</sup> of every subsequent month.
- (iv) The authority expects that the matter will be expedited for renewal of the license by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.
- (v) On the previous date of hearing i.e. 22.01.2019, DTP was directed to appear in person, but he has failed to appear





before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

34. The complaint is disposed of accordingly.

35. The order is pronounced.

36. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 26.02.2019

Judgement Uploaded on 11.03.2019

**(Subhash Chander Kush)**

Member

HARERA  
GURUGRAM

