

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 29.01.2019
Complaint No.	1125/2018 Case Titled As Mr. Pankaj Muralidass V/S M/S Selene Constructions Ltd.
Complainant	Mr. Pankaj Muralidass
Represented through	Shri Siddharth Agarwal, Advocate for the complainant.
Respondent	M/S Selene Constructions Ltd.
Respondent Represented through	Shri Rahul Yadav Advocate for the respondent
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

As per clause 21 of the Builder Buyer Agreement dated 1.8.2013 for unit No.G2093, 9<sup>th</sup> floor, Tower-G2, in project "Indiabulls Centrum Park" Sector-103, Gurugram, possession was to be handed over to the complainant within a period of 3 years + 6 months grace period from the date of execution of the agreement which comes out to be 01.02.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,58,56,560/- to the respondent against a total sale consideration of Rs.1,70,07,003/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 01.02.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation &

Development) Act, 2016 till handing over the 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 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)  
29.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 1125 of 2018**  
**First date of hearing: 29.01.2019**  
**Date of decision : 29.01.2019**

Mr. Pankaj Muralidass  
R/o A-504, Sunny Valley Apartment, Plot no.  
27, Sector 12, Dwarka, New Delhi-110018 **Complainant**

Versus

M/s Selene Constructions Ltd. (through its **Respondent**  
managing director and other directors)  
Regd. office: M-62 and 63 First Floor,  
Connaught Place, New Delhi-110001

**CORAM:**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Siddharth Agarwal Advocate for the complainant  
Shri Rahul Yadav Advocate for the respondent

**ORDER**

1. A complaint dated 22.10.2018 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. Pankaj Muralidass, against the promoter M/s Selene Constructions Ltd., in respect of flat described below in the project 'Indiabulls Centrum Park', on account of violation of clause 21 of the flat



buyer agreement dated 01.08.2013 in respect of unit no. G2-093 on 9<sup>th</sup> floor in tower no. G2 measuring 2875 sq. ft. (super area) for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of Act *ibid*.

2. Since, the flat buyer agreement has been executed on 01.08.2013 i.e. prior to the commencement of the Act *ibid*, 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 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: -

1.	Name and location of the project	"Indiabulls Centrum Park", Village Daulatabad, Sector 103, Gurugram, Haryana.
2.	Nature of the project	Group housing colony
3.	Project area	17.081 acres
4.	DTCP licence no.	252 of 2007 dated 12.11.2007, 50 of 2011 dated 05.06.2011 and 63 of 2012 dated 19.06.2012
5.	Applied for OC on	31.05.2018
6.	RERA registered/ not registered.	<b>Registered</b>



7.	HRERA registration number	<b>11 of 2018 for phase I</b> <b>10 of 2018 for phase II</b>
8.	HRERA registration certificate valid up to	<b>31.07.2018 for phase I</b> <b>31.10.2018 for phase II</b>
9.	Allotment letter	15.07.2013
10.	Flat/unit no.	G2-093 on 9 <sup>th</sup> floor in tower no. G2
11.	Flat measuring	2875 sq. ft.
12.	Payment plan	Construction linked payment plan
13.	Date of execution of flat buyer agreement	01.08.2013
14.	Total consideration as per applicant ledger dated 15.05.2017	Rs. 1,61,24,375/-
15.	Total amount paid by the complainant till date as per applicant ledger dated 15.05.2017	Rs.1,58,56,560/-
16.	Date of delivery of possession Clause 21 – 3 years plus 6 months grace period from the execution of flat buyer agreement i.e. 01.08.2013.	01.02.2017
17.	Delay in handing over possession till the date of decision	1 year 11 months 28 days
18.	Penalty clause as per the said flat buyer agreement	Clause 22 of the agreement i.e. Rs.5/- per sq. ft. per month for the period of delay.



4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A flat buyer agreement dated 01.08.2013 is available on record for the aforesaid flat according to which the possession of the same was to be

delivered by 01.02.2017. Neither the respondent has delivered the possession of the said unit till date to the complainant nor it has paid any compensation @ Rs.5/- per sq. ft. per month for the period of delay as per clause 22 of the flat buyer agreement duly executed between the parties. 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 appearance. The respondent appeared on 29.01.2019. The case came up for hearing on 29.01.2019. The reply filed on behalf of the respondent on has been perused.

#### **Facts of the case**

6. The complainant submitted that he booked a residential flat in the project of the respondent namely “Indiabulls Centrum Park” at Sector 103, Gurugram. The complainant submitted that he was induced to book the above flat by showing brochures and advertisement materials depicting that the project will be developed as a state -of -art project and shall be one of its kind. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within promised time frame.



7. The complainant submitted that on the basis of aforesaid assurances and representations, he was induced to book a flat in the project. Thereafter, the respondent issued an allotment letter dated 15.07.2013 and provisionally allotted a flat bearing no. G2-093 at 9<sup>th</sup> floor measuring super area of 2875 sq. ft.
8. The complainant submitted that the respondent represented that the project is being developed by Indiabulls which is the parent company of the respondent and thus the complainant should not hesitate in the booking of the flat as the respondent will easily get financial assistance arranged for the complainant from ICICI Bank. Accordingly, the complainant availed a financial loan from ICICI Bank at an exorbitant rate of interest for his dream house.
9. The complainant submitted that he was induced to sign a pre-printed flat buyer agreement dated 01.08.2013. It is submitted that he has paid a total sum of Rs.1,58,56,560/- towards the aforesaid residential flat in the project from April 2013 to July 2015 as and when demanded by the respondent. It is pertinent to state that the respondent collected more than 90% of the





sale consideration from April 2013 till September 2015, which is also in terms with the construction linked payment plan. However, still the respondent has miserably failed to offer the possession of the flat in question till date.

10. The complainant submitted that the respondent had promised to complete the project within a period of 3 years from the date of execution of the flat buyer agreement with a further grace period of six months. The flat buyer agreement was executed on 01.08.2013 and as such the respondent was under an obligation to hand over the physical possession of the booked flat on or before 01.02.2017. However, till date the project is not complete and the respondent would require another two years for getting the project ready for offering possession to the complainant and other innocent homebuyers.

11. The complainant submitted that he has made visits at the site and observed that there are serious quality issues with respect to the construction carried out by respondent till now. The flats were sold by representing that the same will be luxurious apartment however, all such representations seem to have been made in order to lure complainant to purchase the flat at





extremely high prices. The respondent has compromised with levels of quality and are guilty of mis-selling. The respondent marketed luxury high end apartments, but, they have compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality.

12. The complainant submitted that respondent has illegally charged car parking usage charges. The respondent has also over charged EDC and IDC and has misrepresented regarding claim of VAT. The respondent has collected an exaggerated amount under the garb of "Contingency VAT deposit". The complainant and other innocent buyers on receipt of bogus demand for depositing contingency VAT deposit has paid the entire amount and thus the respondent is in receipt of money which was not even due and payable at this stage.



13. The complainant submitted that respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent has committed

various acts of omission by making incorrect and false statement in the advertisement material as well as by committing other serious acts. The respondent has not provided the status of the project to the complainant. The complainant is entitled to prescribed rate of interest for every month of delay till the possession is handed over to the complainant.

**14. Issues to be decided:**

- i. Whether the respondent has unjustifiably delayed the construction and development of the project in question?
- ii. Whether the respondent is liable to pay the delay interest at the prescribed rate till the time possession is handed over to the complainant?
- iii. Whether the respondent/ promoter has over charged EDC, IDC?
- iv. Whether the respondent has artificially inflated measurable super area and has also wrongfully charged service tax and PLC?



**15. Relief sought:**

- i. Direct the respondent to pay delay interest at the prescribed rate for every month of delay, till the handing over of possession of the apartment complete in all respect, to the complainant.
- ii. Direct the respondent to provide the schedule of construction and to rectify the breaches with regard to extra EDC /IDC charges, VAT, service tax as well as for wrongfully inflating the super area.

**Reply on behalf of the respondent**

16. The respondent submitted that the instant complaint is not maintainable, on facts or law, and is as such liable to be dismissed at the threshold being filed in wrong provisions of the law. The present complaint is devoid of any merit and had been preferred with sole motive to harass the respondent.
17. The respondent submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact of law. The respondent denies them in toto. Nothing stated in the said complaint shall be deemed to be admitted by the respondent merely on account of non-transverse, unless the same is specifically admitted herein. The instant complaint is



devoid of any merits and has been preferred with the sole motive to extract monies from the respondent, hence the same is liable to be dismissed.

18. The respondent submitted that the instant complaint is outside the preview of this hon'ble authority as the complainant themselves approached the respondent and showed their interest to book unit in the project to be developed by the respondent. Thereafter, the complainant post understanding the terms and conditions of the agreement has voluntarily executed flat buyer agreement (hereinafter referred as FBA) with respondent on 01.08.2013.

19. The respondent submitted that as per clause 49 of the FBA duly executed between the parties, it was specifically agreed that in the eventually of any dispute, if any, with respect to the provisional unit booked by the complainant, the same shall be adjudicated through arbitration mechanism as detailed in the agreement. The relevant clause is reproduced as under:

*“Clause 49 All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussed failing which the same*



*shall be settled through Arbitration. The arbitration shall be governed by Arbitration and conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force.....”*

Thus, it is humbly submitted that, in the event any disputes arise between the parties, the same shall be referred to the arbitration, in terms of the above mentioned clause. Therefore, the complainant is contractually and statutorily barred from invoking the jurisdiction of this hon’ble authority.

20. The respondent submitted that the complainant with malafide intention has not disclosed, in fact concealed the material fact from this hon’ble authority that the complainant has been a willful defaulter since the beginning, not paying his instalments on time as per the construction link plan opted by them.

21. The respondent submitted that it was in knowledge of the complainants, that there is a mechanism detailed in the FBA which covers the exigencies of inordinate delay caused in completion and handing over of the booked unit is enumerated under “clause 22” of duly executed FBA, which is being reproduced hereunder:

*“Clause 22: In the eventuality of Developer failing to offer the possession of the unit to the Buyers within the time as stipulated herein, except for the delay as stipulated herein, except for the delay attributable to the Buyer/ force majeure/vis-majeure conditions, the*



*Developer shall pay to the Buyer penalty of Rs. 5/- per sq. ft. per month for the period of delay....”*

22. The respondent submitted that they have already completed the construction of “tower G” and also applied for grant of OC for the said tower before the concerned authority. It is also submitted that the delay in delivering the possession of the flat to the complainant was beyond the control of the respondent, since for completing a project number of permissions and sanctions are to be required from numerous government authorities which were delayed with no fault of the respondent, in addition to the problems related to labour/ raw material and government restrictions including National Green Tribunal which imposed a ban on carrying out constructions in Delhi-NCR for several months, the respondent kept on work moving steadily.

23. The respondent submitted that the FBA dated 01.08.2013 was executed prior to coming into force of the Act ibid and rules ibid. Further, the adjudication of the instant complaint for the purpose of granting interest and compensation as provided under the Act has to be in reference to the agreement for sale executed in terms of the said Act and said rules and no other





agreement, whereas, the FBA being referred to or looked into in this proceeding is an agreement executed much before the commencement of the Act *ibid*.

24. The respondent submitted that it has made huge investments in obtaining requisite approvals and carrying on the construction and development of the said project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by developer by investing all the monies that it has received from the buyers/customers and through loans that it has raised from financial institutions.

#### **Determination of issues**

25. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority is as under:

1. With respect to the **first and second issue** raised by the complainant, the respondent is liable to pay interest at the prescribed rate, on the delayed possession. This is fortified from the fact that as per clause 21 of the agreement dated 01.08.2013, the construction was to be completed within a





period of 3 years with a grace period of 6 months from the date of execution of the said agreement. The relevant clause is reproduced as under:

*“21. The developer shall endeavor to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of the flat buyers agreement subject to timely payment by the buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer...”*

26. Accordingly, the due date of possession comes out to be 01.02.2017 which has already lapsed but the possession has not been delivered to the complainant till date. The possession has been delayed by 1 year 11 months 28 days till the date of decision. 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 interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Delay charges will accrue from the due date of possession i.e. 01.02.2017 till the handing over of possession.

27. With respect to the **third issue** raised by the complainant, the complainant was well aware about the lawful dues to be paid towards EDC/IDC. As per clause 6(vii) of the flat buyer agreement, the respondent can charge revised EDC/IDC



charges with retrospective effect as imposed by the central or state government or any other authority. Thus, EDC/IDC has been charged as per the terms of the agreement and thus, the issue is decided in negative.

28. With respect to **fourth issue** raised by the complainant, the payments have been collected by the respondent as per the payment plan as agreed by the complainant and the complainant has failed to furnish any material particulars in order to prove that the respondent has wrongfully charged service tax or PLC. The complainant has given no documents with respect to inflation in super area. Hence, this issue is decided in negative.

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

29. The authority has complete subject matter 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. 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. 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.

30. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.



31. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a

consumer. This view has been upheld by the Hon'ble Supreme Court in **civil appeal no. 23512-23513 of 2017.**

32. An amendment to the complaint was filed by the complainants along with the complaint wherein he has stated that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act *ibid* and reserves their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.
33. As per clause 21 of the flat buyer agreement dated 01.08.2013 for unit no. G2-093, 9<sup>th</sup> floor, tower G2 in the project "Indiabulls Centrum Park", Sector-103, Gurugram, possession was to be handed over to the complainant within a period of 3 years + 6 months grace period from the date of execution of the agreement which comes out to be 01.02.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,58,56,560/- to the respondent against a total sale consideration of Rs.1,61,24,375/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75%



per annum w.e.f. 01.02.2017 as per the proviso to section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till handing over the possession.

### **Direction of the authority**

34. 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 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 complainant.
- (ii) The respondent is directed to pay interest accrued from 01.02.2017 to 29.01.2019 on account of delay in handing over of possession to the complainant within 90 days from the date of order.



(iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10<sup>th</sup> of subsequent month.

(iv) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

35. The order is pronounced

36. Case file be consigned to the registry.

**(Samir Kumar)**

Member

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.01.2019

Judgement uploaded on 13.03.2019

