

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

Complaint no. : 653 of 2018
First date of hearing: 27.09.2018
Date of decision : 26.02.2019

Mr. Vinay Pandey,
R/o: H. no. 952, 2nd floor,
Sector 9A, Gurugram, Haryana-122001

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
Regd. Office: 14A/36, WEA,
Karol Bagh, New Delhi-110005.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

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 Mr. Vinay Pandey, against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3(a) of the apartment buyer's agreement executed on 08.05.2017 in respect of



apartment number 230, 2nd floor, block/tower 'Rose' in the project 'Our Homes' for not handing over possession on the due date i.e. 02.06.2017 which is an obligation under section 11(4)(a) of the Act ibid.

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

***Nature of project:** Affordable group housing colony

***DTCP licence no.:** 13 of 2012 dated 22.2.2012

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Project area	10.144 acres
3.	RERA registered/ not registered.	Not registered
4.	Apartment/unit no.	230 on 2 nd floor, block/tower 'Rose'
5.	Apartment measuring	48 sq. mtr. of carpet area
6.	Date of execution of apartment buyer's agreement	08.05.2017
7.	Payment plan	Construction linked payment plan
8.	Basic sale price	Rs.16,00,000/- clause 1.2(a)
9.	Total amount paid by the complainant till date	Rs.15,17,992/-
10.	Percentage of consideration amount	Approx. 98.24%
11.	Date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals)	02.06.2017 (calculated from consent to establish)
12.	Consent to establish granted on	02.12.2013
13.	Delay in handing over possession till date	1 year 8 months 24 days
14.	Penalty clause as per apartment buyer's agreement dated 08.05.2017	Clause 3(c)(iv) of the agreement i.e. Rs.10/- per sq. ft per month of



		the carpet area of the said flat for delay.
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3. 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. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor it has paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 08.05.2017. 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 appearance. The reply filed on behalf of the respondent has been perused. The complainant has filed a rejoinder dated 10.12.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the complaint

5. Respondent advertised itself as a very ethical business group that lives onto its commitments in delivering its housing



projects as per promised quality standards and agreed timelines.

6. Relying upon the advertisement of the respondent, the complainant applied in affordable housing project under Haryana government affordable housing scheme and was allotted apartment no. 230, 2nd floor, tower "ROSE" having carpet area of 48 sq. mts' vide buyer's agreement dated 08.05.2013.
7. The basic sale price of the apartment was Rs.16,00,000 as per the payment plan and the complainant made payments to the amount of Rs.15,17,992/-. The respondent had promised to deliver possession of the said unit within 36 months with a grace period of 6 months as per clause 3(a) of the apartment buyer's agreement.
8. The complainant made visits to the project and found that the construction is at lowest swing and there is no possibility of completion. The complainant requested the respondent for delivery of possession but no satisfactory reply was ever given.
9. The complainant is also concerned about the construction quality as when the internal plaster was checked of the allotted unit, its sand was coming in hand and it was not



properly mixed with right proportion of cement. It is requested to the authority that there should be some mechanism to check the basic construction quality at least.

10. The complainant, thereafter had tried his level best to reach the representatives of the 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.

11. Some buyers filed complaint in CM window and Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15.1.2018 and came to know that builder license was expired and not renewed.

12. Issues raised by the complainants:

- i. Whether the respondent has caused 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 @18% p.a. for the unreasonable delay in handing over the possession?

13. Relief sought:

The complainant is seeking the following relief:

- i. Respondent should be directed to pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum.
- ii. To direct the respondent to offer immediate possession of the said flat.

Note: The complainant vide amendment to the complaint dated 10.012.2018 stated that he is not seeking compensation as mentioned in the complaint but amending his complaint and is seeking directions from the authority to the promoter to comply with the obligations.

Respondent's reply

14. The respondent admitted the fact that the project is situated in Sector 37-C, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. The respondent company has contended in its reply that the complainant has sought compensation and the same has to be adjudged by the adjudicating officer under



section 71 of the Act and hence the authority does not have jurisdiction to hear the matter.

15. 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.

16. However, the respondent submitted that the construction of the said project is in full swing. 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



The respondent 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.

17. The respondent further admitted that they are behind schedule of completion, but the respondent is not responsible for the delay as the delay occurred is due to extraneous circumstances beyond their control. Further, the respondent could get the consent to establish only on 02.12.2013 due to which construction could not be started. The respondent further submitted that license bearing no. 13 of 2012 expired on 22.02.2016. However the company filed an application for renewal of license on 11.02.2016 but due to policy issues, the license could not get renewed till date and further due to non-renewal of the license, the application for registration with the HRERA, Panchkula could not be allowed and the application of the respondent was rejected as a result of which the bankers are not allowing smooth finances and the respondent company suffered but the company is not letting such issues come in their way of delivering possession.

18. 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 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.

19. 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 circumstance beyond the power and control of the developer.

20. 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 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. The respondent submitted that clause 3(b) of apartment buyer's agreement enumerates certain situations in which the date of



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21. 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 has 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 issues wise findings of the authority are as under:



22. With respect to the **first and third issue** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement and the clause regarding the possession of the said unit is reproduced below:

"3(a) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."

Accordingly, the due date of possession was 02.06.2017 and the possession has been delayed by one year eight months and twenty four days till the date of decision.

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. However, 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. .



26. With respect to the **second issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint.

Findings of the authority

27. 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.

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.

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

30. 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.



31. 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%.”

32. 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.



33. 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.

34. As per clause 3(a) of the builder buyer agreement dated 08.05.2017 for unit no. 230, 2nd floor, tower "Rose" 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 02.06.2017. However, the respondent has not delivered the unit in time. It was a construction linked plan. Complainant has already paid Rs.15,17,992/- 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.

Decision and directions of the authority

35. 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) Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- (ii) The respondent is directed to pay to the complainant delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 02.06.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession.
- (iii) 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.
- (iv) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.



36. Complaint stands disposed of.
37. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.02.2019

Judgement uploaded on 15.03.2019



HARERA
GURUGRAM

