

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

**Complaint no. : 1830 of 2018**  
**First date of hearing : 26.02.2019**  
**Date of decision : 26.02.2019**

Col Kishori Mohan Roy (Retired)  
**R/o : H Col. No -06, Alokpur Lane, Maniknagar,  
P.O- Japorigog, Guwahati, Assam-781005**

**Complainant**

Versus

M/s Clarion Properties Limited.  
**Office address : Plot no 8, Sector 44,  
Gurugram-122002 (through its Manager  
Head)**

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Karamjit Singh Advocate for complainant

Ms. Kaadambari Advocate for respondent

**HARERA  
GURUGRAM**

**ORDER**



1. A complaint dated 19.11.2018 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 Col Kishori Mohan Roy, against the promoter M/s Clarion Properties

Limited on account of violation of the clause 5.1 of the buyer's agreement executed on 29.05.2015 in respect of apartment described below in the project 'Element One', Sector 47 & 49 for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 29.05.2015 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 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 case are as under: -

1.	Name and location of the project	"Elements One", Sector-47 & 49, Gurugram
2.	Nature of project	Serviced apartments along with commercial spaces
3.	Project area	2.76 acres
4.	Current status of project	Occupation certificate received on 03.11.2017
5.	RERA Registered/ not registered.	<b>Not registered</b>



6.	DTCP License no.	86 of 2011 dated 20.09.2011
7.	Apartment/unit no.	B-613A, 6 <sup>th</sup> floor, block B
8.	Apartment measuring	671 sq. ft.
9.	Date of execution of apartment buyer's agreement-	<b>29.05.2015</b>
10.	Payment plan	Construction linked payment plan
11.	Total sale consideration	Rs 42,29,573/-
12.	Total amount paid by the complainant	Rs.11,05,719/-
13.	Date of delivery of possession (as per clause 5.1 of buyer's agreement : 3 years + 6 months grace period from the date of execution of agreement or date of start of construction of the tower wherein the unit is located, whichever is later) <b>(Due date of possession is calculated from the date of execution of buyer's agreement as the date of commencement of construction cannot be ascertained)</b>	<b>29.11.2018</b>



14.	Delay in handing over possession till date	No delay
15.	Penalty as per clause 5.3 of the buyer's agreement	Rs.10/- per sq. ft. per month for the delayed period

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 29.05.2015 is available on record for the aforesaid apartment.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 26.02.2019. The reply filed by the respondent has been perused.

#### **FACTS OF THE COMPLAINT**

6. The complainant submitted that believing the representations made by the respondent in the brochure and advertisement of the said project to be true, the complainant had booked a service apartment in the said project vide his application form dated 4<sup>th</sup> March 2015 and the same was verified by the respondent vide application dated 9<sup>th</sup> March 2015 and respondent was allotted unit vide his letter dated



6<sup>th</sup> April 2015 and subsequently respondent had confirmed the same by duly signing the builder buyer agreement (Managed Pool) on 29<sup>th</sup> May 2015 vide unit bearing no. B-613 A, sixth floor, block- B, situated in the revenue estate of Village-Fatehpur, Sector 47 & 49 Gurgaon.

7. The complainant also submitted that he had paid a sum of Rs.5,00,000/- vide cheque bearing no. 48992 dated 25<sup>th</sup> February 2015 drawn on ING Vysya Bank, Guwahati which was acknowledged by the respondent vide his receipt no EO-1295 dated 13-03-201 and a sum of Rs.6,05,719/- vide online reference no. SBIN033012716392 dated 30<sup>th</sup> March 2015 drawn on State Bank Of India and same was acknowledged by respondent vide his receipt no.EO-1323 dated 30-03-2015, making a total sum of Rs.11,05,719/- up till 29<sup>th</sup> May 2015.
8. The complainant also submitted that in the site plan which was annexed with the said buyer agreement, the officials of respondent have marked from red pen manually over the unit no.614 as B-613 A at the time of execution of the said buyer agreement and they were also explained to the complainant that it was clerical mistake and we will rectify it but the complainant was shocked when he visited at site and found that the unit no.B-613 A was not present anywhere in the project of respondent



9. The complainant also submitted that he had visited several times at the project of respondent and found that there was no any change was made by the respondent/officials on ground and the marking was as usual as mentioned in the site plan as per earlier marking without any marking of unit no 613 which was attached with buyer agreement.
10. The complainant also submitted that on every visit complainant had approached respondent's corporate office i.e plot no.8, sector-44, Gurgaon-122002 and apprised the factum of the said place to his officials but the officials of respondent did not talk calmly with the complainant and they kept avoiding complainant from one pretext to another by giving false excuses.
11. The complainant also submitted that from January 20<sup>th</sup> 2016 onwards complainant also sends various e-mails at respondent's registered official e-mail address i.e crm.elementone@satyadevelopers.com in this regard but neither the officials of respondent replied the same nor they marked complainant's unit on the ground anywhere in his project. The complainant had also discussed telephonically with respondent's



official Ms. Nishat Parveen and Ms. Bhawna in this regard but all in vain.

12. The complainant also submitted that up till neither booked unit i.e B-613 A is existing anywhere in master plan/ site plan of respondent's project nor on ground.
13. That the facts and circumstances as enumerated above would lead to only the conclusion that there is deficiency of service on the part of the respondent party and also reflects that he had deliberately defrauded with the complainant and as such they are liable to be punished and compensate to the complainant.
14. The complainant also submitted that the complainant had sent a legal notice to the respondent's main office at New Delhi as well as corporate office at Gurugram through Regd. A.D vide no. RH331371044IN & RH331371129 vide dated 05-09-2018 but up-till neither respondent replied the same nor he refund complainant's payment.
15. The complainant also submitted that the respondent has committed the offence under section 406,420 IPC as they fraudulently allotted the unidentified/ unmarked unit which is neither on site plan nor on



ground and received Rs.11,05,719/- in lieu of such unit which was neither marked on master plan/site plan nor on ground.

**ISSUES TO BE DECIDED:**

16. The complainant has raised the following issues :

- i. Whether there has been deliberate or otherwise, misrepresentation on part of the developer for cheating with complainant by allotting the complainant a missing unit which is not present anywhere in site plan as well as on ground?
- ii. Whether complainant is entitled for refund of all money paid to respondent ?

**RELIEFS SOUGHT**

17. The complainant is seeking the following reliefs:

- i. To direct the respondent to refund amount paid by the complainant i.e Rs. 11,05,719/- in lieu of missing unit along with interest @ 18% per month from March 2015 upto the date of realization.
- ii. To direct the respondent to pay an amount of Rs. Rs.2,00,000/- for deficiency in service.





- iii. To direct the respondent to pay an amount of Rs.5,00,000/- for recovery of damages and mental agony & harassment caused to the complainant due to the negligence and unfair trade practice of the respondent.
- iv. To direct the respondent to pay an amount of Rs.1,00,000/- for transportation charges to the complainant incurred in travelling from Assam to Gurugram to find and to intimate his missing unit to the officials of respondent.
- v. To direct the respondent to pay litigation charges.

**REPLY ON BEHALF OF RESPONDENT**

18. The respondent submitted that the complaint filed by the complainant is not maintainable as this authority has no jurisdiction to entertain the present complaint. The respondent has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent contained in the said application.

19. The respondent submitted that the complaints pertaining to compensation and interest are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate



(Regulation and Development) Rules, 2017 for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 read with Section 31 and Section 71 of the said Act and not before this authority under rule-28.

20. The respondent also submitted that the present complaint is not maintainable as the buyer's agreement contains arbitration clause that mandates the invoking of arbitration proceedings in the event of a dispute between the parties.

21. The respondent also submitted that it is pertinent to mention herein that the said unit was sold at a basic sale price of Rs. 71,07,903/- along with other charges mentioned at page no. 25 under the head "summary of other charges" of the buyers agreement. He only paid a meager amount of Rs. 11,05,719/- till date against the aforementioned sale consideration and as on 10.12.2018 his total outstanding is Rs. 43,29,333/-. It is submitted that the complainant has approached this authority just to avoid his contractual obligation under the buyer's agreement. It is pertinent to mention that the complainant has not paid even a single penny after execution the buyer's agreement.



22. The respondent also submitted that the respondent has completed the project as per approved plans and has applied for the occupation certificate on 27.03.2017 and duly obtained the same within the reasonable stipulated time on 03.11.2017. The respondent duly completed the construction of the subject unit well within the stipulated time as per the buyer's agreement and it is the complainant, who failed to pay the outstanding dues despite assurances and cooperation of the respondent to the issues and queries raised by the complainant herein.
23. The respondent also submitted that the respondent duly addressed the fallacious issue raised by the complainant vide email dated 18.02.2016, wherein the respondent affirmed that the subject unit bearing no. B-613 A does exist in the project and also shared the contact number of the sales manager number for more clarity and further, the complainant was asked to visit the respondent office to resolve issues, if any.
24. The respondent also submitted that since the execution of the buyer's agreement the fact of numbering of the unit was well within the knowledge of the complainant that *due to*



*auspicious reasons as per religious beliefs existing in the society, the number "13" is skipped in the site plan and is mentioned as 614 after the unit number 612 in numerical sequence, it was confirmed to the complainant at the time of the signing of the buyer's agreement that unit no. 614 as shown in the site plan annexed with the buyer's agreement at page 22 and unit no. 613A mentioned at page no. 3 of the same agreement is one and the same unit and they are not two different units.*

25. The respondent also submitted that It is pertinent to mention herein that the site plan as annexed with buyer's agreement was duly endorsed with the cross signature of the complainant herein, falsifying all his claims against the respondent in this regards.
26. The respondent also submitted that despite the best efforts and the prompt reply and cooperation of the respondent, the complainant again on 08.01.2018 raised the same issue and sought cancellation of the subject unit. It is pertinent to mention herein that the said unit does exist in the master plan and on ground reality.



27. The respondent also submitted that as per the clause 5.4 and 5.5 of the said agreement, timely payments by the complainant was the essence of the said agreement. The respondent has time and again failed to comply with the payment schedule as agreed by the parties and on various occasions, the respondent sent demand notices to the respondent to pay his outstanding dues.
28. The respondent also submitted that the said unit having been booked and reserved for the complainant herein, was thereby not placed for sale in the open market and the opportunity cost for generating revenues from the sale of the said unit were given up in favour of the complainant believing his assurances of timely payments of the balance sale consideration.
29. The respondent also submitted that the complainant has failed to perform his obligations under the buyer's agreement and till date has not remitted the payment as demanded in the demand letter dated and final opportunity letter dated 07.07.2017 and has made himself liable to interest on the delayed payment.



## DETERMINATION OF ISSUES

30. 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 are as under:

- i. With respect to the **first issue** raised by the complainant, the complainant has failed to provide any documentary evidence in support of his claim, therefore this issue cannot be determined.
- ii. With respect to **second issue**, the respondent has already obtained occupation certificate dated 03.11.2017 in respect of the booked unit. Therefore keeping in view the current status of the project, the relief of refund claimed by the complainant cannot be granted in the interest of the project in question and other allottees.

## FINDINGS OF THE AUTHORITY

31. 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. 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.

32. In the present case the authority has observed that as per clause 5.1 of the builder buyer agreement dated 29.5.2015 for unit no. B-613-A, block-B, in project "Elements One" at Sector-47 and 49, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of BBA or date of start of construction whichever is later + 6 months grace period which comes out to be 29.11.2018. However, the respondent has not delivered the unit in time. It was a construction linked plan. Complainant has already paid Rs.11,05,719/- in the year 2015 to the respondent. Occupation certificate of the project has been received on 03.11.2017. It has been brought to the notice of



the authority that the complainant is in default in making payments and has only paid Rs.11,05,719/- as on date.

**DIRECTIONS OF THE AUTHORITY:**

33. After taking into consideration all the material facts adduced 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:

- (i) The complainant is directed to pay the dues to the respondent and to take over the possession within 30 days failing which the respondent is at liberty to cancel the unit and to forfeit 10% of the total sale consideration amount and refund the balance amount to the complainant with prescribed rate of interest i.e 10.75% per annum from the date of receipt of payments.
- (ii) As such as per the provisions of Section 19 (6) of the Real Estate (Regulation and Development) Act 2016, the complainant is also liable to pay penal interest at





the rate of 10.75% per annum which shall be calculated at the time of delivery of possession

34. 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.

35. The order is pronounced

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 26.02.2019

Judgement uploaded on 18.03.2019

HARERA  
GURUGRAM

