

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

Complaint no. : 564 of 2018  
First date of hearing : 10.09.2018  
Date of decision : 16.01.2019

Mr. J.M. Chhabra  
H.no. 1184/1, First Floor, Arjun Nagar, Kotla  
Mubarakpur,  
New Delhi-110003

**Complainant**

Versus

Tashee Land Developers Pvt Ltd  
(Mr. Anurag Pandey, Director)  
Address: 517-A, 5 Floor, Narain Manzil, 23,  
Barakhamba Road, Connaught Place,  
New Delhi-110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri. J.M. Chhabra  
None for the respondent

Complainant in person  
Advocate for the respondent

**ORDER**

1. A complaint dated 19.07.2018 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 Ms. J.M. Chhabra against M/s. Tashee Land Developers Pvt Ltd (Mr. Anurag





Pandey, Director) in respect of unit described as below on account of violation which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 19.07.2018. Notices w. r. t. hearing of the case were issued to the respondent on 07.08.2018, 18.09.2018 and 17.10.2018 for making his appearance. Besides this, a penalty of Rs. 5000/- was imposed on 18.09.2018. However, despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint



3. Since, the flat buyers agreement has been executed on 02.05.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal



proceedings cannot 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

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

- **DTCP licence no. 34 of 2011**
- **Nature of project residential apartment**

1.	Name and location of the project	"CAPITAL GATEWAY" Sector-111, Gurugram
2.	RERA registered/ not registered	<b>Registered</b>
3.	Registration certificate no.	<b>12 of 2018 valid upto 31.12.2020</b>
4.	Unit no.	F-1102, tower no. F, floor 11
5.	Unit measuring	<b>1695 sq. ft. but now revised to 1874 sq. ft.</b>
6.	Allotment letter dated	<b>24.04.2013 as per annexure P-3 of complaint</b>
7.	Buyer's agreement	02.05.2013
8.	Basic sale price as per statement of buyer's agreement	Rs.54,51,120 /-
9.	Total amount paid by the complainants till date	Rs.63,84,770/-
10.	Payment plan	Construction link plan
11.	Due date of possession as per clause 2.1 within 36 months from the date of approval of building plans + 180 days grace period <b>Note as buildings plans are not available on the record</b>	<b>02.11.2016</b>





	<b>therefore due date will be calculated from the date of agreement</b>	
12.	Delay in handing over possession till date	<b>Cannot be ascertained</b>

5. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement is not available on record for the aforesaid unit.
6. 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 18.09.2018.

#### **Brief facts of the complaint**

7. The complaint submitted that M/S Tashee Land Developers Private Ltd. vide its allotment letter dated 24<sup>th</sup> April, 2013 allotted flat no. F-1102 in their group housing project named "Capital Gateway" at Sector-111, Gurugram to applicants (1) Munish Chhabra and (2) Mrs. Ishwer Devi Chhabra under customer ID no. PR 0425 measuring 1695 sq. ft. under construction linked payment plan. Subsequently on 02.05.2013, A flat buyer agreement was also executed. The complainants have been paying the due amount regularly





whenever the demands were received. The last instalment paid by the complainants was on 8-8-2016 "On the completion of external plaster". After this, the only instalment now left out is "On offer of possession ". Instead of making this demand, M/S Tashee Land Developers sent a new demand for Rs. 5,73,131/-the particulars of this demand were written as (arrears due to change in super area 179 sq. ft.). We were really shocked to see this demand as we were not prepared for this at the last stage of possession.

8. The complaint submitted that he wrote to him by email dated 15.05.2017 and asked for certain information like (i) how the extended area is distributed (ii) The rate at which the cost of extended area is calculated (iii) the stage of construction of tower "F" and my flat no. F-1102.(iv ) The date by which the possession of the flat will be handed over. (v) a copy of outlay of the flat with an area of 1695 sq. ft. However, no reply was received in spite of issue of reminders and telephonic conversation. Since I was not satisfied and the developer failed to reply to my query, the payment was not made to the developer.





9. It is really intriguing as to how the area of a Flat for which the construction was started as early as 15-5-2014 by 'casting of plinth beam for an area of 1695 sq. ft, can increase in the year 2017 at the time of possession by 179 sq. ft. Even the Builder failed to attach the drawing and dimension of the flat of 1695 sq. ft. It was his moral duty to give the comparison sheet of both the flats with an area of 1695 sq. ft. and 1874 sq. ft. but deliberately avoided and so much so the persons mentioned in the covering letter also couldn't reply to the queries both in writing and verbally. On my personal visit to the office of the developer, I could obtain the drawings of the Flat with 1695 sq. ft area. When I compared both the drawings I found that the developer has played game with the un-suspecting buyers of towers D,E,F & G.
10. The complainant submitted that in the drawing of 1695 sq. ft. area, could find the clear-cut cheating on the part of the developer. There was a complete structural change of the flats. The other thing which I noticed was that the developer has not mentioned the dimension of the balconies. The balconies only shows ascription without any details. This is nothing but a





clear-cut cheating of the buyers by the developer. Though the saleable area is mentioned for both the flats but the carpet area has not been mentioned. It is not understood as to how he has added 179 sq. ft. area at the time of possession. It is also not understood as to how can he change the complete structure of the flat at the time of possession. If the area of the flat was known to the developer, why he kept the buyers in dark till the time of possession. This action on the part of developer goes to prove that he hoodwinked the buyers of 3 bed room flats from the date of launching of the project by manipulating the area knowing well that if he increased the area of the 3 bed rooms flat, people will not buy it or secondly, he manipulated the facts before the plan sanctioning authority and obtained the approval of the project from the competent authority.

11. The complainant submitted that he has deliberately come up with this increase of area at the "last stage" so that the buyers should think twice to surrender their flats after paying huge amount. In any case I oversee it that there is no increase of any area in the 3 bed room flats but the developer wants to make money by manipulating the increase of area at the time of



possession. Photocopies of the maps of both the flats with area 1695 sq. ft and 1874 sq. ft. are enclosed.

**12. The issues raised by the complainants are as follow:**

- i. Whether the builder is liable for increasing in the super area from 1695 sq. ft. to 1874 sq. ft without intimating the respondent at the last stage of project?

**Relief sought**

**13. The complainant prays for the following relief (s) before a decision is taken in the case by the Haryana Real Estate Regulatory Authority**

- i. Request that the developer M/S Tashee Land Developer Pvt. Ltd. may be directed to withdraw the demand dated 29.04.2017 for Rs.5,73,131/- charged on account of 179 sq. ft. extra area and maintain status quo for our flat no. F-1102 in tower-F.
- ii. Direct the developer to intimate the carpet area of the flat with 1695 sq. ft. and 1874 sq. ft. area.





### Respondent's reply

14. The respondent submitted that present complaint has been filed by the complainant without accruing any cause of action against the opposite party. It is also submitted that the complainant himself has failed to specify any cause of action in his favour and against the respondents.
15. The respondent submitted that the aforesaid project is being developed under the licence vide no. 34 of 2011 granted by the director town and country planning, Haryana and all other requisite approvals for developing the group housing project in the name KNS infracon pvt. Ltd. the project is also registered with Haryana real estate authority vide registration no. 12 of 2018.
16. The respondent submitted that a unit measuring super area of 1695 sq. ft. was booked by the original allottee in the group housing project capital gateway and was transferred in the name of complainant on the request made by the original allottee and the complaint herein and the customer has till date made a total payment of Rs. 66,76,718/-



17. The respondent submitted that the area allotted to the complainant was tentative and subject to changes. The provision in this regard have been duly incorporated in the builder buyer agreement dated 02.05.2013.
18. The respondent submitted that the revision of the building plan as approved by DTCP, Haryana dated 09.12.2016 has led to the change / increase in the super area of the flat allotted in the name of the complainant. That the demand towards increase in the area under challenge has been raised consequently to the increase in area of the flat and the same is justified and lawful.

**Determination of issues:**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

19. With respect to the **first issue**, the project in question is registered with Haryana real estate authority vide registration no. 12 of 2018 valid upto 31.12.2020. Project is being developed under the licence vide no. 34 of 2011 granted by the director town and country planning, Haryana dated



09.12.2016. The basic saleable area of the flat admeasuring was 1695 square feet. However, the dimension of same has been now revised to 1874 square feet. Against the total basic price, the complainant has already made a payment of Rs.63,84,770/-. The complainant is perturbed on account of the fact that the respondent has raised an additional demand of Rs.5,73,131/- including service tax on account of increase in the super area. He states that additional demand is unjustified and is in violation of BBA. Since this contention has been raised by the complainant, as such, the builder is directed to justify in raising of additional demand on account of increase in super area within a period of 30 days.

### Findings of the authority

#### 20. 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.

21. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
22. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.



23. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
24. Project is registered with the authority and the revised date of delivery of possession is 31.12.2020.
25. None is present on behalf of the respondent and ex-parte proceedings have already been initiated against the respondent vide order dated 7.12.2018.
26. A builder buyer agreement was signed inter-se both the parties on 02.05.2013. As per clause 2.1 of BBA, the possession of unit was to be delivered within 36 months plus 180 days grace period which comes out to be 02.11.2016. There is certainly delay in delivery of possession of the flat, as such, buyer is entitled for late delivery charges at the rate of 10.75% per annum.
27. The basic saleable area of the flat admeasuring was 1695 square feet. However, the dimension of same has been now revised to 1874 square feet. Against the total basic price, the complainant has already made a payment of Rs.63,84,770/-.



The complainant is perturbed on account of the fact that the respondent has raised an additional demand of Rs.5,73,131/- including service tax on account of increase in the super area. He states that additional demand is unjustified and is in violation of BBA. Since this contention has been raised by the complainant, as such, the builder is directed to justify in raising of additional demand on account of increase in super area within a period of 30 days.

28. However, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f ~~02.11.2017~~ *02.11.2016* till handing over the possession as per provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

29. 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.

#### **DECISION AND DIRECTIONS OF THE AUTHORITY:**

30. After taking into consideration all the material facts as adduced and produced by both the parties, the authority

*Corrected vide order  
dated 13/03/19*





exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents in the interest of justice and fair play:

- i. The promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.75% for every month of delay w.e.f from ~~02.11.2017~~ <sup>02.11.2016</sup> till the handing over 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 handing over the possession shall be paid before 10th of subsequent month.

*Corrected  
vide  
order  
dated  
13/03/19.*

22. The order is pronounced.

23. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.01.2019

Corrected Judgement uploaded on 19.03.2019

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Wednesday and 16.01.2019
Complaint No.	564/2018 Case Titled As Mr. J.M. Chhabra V/S Tashee Land Developers Private Ltd.
Complainant	Mr. J.M. Chhabra
Represented through	Complainant in person.
Respondent	M/S Tashee Land Developers Private Ltd
Respondent Represented through	<b>Respondent already proceeded exparte.</b>
Last date of hearing	7.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

### **Proceedings**

**Project is registered with the authority and the revised date of delivery of possession is 31.12.2020.**

None is present on behalf of the respondent and exparte proceedings have already been initiated against the respondent vide order dated **7.12.2018**.

Arguments heard.

A Builder Buyer Agreement was signed inter-se both the parties on 2.5.2013. As per clause 2.1 of BBA, the possession of unit was to be delivered within 36 months + 180 days which comes out to be **2.11.2016**. There is certainly delay in delivery of possession of the flat, as such, buyer is entitled for late delivery charges at the rate of 10.75% per annum.



The basic saleable area of the flat admeasuring was 1695 square feet. However, the dimension of same has been now revised to 1874 square feet. Against the total basic price, the complainant has already made a payment of Rs.63,84,770/- . The complainant is perturbed on account of the fact that the respondent has raised an additional demand of Rs.5,73,131/- including service tax on account of increase in the super area. He states that additional demand is unjustified and is in violation of BBA. Since this contention has been raised by the complainant, as such, the builder is directed to justify in raising of additional demand on account of increase in super area within a period of 30 days.

However, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **2.11.2016** till handing over the possession as per provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

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.

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

Samir Kumar  
(Member)  
16.1.2019

Subhash Chander Kush  
(Member)

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

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Versus

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**Respondent**

**CORAM:**

Shri Samir Kumar  
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**Member**  
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**APPEARANCE:**

Shri. J.M. Chhabra  
None for the respondent

Complainant in person  
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Pandey, Director) in respect of unit described as below on account of violation which is an obligation under section 11(4)(a) of the Act *ibid*.

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3. Since, the flat buyers agreement has been executed on 02.05.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal

proceedings cannot 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

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

- **DTCP licence no. 34 of 2011**
- **Nature of project residential apartment**

1.	Name and location of the project	"CAPITAL GATEWAY" Sector-111, Gurugram
2.	RERA registered/ not registered	<b>Registered</b>
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11.	Due date of possession as per clause 2.1 within 36 months from the date of approval of building plans + 180 days grace period <b>Note as buildings plans are not available on the record</b>	<b>02.11.2016</b>



	<b>therefore due date will be calculated from the date of agreement</b>	
12.	Delay in handing over possession till date	<b>Cannot be ascertained</b>

5. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement is not available on record for the aforesaid unit.
6. 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 18.09.2018.

### **Brief facts of the complaint**

7. The complaint submitted that M/S Tashee Land Developers Private Ltd. vide its allotment letter dated 24<sup>th</sup> April, 2013 allotted flat no. F-1102 in their group housing project named "Capital Gateway " at Sector-111 , Gurugram to applicants (1) Munish Chhabra and (2) Mrs. Ishwer Devi Chhabra under customer ID no. PR 0425 measuring 1695 sq. ft. under construction linked payment plan. Subsequently on 02.05.2013, A flat buyer agreement was also executed. The complainants have been paying the due amount regularly



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**Relief sought**

**13. The complainant prays for the following relief (s) before a decision is taken in the case by the Haryana Real Estate Regulatory Authority**

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**Determination of issues:**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:



19. With respect to the **first issue**, the project in question is registered with Haryana real estate authority vide registration no. 12 of 2018 valid upto 31.12.2020. Project is being developed under the licence vide no. 34 of 2011 granted by the director town and country planning, Haryana dated

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### Findings of the authority

#### 20. Jurisdiction of the authority-

##### Subject Matter Jurisdiction

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26. A builder buyer agreement was signed inter-se both the parties on 02.05.2013. As per clause 2.1 of BBA, the possession of unit was to be delivered within 36 months plus 180 days grace period which comes out to be 02.11.2016. There is certainly delay in delivery of possession of the flat, as such, buyer is entitled for late delivery charges at the rate of 10.75% per annum.
27. The basic saleable area of the flat admeasuring was 1695 square feet. However, the dimension of same has been now revised to 1874 square feet. Against the total basic price, the complainant has already made a payment of Rs.63,84,770/-.



The complainant is perturbed on account of the fact that the respondent has raised an additional demand of Rs.5,73,131/- including service tax on account of increase in the super area. He states that additional demand is unjustified and is in violation of BBA. Since this contention has been raised by the complainant, as such, the builder is directed to justify in raising of additional demand on account of increase in super area within a period of 30 days.

28. However, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 02.11.2017 till handing over the possession as per provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.
29. 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.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

30. 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 respondents in the interest of justice and fair play:

- i. The promoter is liable under section 18(1) proviso to pay to the complainant interest, at the prescribed rate of 10.75% for every month of delay w.e.f from 02.11.2017 till the handing over 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 handing over the possession shall be paid before 10th of subsequent month.

22. The order is pronounced.

23. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.01.2019

Judgement Uploaded on 08.02.2019

