

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

Complaint No. : 756 of 2018
Date of first hearing : 15.01.2019
Date of Decision : 14.02.2019

M/s. Sanjeev Promoters Pvt. Ltd.
(Through its Director Mr. Sanjeev Marwah)
Address: - 211, Tagore Park, 1st floor,
Near Model Town Part I,
New Delhi- 110009.

Complainant

Versus

M/s Bestech India Pvt. Ltd.
(Through its Director)
Regd. Office: - Plot no. 124, sector 44,
Gurugram, Haryana.

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Sushil Yadav
Ishaan Dang

Advocate of the complainant
Advocate of the respondent



ORDER

1. A complaint dated 27.08.2018 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 M/s. Sanjeev

Promoters Pvt. Ltd., through its director Mr. Sanjeev Marwah, against the promoter M/s Sepset Properties Pvt. Ltd., on account of violation of clause 1.2 (I) of the apartment buyer's agreement dated 14.09.2013 for the apartment no. 104, tower B, in the project "Park view sanskruti" for not refunding balance amount after forfeiting earnest money even after cancellation of apartment vide letter dated 11.09.2017 or to enforce all the payments and seek specific performance of the agreement.

2. Since the builder buyer's agreement dated 14.09.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act ibid for non-compliance of obligation on the part of the respondent.

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

1.	Name and location of the project	Park view sanskruti, sector 92, Gurugram.
2.	Nature of real estate project	Group housing complex
3.	Total area of the project	12.7875 acres
4.	Date of booking	10.05.2013
5.	Date of allotment letter	10.05.2013



6.	DTCP License no.	13 of 2009 dated 21.05.2009 and 43 of 2011 dated 13.05.2011
7.	Apartment/unit no.	104 in tower G
8.	Apartment measuring area	2120 sq. ft.
9.	RERA registered/unregistered	unregistered
10.	Date of execution of the builder buyer's agreement	14.09.2013 (Annx 1)
11.	Payment Plan	Construction linked plan
12.	Total consideration as per payment plan	Rs.1,41,53,480/- (Pg. 64 of the complaint)
13.	Total amount paid by the complainant till date as per SOA	Rs. 88,55,478 /- (Annx R 30)
14.	Percentage of consideration amount	62.56% approx.
15.	Due date of delivery of possession. (Note: - clause 3.a. 36 months' + 6 months' grace period from date of execution of agreement or grant of approvals whichever is later) <ul style="list-style-type: none"> No documents regarding approval of building plans have been annexed so due date is calculated from the date of execution of agreement. 	14.03.2017
16.	Date of cancellation of allotment	11.09.2017 (Annx R 27)
17.	Delay of number of months/ years till date	1 year and 4 months approx.
18.	Penalty clause as per builder buyer agreement	Clause 3.c.(iii) – Rs. 5/- per sq. ft. per month of the super area
19.	Date of receipt of OC	19.06.2018 (Annx R 29)



3. As per the details provided above, which have been checked as per record of the case file, a buyer's agreement is available on record for apartment no. 104 in tower G in the project stated above. The respondent has violated the clause 1.2(l) of the

agreement by not refunding balance amount after forfeiting earnest money even after cancellation of unit vide letter dated 11.09.2017 or to enforce all the payments and seek specific performance of the agreement. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority has issued notice to the respondent for appearance and filing of reply. The respondent appeared on 15.01.2019. The case came up for hearing on 15.01.2019 and 14.02.2019. The reply has been filed by the respondent on 14.11.2018 which has been perused by the authority.

Facts of the case :-

5. Briefly put facts relevant for the disposal of the present complaint are that the complainant relying on the advertisement of the respondent has booked an apartment in the respondent's project, namely 'park view sanskruti', located at sector 92, Gurugram. Pursuant to the said booking of the complainant, respondent vide allotment letter dated 10.05.2013 allotted apartment no. 104 in tower G, admeasuring 2120 sq. ft. in favour of the



complainant. On 14.09.2013, buyer's agreement for the allotted apartment was execute between the parties. As per clause 3.a of the agreement, possession of the apartment was to be delivered within a period of 36 months plus 6 months grace period from the date of execution of agreement or approval of building plan whichever is later , the due which on calculation comes to 14.03.2017. It was alleged by the complainant that the respondent has failed to complete the construction and deliver the possession till date despite repeated reminders from the complainant.

6. The complainant till date has made total payment of Rs. 88,55,478/- as against the total consideration of Rs. 1,41,53,480/-. But it was alleged by the complainant that the respondent has failed to refund the paid amount even on the request of the complainant.

7. It was further alleged by the complainant that the respondent has cancelled the allotment vide letter dated 11.09.2017 and did not refunded the paid amount of the complainant. In this regard the complainant wrote a letter to DC, Gurugram and also to DTP, Gurugram. On getting no



positive response, the complainant was constrained to file the instant complaint.

Issues raised by the complainant: -

- 1. Whether the terms and conditions incorporated in the buyer's agreement are one sided?**
- 2. Whether the delay on the part of the respondent by not refunding the money with delay is justified?**

Reliefs sought:-

- Direct the respondent to refund the amount of Rs. 88,55,478/- alongwith interest @ 18% p.a. from the date of booking.**

Respondent's Reply:-

- 8. The respondent has raised certain preliminary objections regarding the maintainability of complaint. Firstly, that the project in question is not an 'ongoing project' under rule 2(1)(o) of the rules, 2017 as the application for issuance of occupation certificate was made on 30.06.2017 prior to notification of the Haryana Real Estate (Regulation and**



Development) Rules, 2017. Hence, the present complaint is liable to be dismissed on this ground alone.

9. Secondly, the complainant has filed the instant complaint seeking refund, interest and compensation for alleged delay in delivering possession of the booked apartment. The complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Act *ibid*. Thus, the complaint is not maintainable.

10. The respondent has contended that the complainant has no locus standi to file the present complaint. Further the complaint is estopped by its own acts, conduct, omission, etc. from filing the present complaint.

11. The respondent has further contended that as per clause 3.a of the buyer's agreement the possession was to be delivered within a period of 42 months (36 months + 6 months grace period) subject to timely payment of the sales price and other charges.

12. The respondent has contended that the complainant was irregular in making timely payment of instalments as far as



payment of instalment is concerned. The complainant has stopped making payments after January, 2015 and despite repeated reminders has failed to make payments of outstanding dues. Therefore, their allotment was cancelled vide letter dated 11.09.2017 and their amount was forfeited towards earnest money as per the terms of agreement. Even after cancellation of allotment, the complainant did not bother to get in touch with the respondent and after an unexplained delay of one year, the complainant has proceeded to file the present false and frivolous complaint.

13. As far as status of project is concerned, there has been no delay in so far as the construction of the project is concerned. The respondent has already completed construction of the project and applied for the occupation certificate in respect of the same from the competent authority on 30.06.2017 itself.

14. The respondent has submitted that from the sequence of events it is found that there is no illegality attributed to the respondent. The allegations levelled by the complainant



qua the respondent are totally baseless and do not merit any consideration by this authority. Thus, the present application deserved to be dismissed at the very threshold.

Written arguments filed by the respondent: -

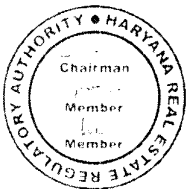
15. The respondent has contended that the issues always arise out of pleadings. There are absolutely no pleadings with regard to any clause of the agreement being on sided or for that matter the agreement being one sided. There is nothing in the complaint to the effect that the respondent has got no reasonable justification for delay or that interest component demanded by the respondent is on higher side. Alongwith their written arguments, the respondent has filed certain rulings/ case laws i.e. 2001 (2) CCC 177, AIR 1970 SC 1986, MANU/SC/1087/2013, AIR 2011 SC 1463. etc.



16. It was further contended by the respondent that despite repeated reminders/demand notices to the complainant on 19.03.2015, 07.05.2015, 21.05.2015, 05.06.2015, 24.07.2015, 10.09.2015, 25.09.2015, 10.10.2015, 22.10.2015, 08.12.2015, 23.12.2015, 07.01.2016,

08.02.2016, 26.03.2016, 07.04.2016, 25.05.2016, 18.07.2016, 02.08.2016 and 17.08.2016 the complainant did not turn up to clear the outstanding dues, therefore, the allotment was cancelled by the respondent vide letter dated 11.09.2017.

17. The respondent has contended that they had applied for occupation certificate after completion of construction on 30.06.2017 (**annx R 28**) and the same was granted by the competent authority on 19.06.2018 (**annx R 29**). Hence, there is no delay and latches on their part and they had not violated any terms and conditions of the agreement. The complaint is liable to be dismissed on this ground alone.
18. The respondent has also contended that as per the terms and conditions of the buyer's agreement specifically clause 1.2 (g) thereof, the respondent is entitled to forfeit the earnest money amounting to 20% of the sales price, processing fees, brokerage and other amounts of non-refundable nature and the balance amount shall be refunded to the complainant after resale of the apartment.



The present application is nothing but an abuse of process of law.

Determination of issues:-

After considering the facts and submissions made by both the parties and perusal of records the issue wise determination given by the authority are as follows-

19. As regards the **issue no. 1** raised by the complainant that the terms and conditions incorporated in the agreement are one sided and arbitrary, it is pertinent to note that the complainant has failed to adduce as to whether which of the specific/ particular clause(s) of the buyer's agreement is one sided and arbitrary. Nothing has been quoted in the pleading regarding the said issue. Even at the time of arguments, the complainant has not pressed this issue. So, the same become infructuous.



20. With regard to the **issue no. 2** raised by the complainant, it is evident from the records, that the complainant has defaulted in making payments of instalment despite repeated demand notices on 19.03.2015, 07.05.2015, 21.05.2015, 05.06.2015, 24.07.2015, 10.09.2015,

25.09.2015, 10.10.2015, 22.10.2015, 08.12.2015,
23.12.2015, 07.01.2016, 08.02.2016, 26.03.2016,
07.04.2016, 25.05.2016, 18.07.2016, 02.08.2016 and
17.08.2016 from the respondent and due to default of the
complainant, the respondent has cancelled the allotment of
apartment vide letter dated 11.09.2017 on account of non-
payment of outstanding dues. But the respondent is neither
justified in retaining the balance amount after forfeiting the
amount as per clause 1.2 (l) of the agreement dated
14.09.2013 and nor seeking specific performance of the
agreement. Relevant portion of clause 1.2 (l) is reproduced
below -

"In the event the APARTMENT ALLOTTEE(s) fails to pay any instalment(s) with interest within 75 days, from the due date, the Developer shall have the right to forfeit the entire amount of earnest/registration money paid by the APARTMENT ALLOTTEE(s) and in such an event the allotment of the Said Apartment shall stand cancelled and the APARTMENT ALLOTTEE(s) shall left with no right, claim or lien on the said apartment and the Developer at its sole discretion would be free to allot the Apartment to a third party. The amount paid, over and above the Registration/Earnest Money, if any, shall be refunded by the Developer without interest after adjustment of interest accrued on the delayed payment(s), processing fees, brokerage, if any, and/or



any other charges, due from the APARTMENT ALLOTTEE(s) under this Agreement....."

Hence the respondent has violated the above mention clause which is in violation of section 11 of the Act *ibid*.

Findings of the authority: -

21. 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 Town and Country Planning Department, 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.

22. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast



upon the promoter as mentioned above. It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

23. As the respondent has obtained OC dated 19.06.2018, it is implied that the project is complete and fit for occupation. In view of this, the respondent is directed to withdraw the cancellation letter dated 11.09.2017 issued to the complainant and complainant should pay the balance amount due towards the respondent. The respondent is further directed not to levy any interest on delayed payment to be made by the complainant and offer the possession of said unit.

24. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall be improper as the occupation certificate has already been obtained vide dated **19.06.2018**.



Decision and direction of the authority:-

25. Keeping in view all the facts on record, the authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues following directions to the both the parties -

i. The complainant is given an option to pay the balance amount due towards the respondent and the respondent shall withdraw the cancellation letter dated 11.09.2017 issued to the complainant and offer possession without charging any interest on delay payment to be made by the complainant during the period of cancellation of unit.

ii. Alternatively, option may be given to the complainant, in case refund is to be given, then respondent shall be allowed to retain 10% of the total sales consideration as earnest money, along with processing fees, delayed payment charges, brokerage charges and other taxes paid to the government. The balance amount remained, if any after deducting the above mentioned amount and



other statutory dues, be refunded to the complainant as per the terms and conditions of builder buyer's agreement.

iii. The project is registerable but the respondent has failed to get the project registered which is in violation of section 3(1) of the Real Estate (Regulation and Development) Act, 2016. Hence, the authority has decided to take suo moto cognizance for initiating penal proceedings under section 59 of the Act ibid against the respondent.

27. The order is pronounced.

28. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram.
Dated: 14.02.2019.

Judgement Uploaded on 20.03.2019