

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

**Complaint no. : 1419 of
2018**
**Date of First
hearing : 08.02.2019**
Date of decision : 08.02.2019

Mrs. Meenakshi Anand and Mr. Brij Anand,
R/o: D-18, Green Park Main, New Delhi

Complainants

M/s Orris Infrastructure Pvt. Limited.
(Through its managing director)
Regd. Office: Vipul Agora, 308/309, 3rd
Floor, M.G. Road, Gurugram, Haryana-
122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sanjeev Sharma Advocate for the complainant
None for the respondent Advocate for the respondent



EX-PARTE ORDER

1. A complaint dated 23.10.2018 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 complainants Mrs. Meenakshi Anand and Mr. Brij Anand against the promoter M/s Orris Infrastructure Pvt. Limited., in respect of said unit described below in the project 'Floreal Towers' for violation of section 11(4)(a).

2. Since the space buyer's agreement has been executed on 02.04.2009, i.e prior to the 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 are as under: -

1.	Name and location of the project	"Floreal Towers", Village Kherki Dhaula, Sector 83, Gurugram
2.	Project area	9.052 acres
3.	Unit No.	325, 3 rd floor, tower B
4.	Unit area measuring	500 sq.ft.
5.	RERA registered/ not registered.	Not Registered
6.	DTCP License No.	260 of 2007 dated 14.11.2007
7.	MOU executed on	16.10.2007
8.	Date of execution of space buyer's agreement	02.04.2009
9.	Payment plan	Assured return



		The respondent was liable to pay assured return of Rs. 27,500/- per month to the complainants for a period of 36 months
10.	Total Consideration	Rs. 12,50,000/- As per clause 1 of the agreement
11.	Total amount paid by the Complainants as per the agreement	Rs. 12,50,000/-
12.	Date of delivery of possession	02.04.2012 Clause 10.1- 36 months from the date of execution of the agreement or sanctions of plans or commencement of construction, whichever is later. Note: Due date calculated from date of agreement
13.	Offer of possession	30.06.2018
14.	Penalty clause as per the said agreement	Clause 11.5 of the said agreement i.e. if the company opts to terminate the said agreement , the company shall refund the amount, with simple interest @ 8% p.a. for the period such amount was lying with the company. If the company opts not to cancel the agreement , then compensation @ Rs.5/- per sq. ft. of the super area of the unit per month for the period of



		such delay.
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- The details provided above have been checked on the basis of the record available in the case file. A space buyer's agreement has been executed for the aforesaid unit.
- 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 08.02.2019. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply. Hence, ex-parte proceedings have been initiated against the respondent.

Facts of the complaint

- Briefly stated, the facts of the case, that the complaint, the company M/s Orris Infrastructure Pvt. Ltd. advertised for construction of world class commercial office spaces space in a new project floated by them by the name of ***Floreal Tower***, in Sector 83 Gurugram. The land underneath the project is owned by Seriatim Land and Housing Limited and who had obtained licence No. 260 of 2007 dated 14.11.2007 vide office



letter endst no. 5DP-2007/29310 dated 21.11.2007 from the Director, Town and Country Planning Haryana, Chandigarh from the Director, Town and Country Planning Haryana, Chandigarh to develop a commercial colony on the land measuring 9.052 acres. The respondent herein entered into a development agreement with above said M/s Seriatim Land and housing Limited for developing 50 % area land for commercial towers A & B proposed to be known as ABW Trade Tower.

6. The respondent herein entered into memorandum of understanding dated 16.10.2007 with complainants herein vide which agreement commercial office space admeasuring 500 sq.ft., super area on the third floor of the project of the respondent was allotted to the complainants for a total consideration of Rs. 12,50,000/- which all amount was paid to the respondent prior to the execution of the above said MOU. Further in terms of the above said MOU the respondent having already received the total sale consideration of Rs. 12,50,000/- had promised to pay to complainants assured



return of Rs. 27,500/- per month calculated on basis of Rs. 55/- per sq. ft. payable from 01.11.2007 to 31.07.2009. As per the MOU the construction was to be completed within 21 months from 01.11.2007 as also as per clause 7 space buyer agreement was to be executed within 6 months from the present MOU.

7. It was only after repeated request by the complainants that the space buyer agreement was executed by the respondent on 02.04.2009 vide which unit no. 325 on third floor in tower B having super area of 500 sq. ft was allotted to the complainants for total consideration of Rs. 12,50,000/- in the project now called **Floreal Tower**. On the date of execution of the space buyer agreement the construction of the said project had not even started, which though as per the MOU was to be handed over within 21 months from 01.11.2007, however the complainants having paid the whole consideration and left with no choice while entering the space buyer agreement unilaterally agreed for extension of time to handover the possession of the unit in question which



as per the clause 10.1 of the present agreement was now to be handed over within 36 months i.e. latest by 02.04.2012.

8. Even on the said date i.e. 02.04.2012 the completion of the unit/project was far away from completion, which left the complainants completely aghast and they inquired the respondent as to the status when the possession will be given to which he replied it will be completed soon. Even after elapse of almost five years from the promised date on which possession of the unit was to be given, the respondent failed to handover the possession of the unit in question. However, on 10.03.2017 the respondent wrote a letter to the complainants giving offer of possession for fit outs to the complainant, however the same was not possession in complete sense but only temporary possession to carry out fitting work.



9. After an exorbitant delay of almost 5 years, the complainants on 17.08.2017 received a letter from the respondent informing that OC with respect to the tower in question has been received. Even after repeated request by the

complainants to give a copy of the said OC, the said OC has not been shared till date.

10. After an exorbitant delay of almost 6 years the respondent vide its letter dated 21.02.2018 offered the constructive possession of the unit in question to the complainants and with the same raised an additional demand of Rs. 8,48,230/-, However total sale consideration had already been paid by the complainants, but the respondent nowhere mentioned about the interest for the delayed possession.
11. The complainant aggrieved by the illegal acts of the respondent issued a legal notice dated 08.05.2018 on the respondent, as the respondent had not only delayed in giving the possession but also was not even offering interest on delayed possession as per law and moreover the respondent had stopped making payment of assured return of Rs. 27,500/- to the complainants since January 2017. The respondent if believed to be true the building was completed in 2018 for possession, thus even at present the respondent is under contractual liability to pay assured return.



12. The respondent vide their letter dated 30.06.2018 offered possession of the unit in question to the complainants and while doing so though admitted their liability to pay assured return, of which as per them Rs. 4,76,980/- was remaining.

13. Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:

- I. Whether the promoter is liable to get itself registered with this hon'ble authority under the RERA Act, 2016 in terms of Section 3(1) First Proviso of the Act?
- II. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant and for which the complainant can now pray for the refund of the entire consideration paid by him to the respondent along with interest @ 18 % P.A (i.e. at the same rate of interest which the respondents use to charge on delay in payments by the allottees)?
- III. Whether the respondent is justified in raising additional demands toward EDC/IDC, Utility and maintenance



charges which do not form the part of the initial agreement?

- IV. Whether the respondent can sell super area in place of carpet area to the allottees, if no then whether the respondent is liable to return the extra money if charged from allottees on account of selling super area for monetary consideration.
- V. Whether the respondent is liable to demand the monies from the complainant toward the Goods and service tax which came on statute and implemented from 1st of July 2017 as the said tax became payable only due to delay in handing over the possession by the respondent, as if the possession was given by the respondent on time then the question of GST would never have arose?

14. Relief sought

- I. Direct the respondent to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common



areas and which sale of common area is in total contradiction of the Act, for the reason as per the Act the monetary consideration can only be for the carpet area.

- II. Direct the respondent to make payment of interest accrued on amount collected by the respondent from the complainants, account of delayed offer for possession and which interest should be @18% p.a from the date as and when the amount was received by the respondent from the complainant.
- III. Direct the respondent to not to demand any amount toward GST service tax etc from the complainants, which had to be paid by the complainants only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST service tax would have arisen as on such date GST service tax was not in existence.
- IV. Direct the respondent not to charge anything additional from the initial agreement.



- V. Orders may be passed against the terms of section 59 of the RERA Act, 2016 for the failure on part of the respondent to register itself with this hon'ble authority.

Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

15. With respect to the **first issue** raised by the complainants, authority is of the view that on the issue is that as per proviso to section 3(1) of the Act *ibid*, ongoing project on the date of commencement of this Act have to be registered with the authority. Proviso to section 3(1) of the Act *ibid* which provides as under:-

“Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”

Rule 2(o) of the rules *ibid*, defines ongoing project as a project for which development works are going on and for which no completion/ part occupation certificate has been



granted on or before publication of these rules. Rule 2(o) is reproduced as hereunder:

“on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”

Keeping in view the above facts and as per the records of the authority, the project is registerable under section 3 of the Act ibid and the respondent has not registered the project with the Haryana Real Estate Regulatory Authority as on date. Consequently the above act on their behalf is a punishable offence under section 59(1) of the Act ibid. Section 59(1) provides as under:-

“If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten



per cent. of the estimated cost of the real estate project as determined by the Authority.”

The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the authority.

16. With respect to **second issue** raised by the complainants regarding payment of interest @ 24% that has been charged by the respondent, it cannot be allowed as 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. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter. No refund



as possession has already been offered, therefore the complainants are directed to take over the possession.

17. With respect to the **third issue**, the complainants have not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issues become infructuous.
18. Regarding **fourth issue**, the authority is of the opinion that as per the agreement, it was agreed that super area be sold. Moreover, the agreement dated 02.04.2009 was executed before coming of the RERA so no retrospective effect.
19. With respect to **fifth issue** raised by the complainants, the complainant shall be at liberty to approach any other suitable forum regarding levy of GST.
20. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.



21. The complainants reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings and directions of the authority

22. **Jurisdiction of the authority-** The project “Floreal Tower” is located in Sector 83, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete 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.



23. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.
24. Such notices were issued to the respondent on 26.10.2018, 13.11.2018 and on 01.12.2018. Besides this, a penalty of Rs. 5000/- and Rs. 10,000/- was also imposed on 13.11.2018 and 01.12.2018 respectively for non-filing of reply, even after service of notices. A final notice dated 31.01.2019 by way of email was sent to both the parties to appear before the authority on 08.02.2019.
25. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainants in their pleading.
26. The ex-parte final submissions have been perused at length. Details regarding the status of the project have not been supported by relevant documents, as already stated above. It is a peculiar case where firstly the MOU dated 16.10.2017



inter-se the parties was executed and the respondent was liable to pay assured return of Rs. 27,500/- per month to the complainants for the period of 36 months and also to hand over the possession to the complainant within a period of 36 months from the date of execution of MOU. Later on, the parties have entered into an space buyer agreement dated 02.04.2009 for unit and as per clause 10.1 of the agreement the due date comes out to be 02.04.2012. however, the respondent has not delivered the unit in time. As per letter dated 30.06.2018 available on record, respondent has offered the possession subject to making balance payments due from the complainant. Accordingly, the complainants are directed to take over the possession of the booked unit and to pay the balance amount due, if any, to the respondent. The complainants are also entitled for delayed possession charges at prescribed rate of interest i.e 10.75% per annum w.e.f 02.04.2012 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession. Having regard to payment of assured return in terms of MOU is concerned, both the parties are directed to settle the issue between themselves.



Decisions and Directions of the authority

27. 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:

- (i) The complainants are directed to take over the possession of the booked unit and to pay the balance amount due, if any to the respondent.
- (ii) Both the parties are directed to settle the issue between them regarding the payment of assured return in terms of MOU.
- (iii) The respondent is directed to pay the complainants delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 02.04.2012 till the offer of possession.
- (iv) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of the order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.



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

28. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the authority.

29. The complaint is disposed off accordingly.

30. The order is pronounced.

31. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.02.2019

Judgement Uploaded on 26.03.2019

