

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

Complaint No. : 649 of 2018
First date of hearing: 13.12.2018
Date of Decision : 26.02.2019

Mr. Mukesh Kumar,
R/o. H.no. 1147, Sector 10A, Gurugram,
Haryana

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 Coudhary 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. Mukesh Kumar, against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3(a) of the apartment buyer's agreement in respect of apartment number 128, 1st



floor, block/tower 'Rose' in the project 'Our Homes' for not handing over possession which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 10.04.2017 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 obligations on the part of the promoters/respondents 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	"Our Homes", Sector 37-C, Gurugram
2.	Nature of the real estate project	Group Housing Colony
3.	RERA registered/ un registered.	un registered
4.	Apartment/unit no.	128, on 1 st floor, block/tower 'Rose'
5.	Apartment measuring	48 sq. mtr. of carpet area
6.	Date of execution of apartment buyer's agreement	10.04.2017
7.	DTCP License no.	13/2012
8.	Payment plan	Time linked payment plan
9.	Basic sale price	Rs.16,00,000/- As per the clause 1.2 of the agreement
10.	Total amount paid by the complainant till date	Rs.15,11,875/-
11.	Date of delivery of possession as	02.06.2017



	per clause 3(a) of the apartment buyer's agreement dated 10.04.2017 (Clause 3(a)- 36 months with a grace period of 6 months from the date of commencement of construction of the complex upon the receipt of all project related approvals) Consent to establish-02.12.2013	Note: Due date calculated from consent to establish.
12.	Consent to establish granted on	02.12.2013
13.	Delay in handing over possession till 26.02.2019	1 year 8 months 20 days
14.	Penalty clause 3(iv) as per apartment buyer's agreement dated 10.04.2017	Rs. 10/- per sq.ft. per month of the carpet area for the period of delay
15.	Status of the project	Last floor roof completed (as per last demand)

4. 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 on 02.06.2017. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 13.12.2018. The case came up for hearing on 13.12.2018, 22.01.2019 and 26.02.2019 .



Facts of the complaint

6. Briefly stating the facts of the complaint, the complainant submitted that the respondent company is developing its project namely Our Homes situated at Village Garauli-Khurd, Sector-37C, Gurugram. The 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.
7. The complainant submitted that relying upon the advertisement of the respondent, had applied in affordable housing project under govt. of Haryana affordable housing scheme and thus allotted apartment no.128, 1th floor, tower rose having a carpet area of approximately 48 sq. mtrs.
8. The basic sale price of the apartment was of Rs.16,00,00/-, payable by the complainant as per payment plan and consequently the complainant paid Rs. 1,60,000/- and Rs. 13,81,876/-.
9. As per the apartment buyer's agreement, the respondent had promise the complainant to handover the physical possession of the dwelling apartment within a period of thirty six months, with a grace period of 6 months.



10. The complainant several times requested the respondent telephonically as well as by personal visits at the office for delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondent but despite that the officials of respondent company did not give any satisfactory reply to the complainant.

11. The respondent by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondents gained wrongfully, which is purely a criminal act.

12. The complainant, thereafter had tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but there was no reply from the respondent company. 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. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

13. The complainant submitted that the some buyers of this project have filed complaint about this delay in CM Window & one of the complaint has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers , Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15/01/2018 and at that point it came to the knowledge that builder license has been expired and not renewed.

14. **Issues raised by the complainants are as follow:**

- i. Whether the respondent 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 for the unreasonable delay in handing over the possession?

15. Relief sought:

The complainant is seeking the following relief:

- i. Interest charged by the builder @ 18% p.a. on delayed payment therefore respondent should pay as per below details:
- a) Respondent should pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to be calculated as and when the thirty six months was completed and thereafter the grace period was exhausted.

Respondent's reply

16. The respondent submitted that complaint has nothing but a gross abuse of the process of law and based on falsehood and concealment of true facts of the case and is neither tenable nor maintainable as filed and liable to be dismissed with heavy costs.
17. The respondent submitted that the case pertains only for adjudication of the compensation, therefore this hon'ble authority lacks jurisdiction in the present matter 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 and is liable to be dismissed right away.

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

19. 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 from HSPCB only on 02.12.2013 due to which construction could not be started. That the 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 along with renewal fees of Rs. 10,00,000/- 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.

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.

21. The respondent submitted 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.

22. 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 have 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:

23. With respect to the **first issue raised** by the complainant, as per clause 3(a) of the builder buyer agreement dated 10.04.2012 for unit 128 1st floor, tower rose, the 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



02.12.2013 + 6 months grace period which comes out to be 02.06.2017. The promoters have violated the agreement by not giving the possession on the due date i.e 02.06.2017 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

24. 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.
25. With respect to the **third issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), 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 under section 18(1).
26. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
27. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority

28. The respondent admitted the fact that the project “Our Homes” is situated in Sector-37-C, Gurugram, therefore, the hon’ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

29. 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.

30. The 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 towers in pocket-A is about 80% and tower in pocket-B is approximately. Hence, the overall completion of the project is 50% approximately. Hence, the overall completion of the project physically is about 6.88%.”



31. As per averments made by the counsel for the respondent, the project will be completed within a period of 4 months from the date of renewal of license by DTCP Haryana. The authority expects that the matter will be expedited for renewal of the license by the office of DTCP at the earliest. A plea has been taken by the counsel for the respondent that the license could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.01.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs. 5000/- is imposed upon DTP on account of non-compliance of directions of the authority.

32. The 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 02.12.2013 plus 6 months grace period which comes out to be 02.06.2017 as such, the complainant is entitled for 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 Act



Decision and directions of the authority

33. 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) The respondent is duty bound to pay the complainant delayed possession charges at prescribed rate of interest i.e 10.75% per annum w.e.f 02.06.2017 on the amount deposited by the complainant as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the offer of possession.
- (ii) The arrears of interest so far shall be paid to the complainant within 90 days from the due date of the order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month



34. 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 registration branch.

35. The order is pronounced.

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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date: 26.02.2019

Judgement uploaded on 28.03.2019

HARERA
GURUGRAM

