

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

Complaint no. : 1179 of
2018
Date of first hearing : 27.02.2019
:
Date of decision : 27.02.2019

Mr. Bharat Bhushan Pandit,
R/o. 803, Sector-9, Gurugram,
Haryana-122001

Complainant

M/s Tulsiani Constructions and Developers
Pvt. Ltd.
Regd. office: Plot no. 3, Block-N, Green Park
Main, New Delhi-110016

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Priyanka Aggarwal,
representative on behalf of the
complainant

Advocate for the complainant

None for the respondent

Advocate for the respondent



EX-PARTE ORDER

1. A complaint dated 16.10.2018 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 complainant Mr. Bharat Bhushan Pandit against the promoter M/s Tulsiani Constructions and Developers Ltd., in respect of said unit described below in the project 'Easy in homes' on account of not refunding the amount even after cancellation of the said unit in terms of cancellation application dated 22.01.2018.
2. Since the builder buyer agreement has not been been executed, 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	"Easy in homes", Sector 35, Gurugram
2.	Project area	5 acres
3.	Apartment/unit No.	E-502, 2 nd floor, tower 5 As per welcome letter



		dated 12.03.2016, Annexure P/2
4.	Unit area measuring	340.46 sq.ft. As alleged by the complainant
5.	RERA registered/ not registered.	Registered
6.	RERA Registration No.	144 of 2017 dated 28.08.2017
7.	Revised date of delivery	27.08.2021
8.	Nature of real estate project	Affordable group housing colony
9.	DTCP license no.	69 of 2017 dated 25.07.2014
10.	Date of execution of builder buyer's agreement	No agreement executed/attached
11.	Payment plan	Construction linked payment plan
12.	Total Consideration	Rs. 12,68,011/-
13.	Total amount paid by the complainant as alleged by the complainant	Rs. 4,75,504/-
14.	Date of delivery of possession	Date cannot be ascertained since no builder buyer agreement executed/attached
15.	Penalty clause	Date cannot be ascertained since no builder buyer agreement executed/attached



3. The details provided above have been checked on the basis of the record available in the case file. A builder buyer agreement has not been executed/attached for the aforesaid unit.

4. 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 27.02.2018. 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

5. Briefly stated, the facts of the case, that the complainant booked 1 BHK flat in the project "Easy In Homes" at Sector-35, Sohna Road Gurugram, dated 14.01.2016 along with amount of Rs 63,401/-.
6. The respondent allotted a 1 BHK unit admeasuring 340.46 sq ft. E 502 to complainant and sent a welcome letter dated 12.03.2016 and raised a demand of Rs 2,65,093/- and in continuation complainant had to pay an amount as demanded by builder on 01.04.2016. The builder again raised the demand for next instalment on 14.12.2016 and complainant had to pay an amount of Rs 1,47,010/-.



7. The complainant submitted that the builder buyer's agreement was executed in the year 2016 and at the time of cancelation of the unit the complainant surrendered all the original document of allotted unit on 22.01.2018.
8. That the complainant due to his personal financial issues and not in capacity to pay next installment, requested the respondent for cancellation of allotted unit and refund of paid amount.
9. That the complainant has repeatedly been seeking a refund of the paid amount. The complainant sent various emails to the respondent, however, the queries of the complainant was never replied and the respondent was always vague and evasive to such requests.
10. The complainant due to the suspicious nature of the respondent decided to send request letter to the District Town Planner Gurugram dated 04.06.2018 for refund of paid amount and as a result, DTP sent a notice on 11.06.2018 to respondent to resolve matter of refund of paid amount but the respondent did nothing about the refund.



11. Issues raised by the complainant

The sole issue as culled out from the complaint is as follows:

- I. Whether the buyer is liable to get the refund of the amount deposited with the promoter and cancel the unit due to personal financial issues?

12. Relief sought

- I. Direct the respondent refund of the amount paid by the complainant i.e Rs. 4,75,504/- along with interest on paid amount as prescribed in RERA Act.

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 issue raised by the parties as under:

13. With respect to the **sole issue** raised by the complainant, the authority is of the view that the respondent is directed to refund the amount deposited by the complainant by deducting Rs. 25,000/- within 90 days from the date of order.



14. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

15. The complainant 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

16. **Jurisdiction of the authority-** The project "Easy in homes" is located in Sector 35, 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.

17. 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.
18. Such notices were issued to the respondent on 17.10.2018, 05.11.2018 and on 29.11.2018. Besides this, a penalty of Rs. 5,000/- and Rs. 10,000/- was also imposed on 05.11.2018 and on 29.11.2018 for non-filing of reply even after service of notices. A final notice dated 18.02.2019 by way of email was sent to both the parties to appear before the authority on 27.02.2019.
19. 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 complainant in its pleading.

20. 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. The builder buyer agreement has not been executed. The representative appearing on behalf of the complainant made a request that the complainant wants to surrender the flat allotted to him as per the provisions of the Affordable Housing Scheme 2013. Keeping in view the provisions contained in para no. 5 (ii) (h) of affordable housing policy, 2013, in case of surrender of the flat by any successful applicant, an amount of Rs. 25,000/- will be deducted by the respondent.

Decisions and directions by the authority:

21. 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 respondent is directed to refund the amount deposited by the complainant by deducting Rs. 25,000/- within 90 days from the date of order.



22. The complaint is disposed of accordingly.
23. The order is pronounced.
24. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 27.02.2019

Judgement uploaded on 28.03.2019



HARERA
GURUGRAM

