

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

Complaint No. : 1828 of 2018

First date of Hearing : 07.03.2019

Date of Decision : 13.03.2019

Mr. Hardip Singh

Mr. Rajan Arora

R/o B-4/21, DLF Phase I, Gurugram

Haryana-122002

Complainants

Versus

M/s Kashish Developers Limited

87, Old A.G. Colony, Kadru, Ranchi,

Jharkhand 834002.

Respondent

CORAM:

Shri Samir Kumar

Member

Shri Subhash Chander Kush

Member

APPEARANCE:

Ms. Sonal Anand with

Advocate for the complainant

Complainant in person

Shri Ashok Sharma

Advocate for the respondent



ORDER

1. A complaint dated 22.11.2018 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 Mr. Hardip Singh and another against the promoter M/s Kashish Developer Ltd. on account of violation of the clause 3(a) of buyer's agreement executed dated 01.02.2013 in respect of unit no. A-2B, 2nd floor admeasuring 895 sq. ft. of the project 'Manor' located at Sector 111 , Gurugram for not handing over possession of the subject plot on the due date i.e. by 01.08.2016 which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid*.

2. Since the floor buyer agreement dated 01.02.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for noncompliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

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

1.	Name and location of the project	Manor One, sector 111 Gurugram
2.	Nature of real estate project	Group housing colony



3.	Project area	14. 843 Acres
4.	DTCP license no.	110 of 2011
5.	Registered/unregistered	unregistered
6.	Date of execution of buyer's agreement	01.02.2013
7.	Allotment letter	19.12.2012
8.	Unit no.	A-2B, 2 nd floor, tower A,
9.	Unit measuring	895 sq. ft.
10.	Payment plan	Construction linked plan
11.	Total consideration amount	Rs 73,22,650/-
12.	Total amount paid by the complainant	Rs. 43,48,609/- (as alleged by complainant)
13.	Date of delivery of possession (As per clause 3(a) – 36 months + 6 months from the execution of agreement)	01.08.2016
14.	Delay in handing over possession till date	2 Years 6 months (approx.)
15.	Penalty clause (as per clause 3 (C) (iv) of flat buyer's agreement)	Rs. 10/- per sq. ft per month of super area for the period of delay



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly,

the respondent appeared on 13.03.2019. The case came up for hearing on 07.03.2019 and 13.03.2019. The reply has been filed on behalf of the respondent has been perused.

Facts of the case

5. The complainants submitted that he paid the booking amount of Rs.6,00,000/- on 31.08.2012 in the project Manor one in sector 111.
6. The complainants submitted that he allotted apartment no. **A-2B** which is at a very premium location. Cheque of Rs.11,20,753/- was given by the complainant no. 1 to the respondent which was debited on 20.10.2012 from the complainant's account. The complainants were further assured that the apartment shall be handed over to him on/before 01.02.2016. The complainant no. 1 was further assured that all the approvals had already been received from the concerned department(s) and also that his money is totally safe and secure. The complainant no. 1 was told that the relevant allotment paper will take time and they shall be soon handing over the same.



7. The complainants submitted that they got the allotment letter dated 19.12.2012 and after much follow-up, the complainant no. 1 was made to signed the buyer's agreement which was handed over to him dated 01.02.2013.
8. The complainants submitted that thereafter, on 12.04.2017 name of complainant no. 2 was added as co-owner on request of complainant no. 1 and from time to time, the respondent raised various demands to make payment, which were duly being fulfilled by the complainants. On the inquiries made by the complainants, they came to know that the licence for the project has expired long-ago on 13.12.2015. The complainants were even shocked to know that the project "**Manor One**" was not registered with RERA. Thereafter the complainant no. 1 many a time e-mailed official of the respondent but they kept on delaying.
9. The complainants submitted that the respondent has not only cheated the complainants but also cheated all other buyers of the project, titled "**Manor One**", located at Sector-111, Dwarka Expressway, Gurugram. The respondent has not been



providing RERA registration number and even not giving timely possession.

10. The complainant submitted that due to the gross failure of the respondent in adhering to their commitments and promises, the complainants have no faith in the respondent whatsoever and despite various communications, letters and visits no end in the ordeal of the complainants appears in sight.

11. The complainants submitted that they have been under tremendous mental stress and agony due to the conduct of the respondent, none of the commitments of the respondent has come true. Leaving the complainant's in a lurch and on the road. in these facts and circumstances, the complainants now left with no option but to file the complainant and has now sought legal advice and has approached hon'ble authority seeking justice and relief inter-alia in terms of a refund of the money paid along with interest as this hon'ble authority may deem deserving in the present case and its circumstances and also seeking justice which it so urgently and ardently deserved.



12. The complainant submitted that when the respondent failed to deliver the possession of the apartment as per the contracted terms/scheduled date even after the receipt of 60 % of the amount i.e. Rs.43,48,609/-.

Issues raised by the complainant

The issues raised by the complainants are as follows: -

- i. Whether the complainant is entitled for refund along with prescribe interest of money paid and the complete failure on the part of the respondent to hand over the apartment to the complainants as per the commitment timeline?

Relief sought

The relief sought by the complainant are as follows: -

- i. Pass an order directing the respondent to give refund along with the prescribed interest to the complainants from the date of booking.
- ii. Provide the complainants information of RERA registration of the said project.



Respondent Reply

13. The respondent is a real estate company developing a residential group housing project named “Manor One” at Sector-111, Gurugram on an area of 14.843 Acres.
14. The respondent submitted that the complainants approached us as they wanted to buy a flat admeasuring 895 sq. ft. in the said project. The complainants have paid only Rs. 43,48,609/- out of total cost of Rs.73,22,650/-.
15. The respondent submitted that they has already completed construction up to 11th floor out of total g+15 floors in tower a in which the complainants have booked their unit . Brick work is completed up to g+8 in this tower and plaster is completed up to 0+3 in this tower. Construction in other towers of the project is also progressing very fast and construction of civil structure is complete up to various levels from G+15 to G+15 out of total G+18. Brick work is complete up to various levels from G+8 to G+13. Plaster is complete up to various levels from 0+3 to 0+4. Work in the project is progressing fast and the project is scheduled to be handed



over by 30th Sep 2019 after getting the OC for Phase-1(Total 5 towers).

Determination of issues

16. With respect to the **sole issue** raised by the complainant, the respondent as per clause 3(a) of the buyer's agreement dated 01.02.2013, was liable to handover the possession within a period of 36 months with 6 months grace period from the date of execution of date of agreement which comes out to 01.08.2016. As there has been a failure on the part of the respondent, thus the respondent is liable to pay interest on the deposited amount at the prescribed rate for delay in handing over of possession and refund cannot be allowed at the current stage because the project is near completion and it will hamper the interest of other allottee who wish to continue with the project..

Findings and directions of the authority

17. **Jurisdiction of the authority-** 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.

18. The complainant made a submission before this authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
19. 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.
20. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has observed that since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act,



2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

21. Since the BBA has been signed on 8.2.2013 as such date of delivery of possession shall be counted from that date. As per clause 3 (a) of the Builder Buyer Agreement dated 1.2.2013 for unit No.A-2B, tower-A, in project “Manor One”, Sector-111, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA + 6 months grace period which comes out to be 1.8.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.43,48,609/- to the respondent against a total sale consideration of Rs.73,22,650/-.

Decision and direction of authority

22. 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 pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 1.8.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer 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 offer of possession shall be paid before 10th of subsequent month.
- iii. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.
- iv. 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 under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.

23.The order is pronounced.



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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated:13.03.2019

Judgement uploaded on 28.03.2019



HARERA
GURUGRAM

