

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

**Complaint no. : 992 of 2018**  
**First date of hearing : 26.02.2019**  
**Date of decision : 26.02.2019**

Mr. Dev Arora  
R/o Flat no. 8A, Tower 7, Central Park-2,  
Sector-48, Sohna Road, Gurugram, Haryana.

**Complainant**

Versus

M/s Sweta Estate Pvt. Ltd.  
(through its managing director:  
Sh. Amarjit Singh Bakshi)  
Address: 21/48, Malcha Marg, Diplomatic  
Enclave, New Delhi-110021.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Sharma Advocate for the complainant  
None for the respondent Proceeded ex parte on 26.02.2019

**ORDER**

1. A complaint dated 20.09.2018 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. Dev Arora, against the promoter M/s Sweta Estate Pvt. Ltd., on account of violation of the clause 9.1 of apartment buyer agreement



executed on 29.07.2013 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer agreement has been executed on 29.07.2013 i.e. prior to the commencement of the Act *ibid*, 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 part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"Central Park-II", Sector 48, Gurugram.
2.	Nature of the project	Group housing colony
3.	Registered/ not registered	<b>Not registered</b>
4.	Provisional allotment letter	26.06.2013
5.	Unit no.	9B, 9 <sup>th</sup> floor, tower Belgravia, plot no. 16.
6.	Unit measuring as per the said agreement	2350 sq. ft.  (unit size increased to 2464 sq. ft. in terms of offer of possession letter dated 12.08.2015)
7.	Date of execution of apartment buyer agreement	29.07.2013



8.	Payment plan annexed as annexure-III to the said agreement	Possession linked payment plan
9.	Basic sale price of the unit	Rs.2,82,00,000/- [excluding taxes]
10.	Total sale consideration as alleged by the complainant	Rs.3,09,62,500/- [Page 10 of complaint]
11.	Total amount paid by the complainant till date as alleged by the complainant	Rs.1,60,95,145 /- [Page 11 of complaint]
12.	Statement of account	<b>Not annexed</b>
13.	<b>Offer of possession by the respondent</b>	<b>12.08.2015</b>
14.	Due date of delivery of possession as per clause 9.1 of apartment buyer agreement i.e. (6 months from the date of execution of this agreement i.e. 29.07.2013)	29.01.2014
15.	Delay in handing over possession till date of offer of possession.	1 year 6 months 14 days.
16.	Penalty clause as per apartment buyer agreement dated 29.07.2013	Clause 9.5(A) of the said agreement i.e. Rs.5/- per sq. ft. on the total super area of the apartment per month for the period of such delay after expiry of initial period of 60 days from the stipulated date for offer of possession.



4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant. An apartment buyer agreement dated

29.07.2013 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 29.01.2014 and the same was offered by the respondent on 12.08.2015 to the complainant. The complainant is alleging that the respondent has failed to give interest for the period it delayed in handing over the possession to the complainant. Therefore, the promoter has not fulfilled its committed liability as on date.

5. 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 26.02.2019. Despite service of notice, neither the respondent has appeared nor has filed their reply to the complaint, therefore the complaint is being proceeded ex-parte against the respondent.

#### **Facts of the complaint**

6. Briefly stated, the facts of the complaint are that M/s Sweta Estate Pvt. Ltd. in December 2007 advertised for construction of world class residential group housing colony in a new project floated by them by the name of Central Park-II, situated at Sector-48, Sohna Road, Gurugram. On the basis of said advertisement and the said brochures one Mr. Raj Kumar Budhiraja and Mrs. Anita Budhiraja expressed their interest in purchasing three-bedroom garden facing residential



apartment and made payment of the booking amount of Rs. 30 lakhs toward booking.

7. The complainant submitted that on 26.06.2013, provisional allotment letter was issued in favour of the Mr. Raj Kumar Budhiraja and Mrs. Anita Budhiraja vide which residential three-bedroom apartment type 'B' was allotted on 9<sup>th</sup> floor in tower Belgravia located on plot no. 16. Further along with the provisional allotment letter the respondent also enclosed an apartment buyer agreement.
8. The complainant submitted that on 29.07.2013, the above mentioned apartment buyer agreement was duly signed between Mr. Raj Kumar Budhiraja and Mrs. Anita Budhiraja and the respondent with regard to the above mentioned unit. The basic sale price was calculated at the rate of Rs.12,000/- per sq. ft. amounting to Rs.2,82,00,000/-. Further total sale consideration of the apartment in question came to be Rs. 3,09,62,500/- inclusive of other charges and the flat in question was taken on possession linked payment plan i.e. 50 % of the total cost was to be paid within 45 days of booking and remaining at the time of offer of possession. Thus the above said allottees were required to make payment of Rs. 1,27,93,345/- at first instance.



9. The respondent submitted that as per clause 9.1 of the said agreement, the respondent represented that the construction was already complete and only fitting and fixtures were remaining and final possession was to be given within 6 months for date of execution of the agreement. Clause 3.2 of the agreement further stipulated interest @ 15 % on delay payments by allottees for first 90 days and additional penal interest of 3 % after expiry of first 90 days.
10. The complainant submitted that on 19.07.2013, he entered into agreement with the above said Mr. Raj Kumar Budhiraja and Mrs. Anita Budhiraja for the purchase of unit in question and all the rights of the original allottees were transferred to the complainant herein. Thereafter, the original allottees and the complainant herein presented before the respondent to inform the respondent about the above said agreement and also to get transfer of rights of the original allottees in favour of the complainant herein. An endorsement to above said effect was made by the respondent on 31.07.2013, however all transfer documents were given to the respondent except pan card of original allottees.
11. The complainant submitted that a total amount of Rs.1,60,95,145/- was paid to the respondent till 24.12.2013 for which the complainant had to avail loan.





12. The complainant submitted that as per the original apartment buyer agreement, the possession of the flat in question was to be given by January 2014. However, the respondent has miserably failed to give the possession on the said date and aggrieved of which the complainant visited the office of the respondent various time but on each such visit, the complainant was always returned back by the respondent with the assurance that the possession shall be given soon.
13. The complainant submitted that it was only after the delay of almost one and a half year, the respondent offered the possession of the flat in question to the complainant and demanded remaining payment. However, the respondent has while offering possession offered no interest for the delay in possession to the complainant and also arbitrarily increased the area of the flat in question from 2350 sq. ft. to 2464 sq. ft. which was so done without the consent of the complainant. Further while offering possession the respondent informed that the OC has been received for the project in 2015 as contrary to claim of the respondent made in 2013 when they claimed OC had already been received in 2013. Further a demand of Rs.1,79,88,951/- was raised while offering possession.



14. The complainant submitted that he tried his level best to settle the demand with the respondent as illegal demands were raised by the respondent such as Rs.3,00,000/- for club charges, demand for increased area so increased without consent and mainly no interest for delayed possession being offered by the respondent. Aggrieved of which the complainant filed case before State Consumer Forum Punjab and Haryana, though the same was filled due to ill advice as the same could not be filed there for want of pecuniary jurisdiction and thus fresh complaint was filed before the NCDRC, New Delhi which is still pending.
15. The complainant submitted that till date having already paid hefty amount is still awaiting for the possession of the flat in question and thus has approached this hon'ble authority.

**Issues to be decided:**

16. The relevant issue in the present complaint is as follows:
- Whether the respondent has caused exorbitant delay in handing over the possession of the unit to the complainant and for which the respondent is liable to pay interest at the prescribed rate to the complainant on amount received by the respondent from the complainant?





- ii. 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?
- iii. Whether the respondent can legally increase/decrease the area under sale without consent of the allottee?

**Reliefs sought by the complainant:**

17. The complainant is seeking the following reliefs:

- i. The respondent be directed to handover the possession of the flat in question complete in all regard after taking amount pending as per the initial agreement and the accounts as far as delay payments are concerned, may be allowed to be reconciled later.
- ii. The respondent be ordered to make refund of the excess amount collected on account of any area in excess of carpet area.
- iii. The respondent be ordered to make payment of interest accrued on amount collected by the respondent from the complainant, account of delayed offer for possession and which interest should be at prescribed rate from the date



as and when the amount was received by the respondent from the complainant and on monthly basis.

- iv. The respondent may be directed not to charge anything extra toward the increase in area as such increase is without the consent of the allottee.

### Determination of issues

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are as under:

18. With respect to the **first issue** raised by the complainant, as per clause 9.1 of apartment buyer agreement, the possession of the said unit was to be handed over within 6 months from the date of execution of this agreement. Therefore, due date of possession shall be computed from 29.07.2013.

*“9.1 subject to clause 9.4 below and subject to timely payment by the buyer of sale price, stamp duty and other charges due and payable according to the payment plans applicable to him/her/it or as demanded by the company, the company contemplates to complete construction of the said apartment and hand over the possession thereof to the buyer within 6 months from the date of execution of this agreement.”*

19. Accordingly, the due date of possession was 29.01.2014 and the respondent offered the possession of the said apartment to the complainant on 12.08.2015. Therefore, the possession has been delayed by 1 year 6 months and 14 days from due date of



possession till the offer of possession by the respondent to the complainant. As the promoter has failed to fulfil its obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

20. With respect to the **second issue** raised by the complainant, the apartment buyer agreement dated 29.07.2013 was executed prior to the coming into force of the Act ibid, therefore it is sacrosanct as regards the dealings between parties. Clause 2.1 provides about basic sale price to be calculated on the basis of super area and the buyer has signed the said agreement with free consent as no coercion has been alleged by complainant regarding execution of apartment buyer agreement. Also, it is held that the Act ibid is not meant to be read retrospectively, in respect of each and every provision but only in cases where specifically provided or infirmed. Thus, this issue is decided in negative.

21. With respect to the **third issue** raised by the complainant, as per clause 8.2 of the said agreement, the developer cannot do material alterations/modifications resulting in excess of plus/minus 10% change in total area of the apartment without intimating the buyer in writing. However in present case, an



apartment measuring 2350 was allotted to the complainant as per the said agreement and as per letter of offer of possession dated 12.08.2015, unit measuring 2464 sq. ft. was offered to the complainant, which is less than 10% change in total area of the apartment. Thus, this issue is decided in negative.

### Findings of the authority

22. **Jurisdiction of the authority-** 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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 entertain the present complaint.

23. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*. 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 *ibid*.

24. The complaint was filed on 20.09.2018. Notices w.r.t reply to the complaint were issued on 04.10.2018, 17.10.2018 and 01.12.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.10.2018 and on 01.12.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed *ex-parte* against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint. A final notice dated 14.2.2019 by way of email was sent to both the parties to appear before the authority on 26.02.2019.



25. As per clause 9.1 of the apartment buyer agreement dated 29.07.2013 for unit no. 9B, 9<sup>th</sup> floor, tower Belgravia, plot no.16, in project Central Park-II, Sector 48, Gurugram. Offer of possession was made to the complainant on 12.08.2015 but

the complainant failed to pay the balance amount to the respondent and to take over the possession. As per the said agreement, 50% amount was to be given at the time of booking and 50% at the time of delivery of possession. The project is ready and the respondent has offered the possession to the complainant. Keeping in view the facts and circumstances, the respondent is obligated to give possession of the unit to the complainant within a period of two months from the date of passing of this order after getting dues from the complainant as per the terms and conditions of the said agreement. The complainant is also well within his rights to get interest at the prescribed rate of interest @ 10.75% per annum on delayed delivery of possession w.e.f. 29.01.2014 to 12.08.2015.

#### **Directions of the authority**

26. 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 directs as follows:

- i. The respondent is obligated to give possession of the unit to the complainant within a period of 2 months from the date of this order after getting dues from the complainant as per the terms and conditions of the said agreement.





- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant.
- iii. The respondent is directed to pay interest accrued from 29.01.2014 to 12.08.2015 i.e. till offer of possession, on account of delay in handing over of possession to the complainant. This entire process shall be completed within 30 days.
27. As the project is registerable and has not been registered by the promoter, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act ibid. A copy of this order be endorsed to registration branch for further action in the matter.
28. The order is pronounced.
29. Case file be consigned to the registry.



**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Dated: 26.02.2019

Judgement uploaded on 28.03.2019