

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

**Complaint no. : 1783 of 2018**  
**First date of hearing : 14.03.2019**  
**Date of decision : 14.03.2019**

Mr. Rajiv Batra

R/o: D53, ground floor, Mayfield Gardens,  
Sector-50, Gurugram, Haryana – 122018

**Complainant**

Versus

M/s Sana Realtors Pvt. Ltd.

Regd. office: H-69, upper ground floor,  
Connaught Place, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Ms. Priyanka Agarwal

Representative on behalf of  
complainant

Shri Amit Kumar

Proxy counsel for Shri Ashish  
Upadhyay, advocate for  
respondent

**ORDER**

1. A complaint dated 09.12.2018 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. Rajiv Batra against the promoter M/s Sana Realtors Pvt. Ltd., on account of violation of the clause 15 of flat buyer agreement executed



on 20.04.2010 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 flat buyer agreement has been executed on 20.04.2010 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 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	"Precision SOHO Tower", Sector 67, Gurugram, Haryana.
2.	Nature of the project	Commercial colony
3.	Project area	2.456 acres
4.	Registered/not registered	<b>Not registered</b>
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	<b>Occupation certificate granted on</b>	<b>18.07.2017</b>
8.	Date of execution of flat buyer	20.04.2010



	agreement	
9.	Office space/unit no. as per the said agreement	540, 5 <sup>th</sup> floor
10.	Unit measuring as per the said agreement	525 sq. ft.
11.	Payment plan	Construction linked payment plan
12.	Total consideration amount as per clause 1 of the said agreement	Rs. 22,16,550/-
13.	Total amount paid by the complainant till date	Rs. 18,49,172/- [as per receipts annexed]
14.	Date of delivery of possession as per clause 15 of flat buyer agreement i.e. 3 years from the date of execution of buyer agreement i.e. 20.04.2010	20.04.2013
15.	Offer of possession	27.07.2017
16.	Delay in handing over possession from due date of possession till date of offer of possession	4 years 3 months 7 days

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 and the respondent. A flat buyer agreement dated 20.04.2010 is available on record for the aforesaid unit. As per clause 15 of the flat buyer agreement dated 20.04.2010, the due date of handing over possession was 2004.2013 and the possession was offered to the complainant on 24.07.2017. The respondent has not paid any interest for the period he delayed in handing over the



possession. Therefore, the promoter has not fulfilled their 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 respondent through his counsel appeared on 13.03.2019. The case came up for hearing on 13.03.2019. The reply filed on behalf of the respondent on has been perused.

### **BRIEF FACTS**

6. Based on the advertisement of the respondent the complainant showed interest in purchasing a space in SOHO towers. The brochure mentioned some facilities like hi-tech security, hi-speed elevator, Wi-Fi, laundry, coffee shop, health club and spa. Based upon promises of respondent the complainant booked an apartment in SOHO tower admeasuring 525 sq. ft'. the initial booking amount of Rs. 2,00000/- was paid through cheque dated 09.02.2010.
7. The respondent allotted unit no. 540 dated 12.02.2010 and the complainant paid the demanded amount in time bound manner but the allotted unit doesn't exist in the project and is illegal and arbitrary.
8. The respondent signed buyer's agreement on 20.04.2010 just to create false belief that the project shall be completed bin



time bound manner and persistently raised demand due to which they were able to extract money from the complainant. The complainant has paid instalments and deposited Rs. 19,78,587/- and respondent has not bothered to commit development of the project in time bound manner.

9. The total value of the unit is Rs. 22,16,550 as per buyer's agreement out of which the respondent has already extracted Rs. 19,78,587/- which is more than 90% of the total sale consideration before March, 2013 and the possession was offered in 2018.
10. The complainant repeatedly sought updates about the project and the same were not answered. The complainant visited the site many times to ascertain the status of the project but was shocked and surprised to find the project was lying raw and abandoned. To meet the demands raised by the respondent, the complainant had to liquidate his investments and borrow money through unsecured loans at high rate of interest.

**11. ISSUE TO BE DECIDED**

- I. Whether the respondent has breached provisions of this Act and the agreement by not completing construction on time?



- II. Whether the respondent is liable to pay interest on the amount paid to him by the complainant?
- III. Whether the unit no. 540 allotted to the complainant exists in the project?

### RELIEF SOUGHT BY THE COMPLAINANT

12. The complainant is seeking the following reliefs:

- i. Direct the respondent to immediately give possession of unit no. 540 or another with same size and all amenities mentioned in the brochure.
- ii. To direct the respondent to pay interest on paid amount of Rs. 19,78,587/- for delayed period.
- iii. To restrain the respondent from raising any fresh demand and increasing the liability of the complainant.
- iv. Any other relief that hon'ble authority deems fit in the facts and circumstances of the case.



### RESPONDENT'S REPLY

13. The present complaint filed by the complainant is liable to be dismissed as the present project does not fall within the purview of RERA and the Occupation Certificate in respect of the present project is already being issued by the competent

authority. Further it is submitted that vide memo No. ZP-589/SD (BS)/2017/17063 dated 18/07/2017 In Form BR-VII, DTCP had granted occupation certificate in respect of the aforesaid project. The Occupation Certificate was also containing the Description of the Building of the aforesaid project As "License No. 72 of 2009 dated 26/11/2009 Total Area measuring 2.456 Acres Sectors 67, Gurugram developed by M/s. Sana Realtors Pvt. Limited.

14. The present complaint filed by the complainant is liable to be dismissed as the complainant has made wrong averments in the complaint and had made wrong allegations against the respondent without any substantial evidence, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.
15. The present complaint filed by the complainant is not maintainable as not filed before the competent authority i.e. adjudicating officer as the relief sought by the complaint shall not be fall within the jurisdiction of this hon'ble regulatory authority, hence the present complaint is not maintainable and is liable to be dismissed.
16. The present complaint filed by the complainant is not maintainable as the occupancy certificate is already issued



and even the complainant is offered the possession of the property in question. Further the complainant was also intimated that the sale deed of the property in question is ready for execution but the complainant is deliberately not coming forward to take the possession and to get the conveyance deed executed.

17. The present complaint is not maintainable as the provision of section 19 (6) of Real Estate (Regulation and Development) Act 2016 was not complied by the complainant, which says every allottee, who has entered into an agreement to take or sale the apartment, plot or building shall be responsible to pay the necessary payments including registration charges, municipal taxes water and electricity charges, maintenance charges, ground rent and other charges etc. But no necessary payments were made by the complainant after the completion of the project, hence the present complaint is not maintainable and is liable to be dismissed.



18. The present complaint is not maintainable as the complainant had not executed the buyer's agreement till date; hence the present complaint is not maintainable and is liable to be dismissed.



19. It is pertinent to mention here that the complainant failed to make the timely payment of installments, hence the present complaint is not maintainable and is liable to be dismissed.
20. As there was no agreement and hence as such there is no delay in the handing over the possession of the project was beyond the control of the respondent. It is submitted that clause 15 of the agreement (thus not executed by the complainant) provide for the exemption if the delay, if any caused is beyond the control of the respondent, the same shall be excluded from the time period so calculated. It is not out of place to mention here that the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented. It is worth to note here that initially there were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised and since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start. Initially there was a 66 KV electricity line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL for



shifting of the said electricity line. HVPNL subsequently demanded a sum of Rs. 46,21,000/- for shifting the said electricity line and lastly even after the deposit of the said amount HVPNL took about one and half years for shifting the said electricity line. It is pertinent to mention here that until the electricity line was shifted the construction on the plots was not possible and hence the construction was delayed for about two years. It is pertinent to note here that the diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the removal of high tension wires in the year 2008 i.e. a year even before the license was granted to the respondent so that the time can be saved and project can be started on time. It is submitted that the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. It is submitted that in the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent, which further



was duly noted by various media agencies and documented in the government department. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December, 2012 and the dispute was settled by the respondent by paying more to the earlier contractor and thereafter appointing a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January, 2013 immediately to resume the work at the site without delay. Further, the project is complete since 2015 and the respondent has also applied for the occupancy certificate in May 2015. Lastly in July 2017 occupancy certificate was issued and the delay of two years was on account of the delay in compliances by the authorities and as such the respondent is not responsible for any delay. The development and construction has been diligently done by the respondent and the obligations which the respondent was to discharge have been onerously discharged without fail and the reasons for delay are stated herein for the kind consideration of this hon'ble commission. It is submitted that the respondent has complied with its part



of the obligation and the conditions aforesaid were not in control of the respondent. The respondent could diligently do his part, which has been done and requisite documents to prove its diligence are annexed herewith, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

21. It is further submitted as per the provisions of section 19 (7) Real Estate Regulation and Development Act 2016 the complaint is liable to pay the compensation and interest if any delay cause on the part of the complainant, whereas there is no delay on the part of the respondent.
22. The respondent deliberately is not taking the possession of the property in question and have filed the present complaint with the sole purpose to harass the respondent and to create undue pressure and to extort illegal money from the respondent, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.
23. The complainant has filed the present complaint, after concealing material and true facts with sole aim to mislead the hon'ble authority and to harass the defendant, therefore the complainant is not entitled to get any relief from the hon'ble authority as the occupancy certificate had been



issued by the concerned department and the delay in taking possession and registration process was done only by the complainant himself hence it is liable to be dismissed.

24. The present petition filed by the plaintiff is nothing other than the abuse of process of law, hence the present petition is liable to be dismissed.

25. The present suit is neither properly filed nor verified as per the provision of the hon'ble High Court rules, hence the same is liable to be dismissed.

#### DETERMINATION OF ISSUES

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

26. With respect to the **first and second issue**, the authority came across clause 15 of the buyer's agreement which is reproduced hereunder:

*"clause 15 – possession is proposed to be delivered by the developer within 3 years from the date of execution of buyer agreement i.e. 20.04.2010"*

Therefore, the possession was to be handed over by 20.04.2013 and the same was offered on 20.07.2017 causing a delay of 4 years 3 months 7 days. As the possession has been offered it would not be feasible to provide refund to the



complainant as it will affect the interest of other allottees. The complainant is thereby entitled to delayed possession charges at prescribed rate of 10.75% p.a. from the due date of possession till the actual handing over of possession.

27. With respect to the **third issue**, the letter of offer of possession dated 27.07.2017 issued by the respondent indicates that unit no. 540 has been offered to the complainant.

#### FINDINGS OF THE AUTHORITY

28. 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 deal with the present complaint.



29. 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.
30. The authority observed that as per clause 15 of flat buyer agreement dated 20.04.2010 for the said flat in "Precision SOHO Tower", Sector 67, Gurugram possession was to be handed over to the complainant within a period of three years from the date of the agreement i.e. 20.04.2010 which comes out to be 20.04.2013. However, respondent has not delivered the apartment in time. Complainant has already paid Rs. 18,49,172/- to the respondent against a total sale consideration of Rs. 22,16,550/-. However, the refund cannot be allowed in the present case, as the respondent has completed the project and has obtained occupation certificate dated 18.07.2017 from the competent authority. Thereafter, the respondent has also offered possession to the complainant on 24.07.2017. As the promoter has failed to fulfil his obligation by not handing over the possession within the stipulated time, the promoter is liable under section 18(1) proviso of the Act ibid 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 offer of possession.

### **DIRECTIONS OF THE AUTHORITY**

31. 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) It has been stated by the counsel for respondent that they have received occupation certificate on 18.07.2017 and offer of possession too has been sent to the complainant on 27.07.2017.
- (ii) As per clause 15 of the builder buyer agreement dated 20.4.2010 for unit no. 540, 5<sup>th</sup> floor, in project "Precision SOHO Tower" Sector-67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of buyer's agreement which comes out to be 20.4.2013. Complainant has already paid Rs.18,49,172/- to the respondent against a total sale consideration of Rs.22,16,550/-. Respondent has





offered the possession to the complainant on 27.7.2017.

(iii) It has been brought to the notice of the authority that the respondent has already offered possession to the complainant, as such as per provisions of section 19 (6) of the Real Estate (Regulation and Development) Act 2016, the complainant is also liable to pay penal interest at the rate of 10.75% on the balance dues which shall be calculated at the time of delivery of possession.

(iv) As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 20.4.2013 to 27.7.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016. The amount accrued on account of delayed charges shall be adjusted in the last demand to be raised by the respondent.

(v) Respondent is also directed to change the address of complainant in their record as intimated by the complainant. In view of the prevailing



circumstances no holding charges shall be charged  
by the respondent.

32. Complaint stands disposed of.

33. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Real Estate Regulatory Authority, Gurugram

Dated: 14.03.2019

Judgement Uploaded on 28.03.2019



HARERA  
GURUGRAM

