

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

Complaint no. : 1986 of 2018
Date of first hearing : 19.03.2019
Date of decision : 19.03.2019

1. Mr. Pankaj Kansal, s/o. Shri Raj
Kumar Kansal.
2. Mrs. Dimpy Kansal, w/o. Mr. Pankaj
Kansal

Address:- House no. 503, Swarn Jayanti
Apartment, Sector- 54, Gurugram,
Haryana- 122001.

Complainants

Versus

M/s Vatika Limited, through its authorized
representative.

Office at: Vatika Triangle, 4th Floor,
Sushant Lok, Phase-I, Block-A,
MG Road, Gurugram,
Haryana-122002.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member



APPEARANCE:

Shri R.K. Kansal
Ms. Radhika Verma

Father of the complainant
Senior executive (litigation) for the
respondent.

Shri Satya Prakash Singh Advocate for the respondent

ORDER

1. A complaint dated 04.12.2018 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 complainants Mr. Pankaj Kansal and Mrs. Dimpy Kansal, against the promoter M/s Vatika Limited, through its authorized representative in respect of apartment no. 1003, 10th floor in building E, admeasuring 2290 sq. ft. super area of the project 'tranquil heights', located at sector 82 A, Gurugram on account of violation of obligation on the part of promoter/respondent under section 11(4)(a) of the Act *ibid.*
2. Since the builder buyer's agreement was executed on 10.08.2015 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 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	“Tranquil heights” in Sector 82-A, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	DTCP license no.	22 of 2011 dated 24.03.2011
4.	Allotted apartment no.	1003, 10 th floor, building no. E
5.	Admeasuring super area of the allotted apartment no.	2290 sq. ft.
6.	Project area	11.218 acres
7.	RERA registered/ not registered	Registered vide no. 359 of 2017
8.	Date of booking	15.11.2013 (as per statement of account, annx P/1)
9.	Date of builder buyer agreement	10.08.2015 (annx P/2)
10.	Total consideration (as per SOA @ annx P/1)	Rs. 1,73,71,940/-
11.	Total amount paid by the complainant (annx P/1)	Rs. 73,13,785.72/-
12.	Payment plan	Construction linked payment plan. (Pg. 44 of the complaint)
13.	Due date of delivery of possession	10.08.2019 Clause 13 – 48 months from date of execution of agreement
14.	Revised date of completion as per RERA registration certificate	30.04.2021
15.	Delay of number of months/ years	Complaint is pre-mature.
16.	Penalty clause as per builder buyer agreement dated 10.08.2015	Clause 18- Rs. 7.50/- per sq. ft. per month of the super area



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A builder buyer agreement dated 10.08.2015 is available on record for unit no. 1003, 10th floor, building no. E, admeasuring super area of 2290 sq. ft. according to which the due date of possession comes out to be 10.08.2019. Hence, the complaint is premature on this count. But the complainant alleges that the construction activity is carried out by the respondent at a very slow pace due to ongoing dispute between the promoter and the farmers.
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The respondent through his counsel appeared on 19.03.2019. The case came up for hearing on 19.03.2018. The reply has been filed by the respondent on 09.01.2019 which has been perused by the authority.



Facts of the complaint: -

6. Briefly put facts relevant for the disposal of the present complaint are that the complainant has booked an apartment in the respondent's project, namely 'tranquil heights' located at sector 82-A, Gurugram in 2014. In pursuance to the

aforesaid booking of the complainant, respondent has allotted apartment no. 1003, 10th floor in the above project in favour of the complainant. On 10.08.2015, builder buyer agreement for the aforesaid apartment was executed between the parties.

7. The total consideration of the apartment was agreed at Rs. 1,66,43,720/- as against which the complainant has made a total payment of Rs. 73,13,786/- to the respondent on various dates under construction linked payment plan.
8. The respondent has registered the project with HRERA vide no. 359/2017 in November, 2017 with completion date of 2022 whereas per clause 13 of the builder buyer's agreement the respondent company assured the complainant that the possession of the said unit would be handed over to the complainant within 4 years i.e. by 10th August, 2019.
9. It was alleged by the complainant that the respondent has executed the builder buyer agreement after a delay of one and a half year from the date of booking. It was further alleged by the complainant that the construction activity was not going on as per the terms of agreement as there was some dispute going on between the respondent and farmers. The complainant vide email dated 01.11.2015 asked the respondent to update regarding the same but in reply to the



email the respondent has stated that all these are rumours and confirmed that everything is fine.

10. The complainant alleged that despite repeated request the respondent has failed to refund the paid amount till date, however, the respondent has pressurized the complainant to opt for alternative unit in other developments of respondent as the respondent will not refund the money. The said offer was denied by the complainant vide email dated 17.09.2018.
11. Being aggrieved by the aforesaid conduct of the respondent, the complainant was constrained to file the instant complaint before this authority.

Reliefs sought:-

- **Direct the respondent to refund the money paid by the complainant i.e. Rs. 73,13,786/- alongwith interest @24% p.a. from the date of payment till its realization.**

Respondent's reply: -

12. The respondent submitted that the claim for compensation with interest would be adjudged by the adjudicating officer as appointed under Section 71 of RERA 2016 and that too keeping in view the factors mentioned in section 72 of the Act. No complaint can be entertained much less before this Id.



authority in respect of matters to be adjudicated by the adjudicating officer. Hence the Id. authority lacks jurisdiction to deal with the present complaint.

13. The respondent submitted that the complaint is liable to be dismissed as it is **pre-mature**. The delivery date of the apartment as per the builder buyer agreement is 10.08.2019. it is also pertinent to mention that the complainant had satisfied themselves in respect of the said project and were duly informed about the completion date of the said apartment and other obligations of the complainants at the time of making application for booking the said apartment. The complainant now in early 2018 even before the stipulated date of completion cannot be allowed to raise the concocted, flimsy and frivolous averments/objections at such juncture where the project is yet to reach at its stipulated delivery/completion date.

14. The respondent submitted that the relief sought by the complainants is based on assumptions and presumptions and is not tenable in the eyes of law and hence is not maintainable and the complaint should be rejected at the very first instance.

15. The respondent submitted that the complainant has failed to bring on record any joint cause of action and they are in



violation of the RERA 2016. Thus, the petition is liable to be dismissed solely on this ground.

Findings of the authority:-

16. 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. The project “tranquil heights” is located in sector 82-A, Gurugram. 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.

18. Arguments heard. During the course of arguments, the counsel for the respondent has stated at bar that they are ready to refund the amount. It has been alleged by the complainant that the project is badly delayed. Out of total consideration of Rs.



1,73,71,940/- the complainants have paid only Rs. 73,13,785/- till date. As per registration certificate the revised date of delivery of possession is 30.04.2021. The complainant has further alleged that the land on which the tower is situated is under litigation with the farmers. However, no proof in this context has been annexed and brought on record by the complainant.

19. However, the authority is of the considered opinion that keeping in view the facts and circumstances of the case and statement made by the counsel for the respondent at bar, the complainants are entitled for refund of the deposited amount alongwith prescribed rate of interest @ 10.75% p.a.

Decision and directions of the authority:-

20. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following direction to the respondent: -

- The respondent is duty bound to refund the deposited amount of the complainants alongwith prescribed rate of interest @ 10.75% p.a. from the actual date of payment till its realization within 90 days from this date of order.



21. The order is pronounced.

22. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date:

Judgement uploaded on 29.03.2019



HARERA
GURUGRAM

