

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 23.01.2019
Complaint No.	532/2018 case titled as Mr. Satish Kumar Sharma Vs. M/s Selene Construction Ltd.
Complainant	Mr. Satish Kumar Sharma
Represented through	Complainant in person Shri Sushil Yadav, Advocate.
Respondent	M/s Selene Construction Ltd.
Respondent Represented through	Shri Ashish Kumar, authorized representative on behalf of the respondent-company with Shri Rahul Yadav, Advocate for the respondent.
Last date of hearing	12.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

Project is already complete. Occupation certificate has already been received by the respondent on 5.2.2018 and possession has already been offered to the complainant by the respondent on 22.2.2018.

As per clause 21 of the Builder Buyer Agreement dated 10.1.2014 for unit No. P-022, 2nd floor, tower-P, in project "Indiabulls Centrum Park" Sector-103, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of execution of BBA which comes out to be **10.7.2017**. It was a construction

linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.59,74,651/- to the respondent against a total sale consideration of Rs.92,33,907/-. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e 10.75%. However, citing health and marriage of his daughter the complainant is seeking refund of the deposited amount as he is unable to pay further amount to get possession.

Keeping in view medical health issues of the complainant and marriage of his daughter, the authority is of the considered opinion that the amount deposited by the complainant be refunded to the complainant after deducting 10% of the total sale consideration alongwith prescribed rate of interest @ 10.75% per annum, within a period of 90 days from the date of this order. Accordingly, the respondent is directed to refund the deposited amount to the complainant by taking sympathetic view in the circumstances of the matter by not charging any penal interest for making late payments on the part of the complainant.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
23.1.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 532 of 2018
First date of hearing : 12.12.2018
Date of decision : 23.01.2019

1. Mr. Satish Kumar Sharma
R/o WZ 1523/1, Nangal Raya,
New Delhi-110046.

2. Mr. Abhishek Jain
R/o B3/36, Block B, Sector 11,
Rohini, Delhi-110085.

Complainants

Versus

M/s Selene Construction Ltd.
Regd. Office: F-60, Malhotra Building, 2nd floor,
Connaught Place, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Satish Kumar Sharma Complainant in person
Shri Sushil Yadav Advocate for the complainants
Shri Rahul Yadav Advocate for the respondent
Shri Ashish Kumar Authorised representative on
behalf of the respondent
company

ORDER

1. A complaint dated 11.07.2018 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. Satish Kumar Sharma and Mr. Abhishek Jain, against the promoter M/s Selene Construction Ltd, on account of violation of the clause 21 of the flat buyer's agreement executed on 10.01.2014 in respect of flat described below in the project 'Indiabulls Centrum Park' for not giving 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's agreement has been executed on 10.01.2014 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 Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"Indiabulls Centrum Park", Village Daulatabad, Sector 103, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	22.062 acres
4.	DTCP license no.	252 of 2007 50 of 2011 63 of 2012



5.	Occupation certificate received on	05.02.2018
6.	Offer of possession demand raised on	22.02.2018
7.	RERA Registered/ not registered.	Registered
8.	HRERA registration number	11 of 2018 for phase I 10 of 2018 for phase II
9.	HRERA registration certificate valid upto	31.07.2018 for phase I 31.10.2018 for phase II
10.	Flat/unit no.	P-022, 2 nd floor, tower P
11.	Flat measuring	1481 sq. ft.
12.	Date of execution of flat buyer's agreement-	10.01.2014
13.	Payment plan	Construction linked payment plan
14.	basic sale price of the unit as per the said agreement	Rs.76,55,000/-
15.	Total cost of the said flat as per letter dated 22.02.2018	Rs.92,33,207/-
16.	Total amount paid by the complainants till date as per letter dated 22.02.2018	Rs.59,74,651/-
17.	Date of delivery of possession as per clause 21 of flat buyer's agreement (3 years + 6 months grace period from the date of execution of flat buyer's agreement i.e. 10.01.2014)	10.07.2017
18.	Delay in handing over possession from the due date till the offer of possession	7 months and 12 days
19.	Penalty clause as per the said flat buyer's agreement	Clause 22 of the agreement i.e. Rs.5/- per sq. ft. per month for the period of delay.



4. The details provided above have been checked on the basis of record available in the case file which has been provided by

the complainants and the respondent. A flat buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 10.07.2017 and the possession was offered to the complainants on 22.02.2018. 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 appearance. The respondent appeared on 12.12.2018. The case came up for hearing on 12.12.2018 and 23.01.2019. The reply filed on behalf of the respondent on has been perused.

Facts of the complaint

6. Briefly stated, the facts of the complaint are that Mr. Satish Kumar Sharma and Mr. Abhishek Jain booked a flat admeasuring super area 1481 sq. ft. in the said project of the respondent for basic sale price of Rs.76,55,000/- and total sale consideration is Rs.92,33,207/- which includes BSP, car parking, IFMS, club membership, PLC etc.
7. The complainants submitted that they made payment of Rs.59,74,651/- to the respondent vide different cheques on



different dates, the details of which are annexed with the complaint. The complainants booked the flat in September 2012 and executed the flat buyer's agreement in January 2014. As per said agreement, the respondent had allotted a flat bearing no. P-022 on 2nd floor in tower-P having super area of 1481 sq. ft. to the complainants. As per clause 21 of the flat buyer's agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of signing of the flat buyer's agreement dated 10.01.2014 with an extended period of six months.

8. The complainants submitted that they regularly visited the site but were surprised to see that construction work is not in progress and no one was present at the site to address the queries of complainants. That despite receiving 75-80% approximately payment of almost all the demands raised by the respondent over phone calls and personal visits of complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period.

9. The complainants submitted that due to the omission on part of the respondent, they have been suffering from mental torture, agony and also continues to incur severe financial losses. As per clause 22 of the flat buyer's agreement dated



10.01.2014, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants compensation @ Rs.5/- per sq. ft. per month of the super area of the flat. It is however, pertinent to mention here that compensation at a such nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainants by not providing the possession of the flat even after a delay of almost 23 months from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement.

10. The complainants submitted that they sent a letter dated 10.03.2015 for cancellation of aforesaid unit but the respondent paid no heed to the letter and continued to demand the money from the complainants. In March 2017, the complainants again sent a legal notice for cancellation of unit and instead of cancelling the unit the respondent continued to send the demand letter to the complainants. It is pertinent to mention that the complainant, Mr. Satish Kumar suffered a massive heart attack and incur a huge amount of bills for the operation in the hospital and now he is in debts to pay the bills of the hospital and in urgent need of money, therefore he does not want to continue with the flat now.



11. The complainants submitted that they requested respondent several times on making telephonic calls and also personally visiting the office of the respondent either to refund the amount along with interest @ 18% per annum on the amount deposited by them, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard earned huge amount and wrongfully gain himself and caused wrongful loss to the complainants.

Issues to be decided

12. The sole issue raised by the complainants is whether the respondent has unjustifiably delayed in handing over possession of the said unit in project in question?

13. Relief sought:

The complainants are seeking refund of amount Rs.59,74,651/- along with interest @ 18% per annum on compounded rate from the date of booking of the flat in question.

Reply on behalf of the respondent

14. The respondent submitted that the instant complaint is not maintainable, on facts or in law, and as such is liable to be



dismissed at the threshold being in wrong provisions of the law.

15. The respondent submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law. The respondent denies them in toto. Nothing stated in the said complaint shall be deemed to be admitted by the respondent merely on account of non-transverse, unless the same is specifically admitted herein. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the respondent, hence the same is liable to be dismissed.
16. The respondent submitted that the complainants themselves approached the respondent and showed interest to book unit in the said project. Thereafter, the complainants post understanding the terms and conditions of the agreement had voluntarily executed the flat buyer's agreement with the respondent on 10.01.2014. It is submitted that as per clause 49 of the said agreement, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the complainants, the same shall be adjudicated through arbitration mechanism. Thus, the complainants are contractually barred from invoking the jurisdiction of this hon'ble authority.



17. The respondent submitted that the relationship between the complainants and the respondent is governed by the document executed between them i.e. FBA dated 10.01.2014. It is pertinent to mention that the complainants with mala fide intention have not disclosed, in fact concealed the material fact from this hon'ble authority that the complainants have been wilful defaulters since the beginning and not paying their instalments on time as per the construction link plan opted by them.
18. The respondent submitted that they have already completed the construction of tower 'P' and also obtained OC for the concerned tower dated 05.02.2018 and already initiated the process of handing over possession of tower P to its respective buyers. It is also submitted that they are under the process of handing over possession of the unit of the said tower including the unit of the complainants in question. The delay in delivering the possession of the flat to the complainants was beyond the control of the respondent, since for completing a project a number of permissions and sanctions are required from numerous governmental authorities which were delayed with no fault of the respondent, in addition to the problems related to labour/raw material and governmental restrictions



including NGT which imposed a ban on carrying out construction in Delhi NCR for several months.

19. The respondent submitted that the agreement that has been referred to is FBA dated 10.01.2014, executed much prior to coming into force of the Real Estate (Regulation and Development) Act, 2016. Further, the adjudication of the instant complaint for the purpose of granting interest and compensation as provided under the Act has to be in reference to the agreement for sale executed in terms of the said Act and rules and no other agreement. Whereas, the FBA being referred to or looked into in this proceeding is an agreement executed much before the commencement of the Act. Thus, no relief can be granted to the complainants on the basis of the new agreement to sell as per the Act *ibid*.

Determination of issues

20. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the findings of the authority on the **sole issue** raised by the complainants is that the respondent is liable to pay interest at the prescribed rate, on the delayed possession. This is fortified from the fact that as per clause 21 of the agreement dated 10.01.2014, the construction was to be completed within a



period of 3 years with a grace period of 6 months from the date of execution of the said agreement. The relevant clause is reproduced as under:

“The developer shall endeavour to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of the flat buyers agreement subject to timely payment by the buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer...”

21. Accordingly, the due date of possession comes out to be 10.07.2017 which has already lapsed. However, the respondent sent a letter of offer of possession to the complainants on 22.02.2018 after the receipt of occupation certificate dated 05.02.2018. Therefore, delay in handing over possession shall be computed from due date of handing over possession till letter of offer of possession i.e. 22.02.2018. The possession has been delayed by 7 month and 12 days from due date of possession till the offer of possession, thereby violating the terms of the said agreement.

Findings of the authority

22. 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 complainants 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.

23. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

24. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be



bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

25. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.
26. The authority observed that as per clause 21 of flat buyer's agreement dated 10.01.2014 for the said flat in "Indiabulls Centrum Park", Sector 103, Gurugram possession was to be handed over to the complainants within a period of three years plus 6 months grace period from the date of execution of the said agreement i.e. 10.01.2014 which comes out to be 10.07.2017. However, respondent has not delivered the unit in time. Complainants have already paid Rs.59,74,651/- to the respondent against a total sale consideration of Rs.92,33,207/-. As such, complainants are entitled for delayed possession charges at the prescribed rate of interest.



However, citing health issues and marriage of daughter, the complainants are seeking refund of the deposited amount as they are unable to pay further amount to get possession.

27. Keeping in view medical health issues of the complainants and marriage of daughter, the authority is of the considered opinion that the amount deposited by the complainants be refunded to the complainants after deducting 10% of the total sale consideration along with prescribed rate of interest @ 10.75% per annum, within a period of 90 days from the date of this order. Accordingly, the respondent is directed to refund the deposited amount to the complainants by taking sympathetic view in the circumstances of the matter by not charging any penal interest for making late payments on the part of the complainants.

Directions of the authority

28. After taking into consideration all the material facts adduced 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 the respondent to refund the amount deposited by the complainants after deducting 10% of the total sale consideration i.e. Rs.92,33,207/- along with prescribed rate of interest @



10.75% p.a. within a period of 90 days from the date of this order.

29. The order is pronounced.

30. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2019

Judgement uploaded on 29.03.2019



HARERA
GURUGRAM

