

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

Complaint no. : 2191 of 2018
First date of hearing: 20.03.2019
Date of decision : 20.03.2019

Mr. Rajdeep Aggarwal
R/o H. No: B-20, Sarvodaya Enclave,
New Delhi: 110070.

Complainant

Versus

M/s. Pareena Infrastructure Pvt Ltd.
Address: - C - (7A), 2nd floor, Omaxe City Centre,
Sohna Road, Gurugram-122018, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Sanjeev Kumar

Advocate for the complainant.
Authorised representative on
behalf of respondent company

Shri Prashant Sheoran

Advocate for the respondent

ORDER

1. A complaint dated 02.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Rajdeep Aggarwal, against the promoter, M/s. Pareena Infrastructure Pvt Ltd. (through its authorised representative), in respect of apartment buyer agreement dated 17.04.2014 for allotted



flat/unit no. T-3/902 in the project “Coban Residencies” located at sector 99 A, Gurugram being developed by the respondent on account of delay in delivery of possession which is in violation of section 11(4)(a) of the Act.

2. Since the apartment buyer agreement dated 17.04.2014 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 non-compliance of statutory obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Coban Residencies” at sector 99 A, Gurugram.
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2017
5.	Date of provisional allotment letter	20.11.2013
6.	Date of apartment buyer agreement	17.04.2014
7.	Allotted flat/unit no.	T-3/1902, tower T 3
8.	Measuring area of the allotted unit	1997 sq. ft.
9.	RERA Registered / not registered	Not registered.



10.	Due date of delivery of possession Clause-3.1 of the said agreement: 4 years from the date of start of construction i.e. 16.10.2014 or execution of agreement i.e. 17.04.2014, whichever is later.	16.10.2018 Note – Due date has been calculated from the date of start of excavation.
11.	Date of start of excavation as per demand cum tax invoice dated 24.09.2018	16.10.2014 (Annex P 8)
12.	Total consideration as per statement of account dated 14.11.2018	Rs. 120,80,628/-
13.	Payment plan	Construction linked payment plan
14.	Total amount paid by the complainant till date as per statement of account dated 14.11.2018	Rs. 99,91,296/- (Pg. 84 of the complaint)
15.	Delay in delivery of possession till date of decision	5 months 4 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. An apartment buyer's agreement dated 17.04.2014 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainant by 16.10.2018. But the respondent has failed to fulfil its contractual obligation till date, which is in violation of section 11(4)(a) of the Act *ibid*.
5. Taking cognizance of the complaint, the authority has issued notice to the respondent for filing reply and for appearance.



The respondent appeared on 20.03.2019. The case came up for hearing on 20.03.2019. The reply filed by the respondent has been perused by the authority.

FACTS OF THE COMPLAINT:

6. Briefly stated, facts relevant for the disposal of the present complaint are that the complainant booked a residential unit in the respondent's project, namely 'Coban Residencies' located at Sector 99 A, Gurugram. In pursuance to the aforesaid booking of the complainant, respondent vide allotment letter dated 20.11.2013, allotted flat/unit no. 902, in tower T 3, measuring 1902 sq. ft. in favour of the complainant. On 17.04.2014, buyer's agreement for the allotted unit was executed between the parties. The complainant stated that against the total consideration complaint has paid Rs. 99,91,296/- on various dates under construction linked payment plan.
7. As per clause 3.1 of the agreement dated 17.04.2014, possession of the unit was to be delivered within a period of 4 years' months from the date of start of construction or execution of agreement whichever is later. Agreement to sell was executed on 16.04.201, inter alia, due date of possession



was 16.04.2018. The complainant alleged that respondent has failed to complete the construction and deliver the possession till date despite collecting substantial amount of sales consideration.

8. Losing all its faith from the respondent in getting the project complete, the complainant has approached the authority by filing the present complaint.

ISSUES TO BE DETERMINED:

- i. Whether the respondent has violated the terms and conditions of the agreement and is there is any reasonable justification for delay to give possession of flat?
- ii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developer for delay in giving possession?
- iii. Whether complainant is entitled for interest at prescribed rate for every month of delay from due date of possession till actual delivery of possession?
- iv. Whether the respondent are liable to refund the entire amount as paid by the complainant?



RELIEF SOUGHT:

Direct the respondent to refund the entire amount of Rs. 99,91,296/- to the complainant along with interest at prescribed rate from the date of payment as per section 18 and 19(4) of the Act ibid OR the respondent may be directed to pay interest with prescribed rate on account of delay from due date of possession till date of possession.

RESPONDENT'S REPLY:

9. The respondent submitted that the construction work of the said project is at an advance stage and the structure of various towers have already been completed and remaining work is endeavoured to be completed as soon as possible.
10. The present complaint has been filed by the complainant by concealing the material facts from this authority. Since the complainant had signed the apartment buyer agreement out of his own accord and free will, he is also bound by the terms and condition of the said apartment buyer agreement. It is submitted that as per clause 3.1, the date of possession will be years from the start of construction or execution of this agreement, whichever is later. It is submitted that the agreement in question was executed on 17.04.2014 and the



complainant on said date had specific knowledge that the construction has yet to be started and it was specifically made aware that the construction of the project shall begin soon. It is submitted that the construction of the project started on 16.10.2014 as duly mentioned in annexure P8 submitted by complainant himself. Thus legally the period of offer of possession shall start from said date and the date of possession comes to 15.10.2018.

11. The respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments by various allottees. This clearly shows unwaiverly commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one has seriously hampered the capability of the respondent to deliver the project as soon as possible. The amounts which were realised from the complainant have already been spent in the development work of the proposed project. On the other hand the respondent is still ready to deliver the unit in question after due completion to the complainant, of course, subject to payment of due instalments and charges.



12. It has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then its other genuine allottees of the project, will stand to be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

13. Admittedly completion of project is dependent on collective payment by all the allottees and just because few of the allottees paid the amount demanded does not fulfil the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by respondent which resulted in delaying completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds. A brief detail of the expenditure showing the bonafide intention of the respondent that the respondent is trying to complete structure out of his own fund is as follow:

- Total no. of units – 544
- Units sold - 238



- Total amount spent on construction - Rs. 165.13 Cr
- Total amount received from customers - Rs. 123.23 Cr
- Total amount demanded from customers - Rs. 162.46 Cr (it could increase further since company have stopped raising demand to defaulter customer service)
- Developers contribution - Rs. 41.90 Cr

14. The respondent submitted that in the present case in order to compensate the delay against the project in question i.e Coban Residencies, the respondent had also paid an amount of Rs. 3,74,440/- against the unit of complainant, but now the complainant became dishonest and is trying to get dual benefit by seeking interest. It is submitted that the respondent had already paid an amount equivalent to interest at the prescribed rate as per RERA upto the month of Jan 2019 to the complainant. That the credit notes issued in lieu of said payment are attached herein as annexure R-1 to R4. The amount paid by respondent is much more than the interest for the period of 16.10.2018 (i.e. date of delivery of possession) to 16.01.2019 and the balance amount shall be adjusted in future payments. It is submitted that as per prescribed rate of interest the amount on the payment made by complainant comes to Rs. 3,44,604/- and the respondent had already compensated the complainant by Rs. 3,74,440/-.



DETERMINATION OF ISSUES:

15. As regards **the issue no. i, iii and iv** raised by the complainant, it is noteworthy from the perusal of record and the submissions made by the parties that as per clause 3.1 of the apartment buyer's agreement dated 17.04.2014, possession of the unit in question was to be delivered within a period of 4 years from the date of commencement of construction or date of execution of agreement, whichever is later. Relevant portion of the clause is reproduced below –

“3.1.....That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later.....”

As per demand letter cum invoice dated 24.09.2018, the date of start of construction is 16.10.2014 which is later than the date of execution of buyer's agreement dated 17.04.2014. So the due date of possession is calculated from date of the date of start of construction i.e. 16.10.2014. Hence due date of delivery of possession comes out to be 16.10.2018. The respondent has failed to deliver the possession till date even after a delay of 5 months 2 days which is in violation of section 11(4)(a) of the Act *ibid*.



However, the authority is of the view that order for refund of paid amount at this belated stage would not serve the ends of justice and also hamper the interest of other allottees as well who wishes to continue with the project as the respondent has submitted in written reply that it is trying to complete the structure. Thus, the complainant is entitled for delayed possession charges at prescribed rate of interest @ 10.75% p.a. on the deposited amount in terms of section 18 of the Act ibid and the compensation already paid by the respondent shall be adjusted.

16. As regards **issue no. ii** raised by the complainant, the complainant has failed to produce any documentary evidence to prove that there is any kind of alleged misrepresentation made by the respondent regarding delay in giving possession of unit. Hence, this issue cannot be decided in favour of complainant for want of documentary evidence.

FINDINGS OF THE AUTHORITY:

17. 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 Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

18. As per clause 3.1 of the apartment buyer agreement dated 17.04.2014, for unit no.T-3/902, tower T3, in project “Coban Residencies”, Sector 99-A, Gurugram, possession was to be handed over to the complainant within a period of 4 years from the date of start of construction or execution of the said agreement whichever is later i.e. 16.10.2014 which comes out to be 16.10.2018. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.99,91,296/- to the respondent against a total sale consideration of Rs.1,20,80,628/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 16.10.2018 as per the provisions of section



18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY:

19. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:-

- (i) The respondent is liable to pay delay possession charges at the prescribed rate of interest @ 10.75% from the due date of delivery of possession i.e. 16.10.2018 till offer of possession to the complainant as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
- (ii) The interest so accrued from due date of delivery of possession 16.10.2018 till the date of order i.e. 20.03.2019 be paid within 90 days from the date of order and monthly interest be paid subsequently on 10th of every month.
- (iii) Both parties are directed to sort out their matter amicably with respect to payment as per statement of accounts



20. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceedings will be initiated against the respondent under section 59 of the Act *ibid*.
21. The order is pronounced.
22. Case file be consigned to the registry. A copy of this order be endorsed to the registration branch.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 20.03.2019

Judgement uploaded on 08.04.2019

HARERA
GURUGRAM

