

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

**Complaint no. : 1390 of 2018**  
**First date of hearing : 13.03.2019**  
**Date of decision : 13.03.2019**

Mr Ashish Kumar  
Mr Naresh Kumar  
R/o. House no 793, Baba Kharak Singh Marg, **Complainants**  
New Delhi.

versus

M/s. Nimai Developers Pvt. Ltd.  
**Address : SCO-304, 2<sup>nd</sup> floor, Sector 29,**  
Gurgaon-122002 **Respondent**

**CORAM:**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE**

Shri Sushil Yadav Advocate for the complainants

Shri Chander Parkash Advocate for the respondent

**ORDER**

1. A complaint dated 17.10.2018 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 Ashish Kumar and Mr Naresh Kumar, against the respondent M/s. Nimai Developers P. Ltd. in respect of unit described below in



the project “Nimai Place” located at sector 114, 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 buyer’s agreement was executed on 10.10.2014 i.e 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 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	“Nimai place” at Sector 114, Gurugram.
2.	Nature of real estate project	Commercial project.
3.	Total area of the project	3.0125 acres
4.	DTCP license no.	126 of 2012 dated 20.12.2012
5.	Date of execution of buyer’s agreement	10.10.2014
6.	Unit no.	615, 6 <sup>th</sup> floor.
7.	Unit area	581 sq. ft.
8.	RERA Registered / not registered	Registered
9.	RERA Registration no	7 of 2018
10.	Revised date of delivery of possession as per RERA certificate	<b>30.09.2019</b>



11.	Due date of delivery of possession <b>Clause-26</b> : 36 months from the date of sanction of building plan or date of execution of agreement, whichever is later. <b>Note</b> - Due date has been calculated from the date of execution of agreement.	<b>10.10.2017</b>
12.	Total consideration	Rs. 44,15,600/-
13.	Total amount paid by the complainants	Rs. 30,19,141/-
14.	Payment plan	Construction linked payment plan
15.	Delay in delivery of possession till date	1 year 6 months 3 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 complainants and the respondent. A buyer's agreement dated 10.10.2014 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered to the complainants by 10.10.2017, 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 13.03.2019. The case came up for hearing on 13.03.2019. The reply has been filed by the respondent which has been perused by the authority.

### Facts of the complaint

6. The complainants submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named Nimai Palace, at Sector 114, Gurugram promising various world class amenities and timely completion of the project etc. Relying on the promise and undertaking given by the respondent in the aforesaid advertisements, the complainants booked an studio apartment admeasuring 581 sq. ft in the aforesaid project for total sale consideration of Rs 44,15,600/-. The complainants made payment of Rs 30,19,141/- to the respondent vide different cheques.
7. The complainants also submitted that as per para no 26 of the builder buyer agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the



date of signing the flat buyer agreement dated 10.10.2014 or approval of building plan.

8. The complainants also submitted that they regularly visited the site but was surprised to see that construction work was very slow in progress and no one was present at the site to address the queries of the complainants.
9. The complainants also submitted that due to this omission on the part of the respondent, the complainants have been suffering from disruption, mental torture, agony and financial losses.
10. The complainants also submitted that they have requested the respondent several times on making telephonic calls and also personally visited the office of the respondent either to refund the amount along with interest @18% per annum.

#### **Issue to be determined**

11. The sole issue raised by the complainants is as follows :
  - i. Whether the respondent is liable to refund the entire amount paid by the complainants along with interest?

#### **Relief sought**

12. The relief sought by the complainants is as follows :



Direct the respondent to refund the entire amount of Rs. 30,19,141/- to the complainants along with interest as prescribed under the Act.

### Respondent's reply

13. The complaint filed by the complainants is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint.
14. In the present complaint, the complainants have asked for the refund along-with the interest and penalty from promoter, in case the complainants wants any compensation from respondent, then they have to necessarily file a complaint only before the adjudicating officer, who alone empowered to grant the compensation, therefore, the present complaint is liable to be dismissed on this score alone. The complaints pertaining to compensation and interest for a grievance under section 12, 14,18 and 19 of the Real Estate (Regulation & Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with section-31 and section-71 of the said Act and not before this authority under rule-28, section-31, section-71, rule-28 and rule-29





15. This authority has no jurisdiction to entertain the present complaint as the complainants have not come with clean hands and have concealed the material facts and wilfully concealed the fact of their actual status as complainant and have presented fabricated story before the authority to unsuccessfully convince the authority to believe on their false and derogatory allegations.

16. It is a submission of the respondent that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondent. It is submitted that the complainant has merely alleged that respondent gave advertisement in various leading newspapers about their forthcoming project promising various advantage, like world class amenities and timely completion/execution of the project etc. The complainants had miserably failed to place any substantive proof in support of their allegations made in the present complaint and have relied only upon the allegations which are based only on the imagination and fantasies. The complainants failed to provide any communication on document or otherwise or any other proof in black and white in support of their frivolous



allegations made against the respondent that he had represented to the complainant to be a renowned developer having expertise in new projects and the proposed project would be completed in three years. It is submitted that the respondent never persuaded or asked the complainants to purchase any of the product of the respondent whether commercial or residential and the allegations made by the complainants against answering respondent are false and frivolous, therefore, the present complaint is liable to be dismissed on this score alone.

17. The complainants himself are falsely representing the fact that the respondent presented a rosy picture of the project. The entire story of complainant is concocted in the present complaint proved to be false as the complainants being an expert know about all the minor details of all the project of real estate available in the market and it is difficult to believe that one real estate expert can misrepresent about a real estate project, as mentioned in the present complaint. Therefore, the present complaint has been filed by the complainant only to harass and humiliate the respondent unnecessarily by abusing the Real Estate (Regulation and Development) Act, 2016





passed by the Parliament as welfare legislation the complainants are trying to destroy the career of respondent as a real estate developer.

18. The complainants have made false and baseless allegations with a mischievous intention to extort money from respondent in an illegal and unlawful manner by filing such merit-less complaint. In view of the same, it is submitted that there is no cause of action in favour of the complainants to institute the present complaint.

19. It is submitted that the complainants invested monies in the project of the respondent after making a due diligence of the investment potential of the project and respondent had not played any role in the same. Therefore, it is from the averments mad herein above, it is clear as crystal that the answering respondent is not liable to pay compensation, refund, interest or penalty to the complainant in the present case. It is further submitted that the complainants have approached this authority with malafide intentions of making unlawful gains and therefore, no permission shall be given to file the present complaint on this short ground alone and the complaint ought to be dismissed.



20. In the present project payment received till date is Rs. 42,41,238/- (including tax) in percentage 50% whereas the payment terms were as per the construction link plan as executed in the buyer's agreement. On the contrary the demand of the further money has been sent on several occasions and till date the payment should have been deposited upto 70% but neither the complainants bothered to pay the same nor did averred in the present complaint, the present conduct perhaps speaks volumes of the intent of the complainant.
21. The respondent is not liable to pay any interest along-with compensation, refund and penalty being claimed by the complainants. The respondent had never made any statement whether orally or in writing or by visible representation to falsely represent his services of a particular standard or grade. The respondent never ever represented about any licence or approval or sanctions or permissions of respondent for the said project and never made any false or misleading representation regarding the services or product of the respondent and always discharged his duties and functions as per the provisions of the said Act, therefore, the allegations of



deficiency of services, cheating or fraud on the part of respondent played with complainants are false and frivolous, thus, the present complaint deserves to be dismissed summarily.

22. It is submitted that initially construction of two basements was hampered by the high water table (instead of 3 basements respondent was restricted to 2 only). It is further submitted that the construction technique of PT beam, adopted as the state of art technology also added to the slowdown of the progress. It is further submitted that the construction of the project is almost completed upto 50% and it shall be completed by end of 2019. It is also submitted that the construction of the project over the site is going in full swing and in speedy manner, which is expected to be completed by the end of year 2019.

### Determination of Issues

23. As regards **the sole issue** raised by the complainants, it is to be noteworthy from the perusal of record and the submissions made by the parties, as per clause 26 of the buyer's agreement dated 10.10.2014, possession of the unit in question was to be delivered within a period of 36 months from the date of



sanction of building plans or date of execution of agreement, whichever is later.

Relevant portion of the clause 26 is reproduced below –

“The developer shall offer possession of the unit anytime within a period of 36 months from the date of sanction of building plans or date of execution of buyer’s agreement whichever is later, subject to force majeure circumstances.....”

Hence on calculation the due date of delivery of possession from the date of execution of agreement comes out to be 10.10.2017, however the respondent has failed to deliver the possession till date even after a delay of more than 10 months which is in violation of section 11(4)(a) of the Act *ibid*. It is pertinent to note that the project is registered with the authority vide registration no. 7 of 2018 and wherein the revised date of delivery of possession is mentioned as 30.09.2019.

So, 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. 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.

### Findings of the authority

24. The preliminary objection raised by the respondent regarding the jurisdiction of the authority stands dismissed. 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..

25. In the present case, the authority has observed that as per clause 26 of the buyer's agreement dated 10.10.2014 for unit



no. 615 in project "Nimai Place, sector-114, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of execution of buyer's agreement which comes out to be 10.10.2017. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.30,19,141/- to the respondent against a total sale consideration of Rs.44,15,600/-.The revised date of handing over the possession is December 2019 as per registration granted to the respondent.

### **Decision and directions of the authority**

26. 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. 10.10.2017 till the actual offer of possession to the complainants.
- (ii) The interest so accrued from due date of delivery of possession i.e 10.10.2017 till the date of order 13.03.2019





be paid within 90 days from the date of order and thereafter on or before 10<sup>th</sup> of every subsequent month till final offer of possession.

27. The order is pronounced.

28. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 13.03.2019

Judgement uploaded on 09.04.2019



HARERA  
GURUGRAM

