BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1789 of 2018
First date of hearing : 12.03.2019
Date of decision : 12.03.2019

Mr. Satish Kumar Sharma(HUF)
R/o: 205, Rakshak, South City-1, Gurugram, Haryana **Complainant**

Versus

M/s Sana Realtors Pvt. Ltd.
Regd. office: H-69, Upper ground floor, Connaught Circus, Connaught Place, New Delhi-110001 **Respondent**

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

APPEARANCE:
Ms. Priyanka Agarwal Representative on behalf of the complainant
Mr. Amit Kumar, proxy counsel for the respondent Advocate for respondent

ORDER

1. A complaint dated 12.12.2018 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. Satish Kumar Sharma(HUF), against the promoter M/s Sana

Realtors Pvt. Ltd., in respect of unit described below for non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act ibid.

2. Since the flat buyer agreement has been executed on 27.04.2010 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
2.	Nature of the project	Commercial colony
3.	Project area	2.456 acres
4.	Registered/not registered	**Not registered**
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	**Occupation certificate granted on**	**18.07.2017**
8.	Letter of payment demand "at the time of possession"	**24.07.2017** **Note: No formal offer of possession has been made. However, vide**

		this letter, demand at time of possession was raised.
9.	Date of execution of flat buyer agreement	27.04.2010
10.	Office space/unit no. as per the said agreement	409,4th floor
11.	Unit measuring as per the said agreement	525 sq. ft.
12.	Payment plan	Construction linked payment plan
13.	Total consideration amount as per clause 1 of the said agreement	Rs. 18,37,500/-
14.	Total amount paid by the complainant till date	Rs. 15,27,768/- (as per receipts attached)
15.	Date of delivery of possession as per flat buyer agreement dated 27.04.2010	**27.04.2013** Clause 15- 3 years from the date of execution of buyer agreement
16.	Delay in handing over possession till 12.03.2019	5 years 10 months 13 days
17.	Penalty clause as per flat buyer agreement	**Not given in the agreement**

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 27.04.2010 is available on record for the aforesaid unit. As per clause 15 of the said flat buyer agreement, the due date of handing over possession was 27.04.2013. However, though no formal offer of possession was made, but on

24.07.2017, a letter demanding payment "at the time of possession" was made. 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 case came up for hearing on 12.03.2019. The reply has been filed on behalf of the respondent and the same has been perused. A replication has been filed by the complainant re-asserting the facts stated in the complainant and refitting the contentions made by the respondent in his reply.

Facts of the complaint

6. Briefly stating the facts of the complaint, are that based on promises and commitment made by the respondent the complainant booked a SOHO Apartment admeasuring 525 sq. ft, unit no 409 in project "Precision SOHO Tower" at Sector 67, Gurugram. The initial booking amount of Rs 2,00,000/- was paid through cheque dated 16.12.2009.

7. The complainant submitted that the respondent to dupe the complainant even executed flat buyer on 27.04.2010, just to create a false belief that the project shall be completed in time bound manner and in garb of this agreement persistently raised demands due to which they were able to

extract huge amount of money from the complainant. It is further submitted that the respondent did not mention the date of agreement but the complainant enclosed a letter dated 27.04.2010 after the signing of the agreement.

8. The complainant submitted that the complainant has paid Rs.15,99,378/- (as alleged by the complainant) and the respondent in an endeavor to extract money from allottees devised a payment plan under which respondent citing milestone for construction progress stages, or development of the site, and after taking the same respondent has not bothered to committed development of the project in time bound manner.

9. The complainant submitted that the total value of unit is Rs. 18,37,500/- as per flat buyer agreement and out of that respondent extracted total amount of Rs 15,99,378/- This is more than 85% of total sales consideration before April,2013 and the builder offered the possession in 2017.

10. The complainant submitted that she has repeatedly been seeking an update on the progress in the development of the project. However, the queries of the complainant were never replied to and the respondent always gave vague and evasive reply to such requests. Finding her repeated efforts being

thwarted, the complainant became suspicious of the motives and intentions of the respondent and decided to visit the site herself and assess the state of development. The complainant, as a result, visited the site many times (2010 to 2013) to ascertain the status of the project site.

11. The complainant submitted that he was shocked and surprised beyond comprehension to find that the project was lying in a raw, desolate state and in a state of utter neglect and abandonment. As per term of flat buyer agreement, builder had committed in the agreement clause no. 15 and was accordingly obliged and liable to give possession of said unit within 36 months from execution of flat buyer agreement. Accordingly, the unit should have been delivered way back before 27.04.2013.

12. The respondent at no stage informed the complainant on the status and development of the project, but kept on demanding payments in the garb of development which was never carried out. The respondent within_a period of 29 months from 16.12.2009 to 04 .04.2013 raised the demand of 85% payment of total sale consideration. To meet this huge demands raised by the respondent, complainant had to not only liquidate their investments, but had to borrow money through unsecured loans at high rate of interest.

13. The complainant submitted that the respondent has failed to meet the obligations and with malafide intentions have collected huge amount of money from the complainant. This act on part of the respondent has not only caused huge financial losses but have also offset the family life.

14. The complainant submitted that the complainant with good intentions has paid all demands raised by respondent amounting to more than 85% of the cost. However, respondent has failed to meet their obligations and commitments. This undue delay in handing over the possession of the unit for more than 5 years from committed date as per agreement is not only a breach of trust, but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainant.

15. **Issues to be determined**

The relevant issues as culled out from the complaint are:

i. Whether the the respondent has breached the provisions of the Act as well as of the agreement by not completing the construction and not delivering the possession of the allotted unit within time bound manner?

ii. Whether the respondent is liable to pay interest on the amount to them by the complainant?

16. **Relief sought**

The complainant is seeking the following reliefs:

i. Direct the respondent to pay interest on paid amount of Rs 15,99,378/- for delayed period w.e.f. 27.04.2013 till actual delivery of possession as per prescribed rate in RERA Act.

Respondent's reply

17. The respondent submitted that the present complaint is liable to be dismissed as the present project does not fall within the purview of the Act ibid. The occupation certificate in respect of the project in question was issued by the competent authority vide memo no. ZP-589/SD(BS)/ 2017/17063 dated 18.07.2017. The occupation certificate also contains the description of the building with license no.72 of 2009 dated 26.11.2009 for total area measuring 2.456 acres developed by M/s Sana Realtors Pvt. Ltd.

18. The respondent submitted that the present complaint is liable to be dismissed as the complainant has made wrong

averments in the complaint and has made wrong allegations against the respondent without any substantial evidence. Hence, the present complaint is not maintainable.

19. The respondent submitted that the present complaint is not maintainable as it is not filed before the competent authority i.e. adjudicating officer as the relief sought by the complainant does not fall within the jurisdiction of this hon'ble authority. Hence, the present complaint is liable to be dismissed.

20. The respondent submitted that the present complaint is not maintainable as the possession of the property in question was offered to the complainant after receipt of the occupation certificate. 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.

21. The respondent submitted that section 19(6) of the Act ibid was not complied by the complainant, which says that every allottee who has entered into an agreement for sale to take an

apartment, plot or building shall be responsible to make 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.

22. The respondent submitted that as per clause 41 and 42 of the flat buyer agreement, the complainant shall be liable to pay as and when demanded by the respondent, the stamp duty, registration charges and other legal and incidental charges for execution and registration of conveyance deed. It is also submitted that the complainant is also liable to pay any loss or damages suffered by respondent for non-payment or delay in payment, non-performance of the terms and conditions of the agreement. Hence, the present complaint is not maintainable and is liable to be dismissed.

23. The respondent submitted that clause 8 of the flat buyer agreement incorporates that "the time of payment of installments as stated in schedule of payment (annexure –I)

and applicable stamp duty, registration, fee, maintenance and other charges payable under this agreement as and when demanded is the essence of this agreement". Hence, the present complaint is not maintainable and is liable to be dismissed.

24. The respondent submitted that the delay in handing over possession of the project was beyond the control of the respondent. It is submitted that clause 15 of the said agreement, relied upon by the complainant also provides for the exemption for 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. 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.

25. The respondent submitted that 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.

26. The respondent 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. Thereafter, 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. 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 appointed a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January 2013 immediately to resume the work at the site without delay.

27. The respondent submitted that the project was complete in all respect in the year 2015 when the occupation certificate was applied. Lastly in July 2017, occupation 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 failure. The respondent has diligently done his part and requisite documents to prove its diligence are annexed with reply, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

28. The respondent submitted that the complainant deliberately is not taking possession of the property in question and has filed the present complaint with the sole purpose to harass the respondent and to create undue pressure to extort illegal money from the respondent. Hence, the present complaint is not maintainable and is liable to be dismissed with heavy cost.

29. The respondent submitted that till date a sum of Rs. 2,86,479/- is outstanding and payable by the complainant since 24.07.2017 and the complainant is deliberately not making the outstanding payment to the respondent despite already offering possession on 24.07.2017.

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:

30. With respect to the **first and second issue**, as per clause 15 of the flat buyer agreement, the possession of the said unit was to be handed over within 3 years from the date of this agreement i.e. by 27.04.2013. The relevant clause is reproduced as under:

> *"15. That the possession of the said premises is proposed to be delivered by the developer to the allottee within 3 years from the date of this agreement."*

Accordingly, the due date of possession was 27.04.2013. However, though no formal offer of possession was made, the respondent sent a letter of payment demand "at the time of possession" on 24.07.2017 after the receipt of occupation certificate dated 18.07.2017. Therefore, the respondent delayed in handing over possession from due date of handing

over possession till date of said letter, thereby violating the terms of the said agreement. As the promoter has failed to fulfil his obligation under section 11(4)(a), 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.

Findings of the authority

31. **Jurisdiction of the authority**- The project "Precision Soho Tower" is located in Sector 67, 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.

32. 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.

33. 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.

34. The complainant reserves his right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

35. The authority is of the view that the complainant was to be handed over the possession within a period of 36 months from the date of execution of agreement which comes out to be 27.04.2013. However, the respondent has not delivered the unit in time. The complainant is entitled for delayed possession charges at prescribed rate of interest per annum w.e.f 27.04.2013 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, till the offer of possession.

Directions of the authority

36. 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) The respondent is directed to pay the complainant delayed possession charges at prescribed rate of interest i.e 10.75% per annum for every month of delay on the amount paid by the complainant, from the due date of possession 27.04.2013 till the offer of possession.

(ii) The arrears of interest accrued so far shall be paid to the complaint within 90 days from the date of the order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of every subsequent month.

(iii) The respondent is directed not to charge any holding charges from the complainant and in addition to this, the respondent shall not increase or decrease the area of the unit beyond 5%(+ -) already agreed.

HARYANA REAL ESTATE REGULATORY AUTHORITY
Chairman
Member
Member

(iv) The complainant is directed to clear the dues on his part, if any.

37. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

38. The complaint is disposed of accordingly.

39. The order is pronounced.

40. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.03.2019

Judgement Uploaded on 12.04.2019

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Member