

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

Complaint no. : 1053 of 2018
First date of hearing : 12.02.2019
Date of decision : 15.03.2019

1. Lt. General SN Handa
 2. Mr. Mayank Handa
- Both R/o: H. No. 3696, 1st Floor, Sector-
23, Gurugram

Complainants

Versus

M/s Selene Constructions 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:

Lt. Gen S.N Handa Complainant in person
Shri Rambir Sangwan Advocate for the complainants
Shri Rahul Yadav 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, Lt. General SN Handa and Mr. Mayank Handa, against the promoter M/s Selene Constructions Ltd, on account of violation of the clause



21 of the flat buyer's agreement executed on 22.5.2012 in respect of flat described below in the project 'Indiabulls Centrum Park' for not handing over 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 22.05.2012 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 statutory 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 case are as under: -

- **Nature of the project- Group housing colony**
- **DTCP License no.- 252 of 2007 dated 2.11.2007, 50 of 2011 dated 5.6.2011 and 63 of 2012 dated 19.6.2012**

1.	Name and location of the project	"Indiabulls Centrum Park", Village Daulatabad, Sector 103, Gurugram, Haryana
2.	Project area	22.062 acres
3.	RERA Registered/ not registered.	Registered
4.	HRERA registration number	11 of 2018 for phase I 10 of 2018 for phase II
5.	HRERA registration certificate valid upto	31.07.2018 for phase I 31.10.2018 for phase II
6.	Flat/unit no.	1023, 2 nd floor, tower G1



7.	Flat measuring	2875 sq. ft.
8.	Date of execution of flat buyer's agreement	22.05.2012
9.	Allotment letter	30.03.2012
10.	Payment plan	Construction linked payment plan
11.	Total cost of the said flat as per applicant ledger dated 28.08.2018	Rs.1,29,61,875/- (page 96)
12.	Total amount paid by the complainant till date as per applicant ledger dated 28.08.2018	Rs.1,25,11,669/- (annexure c-7, page 97)
13.	Due 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. 22.5.2012)	22.11.2015
14.	Delay in handing over possession from the due date till date of decision	3 years 3 months 21 days
15.	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. 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's agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 22.11.2015. Neither the respondent has handed over possession of the said unit till date nor has paid any interest for the period he delayed in handing over the possession as per clause 22 of the said



agreement duly executed between the parties. Therefore, the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The reply filed on behalf of the respondent has been perused. The case came up for hearing on 12.02.2019 and 15.03.2019. the respondent through its counsel appeared on 12.02.2019.

Facts of the complaint

6. The complainants are peace loving and law abiding citizens of the country and have been residing at Gurugram in rented accommodation since July 2011 after retirement of complainant no.1 from army. Both the complainants are related to each other, the complainant no.1 is the father of complainant no.2. Present complaint is filed by complainants being aggrieved by the action of the respondent, wherein the respondent has failed to deliver the possession of the residential flat on time and further failed to pay interest on delay in possession. In present complaint, the complainant no.2 is represented through complainant no.1 being an authorized representative/ general power attorney holder.



7. The respondent is a limited company incorporated under the Companies Act, 1956. Respondent is in the business of building and construction of flats and societies.
8. In year 2011-2012, the complainants were approached by a sales organiser of respondent, IGNIS GLOBAL REALTY, for purchasing residential apartments/flat in an upcoming group housing project namely “Centrum Park” of the respondents being constructed in Sector 103, Gurugram.
9. Complainants were allured by the representations of the sales organiser and officials of the respondent company and solicited to book in their upcoming project “Centrum Park”. Relying on the assurances of their representatives, the complainants jointly submitted an application form dated 09.02.2012 for registration/booking of residential flat admeasuring super area of 2875 sq. ft. @ of Rs. 4073 per sq. ft. having total sale consideration of Rs. 1,29,61,875/- and also paid earnest money of Rs. 1,00,000/- to the respondent. Further, the respondent issued an allotment letter dated 30.03.2012 in favour of complainants allotting the apartment no. 023, Floor 2nd, building G1, Type 4BHK +SQ.
10. On 22.05.2012 a flat buyer’s agreement was also executed between the parties. As per the terms and conditions



mentioned therein the physical possession of said apartment is to be handed over within a period of three years from the date of execution of flat buyer's agreement. The relevant clause is reproduced herein as:

Clause no.21 of buyer's agreement – The developer shall endeavour to complete the construction of said building/unit within a period of three years, with an 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. The developer on completion of the construction/development shall issue final call notice to the buyer, who shall within 30 days thereof, remit all dues and take possession of the unit. In the event of his/her failure to take possession of the unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges / cost and other levies on account of the allotted unit along with interest and penalties on the delayed payment, from the dates these ate levied/made applicable irrespective of the fact that the buyer has not taken possession of the unit or has not been enjoying benefit of the same. The buyer in such an eventuality shall also be liable to pay holding charges @ Rs. 5 per sq. ft (of total super area) per month to the developer, from the date of expiry of said thirty days till the time possession is actually taken over by the buyer.



11. The flat buyer agreement was executed between the parties on 22.05.2012 and therefore, as per the clause 21 of the buyer's agreement the respondent is bound to hand over the physical possession of the flat up to 22.11.2015 (including six months grace period). At the time of booking of said flat the

respondent represented and assured the complainants that the said project would be completed and the possession of the apartment would be given to the complainants as per terms mentioned in the buyer's agreement.

12. The physical possession of booked flat/ unit has not been given to the complainants till date even after their repeated various visits, conversations, e-mails and telephonic calls and the complainants have not been given satisfactory reply. However, the respondent has been lingering on the matter on one pretext or the other in its own way without bothering the rules and regulations which has been passed by the Apex Court of India for the builder and developers and even without considering the terms and conditions of the flat buyer's agreement. In their email dated 30.05.2016, the respondent informed the complainants that "possession of your unit is tentatively scheduled in the 2nd half of 2017" but have failed to do so.



13. It is submitted that till date the complainants have paid Rs 1,25,11,669/- to the respondent. It is relevant to mention here that the respondent has recovered penal interest on delayed payments by complainants @18% per annum compounded quarterly as per clause 11 of flat buyers agreement which is reproduced below:

Clause 11- In exceptional circumstances, the developer may, in its sole discretion, condone the delay in payment by charging interest at the rate of 18% per annum compounded quarterly on the amounts in default. In the event of the developer waiving the right of forfeiture and accepting payment with interest from buyer of any other unit, no right, whatsoever, will accrue to the buyer.

14. The complainants are also entitled for interest @ of 18 % on Rs. 1,25, 11,669/- i.e. the total amount paid from the due date of possession i.e 22.11.2015 (including six months grace period) till the date of actual physical possession handed over to the complainants.
15. The respondent has been evasive in providing even an estimated time line for handing over possession of the said apartment. After persistent queries he has responded to convey that respondent "will be applying for OC within this year".
16. It is also relevant to mention here that complainants had drawn a housing loan from HDFC bank of Rs. 90,00,000 on 11.05.2012, which was later migrated to SBI, Karkardooma RASMECC Branch on 13.03.2015 required to be repaid @ Rs.64,154/- per month EMI which is big expense on complainants.



17. The complainants not only have to pay EMI for the financed amount till date but also have to bear the burden of rental accommodation.
18. In the present circumstances the complainants are entitled to interest on account of delay in possession on the total amount paid by the complainants i.e Rs. 1,25,11,669/-. The complainants made the last payment to the respondent on 26.08.2014. However, the complainants are seeking interest from the due date of possession i.e 22.11.2015 (including six months grace period) along with interest on the account of delay in handing over possession and hence present complaint at this stage.

Issues to be decided

19. The complainants have raised issue that whether the respondent has handed over possession of flat in question as per clause 21 of the said agreement and is entitled for interest on delayed possession?

Relief sought

20. Direct the respondent to pay interest on Rs. 1,25,11,669/- i.e. total paid amount @ prescribed rate of interest from 22.11.2015 i.e. the date of possession as per flat buyers



agreement, till the date of actual handing over of the physical possession of the flat to the complainants.

Reply on behalf of the respondent

21. 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 filed under the provision of Act ibid which is beyond the purview and scope of this hon'ble authority.
22. 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.
23. The respondent submitted that the complainants themselves approached the respondent and showed their 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 22.05.2012. 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.

24. The respondent submitted that the relationship between the complainants and the respondent is governed by the document executed between them i.e. FBA dated 22.5.2012. It is pertinent to mention that the complainants with malafide intention has not disclosed, in fact concealed the material fact from this hon'ble authority that the complainants have been wilful defaulters since the beginning not paying their instalments on time as per the construction link plan opted by them.

25. The respondent submitted that they have already completed the construction of tower 'G1' and has already applied for grant of OC for the said tower. The respondent is also expecting the OC in couple of days after which the process of handing over of possession will start.



26. The respondent submitted that the agreement that has been referred to is FBA dated 22.05.2012, 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 ibid 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 said Act. Thus, no relief can be granted to the complainant on the basis of the new agreement to sell as per the Act ibid.

Determination of issues

31. 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 complainant 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 said agreement dated 22.5.2012, 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 due date of possession comes out to be 22.11.2015 which has already lapsed.



However, the construction of the tower is complete and the occupation certificate is expected shortly. The possession has been delayed by 3 years 3 months and 21 days from due date of possession till date of decision, thereby violating the terms of the said agreement. As the promoter has failed to fulfil his obligation under section 11(4)(a) of the Act *ibid*, 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 complainants, at the prescribed rate, for every month of delay till the handing over of possession.

Findings of the authority

27. 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 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.

28. The amendment of Sec. 8 of the Arbitration and conciliation act does not have the effect of nullifying the ratio of 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.
29. 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.
30. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*. 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.

31. By virtue of this complaint, complainant is seeking directions from the authority to direct the respondent to pay delayed possession charges on account of delay in handing over the possession.

32. The authority observed that as per clause 21 of flat buyer's agreement dated 22.5.2012 for the said flat in "Indiabulls Centrum Park", Sector 103, Gurugram possession was to be handed over to the complainant within a period of three years plus 6 months grace period from the date of execution of said agreement which comes out to be 22.11.2015 but till date no offer of possession has been made to the complainants. Complainants have already paid an amount of Rs. 1,25,11,669/- to the respondent against a total sale consideration of Rs.1,29,61,875/-.

33. As per clause 21 of the buyer's agreement executed inter-se the parties on 22.05.2012, the possession of the booked unit no. 1023, second floor, tower G1 in project "Indiabulls Centrum Park", Sector 103, Gurugram was to be handed over to the complainant within 36 months + six months grace period which comes out to be 22.11.2015 but till date no offer of



possession has been made to the complainant. Complainant had paid an amount of Rs.1,25,11,669/- against total sale consideration of Rs.1,29,61,875/-.

34. Counsel for the respondent has stated at bar that respondent has received the occupation certificate and expected to offer the possession to the complainant within a month.

Decision and directions of the authority

35. 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 issues the following directions:

- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest @10.75% p.a. from the due date of delivery of possession as per section 18 of the Act ibid till offer of possession.
- ii. Arrears of interest accrued so far shall be paid by the respondent to the complainants within a period 90 days from the date of issuance of this order, and thereafter the month payment of interest till handing



over the possessions shall be paid before the 10th of each subsequent month.

36. The order is pronounced.

37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2019

Judgement uploaded on 12.04.2019



HARERA
GURUGRAM

