

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

Complaint no. : 2303 of 2018
First date of hearing : 27.03.2019
Date of decision : 27.03.2019

1. Mrs. Anu Baveja
2. Mrs. Dejee Singh
R/o: A-77, Ground Floor,
South City-2, Gurugram, Haryana

Complainants

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
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Priyanka Agarwal Representative on behalf of
complainants
Shri Samrat Jasra Advocate for respondent

ORDER

1. A complaint dated 18.12.2018 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 complainants Mrs. Anu Baveja and Mrs. Dejee Singh, against the promoter M/s Sana Realtors Pvt. Ltd., on account of violation of the clause 15 of



flat buyer agreement executed on 10.04.2010 in respect of unit described below 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 agreement has been executed on 10.04.2010 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 statutory 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 are as under: -

1.	Name and location of the project	"Precision SOHO Tower", Sector 67, Gurugram, Haryana.
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.	Occupation certificate granted on	18.07.2017
7.	Date of execution of flat buyer agreement	10.04.2010
8.	Office space/unit no. as per the	518, 5 th floor



	said agreement	
9.	Unit measuring as per the said agreement	525 sq. ft.
10.	Payment plan	Construction linked payment plan
11.	Total consideration amount as per clause 1 of the said agreement	Rs. 22,37,025/-
12.	Total amount paid by the complainant till date	Rs. 13,71,487/- [as per receipts annexed]
13.	Date of delivery of possession as per clause 15 of flat buyer agreement i.e. 3 years from the date of execution of buyer agreement i.e. 10.04.2010	10.04.2013
14.	Offer of possession	18.07.2017 (page 31 of reply)
15.	Delay in handing over possession from due date of possession till date of offer of possession	4 years 3 months 8 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 flat buyer agreement dated 10.04.2010 is available on record for the aforesaid unit. As per clause 15 of the flat buyer agreement dated 10.04.2010, the due date of handing over possession was 10.04.2013 and the possession was offered to the complainant on 18.07.2017. The respondent has not paid any interest for the period it 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 for appearance. The case came up for hearing on 27.03.2019. The respondent through its counsel appeared on 27.03.2019. The reply filed on behalf of the respondent has been perused.

BRIEF FACTS

6. The complainants submitted that based on the advertisement of the respondent, they showed interest in purchasing a space in SOHO towers. The brochure mentioned some facilities like hi-tech security, hi-speed elevator, Wi-Fi, laundry, coffee shop, health club and spa. The complainants have bought the apartment which was previously booked in the name of Mrs. Shubhra Shrivastava and Mr. Aditya Kumar Shrivastava.
7. The respondent allotted unit no. 518 to earlier allottees vide agreement dated 10.04.2010 and have endorsed the same agreement in favour of complainants by endorsement stamp dated 19.05.2012.
8. The total value of the apartment is Rs. 22,37,025/- and out of that the complainants have paid Rs. 13,71,487/- before 20.06.2012. The respondent is taking money without



reaching the milestone devised in the payment plan for construction stages. The complainants have paid more than 60% of the total amount before June, 2012 and builder has offered possession in 2018.

9. The complainants repeatedly sought updates about the project and the same were not answered. The complainants visited the site many times to ascertain the status of the project but was shocked and surprised to find that the project was lying raw and abandoned. To meet the demands raised by the respondent, they had to liquidate their investments and borrow money through unsecured loans at high rate of interest.

10. ISSUE TO BE DECIDED

- I. Whether the respondent has breached provisions of this Act and the agreement by not completing construction on time?
- II. Whether the respondent is liable to pay interest on the amount paid to him by the complainants?

RELIEF SOUGHT BY THE COMPLAINANT

11. The complainants are seeking the following reliefs:



- i. Direct the respondent to immediately give possession of the flat in habitable condition with all amenities mentioned in the brochure.
- ii. To direct the respondent to pay interest on paid amount of Rs. 13,71,487/- for delayed period.
- iii. To restrain the respondent from raising any fresh demand and increasing the liability of the complainant.
- iv. Any other relief that hon'ble authority deems fit in the facts and circumstances of the case.

RESPONDENT'S REPLY

12. The present complaint filed by the complainants is liable to be dismissed as the present project does not fall within the purview of RERA and the occupation certificate in respect of the present project is already being issued by the competent authority. Further it is submitted that vide memo No. ZP-589/SD (BS)/2017/17063 dated 18/07/2017 in form BR-VII, DTCP had granted occupation certificate in respect of the aforesaid project. The occupation certificate was also containing the description of the building of the aforesaid project as "License No. 72 of 2009 dated 26/11/2009, total



area measuring 2.456 acres Sectors 67, Gurugram developed by M/s. Sana Realtors Pvt. Limited.

13. The present complaint filed by the complainants is liable to be dismissed as the complainants have made wrong averments in the complaint and had made wrong allegations against the respondent without any substantial evidence, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.
14. The present complaint filed by the complainants is not maintainable as not filed before the competent authority i.e. adjudicating officer as the relief sought by the complaint shall not be fall within the jurisdiction of this hon'ble regulatory authority, hence the present complaint is not maintainable and is liable to be dismissed.
15. The present complaint filed by the complainants is not maintainable as the occupancy certificate is already issued and even the respondent has offered the possession of the property in question. Further, the complainants were also intimated that the sale deed of the property in question is ready for execution but the complainants are deliberately not coming forward to take the possession and to get the conveyance deed executed.



16. The present complaint is not maintainable as the provision of section 19 (6) of Real Estate (Regulation and Development) Act 2016 was not complied by the complainants, which says every allottee, who has entered into an agreement to take or sale the apartment, plot or building shall be responsible to pay 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 complainants after the completion of the project, hence the present complaint is not maintainable and is liable to be dismissed.
17. As per clauses 41 and 42 of the flat buyer's agreement, the complainants 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. Also, the complainants are liable to pay for any loss or damage suffered by respondent for non-payment or delay in payment.
18. It is pertinent to mention here that clause 8 of the buyer's agreement which incorporates that "the timely payment of instalments as stated in schedule of payment and applicable stamp duty, registration fee, maintenance and other charges payable under this agreement is the essence of this



agreement". It is pertinent to mention here that the complainant failed to make the timely payment of installments, hence the present complaint is not maintainable and is liable to be dismissed.

19. The respondent submitted that the delay in the handing over the possession of the project was beyond the control of the respondent. It is submitted that clause 15 of the agreement (relied upon by the complainants also) provide for the exemption if the 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 and 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.

20. 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.

21. It is 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 and 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.

22. 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 appointing a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January 2013 immediately to resume the work at the site without delay.
23. Further, the project is complete since 2015 and the respondent has also applied for the occupancy certificate in May 2015. Lastly in July 2017, occupancy 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 fail and the reasons for delay are stated herein for the kind consideration of this hon'ble commission. It is submitted that the respondent has



complied with its part of the obligation and the conditions aforestated were not in control of the respondent. The respondent could diligently do his part, which has been done and requisite documents to prove its diligence are annexed herewith, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

24. It is further submitted as per the provisions of section 19 (7) Real Estate (Regulation and Development) Act, 2016 the complainants are liable to pay the compensation and interest if any delay cause on their part, whereas there is no delay on the part of the respondent.
25. The respondent submitted that the complainants deliberately are not taking the possession of the property in question and have filed the present complaint with the sole purpose to harass the respondent and to create undue pressure and to extort illegal money from the respondent. Hence, the present complaint is not maintainable and is liable to be dismissed with heavy cost.
26. The complainants have filed the present complaint, after concealing material and true facts with sole aim to mislead the hon'ble authority and to harass the defendant, therefore the complainants are not entitled to get any relief from the



hon'ble authority as the occupancy certificate had been issued by the concerned department and the delay in taking possession and registration process was done only by the complainants themselves. Hence it is liable to be dismissed.

27. The present complaint filed by the plaintiff is nothing other than the abuse of process of law, hence the present complaint is liable to be dismissed. The present suit is neither properly filed nor verified as per the provision of the hon'ble High Court rules, hence the same is liable to be dismissed.

DETERMINATION OF ISSUES

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

28. With respect to the **first and second issue**, the authority came across clause 15 of the flat buyer's agreement which is reproduced hereunder:

"clause 15 – possession is proposed to be delivered by the developer within 3 years from the date of execution of buyer agreement i.e. 10.04.2010"

Therefore, the possession was to be handed over by 10.04.2013 and the same was offered on 18.07.2017 causing a delay of 1 year 8 months 8 days.



As the promoter has failed to fulfil its 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 offer of possession.

FINDINGS OF THE AUTHORITY

29. 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.
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. Occupation certificate has been received by the respondent on 18.7.2017. As per clause 15 of the flat buyer agreement dated 10.4.2010 for unit no. 518, 5th floor, in project "Precision SOHO tower, Sector-67, Gurugram, the possession was to be handed over to the complainants within a period of 3 years from the date of execution of flat buyer's agreement which comes out to be 10.04.2013. Possession has already been offered by the respondent to the complainants on 18.07.2017 but the complainants have not taken the possession as on date. Complainants have already paid Rs.13,71,487/- to the respondent against a total sale consideration of Rs.22,37,025/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 10.04.2013 till 18.07.2017, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.



DIRECTIONS OF THE AUTHORITY

32. 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) Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- (ii) The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants with the promoter from the due date of possession i.e. 10.04.2013 till offer of possession i.e. 18.07.2017.
- (iii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. Both the parties are equally responsible to pay interest @ 10.75% per annum. Complainant



are directed to take possession of the unit within one month.

33. Complaint stands disposed of.

34. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Real Estate Regulatory Authority, Gurugram

Dated:27.03.2019

Judgement uploaded on 12.04.2019



HARERA
GURUGRAM

