

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

Complaint no. : 423 of 2018
First date of hearing : 07.08.2018
Date of decision : 15.03.2019

1. Mr. Rahul Wadhwa and
2. Mr. Rajesh Gaba
R/o: ML-33, Eldeco Mansions,
Sohna Road, opp. Omaxe Mall,
Gurugram, Haryana

Complainants

Versus

M/s Anjali Promoters & Developers Pvt. Ltd.
Address: M-11, Middle Circle,
Connaught Circus, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Venkat Rao Advocate for the complainants
Shri Shashank Bhushan Advocate for the respondent

ORDER

1. A complaint dated 13.06.2018 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. Rahul Wadhwa and Mr. Rajesh Gaba, against the promoter M/s Anjali Promoters & Developers Pvt. Ltd. on account of violation of the



clause 2.1 of space buyer's agreement in respect of shop/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 allotment letter has been executed on 10.06.2008 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: -
 - **Nature of the project- Commercial complex.**
 - **DTCP license no.- 277 of 2007**
 - **License valid/renewed upto- 16.12.2019**
 - **License holder- Countrywide Promoters**

1.	Name and location of the project	"Centra One", Sector 61, Gurugram.
2.	Project area	3.675 acres
3.	Registered/ not registered	Not registered
4.	Shop/unit no. as per agreement	1205A, 12 th floor
5.	Unit measuring	1000 sq. ft.
6.	Date of execution of space buyer's agreement	Not executed
7.	Payment plan (Page 45)	Construction link [initially time linked]
8.	Consideration amount as per agreement	Rs.57,75,000/-
9.	Total amount paid by the	Rs.67,12,193/-



	complainant till date as alleged by the complainant	[as alleged by complainant]
10.	Statement of account	Not annexed [note: the respondent be directed to provide statement of account regarding the payments made by the complainant in order to calculate interest component.]
11.	Due date of delivery of possession as per clause 2.1 of space buyer's agreement (BBA not signed)	Cannot be ascertained
12.	Delay in handing over possession till date of decision	Cannot be ascertained
13.	Penalty clause as per space buyer's agreement	Clause 2.2 of the said agreement i.e. Rs.15/- per sq. ft. per month up till the date of handing over of the said premises by giving appropriate notice to the intending purchaser.

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 space buyer's agreement is available on record which has not been executed. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.15/- sq. ft. per month for the delay in



handing over possession of the unit. Therefore, the promoter has not fulfilled his 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 07.08.2018, 16.08.2018, 10.01.2019, 31.01.2019, 07.03.2019 and 15.03.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. In April, 2008 the complainants purchased a commercial space in the project "Centra One" floated by BPTP Pvt Ltd in resale from Mr.Ashok Kumar. The complainants paid the demands as and when raised by the respondent. As per the statement of account dated 1.12.2015, Rs.67,12,193.50/- was paid to the respondents including the interest of Rs.66,47,002.82.
7. Without having a valid license, the respondent sold the project in November, 2006 and 60% of the basic price was collected before bhumi puja i.e., December, 2008 as per time-link plan. The rest 40% of the cost was converted to construction linked plan after protest of the rest of allottees.
8. In 2009, buyer's agreement was sent to the complainants according to which the project was to be completed on 31.12.2011 however even after 7 years of delay only semi-



furnished structure is complete. As per RTI dated 26.11.2015, license no. 277 vide LC no. 1016A for 3.675 acres with respect to the project got expired on 16.12.2013 and building plans have not been approved.

9. The respondent has collected enhanced EDC and IDC charges along with interest which have not been deposited with the government. Copy of RTI is enclosed. Respondent also collected PLC from allottees for no reason or prime location.
10. The respondent does not have valid approvals till date so the building is illegal. Copy of RTI dated 26.11.2015 from the office of DTCP, Panchkula is attached for reference.
11. As per clause 2.1 of the buyer's agreement, the possession of the premises was to be delivered by 31.12.2011. Further in clause 2.2 in case of any delay the possession will definitely be given by 30.6.2012 and if not given then the complainant will be entitled to receive Rs.30/- per sq. ft' per month vide letter dated 15.5.2009. the respondent has refused to pay the penalty and even the buyer's agreement is one-sided.
12. The respondent has illegally charged compounding interest and thereafter charged interest upon interest for filling their pockets. The respondent charged interest amounting to Rs.7,24,891 as interest @18% p.a. for which they have given



receipt and now they are charging interest on balance payment that comes to Rs.13,00,000 approx.

13. The complainants are incurring expenses in terms of interest on lo borrowed for payment to the respondent and also rent @ Rs.42,000 per month on office the complainant is currently using.

14. Issues raised by the complainant

- i. Whether the respondent have defaulted in delaying the possession?
- ii. Whether the respondent is guilty of committing fraud with petitioners?
- iii. Whether the respondent has charged exorbitant interest?
- iv. Whether the respondent has failed to pay the penal charges @Rs.30 per sq. ft' as agreed on delayed possession?

15. Relief sought by the complainant

1. To refund the full amount of Rs.67,12,693 along with interest @18%.
2. To direct the respondent to pay damages suffered by the complainant on account of default by the company.



Respondent's reply

16. At the time of transfer of the unit in the name of complainants, and indemnity-cum-undertaking was executed on 27.6.2008 wherein the complainants agreed to execute the buyer's agreement and the same was also agreed in transfer letter addressed to the respondent.
17. The respondent sent two copies of buyer's agreement to the complainants on 25.5.2009 for signing but the complainants failed to do the same. In the absence of executed agreement, possession timeline clause mentioned in agreement is not binding upon the parties. So, the complainants have approached this authority with unclean hands.
18. The complaint does not have supporting affidavit so it is liable to be dismissed on this ground alone. Moreover, the complainants are subsequent buyers and not the original allottee and the respondent had issued allotment letter dated 10.6.2008 to the original allottee. The complainants have not approached the court directly and have purchased the unit from open market after due diligence.
19. The complainants have defaulted in making timely payments and the respondent had to send reminder letters dated



14.10.2008, 6.12.2008, 15.5.2009, 12.8.2010 and 2.5.2011 and final demand notices on 31.5.2011 and 29.5.2012.

20. The respondent had conceived that the project would be complete by 31.12.2011 on assuming cash flows from the allottees however, allottees including the complainants have made huge default in making timely payments. In the year 2007, 43% customers defaulted in making payments and this percentage swelled upto 56%, 40% and 68% in the years 2009, 2010 and 2011 respectively.

21. The respondent offered additional timely payment discount of 10% in BSP to the customers which amounted to a substantial discount of Rs.257/- per sq. ft'. The respondent also offered an additional discount of 10% on net inflow of uncalled BSP in case any customer decided to opt for pre/upfront payment. Further, in order to express seriousness to complete the project, the respondent doubled the delayed possession penalty from the agreed amount of Rs.15/- sq. ft' per month to Rs.30/- sq. ft' per month.

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:



14. With respect to the **first and fourth issue** raised by the complainant, the buyer's agreement is not executed inter-se the parties so the delay period cannot be ascertained.
15. With respect to the **second issue**, the complainant has only made assertion without substantiating the same in material particulars.
16. With respect to the **third issue**, there is no agreement which limits the interest to be charged by the respondent and the buyer's agreement has not been signed by the parties.
17. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso 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 handing over of possession.

Findings of the authority

18. **Jurisdiction of the authority**-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 & Country Planning, 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 entertain the present complaint.

19. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. 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.

Directions of the authority

20. 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) Report dated 30.01.2019 of the local commissioner has been received and placed on record. Counsel for the respondent has raised objections with regard to certain contents of LC report. It has been stated the building plans were approved. No builder buyer agreement has been executed so far. Occupation certificate has been granted to the respondent and the respondent has offered possession to the complainant on 1.12.2018.

(iii) Case of the complainant is that he had booked a flat/unit 1205A, 12th floor, in project "Centra One" Sector 61, Gurugram but no buyer's agreement to this effect was executed inter-se the parties. Against total sale consideration of Rs. 57,75,000/-, the complainant has so far paid an amount of Rs.67,12,193/- to the respondent.

(iv) Since no space buyer's agreement has so far been executed between the parties, the due date of possession can be ascertained from the date of allotment letter as in other similarly situated cases



the time for completion of the project is 36 months, as such, due date of delivery of the unit can be arrived at as 31.12.2011.

- (v) Counsel for the respondent has stated that respondent has received an occupation certificate and possession offer has been made to the complainant on 01.12.2018. However, there is dispute with regard to demarcation of 1000 sq. ft' area in the complex. LC appointed in the matter has given his report stating therein that work at the site is complete and the counsel for the respondent too has given his comments on the report and his comments are taken on record. As per para 5 of the comments which reads:

“That the conclusion given by the LC at Page 7 of the report dated 30.01.2019 is not based on the agreement executed in between the parties (however, in this particular case, no agreement has been executed) and is also not reflecting the market practice as is applicable for commercial developments. It is submitted that despite observing that the work has been completed as per the approved building plans and issuance of occupation certificate on 09.10.2018, the LC has wrongly arrived on conclusion more



particularly when he himself found the work to be completed.”

- (vi) In order to sort out the matter, respondent is directed to comply with the provisions of law and to get the space buyer's agreement signed and to hand over the possession of the demarcated unit/apartment to the complainant within a period of 30 days. However, after getting signed buyer's agreement, the complainant is directed to pay the balance amount to the respondent which shall be adjusted against the delayed charges at the prescribed rate of 10.75% p.a. to be paid by the respondent w.e.f. 31.12.2011 till offer of possession as per section 18(1) of Haryana Real Estate(Regulation). If the amount exceeds, in that case, due amount shall be refunded to the complainant within a period of 90 days from the issuance of this order.

21. The order is pronounced.
22. Case file be consigned to the registry.
23. A copy of this order be endorsed to the registration branch for further proceedings.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2019

(Subhash Chander Kush)

Member