

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. : 1604 of 2018
First date of hearing: 07.03.2019
Date of decision : 13.03.2019

Mr. Rajiv Kohli
Mrs. Sangeeta Kohli
Both R/o. B-38, Ashoka Avenue, Sainik
Farms, New Delhi-110062

Versus

Complainants

1.M/s Nimai Developers Private Limited
Office: 48, Vasant Lok, Vasant Vihar,
Delhi-110057
2.M/s Y B Builders Private Limited
Office: 48, Basement, Vasant Lok, Vasant
Vihar, Delhi-110057

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Simarpal Singh Sawhney Advocate for complainants
Shri Chander Parkash Advocate for the respondent
no.1

ORDER

1. A complaint dated 20.11.2018 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. Rajiv Kohli



and Mrs. Sangeeta Kohli against the promoters, M/s Nimai Developers Private Limited and M/s Y B Builders Private Limited, for not handing over possession on due date in the project described below on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 22.04.2015 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 promoters/respondents 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 project**
- **DTCP license no: 126 of 2012 dated 20.12.2012**
- **RERA registration: 07 of 2018 dated 13.7.2018**
- **Valid upto: September, 2019**



1.	Name and location of the project	"Nimai Place", Sector-114, Gurugram, Haryana
2.	Project area	3.0125 acres

3.	Payment plan	Construction linked plan
4.	Date of buyer's agreement	22.04.2015
5.	Unit no.	601,6 th floor
6.	Area of unit	811 sq. ft.
7.	Date of booking	08.11.2013
8.	Allotment letter dated	22.04.2015
9.	Basic sale price	Rs.63,66,034.11/-
10.	Total consideration	Rs.71,98,084/-
11.	Total amount paid by the complainant	Rs 42,41,238/-
12.	Due date of Possession as per clause 26 of the builder buyer's agreement within period of 36 months from the date of sanction of the building plan or date of execution of the buyer's agreement whichever is later Not: the due date of possession id calculated from the date of the agreement i.e. 22.04.2015	22.04.2018
13.	Delay in handing possession	10 months and 19 days
14.	Delay possession charges as per clause 30 of the agreement	Rs. 10/- per sq. ft. per month on super area for any delay



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. A builder buyer's agreement dated 22.04.2015 is available on record for unit no.

601, 6th floor admeasuring 811 sq. ft. in the project 'Nimai Place' according to which the due date of possession comes out to be **22.04.2018**.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 07.03.2019. The reply filed on behalf of the respondents has been perused.

Facts of the case:

6. The complainants submitted that the respondent no. 1 is M/s. Nimai Developers Private Limited having its registered office at: 48, Vasant Lok, Vasant Vihar, Delhi - 110070 and respondent no. 2 i.e Y.B. Builders Private Limited having its registered office at: S. No. 48, Basement, Vasant Lok, Vasant Vihar, Delhi - 110057 also at SCO no. 304, 2nd Floor, Sector - 29, Gurugram 122002 are real estate developers and have been developing various residential projects in and around NCR Region (hereinafter referred to as respondent companies or respondents).



7. The complainants submitted that respondent no.1 represented to the complainants that they had obtained requisite permissions to develop the said project and obtained the license no. 126 of 2012 dated 20.12.2012 from DTCP, Haryana for the said plot of land situated at Sector – 114, Gurgaon Haryana and falls under Gurgaon Manesar Urban Plan 2021.

8. The complainants submitted that respondent no. 1 planned to develop a commercial shop/ office space/ studio apartment in their project called “Nimai Place” on the said land by constructing thereon multi-storied buildings. The project comprising of 2 BHK + study room, 3BHK + S. toilet, 3BHK + study + S. room having apartments, commercial shops, office space & amenities like convenient shopping, clubhouse with swimming pool, gymnasium, mediation court, basketball and tennis court, nature park Jogging track, amphitheater amongst several others. Details of the project as advertised on their website www.nimaidevelopers.com alongwith photographs of recent constructions as made available on respondents website is annexed as **ANNEXURE- P1**.



9. The complainants submitted that the representatives of respondent no. 1 informed and assured the complainants at the time of booking that the construction will commence maximum by the end of November, 2013 and possession will be handed over within the period of 36 months from the date of payment of booking amount, thus, believing upon the representations and assurances of the respondent no. 1, the complainants booked the unit on 08.11.2013 by paying a booking amount of Rs. 5,00,000/- (rupees five lakhs only) through cheque bearing no. 060824, dated 08.11.2013 drawn in favor of respondent no. 1 and opted for construction linked payment plan and thereafter was promised the unit bearing no.601, 6th floor, admeasuring 811 square feet in project "Nimai Place". The said amount was acknowledged and accepted by the respondent no. 1 and even after continuous demands of the complainants no receipt was issued to them. A receipt was issued only on 13.12.2013 for the said cheque bearing no. 060824, dated 08.11.2013. The complainants made several requests to provide the allotment letter and to



execute the buyer's agreement but the respondent no. 1 was deliberately delaying the same.

10. The complainants submitted that they asked at the time of booking/ 1st payment to provide the allotment letter and to execute the buyer's agreement but the respondent gave false excuses and delayed stating one reason or another. Thereafter, the respondent no. 1 created an undue pressure to give money as per their demands without executing buyer's agreement. Further, upon requests of the respondent no. 1 another cheque bearing no. 083952 amounting to Rs. 7,73,270/-, dated 07.12.2013 was handed over to the respondent no. 1 on 07.12.2013. Further, upon continuous requests and persistence of respondent no. 1 the complainants were constrained to fulfill another demand of the respondents by paying another substantial amount of Rs. 10,38,260/- vide cheque bearing no. 449360, dated 26.03.2014, the same was handed over to respondent no. 1 on 26.03.2014. The requests of the complainants to execute the allotment letter and flat buyer's agreement had fallen in the deaf ears. It is evident that at that relevant time the complainants had made a payment of



substantial amount out of the total consideration for the said flat.

11. The complainants submitted that after repeated requests the respondent no. 1 executed the allotment letter and builder buyer's agreement on 22.04.2015 that is almost after passing of more than one and a half year from the date of booking. It is pertinent to mention here that the provisional allotment letter dated 22.04.2015 malafide mentions the date of application as 07.12.2013, whereas it is evident from the document placed on record that the flat was booked way back on 08.11.2013 when the cheque bearing no. 060824 of Rs. 5,00,000/- was handed over to the respondent no. 1 against which a proper receipt had also been issued. Further, the flat buyer's agreement was sent to the complainants on 28.04.2015 which is evident from the supporting cover letter, however, the said flat buyer's agreement was dated 22.04.2015.

12. The complainants submitted that they were surprised on realization of the fact that the possession of the unit to be handed over within a period of 36 months from the date of buyer's agreement as mentioned in the said buyer's agreement



dated 22.04.2015, which was against the terms of the agreed understanding as the representatives of the respondents had assured for handing over the possession within a period of 36 months from the payment of booking amount. The promised delivery date as per the agreement is 22.04.2018, the same had lapsed long back.

13. The complainants submitted that the total consideration paid till date is Rs. 42,41,238/- out of total consideration (BSP only) of Rs. 63,66,034.11. It is pertinent to mention that complainants have paid the amount of the consideration fulfilling each and every demand of the respondent that have arose from time to time for the unit bearing no. 601, 6th Floor, admeasuring 811 square feet in project "Nimai Place". Thus, the complainants have made payments on the demands of the respondent no. 1 and the same were duly accepted and receipts were provided against the payments made.

14. The complainants submitted that as huge time had been lapsed, the complainants therefore made several calls to the customer care and marketing departments to seek status of the construction, but the complainants were never provided



with a satisfactory response and the officials of the respondents made false and frivolous statements that the construction is in full swing and the unit shall be handed over within the agreed time. The complainant no. 1 wrote a letter dated 06.05.2017 enquiring about the status of construction and tentative completion date, however, the said letter was not replied by the respondents. Thereafter the complainants once again visited the site in the month of March, 2018 and were shocked to realize that the project was getting delayed as no construction was being carried out. The complainants noticed that external work in the building, the land scape work and other such developments and facilities are not completed till date. The complainants were shocked to discover that the construction work of the floor on which the flat of the complainants are located has not even started yet.

15. The complainants submitted that the project is not complete till date despite of the fact that the complainants had paid the substantial amount against the flat as per the demands of the respondent no. 1 for the construction purpose. As, per the payment schedule provided by the respondent no. 1 under the



buyer's agreement. The complainants had already paid the demanded amount which is more than the considered amount as per the agreement. It is quite surprising that till date the notice of possession had not been provided by the respondent, moreover the construction has not been completed yet.

16. The complainants submitted that the buyer's agreement stated that time was the essence of the contract, it was incumbent upon the builder i.e. the respondent no. 1 to develop and hand over possession of the said flat as per the timelines set out in the buyer's agreement. It is also to mention here that in the clause 26 of buyer's agreement it has been stated that *"The developer shall offer possession of the unit any time 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....."*

17. The complainants submitted that it is pertinent to note here that till date the project is nowhere near completion stage and thus, the complainants are entitled for refund of complete amount duly paid alongwith interest. The complainants have on various occasions demanded refund of the entire money



paid till date alongwith interest @ 18% per annum and appropriate compensation, but all their requests have fallen in deaf years of the officials of the respondents.

18. The complainants submitted that almost a period of 59 months has been lapsed from the date of booking of the unit and further a period of almost 42 months have gone since the agreement was executed between the complainants and the respondent no. 1. Despite passing of huge time the respondent no. 1 had deliberately failed to handover the possession of the unit to the complainants and the project is also at nascent stage, this fact is evident from the information available at the website of the respondent. Therefore, the respondent no. 1 should refund the total amount paid alongwith interest @ 18% per annum and appropriate compensation.

19. The complainants submitted that the complainants aver that in view of the principle of the parity the respondent no. 1 is also liable to pay 18% p.an interest in case of any default on their part. They are also liable to pay pendent lite interest and further interest till date of actual payment.



Issues raised by the complainants:

20. The following issues have been raised by the complainant:

- i. Whether the respondents have breached the terms and conditions as agreed by it under the buyer's agreement dated 22.04.2015?
- ii. Whether failing to deliver timely possession of the unit bearing no. 601, 6th floor, admeasuring 811 square feet in project "Nimai Place" situated at Sector 114, Gurgaon, Haryana, the respondents has been in material breach of its obligations under the agreement and the Real Estate Regulatory Authority Act?
- iii. Whether the respondents are liable to refund the entire amount of Rs. 42,41,238/- to the complainants along with interest as prescribed under the Real Estate Regulatory Authority Act, Haryana Real Estate (Regulation and Development) Rules, 2017 and other relevant Rules/Regulations framed thereunder?



Relief sought by the complainants:

21. In view of the facts mentioned the following reliefs have been sought by the complainants:

1. Direct the respondents to refund the entire amount of Rs. 42,41,238/- to the complainants along with interest as prescribed under the Real Estate Regulatory Authority Act, Haryana Real Estate (Regulation and Development) Rules, 2017 and other relevant rules/ regulations framed thereunder on the aforementioned sum paid by the complainants to the respondent from the date of such payment and till the date of realization of such amounts.
2. Direct the respondent to pay to the complainants compensation for harassment and mental agony suffered by the complainant due to acts of the respondents.
3. Any other relief that this hon'ble tribunal deems fit in the facts and circumstances.



Reply on behalf of the respondent no. 1

22. The respondent submitted that the complaints pertaining to compensation and interest for a grievance under section 12,

14,18 and 19 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “said Act”) are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the “said rules”) read with section-31 and section-71 of the said Act and not before this hon'ble regulatory authority under rule-28, section-31, section-71, rule-28 and rule-29 are also reproduced herein below:-

Section -31(1): *Any aggrieved person may file a complaint with the Authority or before the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made there-under against any promoter allottee or real estate agent, as the case may be.*

Section -71(1): For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the authority shall appoint in consultation with the appropriate Government one or more Judicial Officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding



an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard: -

Provided that any person whose complaint in respect of matters covered under Sections 12, 14, 18 and Section -19, is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the Adjudicating Officer under this Act.”

Rule-28(1): Any aggrieved person may file a complaint with the authority for any violation of the provisions of the act or the rules and regulations made there-under, save as those provided to be adjudicated by the adjudicating officer in form “CRA” ...



Rule-29(1): Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in form 'CAO'..."

(b) In the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainant have filed the present complaint under rule-28 of the said rules and is seeking the relief of refund, interest and compensation U/s 18 of the said act. The complaint, if any, is still required to be filed before the adjudicating officer under rule-29 of the said rules and not before this hon'ble regulatory authority under rule-28 as this hon'ble regulatory authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

23. The respondent submitted that a bare perusal of the complaint will sufficiently elucidate that the complainant has 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. It is humbly submitted here that the complainants have miserably failed to place any substantive proof in support of their allegations made in the present complaint before this hon'ble authority 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 it had represented to the complainants 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 complainant to purchase any of the product of the respondent whether commercial or residential and the allegations made by the complainant against answering respondent are false and frivolous, therefore, the present complaint is liable to be dismissed on this score alone.



24. The respondent 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 hereinabove, 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 hon'ble 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.

25. The respondent submitted that also it is trite to mention that 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 linked plan as executed in the buyer's agreement. On the contrary the demand of the gurur money has been sent on several occasions and till date the payment should have been deposited until 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 complainants.



26. The respondent submitted that the respondent is not liable to pay any interest along-with compensation, refund and penalty being claimed by the complainant. It is humbly submitted that the respondent had never involved in unfair trade practice with 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 license 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.

27. The construction of the project is almost completed up-to 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. The preliminary objection may be read as part and parcel in reply to this para, which are not being reproduced herein to avoid repetition for the sake of brevity. Based on the above submissions the respondent is not liable to pay any interest to the complainants along-with compounded interest. It is submitted that the complainants are not entitled to any discretionary relief from this hon'ble authority, as the complainants have approached this hon'ble authority with soiled and unclean hands. The complainants are investors and not consumers. The complainants have booked alleged flat as an investment and to gain profit from its resale. The complainants never ever had the intention to use the said unit for their personal residential use, therefore, demanding of any penalty or compensation for any loss or damage or his deprivation from using the said flat as "home" would be a misnomer any such allegation or averments in the present complaint would be the abuse of process of law and a pressure tactics to extort illegal money from the answering respondent.



Determination of issues

After considering the facts submitted by the complainants, respondents and perusal of record on file, the issue wise findings are as hereunder:

28. With respect to **first and second issues** raised by the complainants, the authority came across that as per clause 26 of the builder buyer's agreement the possession was to be handed over within a period of 36 months from the date of sanction of the building plans or date of execution of the buyer's agreement whichever is later. **Not: the due date of possession is calculated from the date of the agreement i.e. 22.04.2015.** The builder buyer's agreement was executed on 22.04.2015. Therefore, the due date of possession comes out to be 22.04.2018 and the possession has been delayed by **10 months and 19 days** till the date of decision. The delay compensation payable by the respondent @ at Rs.7.50 per sq. ft. of sale area on the amount(s) paid by the allottee for such period of delay of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided



as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

29. Therefore, under section 18(1) proviso respondent is liable to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainants regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the



amount deposited by the complainants with the promoter on the due date of possession i.e. 22.04.2018 upto the date of offer of possession.

30. With respect to **third issue** raised by complainants, as per the statement of respondent no.1 in his reply, reproduced as below:

The construction of the project is almost completed up-to 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.

The project is also registered with authority vide registration no. 07 of 2018 dated 13.07.2018 and valid upto September, 2019. Therefore, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. Therefore, the relief sought by the complainants cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainants



shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.

Findings of the authority:

31. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
32. 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 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.



33. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
34. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.
35. As per clause 26 of the buyer's agreement dated 22.04.2015 for unit no. 601, 6th floor, in project "Nimai Place", Sector-114, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA which comes out to be 22.04.2018. However, the respondents have not delivered the unit in time. It was a construction linked plan. Complainants have already paid Rs.42,41,238/- to the respondents against a total sale consideration of Rs.71,98,084/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **22.04.2018** as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.



36. Possession has already been offered to the complainant, accordingly complainants are directed to take the possession within a month.

37. The ex-parte proceedings will be initiated against respondent no. 2. As respondent no.2 failed to submit reply even after duly service of the notice.

Decision and directions of the authority:

38. 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 issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondents are 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. 22.04.2018 upto the date of offer of possession.



- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. The complainants are directed to take the possession within a month.
- iv. The respondents are directed to adjust the payment of delayed possession charges towards dues from the complainants, if any.

39. The order is pronounced.

40. Case file be consigned to the registry.

41. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.03.2019

Judgement Uploaded on 11.04.2019