

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

Complaint no. : 875 of 2018
Date of first hearing : 08.02.2019
Date of decision : 19.03.2019

1. Dr. S.C Ahuja
R/o 290, Asian Games Village Complex
New Delhi-110016
2. M/s Jain Estates
(Through its partner)
Mr. Amit Jain
R/o A-21, Green Park,
New Delhi-110016

Complainants

Versus

1. Kashish Developers Limited
(Through its directors)
Regd. office: Old A.G. Colony,
Kadru, Ranchi, Jharkhand-834002
2. Vinman Constructions Private Ltd.
(Through its directors)
Regd. office 4, Battery Lane,
Rishi Apartments,
Rajpur Road, Civil Lines, Delhi-110054
3. Elite Villas Private Limited
(Through its directors)
Regd. office :87,Old A.G. Colony,
Kadru, Ranchi, Jharkhand-834002

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Sandeep Aneja
None for respondent

Advocate for the complainants
Proceeded ex-parte on
08.02.2019

EX-PARTE ORDER

1. A complaint dated 18.09.2018 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 Dr. S.C Ahuja and M/s Jain Estates, against the promoters Kashish Developers Ltd. and others, on account of violation of clause 3(a) of apartment buyer's agreement dated 30.11.2012 in respect of the apartment described below in the project 'Manor One', 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 apartment buyer's agreement has been executed on 30.11.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 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	“Manor One” Sector-111, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	14.843 acres
4.	Unit no.	B5-1713 on 17 th floor, tower B5
5.	Unit area	1715 sq. ft.
6.	Registered/not registered	Unregistered
7.	DTCP license no.	110 of 2011
8.	Date of allotment letter	02.11.2012
9.	Date of apartment buyer agreement	30.11.2012 as alleged by the complainants (BBA copy is not dated)
10.	Total consideration	Rs. 1,13,48,685/-
11.	Total amount paid by the complainant	Rs. 79,61,138/-
12.	Payment plan	Instalment payment plan(annexure II of the agreement)
13.	Due date of delivery of possession as per clause 3(a) i.e. 36 months from the date of execution of buyer’s agreement plus 6 months grace period	30.05.2016
14.	Delay in handing over possession from due date of possession till date of decision	2 years 9 months 20 days
15.	Penalty clause	Clause 3(c)(iv)- Rs. 10/- per sq. ft. per month on super area for any delay in offering possession of the unit.

4. The details provided above have been checked on the basis of the record available in the case file. An apartment buyer's agreement dated 30.11.2012 is placed on record for the aforesaid unit according to which the possession of the same was to be delivered by 30.05.2016. Neither the respondent has delivered the possession of the said unit till date nor they have paid any compensation @ Rs.10/- per sq. ft. per month of the area of the said unit for the period of such delay as per clause 3(c)(iv) of the said agreement duly executed between the parties. 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 08.02.2019 and 19.03.2019. Despite service of notices, neither the respondent has appeared nor has filed reply to the complaint, therefore the case is being proceeded ex-parte against the respondent. Respondent no. 2 and 3 were mere pro-forma defendant and there is no allegation against them.

Facts of the complaints

6. The complainants submitted that in the year 2012 the respondents through their directors approached them and represented that respondent no.2 was owner of land admeasuring an area of 8.875 acres of land situated at Village Chauma, Gurugram and that respondent no.3 was owner of land admeasuring an area of 5.97 acres of land situated at Village Chauma, Gurugram and that respondent no.2 and respondent no.3 have entered into a collaboration agreement dated 19.07.2012 with respect to developing their respective lands having total area of 14.843 acres by way of constructing a group housing complex wherein respondent no.1 was appointed as the developer and was entitled to construct, develop and sell the group housing complex, by the name of 'Manor one'.
7. The complainants submitted that the respondents through their directors further represented to the complainants that the structure would be spread over 14.843 acres and would provide premium residential group housing complex. It was also represented and assured to the complainants that the said

project presents a plethora of futuristic amenities, meeting the demands of an efficient and inspiring residential environment.

8. The complainants submitted that being induced by the respondents and believing upon the representations, assurances and promises, the complainants were induced to book an apartment and applied for same on 06.08.2012. Respondent no.1 issued a letter of allotment dated 02.11.2012 in favour of the complainants wherein complainant no.1 and complainant no.2 were allotted flat no. B5-17B on the 17th floor, block/tower B5 admeasuring total super area of 1715 square feet along with 1 parking space in the said project. The sale price of the allotted unit and car parking was Rs.1,13,48,685/- including the EDC, IDC, PLC, club membership charges and IFMS charges.
9. The complainants submitted that they had already out of their pocket made payment of an amount of Rs.36,30,913/- towards sale consideration of the said unit. They were constrained and compelled to sign a one sided arbitrary apartment buyer agreement dated 30.11.2012 on blank dotted lines.

10. The complainants submitted that as per clause 3(a) of the said agreement, the possession of the said unit was promised to be delivered by respondents within 36 months from the execution of the said agreements, which culminated on 30.11.2015. Notably, the complainants have already paid to respondent no.1 an amount of Rs.79, 61,138/- towards the said unit.
11. The complainants submitted that even after depositing a substantial amount of money, the complainants till date have not been offered possession of the said unit. Even after lapse of almost 30 months over and above the due date of possession as per the said agreements, the respondents have miserably failed to give possession of the said unit to the complainants. Further submitted that complainant no.1 being fed up with the false assurances given by the respondents visited the said project to inspect about the development. However, complainant no.1 was shocked to see that construction of the project had not even been completed and the entire project is lying unfinished and far away from completion and no labour was to be found as if the project has been abandoned. Complainant no.1 immediately

tried contacting the respondents, however, each time the calls were ignored.

12. The complainants submitted that though the respondents have failed to provide possession of the said unit on time, respondent no.1 is still raising frivolous demands to the complainants to make further payments by imposing interest @ 24% p.a. to be compounded quarterly and threatening to cancel the allotment of the said unit, in case the complainants do not make the payment of such frivolous demands.
13. The complainants submitted that respondents have defaulted miserably in handing over the possession of the said unit despite the fact that the complainants have been making timely payments towards the sale consideration of the said unit. It is further submitted that respondents have deliberately breached the obligations stipulated in the said agreements by usurping the huge amount of money received from the complainants and have been using it for their own personal expenses and not towards the completion of the project.
14. The complainants submitted that after realizing that respondents are in no mood to give possession, they

approached respondent no.1 and sought refund of the entire amount paid towards the said unit but the respondents refused to do so and threatened the complainants that their allotment would be cancelled if they do not make further payments.

15. The complainants submitted that as per clause 1.1(j) of the said agreement, if the complainants fail to make payment within the stipulated time, then the complainants are liable to pay interest calculated from the due date of the outstanding amount from the period of delay @ 24% per annum to be compounded quarterly. Whereas as per clause 3(a), if the respondents fail to give possession within the stipulated time period, then they will only pay a penalty of Rs.10/- per sq. ft. of the super area and that the amount would be adjusted at the time of demand of the final payment at the time of possession. Such arbitrariness cannot be held legal and also per section 19(4) read with section 2(za)(i) of the Real Estate (Regulation and Development) Act, 2016.

16. Issues to be decided

The relevant issues as culled out from the complaint are as

follows:

- i. Whether the complainants are entitled for refund of the amount of Rs.79,61,138/- from the respondents along with interest at the prescribed rate?
- ii. Whether the respondents have not handed over the possession to the complainants within the stipulated period of 36 months as per terms of the said agreement?

17. Relief sought

- i. To direct the respondents to refund the amount of Rs.1,76,23,412/- given towards allotment of unit no. B5-17B, in the project "Manor One" along with pendent lite and future interest at prescribed rate in favour of the complainants.
- ii. Award cost of the complaint in favour of the complainants.

18. Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainants and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the complainants as under:

- i. With respect to the **first and second issue** raised by the complainants, as per clause 3(a) of the buyer's agreement dated 30.11.2012, the possession of the said unit was to be handed over within 36 months from the date of execution of this agreement plus grace period of 6 months. The relevant clause is reproduced as under:-

"The developer proposes to hand over the possession of the said apartment, within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this agreement."

Accordingly, the due date of handing over possession comes out to be 30.05.2016. However, the possession has been delayed by 2 years 9 months and 20 days till the date of decision. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

The complainant has annexed certain photographs which clearly indicate that the project has been abandoned by the respondent. Only super structure has been raised. Nothing has been done and no work force is working at the site

which indicates that there is no hope and scope for completion of the project. In view of the above, the authority is of the view that the complainants are entitled for refund of the amount deposited with the respondent with prescribed rate of interest @10.75% as per annum. As per provision of section 18(1) of Haryana Real Estate (Regulation and Development) Act, 2016.

Finding of the authority:-

19. **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. 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 Town and Country Planning Department, 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.

20. The complaint was filed on 18.09.2018. Notices with respect to the hearing of the case were issued to the respondent on 04.10.2018, 17.10.2018 and 29.11.2018. However, despite due and proper service of notices, the respondents have neither filed reply nor come present before the authority by way of making their personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainants in their complaint.

21. The case of the complainant is that they had booked a flat/unit no. B-5-1713, 17th floor in project 'Manor One,' Sector 111, Gurugram and an apartment buyer's agreement to this effect was executed inter-se the parties on 30.11.2012. The agreement does not bear any date. However, the case is proceeded ex-parte and the date of execution taken for consideration is on the basis of submission of the complainants. By virtue of clause 3(a) of the said agreement, the possession of the unit was to be delivered

to the complainants within a period of 36 months + 6 months grace period which comes out to be 30.05.2016. Till date, the complainant have paid an amount of Rs. 79,61,138/- against total sale consideration of Rs. 1,13,48,685/-.

22. The complainants have annexed certain photographs which clearly indicate that the project has been abandoned by the respondent. Only super structure has been raised. Nothing has been done and no work force is working at the site which indicates that there is no scope and hope for completion of the project. In view of the above, the authority is of the view that complainants are entitled for refund of the amount deposited with the respondent with prescribed rate of interest @10.75% per annum as per provision of section 18(1) of Haryana Real Estate (Regulation and development) Act, 2016.

23. Accordingly, the respondent no. 1 is directed to refund the amount deposited by the complainant along with prescribed rate of interest at the rate of 10% per annum within a period of 90 days from the issuance of this order

Decision and directions of the authority

24. 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 no. 1:

- i. The respondent no. 1 is directed to pay refund of the amount deposited by the complainants amounting to Rs. 79,61,138/- along with prescribed rate of interest i.e. 10.75% per annum from the date of receipt of payments till its actual realisation.
- ii. The said amount shall be paid within a period of 90 days from the issuance of this order.
- iii. The project is not registered. Notice under section 59 of the real estate (Regulation and 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.

25. The complaint is disposed of accordingly.

26. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.03.2019

Judgement uploaded on 12.04.2019