

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

Complaint no. : 2190 of 2018
First date of hearing : 19.03.2019
Date of decision : 19.03.2019

Ashish Bhandari

Anshuma Bhandari

**R/o : Flat no 1522 A, DLF Magnolias, Golf
course road, Phase 5, Gurugram, Haryana-
121007**

Complainants

Versus

M/s Pioneer Urban Land and Infrastructure
Ltd. (through its Director)

**Address : Paras downtown centre, 7th floor,
Golf course road, sector 53, Gurugram.**

Respondent

CORAM

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE

Mr K.P. Pandey

Advocate for the complainants

Mr Ishaan Dang

Advocate for the respondent.

ORDER

1. A complaint dated 21.12.2018 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 Ashish Bhandari and Anshuma Bhandari against the promoters M/s



Pioneer Urban Land and Infrastructure Ltd, in respect of unit described below on account of violation of the clause 11.2 of apartment buyer's agreement executed dated 11.06.2012 for not handing over possession of the subject plot on the due date which is an obligation of the respondent under section 11(4)(a) of the Act *ibid.*.

2. Since the apartment buyer's agreement dated 11.06.2012 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid.*
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"Araya" at sector 62, golf course extension road, Gurugram.
2.	Nature of real estate project	Group housing colony.
3.	Current status of the project	Occupation certificate received dated 23.07.2018 and possession offered vide letter dated 28.08.2018
4.	Total area of the project	24.606 acres
5.	DTCP license no.	268 of 2007 dated 03.12.2007



6.	Date of buyer's agreement	11.06.2012
7.	Unit no.	A-1402, 14 th floor, A-tower
8.	Unit area	3498 sq. ft (super area)
9.	RERA Registered / not registered	101 of 2017
10.	RERA registration valid upto	31.12.2019
11.	Total consideration (as per statement of accounts dated 23.01.2019)	Rs. 3,88,31,363.14/-
12.	Total amount paid by the complainant till date (as per statement of accounts dated 23.01.2019)	Rs. 3,88,35,918.93/-
13.	Payment plan	Construction linked payment plan
14.	Due date of delivery of possession clause 11.2 – developer shall apply for OC within 39 months from the date of excavation subject to government approvals and sanctions + 180 days grace period Date of start of excavation 02.06.2012	11.03.2016
15.	Possession offered on	28.08.2018
16.	Delay in offering possession i.e. till 28.08.2018	2 years 5 months 17 days
17.	Penalty clause	Clause 11.5 (i) – Rs. 10/- per sq. ft' of super area



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. An apartment buyer's agreement dated 11.06.2012 is available on record for the

aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by 11.03.2016.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed by the respondent which has been perused by the authority.

Facts of the complaint

6. The complainants submitted that the respondent herein is the developer company who is engaged in development and construction of building and group housing society. The Respondent acquired ownership rights of the freehold land measuring 24,606 acres falling in Village-Ghata, Sector-62, Gold Couse Extension Road, situated at District-Gurgaon (Now Gurugram), Haryana and undertaken to construct a group housing society in the name and style of 'ARAYA'. Excavation of the project was stated on 14.05.2012.

7. The complainants submitted that they booked an apartment bearing no. A-1402 situated at 14th floor, in tower 'A' super area 3498 sq. ft. in the project 'Araya'. vide welcome letter



dated 21.03.2012 the respondent confirmed the booking of the apartment in favour of the complainants and subsequently issued allotment letter along with payment schedule on 22.03.2012.

8. The complainants submitted that subsequent 'apartment buyer's agreement was executed between the complainants and the respondent on 11.06.2012. The terms of the agreement are self-explanatory. In the apartment buyer's agreement dated 11.06.2012, the respondent admitted that they shall complete the project and hand over possession of the apartment to the complainants in 39 months from the date of excavation.
9. The complainants submitted that it is respectfully submitted before this authority that vide letter dated 14.05.2012, the respondent raise demand of sale process payable at the time of excavation which mean that excavation of the project started on or before 14.05.2012. From this date i.e. 14.05.2012 the respondent was supposed to deliver possession of the apartment to the complainants within 39 months but the respondent wilfully, deliberately and intentionally failed to



deliver possession of booked apartment to the complainants till date. Till date there is 39 months delay in handing over possession of the apartment.

10. The complainants submitted that they have made all payments well within stipulated period of time as per payment schedule without fail. The complainants have paid the entire sale consideration to the respondent as per their demand and no dues left unpaid on part of the complainants.
11. The complainants submitted that they approached the respondent on various occasions and requested to hand over possession of the apartment to the complainants as per promise made at the time of purchase but the respondent deliberately and intentionally failed to do so.
12. The complainants submitted that vide demand/tax Invoice dated 23.07.2018 the respondent raised a demand on pretext of receipt of occupation certificate of tower A. It is necessary to submit before this authority that the respondent has not provided occupation certificate to the complainants till date. The project is not complete. All facilities as promised at the



time of booking of apartment are not in order and the premises is not fit for human rehabilitation.

13. The complainants submitted that vide intimation for possession dated 28/08/2018, the respondent informed the complainants that they are in process of giving possession of the apartment and asked to remit the remaining due amount. It is respectfully submitted before this authority that in the aforementioned intimation of possession, the respondent has not stated anywhere that they obtained occupancy certificate and completion certificate from the competent authority. The respondent also did not disclose that they have completed the project as per agreement. The respondent also did not pay any compensation towards delay in delivery of possession in accordance with the provisions of Haryana RERA.

14. The complainants submitted that they have paid the remaining dues to the respondent under protest. The complainants have raised their concern vide letter dated 16/09/2018. In letter dated 16/09/2018, the complainants specifically raised concern regarding inappropriate delay penalty, poor conditions of the building and missing various facilities as



promised by the respondent at the time of booking of the apartment.

15. The complainants submitted that they have booked premium apartment for living for themselves with their small children and parents. Onsite inspection the complainants were very disappointed to see that the respondent has not developed the apartment in accordance with the agreement. Till now no facilities developed in the project, construction work is still going on due to which there are so much dust and dirt all over the premises and the apartment is not fit for human rehabilitation. Site condition is not fit to live. It is totally insecure and unsafe. therefore, in these circumstances, the complainants cannot take possession of the apartment. It is therefore, a direction needs to be passed against the respondent directing the respondent to first complete the project and obtain occupancy certificate and completing certificate from the competent authority and then only offer possession of the apartment. Directions need to be passed against the respondent directing the respondent to complete all pending work and develop all facilities as per agreement at



earliest without any further delay within reasonable period of time and for delay the respondent should pay delay penalty as per provisions of Haryana RERA.

16. The complainants submitted that from the site inspection, the complainants came to know that the construction work is still going on in the project and the respondent has not made all facilities of the project upto mark. The complainants observed poor condition of the building with significant open points on safety and liveability. It is also necessary to submit that apartment is not as per specifications. When the complainants come to the bathroom in the master bedroom, tub is missing along with steam/jacuzzi. It is also not safe in health point of view. All construction, health and safety points need to be resolve immediately before making offer of possession.

17. The complainants submitted that they have not filed any other or similar complaint before any other court/forum/authority seeking identical relief.

18. The complainants submitted that the project is situated within territorial jurisdiction of this authority hence this authority is competent to try and adjudicate the present complaint.



Issues to be determined

19. The issues raised by the complainants are as follows :-

- i. Whether the respondent has right to offer possession without obtaining occupancy certificate and completion certificate from the competent authority?
- ii. Whether the complainants can be forced to take immediate possession of their booked apartment without providing all basic facilities as per specifications in terms of agreement?
- iii. Whether the complainants are entitled for interest @18% per annum on the deposited amount as per provisions of section 18 of Real Estate (Regulation and Development) Act, 2016 for delay period on pro rate basis ?
- iv. Whether the complainants are entitled for litigation cost?

Reliefs sought

20. The reliefs sought by the complainants are as follows :

- i. To direct the respondent to give possession of apartment to the complainants immediately, in the interest of justice.
- ii. To direct the respondent to pay interest @ 18% per annum to the complainants for the delay period on the deposited amount, in the interest of justice.



- iii. To direct the respondent to pay litigation cost to the complainants.
- iv. To direct the respondent to complete all pending work and provide all amenities and facilities as per promise made in the agreement.
- v. To direct the respondent not to raise any demand from the complainants till provide all amenities and facilities as per agreement.
- vi. To declare the demand letter dated 28.08.2018 sent to the complainants raising final demand null and void.
- vii. To pass stay order on demand letter dated 28.08.2018 restraining the respondent from claiming any holding charges on the basis of above demand letter till respondent obtain completing certificate and occupancy certificate from competent authority.

Respondent's reply

21. The present complaint is not maintainable and the provisions of RERA Act are not applicable to the project in question. The plea of compensation by the complainant are to be decided by



the adjudicating officer under section 71 of the Act read with rule 29.

22. The application for issuance of occupation certificate in respect to the said unit was made on 04.04.2018 and the occupation certificate of tower A was issued on 23.07.2018 vide memo no. ZP-338-C-VOL-I/SD(BS)/2018/21712. The construction of the tower in which the booked unit is located is completed.

23. The project is registered under RERA Act and rules vide registration no. 101 of 2017 dated 24.08.2017.

24. The complainant booked apartment bearing no. A-1402 on 14th floor of tower-A in the project Araya at Sector 62 along with 3 car parking spaces and buyer's agreement was executed on 11.06.2012.

25. The respondent also submitted that the complainants have not paid the stamp duty charges amounting to Rs 22,69,000/- and maintenance amount of Rs 2,35,276/-.

26. The respondent also submitted that the complainants are not desirous of obtaining the physical possession of the apartment



although they are aware of the fact that the same is fit for habitation in all respects.

27. The respondent also submitted that the compensation amount of Rs 10,64,310/- has already been credited to the complainants account and has been duly mentioned in credit note no 9200001125 dated 28.08.2018.

Determination of Issues

28. With respect to the **first issue**, the authority has observed that the respondent has obtained occupation certificate in respect of the booked unit on 23.07.2018 and offered possession to complainants vide letter dated 28.08.2018. The letter of offer of possession dated 28.08.2018 is valid in nature as the same is issued after issuance of occupation certificate by the competent authorities.
29. As regards the **second issue**, this issue cannot be determined as the complainants have failed to produce any documentary evidence in support of their claim.
30. As regards the **third issue**, the respondent as per clause 11.2 of the apartment buyer's agreement dated 11.06.2012, were liable to handover the possession within a period of 39 months



from the date of excavation i.e 02.06.2012 subject to government approvals and sanctions + 180 days grace period. Therefore the due date of possession comes out to be 11.03.2016. The respondent offered possession of the booked unit to the complainants vide letter dated 28.08.2018 after an inordinate delay of 2 years 5 months 4 days. Thus the respondents are liable to pay interest on the deposited amount at the prescribed rate i.e 10.75% per annum for every month of delay.

31. As regards the **fourth issue**, this authority does not have jurisdiction to determine the cases of compensation, however the complainants are at a liberty to approach adjudicating officer to seek relief.

Findings of the authority

32. 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 Town and Country Planning Department, 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. In the present case, the authority has observed that by virtue of this complaint, the complainants are seeking directions against the respondent to hand over the possession of the unit and to pay delayed possession charges. In addition to this, the complainants are also seeking directions from the authority to direct the respondent to complete the pending works at site. Brief facts leading to this complaint are that complainants had booked a unit no. A-1402, 14th floor, tower A in project "Araya" in Sector 62, Gurugram. Buyer's agreement to this effect was executed inter-se the parties 11.06.2012 and in terms of clause 11.2 of the said buyer's agreement, the respondent was bound to hand over the possession to the complainants within a period of 39 months from the date of excavation subject to



government approvals and sanctions plus 180 days grace period which comes out to 02.03.2016. The complainants have till date paid an amount of Rs.3,88,35,918/- against total sale consideration of Rs.3,88,31,363/-. Respondent has received occupation certificate on 23.07.2018 and possession of the booked unit has been offered to the complainants on 28.08.2018.

Decision and directions of the authority

34. After taking into consideration all the material facts produced by 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 directions
- i. The complainants in terms of section 18 (1) of Real Estate(Regulation and Development) Act, 2016 are entitled for delayed possession charges @ 10.75% per annum w.e.f. 02.03.2016 till the date of offer of possession i.e. 28.08.2018.
 - ii. The arrears of interest accrued on account of delayed possession charges shall be paid to the complainant



within a period of 90 days from the date of issuance of this order.

- iii. The complainants are directed to take over the possession within one month
 - iv. The respondent is also directed not charge any holding charges and to remove the defects pointed out by the complainant particularly with regard to defects in lifts installed.
35. The order is pronounced.
36. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 19.03.2019

Judgement uploaded on 17.04.2019

