

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

Complaint no. : 353 of 2018
Date of first hearing : 11.9.2018
Date of decision : 10.1.2019

Lakhmi Chand
R/o- Village Ullawas, P.O. Kadarapur
New Delhi

...Complainant

Versus

AJS Builders Ltd. through its directors
Geeta Singh, Madhu Singh and Kailash Rani
Office: 8, Shaheed Bhagat Singh Marg,
Gole Market, New Delhi-110001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Lakhmi Chand Complainants in person
None for the respondent Advocate for the respondent

ORDER

1. A complaint dated 30.5.2018 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 complainant Mr. Lakhmi Chand against AJS builders on account of violation of 4.1 of the flat buyer's agreement executed on 7.7.2016 for flat no.





803, B3 with a super area of 1550 sq. ft' in the project "AJS Hill View", a group housing colony for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the space buyer's agreement has been executed on 8.6.2008 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 project:** Group housing residential project

***DTCP licence no.:** 80 dated 1.4.2008

***Licence holder:** AJS Builder Ltd.

1.	Name and location of the project	"AJS Hill View Apartments" Sector 62, Gurugram
2.	Unit No.	803, B-3
3.	Unit area	1550 sq. ft'
4.	Project area	4.4 Acres
5.	RERA Registration	Not registered





6.	Date of execution of builder buyer agreement	8.6.2008 (as alleged by complainant but not signed)
7.	Basic sale price	Rs. 41,85,000/- (Annexure A-4)
8.	Total amount paid by the complainant	Rs. 4,18,500/- (Annexure A-7) 8,37,000/-
9.	Payment plan	Construction Linked Payment Plan (schedule-II, Annexure-4)
10.	Due date of delivery of possession.	Cannot be ascertained
11.	Delay of number of months/ years	Cannot be ascertained
12.	Penalty clause as per builder buyer agreement	Clause 10 i.e. Rs 5 per Sq. ft' per month of the Super area

4. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for flat No. 803, B3, Sector 62, Gurugram in the project "AJS Hill View Apartments" for which the promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.

Corrected vide order dated 12/04/19.





FACTS OF THE CASE

6. The complainant booked a flat in AJS hill view apartment after paying basic sale cost of Rs.4,18,500/- vide cheque no.027177 dated 29.1.2007 and signed the application form. *A cheque bearing no. 789749 dated 14.07.2007 of Rs. 4,18,500/- was also given to respondent.*
7. Complainant filed the buyer's agreement on 8.6.2008 and was allotted Block B3, flat no.803, 8th floor in tower-B3. The construction of the project has stopped since August 2008.

8. ISSUES RAISED BY THE COMPLAINANT

- I. Whether the respondent has cheated the complainant by booking the project, stopping construction and closing their office?
- II. Whether the respondent has failed to provide possession of the unit till date?

9. RELIEF SOUGHT

- I. To refund the entire amount paid as per the agreement along with interest @18% p.a. Rs.8,37,000/-

OR

- II. Alternatively- possession of the unit allotted.

Corrected vide order dated 12/04/19.



- III. To direct the respondent to pay compensation of Rs.10,00,000/- to the complainant for mental agony, harassment and losses suffered.
- IV. To award costs.

DETERMINATION OF ISSUES

10. With respect to the **first issue**, the complainant has made allegations without substantiating the same in material particulars. As such this issue cannot be determined.
11. With respect to the **second issue**, as per clause 10 of unsigned Builder Buyer Agreement for unit No.803,20-B, AJS Hill View Apartments, Sector-62, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period. It was a construction linked plan. Complainant has already paid Rs. ~~4,18,500/-~~ ^{8,37,000/-} to the respondent. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum.



FINDINGS OF THE AUTHORITY

12. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.

DECISION AND DIRECTIONS OF THE AUTHORITY

13. 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, as such 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) Complaint was filed on 30.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.6.2018, 13.9.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 13.9.2018 and on 15.11.2018 for non-filing of reply even after service of notice. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority.

(iii) From the above stated conduct of the respondent it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte and to decide the matter on merits by taking into a count legal/factual propositions as raised by the complainant in his complaint.



(iv) A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

(v) As per clause 10 of unsigned Builder Buyer Agreement for unit No.803,20-B, AJS Hill View Apartments, Sector-62, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period. It was a construction linked plan. Complainant has already paid Rs. ~~4,18,500/-~~ ^{8,37,000/-} to the respondent. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.



Corrected vide
order dated
12/04/19.

14. Complaint is disposed of accordingly.
15. Detailed order will follow. File be consigned to registry.



(Samir Kumar)
Member



(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.1.2019

Corrected judgement uploaded on 17.04.2019



HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	353/2018 Case titled as Mr. Lakhmi Chand Vs AJS Builders Ltd.
Complainant	Mr. Lakhmi Chand
Represented through	Complainant in person
Respondent	M/s AJS Builders Ltd.
Respondent Represented through	None for the respondent.
Last date of hearing	12.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such 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.

Arguments heard.

Complaint was filed on 30.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.6.2018, 13.9.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 13.9.2018 and on 15.11.2018 for non-filing of reply even after service of notice. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the Authority.

From the above stated conduct of the respondent it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte and to decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

The brief facts of the matter are as under :-

As per clause 10 of unsigned Builder Buyer Agreement for unit No.803,20-B, AJS Hill View Apartments, Sector-62, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period. It was a construction linked plan. Complainant has already paid Rs.4,18,500/- to the respondent. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

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Samir Kumar
(Member)
10.1.2019

Subhash Chander Kush
(Member)

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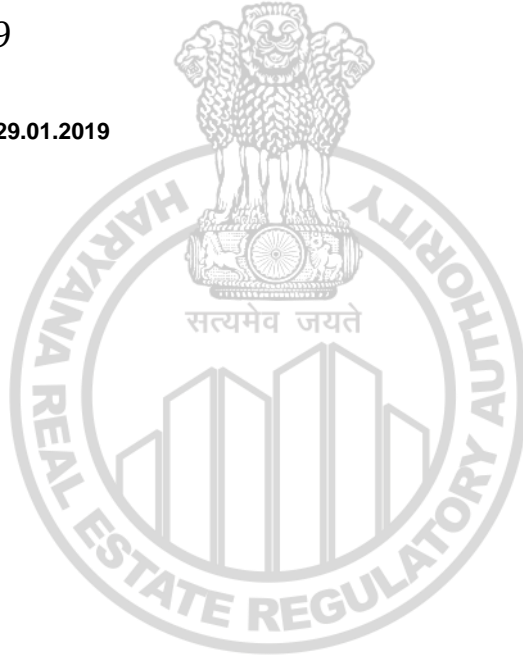
(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.1.2019

Judgement uploaded on 29.01.2019



HARERA
GURUGRAM

