BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1328 of 2019
First date of hearing: 05.09.2019
Date of decision : 05.09.2019

Ram Avtar Nijhawan
R/o: House no. E-50, Bali Nagar,
New Delhi, 110015. **Complainant**

Versus

M/s Neo Developers Pvt .Ltd ,
Office at: 1205, 12th floor, Tower B,
Signature towers, South city 1, NH 8,
Gurugram:122001. **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE
Ms. Pavitra Yadav Advocate for complainant
Shri Pankaj Chandola, Proxy
counsel for Shri Venkat Rao Advocate for respondent

ORDER

1. A complaint dated 02.04.2019 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. Ram Avatar Nijhawan against the promoter M/s. Neo Developers Pvt. Ltd., on account of violation of clause 5.2 read with 5.4. of the buyer's agreement executed on 12.02.2013, in respect of shop

described as below for not handing over the possession by due date i.e. 12.02.2013 which is an obligation under section 11 (4) (a) of the Act ibid.

2. Since, the buyer's agreement was executed on 12.02.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016. Therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations 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 case are as under:

1.	Name and location of the project	"Neo Square", Sector 109, Gurugram, Haryana
2.	Nature of real estate project	Commercial Complex
3.	Project area	2.71 acres
4.	Unit no.	Shop no. 84, tower-A, ground floor
5.	Super area of the unit	685 sq. ft.
6.	DTCP license	102 of 2008 dated 15.05.2008
7.	Registered/ not registered	**Registered (3.089 acres)**
8.	RERA registration no.	109 of 2017 dated 24.08.2017
9.	Revised date of RERA registration	23.08.2021
10.	Date of execution of buyer's agreement	12.02.2013
11.	Total consideration as per the payment schedule attached on page 28 of the complaint	Rs. 66,70,198/-
12.	Total amount paid by the complainant	Rs. 66,42,959.56/-

	as per the ledger account annexed as Annexure 9 on page 43 of the complaint	
13.	Payment plan	Construction linked
14.	Date of start of construction (as per date mentioned in ledger account attached on page 26 of complaint and admitted by respondent in reply)	15.12.2015
15.	Due date of delivery of possession as per clause 5.2 & 5.4- 36 months + 6 months grace period from the execution of buyer's agreement or from the start of construction, whichever is later	15.06.2019
16.	Delay in handing over possession till date	2 months 21 days
17.	Penalty as per clause 5.6 the buyer's agreement	Rs.10/- per sq. ft. per month for the super area of the said space

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 buyer's agreement dated 12.02.2013 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 15.06.2019. The respondent has not delivered the possession of the said unit till date to the complainant as per clause 5.2 read with 5.4 of said buyer's agreement duly executed between the parties. Therefore, the promoter has not fulfilled its 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 05.09.2019. The reply was

filed on behalf of the respondent on 04.06.2019 has been perused by the authority. Rejoinder and written arguments were filed by the complainant wherein he has reasserted the facts of the complaint.

FACTS OF THE COMPLAINT:

6. The complainant submitted that he initiated the discussions for real estate opportunities in Delhi NCR with a real estate agent for investors clinic, a real estate consultant based in Delhi NCR and shared information for upcoming real estate project by M/s Neo Developers Pvt. Ltd called Neo Square.

7. The complainant was made to understand that the respondent was a credible developer known for its timely delivery of its past project. The shop/office space in the project Neo Square in sector 109, Gurugram was being offered under the construction linked plan. The agreed total price of the shop was Rs. 66,43,778/- including taxes.

8. The complainant initiated the booking process on 3rd April and 19th April by presenting a cheque of Rs. 2,50,000/- to the respondent. Thereafter another payment of Rs. 1,50,000/- was made to fulfil their down payment requirement of the agreement total booking amount and applicable taxes.

9. Thereafter the complainant was allotted unit no. 84, on ground floor admeasuring 571 sq. ft. in the said project and payment was made as per the payment schedule.

10. Builder buyer agreement was executed and the period of completion of the project was 36 months as per clause 5.2 of the agreement. Currently, the structure of the tower where the complainant has been allotted the unit has only been partially complete.

11. Thereafter making full payment in 2018, the complainant consensually requested for updates in 2019 regarding the project and received no response from the respondent. In January 2019 the complainant visited the project site and noticed the project was massively lagging on its completion deadline. Thereafter the complainant contacted the respondent for possession but received no response.

12. The intention of the respondent and their officers and directors was malafide right from the beginning and has been aiming to cheat the complainant. The respondent is liable for acts and omissions and have misappropriated the said amount paid by the complainants and therefore are liable to be prosecuted under the provisions of law. The respondent has failed to complete the project construction activities till date.

ISSUES RAISED BY THE COMPLAINANT:

13. The complainant has raised the following issues:

    i. Whether the respondent cheated the complainant by booking unit no 84 in the said project and not completed it yet?

    ii. Whether the respondent misappropriated the hard-earned money of the complainant?

    iii. Whether or not the respondent has delayed the possession of the booked unit?

RELIEFS SOUGHT BY THE COMPLAINANT:

14. The complainant is seeking the possession of the unit along with delay possession charges under section 18 of the RERA,2016 read with Rule 15 of the Haryana RERA Rules.

REPLY BY THE RESPONDENT:

15. The respondent submitted that the present complaint is an abuse of the process of the hon'ble authority and is not maintainable. The complaint has not approached this authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

16. The respondent submitted that the present complaint is premature. There is no cause of action arising in favour of the complainant. It is submitted that clause 5.2 the buyers agreement provides that the company shall complete the construction of the said building within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction, whichever is later. Further, a grace period of 6 months is also mentioned in clause 5.4 of the buyers agreement. It is submitted that mentioned herein that the said agreement was executed on 12.02.2013 and construction started in the month of December. The respondent has been granted registration vide no. 109 of 2017 dated 24.08.2017 and the same is valid up to 23.08.2021. Accordingly, the due date for handing over the possession of the unit has not occurred as alleged by the complainant either in terms of the buyers agreement nor in terms of RERA registration and hence the complaint is premature and should be dismissed at the outset.

17. From conjoint reading of section 31,71 of the Act and Rules 28 and 29 it is crystal clear and evident that the claim made by the

complainant is in the form of compensation which would be adjudged by the adjudicating officer as appointed under section 71 of the act.

18. The respondent submitted that the complainant is trying to shift its onus of failure on the respondent as it is the complainant who has failed to comply his part of obligation and miserably failed to pay the instalments in time despite repeated payment reminders being sent by the respondent from time to time.

DETERMINATION OF ISSUES:

19. After considering the facts submitted by the complainant, and perusal of record on file, the authority decides the issues raised by the parties as under:

i. With respect to the **first and second issues** raised by the complainant, the authority is of the view that there is no documentary proof brought on record for the same and the complainant has merely asserted the same. The issues were not perused before the authority at the time of arguments. Thus, these issues are decided in negative.

ii. With respect to the **third issue** raised by the complainant, as per clause 5.2 read with 5.4 of buyer's agreement dated 12.02.2013, the possession of the unit was to be handed

over within 36 months + 6 months grace period from the date of execution of agreement or date of start of construction whichever is later. The construction started on 15.12.2015. Therefore, the due date of handing over the possession shall be computed from 15.12.2015. Accordingly, the due date of possession was 15.06.2019 and the possession has been delayed by 2 months 21 days till date of decision. As the promoters have failed to fulfil its obligations under section 11(4)(a), the promoters are liable under section 18(1) proviso of the Act ibid 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. The authority issues directions to the respondents u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.45% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 15.06.2019 up to the date of offer of possession.

FINDINGS OF THE AUTHORITY

20. 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 Department of Town and Country Planning, 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 The authority has complete jurisdiction to decide the complaint regarding 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.

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

22. By virtue of clauses 5.2 and 5.4 of the buyers agreement dated 12.02.2013 for unit/shop no. 84, tower A, ground floor in project "Neo Square", Sector 109, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of start of construction i.e. 15.12.2015 plus 6 months grace period which comes out to be 15.06.2019. the respondent has miserably failed to deliver the possession of the unit in time. Complainant has already paid Rs.

66,42,959/- to the respondent against a total sale consideration of Rs. 66,70,198/-. As such the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 15.06.2019 as per provisions of section 18(1) of the Act ibid.

DECISION AND DIRECTIONS OF THE AUTHORITY

23. 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 direction to the respondents:

i. The respondent is directed to pay interest at the prescribed rate of 10.45% per annum on the amount deposited by the complainant with the promoter from the due date of possession i.e. 15.06.2019 till the actual delivery of possession.

ii. The arrears of interest accrued so far shall be paid to the complainant 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. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The promoter shall not charge anything from the complainant which is not a part of the buyers agreement.

v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as being granted to the complainant in case of delayed possession

24. The order is pronounced.

25. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2019

AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM