BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1329 of 2019**
First date of hearing:		**05.09.2019**
Date of decision	**:**	**05.09.2019**

Sh. Ram Avtar Nijhawan
R/o:- H. No. E-50, Block-E, Bali Nagar, New Delhi-110015 **Complainant**

Versus

M/s Neo Developers Pvt. Ltd.

Corporate office: #1507, Tower D Global Business Park M.G. Road, Gurugram-122002

Registered office:1205, 12th Floor, Tower-B, Signature Tower, South City-1, NH8, Gurugram-122001 **Respondent**

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

APPEARANCE:
Ms. Pavitra Yadav Advocate for the complainant
Sh. Pankaj Chandola Proxy counsel for the respondent's advocate, Sh. Venkat Rao

ORDER

1. A complaint dated 02.04.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016

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read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Ram Avtar Nijhawan against the promoter M/s. Neo Developers Pvt. Ltd., on account of violation of clause 5.2 read with clause 5.4 of the buyer's agreement executed on 12.02.2013, in respect of shop described as below in the project "Neo Square" for not handing over the possession by the due date i.e. 15.06.2019 which is an obligation of the promoter 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, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory 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 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

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4.	Unit no.	Shop No. 87, Tower-A, Ground Floor
5.	Super area of the unit	682 sq. ft.
6.	DTCP license	102 of 2008 dated 15.05.2008
7.	Registered/ not registered	Registered
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 on pg. 42 of the complaint	Rs. 66,42,791/- (including other charges)
12.	Total amount paid by the complainant as per the ledger account annexed as Annexure 8 on pg. 43 of the complaint	Rs. 66,16,306/-
13.	Payment plan	Construction Linked Plan
14.	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 **i.e. 12.02.2013** or starting of construction **i.e. 15.12.2015**, whichever is later	15.06.2019 **Note: the due date is calculated from the date of start of construction i.e. 15.12.2015 as per the ledger account annexed as Annexure 8 on pg. 43 of the complaint**
15.	Delay in handing over possession till date	2 months 21 days
16.	Penalty clause As per clause 5.6 buyer's agreement	Rs.10/- per sq. ft. per month for the super area

4. The details provided above have been checked on the basis of record available in the case file which has been provided

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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 & 5.4 of the buyer's agreement duly executed between the parties. Therefore, the promoter has failed to fulfil its obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

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 filed on behalf of the respondent on 04.06.2019 has been perused by the authority.

FACTS OF THE COMPLAINT

6. The complainant submitted that he was made to understand that M/S Neo Developers Pvt. Ltd., the promoter/developer of the real estate project was a credible developer, known for its timely delivery of its past projects. The shop/office space in the project namely "Neo Square" in Sector 109, Gurugram was

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being offered under the construction linked plan. The agreed total price of the shop was a sum of Rs. 66,42,791/- including taxes.

7. The complainant submitted that he initiated the booking process on 3rd April and 19th April, by presenting a cheque to M/s Neo Developers Pvt. Ltd. of sum of Rs. 2,50,000/-. Thereafter, one more payment of sum of Rs. 1,50,000/- respectively were made to the respondent to fulfil their down payment requirement of the agreed total booking amount and applicable taxes.

8. The complainant submitted that after the payment made by him, an allotment letter dated 20.06.2012, unit no. 57, ground floor measuring 572 sq. ft. approx. in "Neo Square" the commercial project of the company situated in sector-109, Gurugram was allotted to him and payment of Rs. 4,00,000/- and Rs. 6,82,950/- was also made as per the payment schedule. The buyer's agreement was executed between M/s. Neo Developers Pvt. Ltd. and the complainant on 12.02.2013. the respondent thereafter, unilaterally changed unit vide the said agreement to unit no. 87 admeasuring 685 sq. ft. for total price

of Rs. 66,42,791/-. The time for completion of the project was 36 months i.e. May 2016 as per clause 5.2 of the agreement.

9. The complainant submitted that after making the full payment in 2018, he continuously requested for updates in 2019 regarding the project and received no response from the respondent. In January 2019, he visited the project site and noticed the project was massively lagging behind on its completion deadline. Thereafter, he contacted the respondent for the possession of unit no. 87 but received no response.

10. The complainant submitted that the respondent failed to complete the project constructions activities till date.

ISSUES RAISED BY THE COMPLAINANT

11. The following issues have been raised by the complainant: -

i. Why unit no. 57 was allotted in the allotment letter however thereafter in the buyer's agreement it was unilaterally changed to unit no. 87 without informing the complainant?

ii. Why the respondent misappropriated the hard earned money of the complainant?

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iii. Why the possession was not given as per the clause 5-5.2 on page no. 10 of the buyer's agreement which was due in May 2016?

iv. Why the possession of the said unit having super area approx.. 682 sq. ft. in the said project has not been delivered to the complainant till date?

RELIEF SOUGHT

12. The following reliefs are sought by the complainant:-

i. Direct the respondent to handover the possession, along with interest payable under section 18 of RERA, 2016 read with Rule 15 of the Haryana RERA, Rules.

REPLY BY THE RESPONDENT:

13. 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 of the buyer's 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 the

buyer's agreement. It is submitted that the said agreement was executed on 12.02.2013 and the construction started in the month of December 2015. Also, the registration of the project with Haryana Real Estate Regulatory Authority vide registration no. 109 of 2017 dated 24.08.2017 have granted the registration till 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 buyer's agreement nor in terms of the RERA registration and hence, the complaint is premature and should be dismissed.

14. The respondent submitted that the complaint filed by the complainant before the ld. authority besides being misconceived and erroneous, is untenable in the eyes of law and liable to be rejected. The complainant has misdirected himself in filing the captioned complaint before this ld. authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this ld. authority. The claim for cost which is a kind of compensation would be only adjudged by the adjudicating officer as appointed under section 71 of 2016 Act and that too keeping in view the factors mentioned in section 72 of 2016 Act. No complaint can be entertained much less before

this ld. authority in respect of the matters to be adjudicated by the adjudicating officer. Hence, the ld. authority lacks jurisdiction to deal with the present complaint.

Also, it has been held by the hon'ble Haryana Real Estate Appellate Tribunal while disposing off a bunch of appeals, the leading appeal being ***Sameer Mahawar Vs MG Housing Pvt Ltd, Appeal No.06 of 2018***, *held as follows:*

(i) The violations and causes of actions arising out of the same bundle of facts/rights giving rise to the multiple reliefs shall be placed before one and the same forum for adjudication in order to avoid conflicting findings.

(ii) .....

Similarly, if compensation is provided as a part of the multiple reliefs along with refund/return of investment with interest flowing from the same violation/s and causes of action, the complaints have to be placed before the adjudicating officer exercising the powers under Sections 31, 71(1) read with rule 29 of the Rules as only the adjudicating officer is competent to deal with the relief of compensation.....

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

DETERMINATION OF THE ISSUES

16. With respect to the **first issue** raised by the complainant the authority came across that, initially the respondent allotted unit no. 57 vide allotment letter dated 20.06.2012 with ref. no. NEOD/NS/00050 in favour of the complainant but it was issued provisionally and later on the respondent executed the buyer's agreement on 12.02.2013 in favour of the complainant in which it allotted the unit no. 87 instead of the unit no. 57. The same agreement was accepted and signed by the complainant without any protest, so the complainant cannot raise this issue at this later stage and becomes infructuous.

17. With respect to the **second issue** the complainant has not submitted any evidentiary proof and justification for the same. Thus, this issue is decided in negative.

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18. With respect to the **third and fourth issues** raised by the complainant the authority came across that, as per the clause 5.2 & 5.4 of the buyer's agreement the respondent is liable to handover the possession within the period of 36 months + grace period of 6 months from the date of execution of buyer's agreement or the date of start of construction, whichever is later. The buyer's agreement was executed on 12.02.2013 and the construction was started on 15.12.2015. Therefore, the due date for handing over the possession is calculated from the date of start of construction. The relevant clause is reproduced under-

> *"**clause 5.2**-that the company shall complete the construction of the said building/complex, 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.....*
> ***Clause 5.4**-that the allottee hereby also grants an additional priod of 6 months after the completion date as grace period to the company after the expiry of the aforesaid period"*

Accordingly, the due date of handing over the possession comes out to be 15.06.2019. Since, the respondent has not handed over the possession till this date, the promoter has delayed the possession by 2 months 21 days. Thus, the

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respondent has failed to fulfil its obligation under section 11(4)(a) of the Act ibid.

The authority is of the view that as the respondent has failed to fulfil its obligations under section 11(4)(a) of the Act ibid, the complainant is liable to get the delayed possession charges for the period of delay starting from the due date of possession i.e. 15.06.2019 till the date of offer of possession under section 18(1) proviso of the Act ibid to be read with rule 15 of the Rules ibid at the prescribed rate of 10.45% p.a.

FINDINGS OF THE AUTHORITY

19. 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. 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.

20. 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.

21. As per the clauses 5.2 and 5.4 of the buyer's agreement dated 12.02.2013 for unit/shop no. 87, 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** + 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. 66,16,306/- to the respondent against a total sale consideration of Rs. 66,42,791/-. 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 the provisions of section 18(1) proviso of the Real Estate (Regulation & Development) Act, 2016 till the actual offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY

22. After taking into consideration all the material facts adduced 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:

i. 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 the provisions of section 18(1) proviso of the Real Estate (Regulation & Development) Act, 2016 till the actual offer 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 each subsequent month.

iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.

iv. The promoter shall not charge amount/charges from the complainant which is not a part of the buyer's agreement.

v. Interest on 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 is being granted to the complainant in case of delayed possession.

23. Complaint stands disposed off.

24. The order is pronounced.

25. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2019

DEEPANSHU SINGLA
Legal Assistant