

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. : 1673 of 2018

First date of hearing: 09.04.2019

Date of decision : 09.04.2019

Mr. Pradeep Kumar Upadhyay,
Flat- B-054 tower-B, Raheja Vedanta
Sector-108, Gurugram - 122001

...Complainant

Versus

Maxworth Infrastructures Pvt. Ltd.
108 and 109, 1st floor, DLF Star tower, NH-8
Gurugram - 122001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Pradeep Upadhyay Complainant in person
None for the respondent Advocate for the respondent

EXPARTE ORDER

1. A complaint dated 03.12.2018 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 Mr. Pradeep

Kumar Upadhyay against the promoter Maxworth Infrastructures Pvt. Ltd. in respect of apartment/unit described below in the project “Aashray”, for the delay in handing over possession of the unit in question as per terms of agreement to sale was executed between parties which is in violation of the section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 03.12.2018. Notices w.r.t. hearing of the case were issued to the respondent on 04.12.2018, 21.12.2018, 08.01.2019 for making his appearance. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his 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 complainant in their complaint.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Aashray", sector-89, Gurugram
2.	Registered/Unregistered	245 of 2017
3.	Registration valid upto	25.09.2021
4.	Nature of project	Affordable housing scheme
5.	Payment plan	Time linked plan
6.	Allotment letter	22.03.2018
7.	Area of project	5.51875 acres
8.	Unit no.	T11-1404, floor-14th
9.	Area of unit	627.11 sq. ft (carpet area) 77.82 sq. ft (balcony area)
10.	Total consideration	Rs. 25,47,350/- (as per statements of complainant)
11.	Total amount paid by the complainant	Rs. 6,87,784/- (as per statement of complainant)

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor

file their reply to the complaint therefore, the case is being proceeded ex-parte against the respondent.

Facts of the complaint

5. The complainant submitted that he had been allotted a residential apartment bearing no. T11-1404 in the Maxworth Infrastructures Pvt. Ltd., sector – 89, Gurugram, measuring 627.11 /- sq. ft. of carpet area and 77.82 sq. ft of balcony area, for a total sale consideration of Rs.25,47,350/- from the respondent.
6. The complainant submitted that on 20.06.2018, agreement to sale was executed between Sh. Pradeep Kumar Upadhyay and respondent. It is submitted that with the consent of both parties the consideration amount for the apartment was fixed for Rs. 25,47,350/- out of which the allottee had already paid an amount of Rs. 1,27,367/- to the respondent as booking amount.
7. The complainants submitted that on 20.03.2018 a draw of lots was conducted and the complainant was allotted the apartment.

8. The complainants submitted that on 15.04.2018 complainant received demand cum allotment letter from respondent.
9. The complainants submitted that on 20.06.2018 at registrar office builder and buyer agreement was signed between both parties.
10. The complainants submitted that on 21.08.2018 complainant paid Rs.5,60,416/- via cheque.
11. The complainant paid Rs.1,27,368 (booking amount) and Rs.5,60,416/-(on demand) which becomes a total of Rs.6,87,784/-.
12. The complainants submitted that telephonically on 30.08.2018, Mr. Sushil Kaundniya (MD of Maxworth Infrastructure Pvt. Ltd.) refused to construct the said project.
13. The complainants submitted that he was already allotted 1 house under affordable scheme so he cannot apply for new one without surrender of current allotted house.

Issues raised by the complainant

14. Whether the complainant is entitled to get refund of the entire amount paid by him to the respondent?

Relief sought by the complainant

15. To direct the respondent to refund the entire amount with interest as per agreement to sale.
16. To direct the respondent to allot another unit in his other project.

Determination of issue

17. With respect to sole issue raised by the complainant, complainant has booked a flat no. T11-1404 in project "Aashray", sector-89, Gurugram. Complainant has paid an amount of Rs.6,87,784/- to the respondent against a total sale consideration of Rs.25,47,350/- under affordable housing scheme. The project is still lying abandoned and the respondent merrowed the hard earned money of the complainant which is not justified by any patents of logical law, hence the authority decides to refund the amount alongwith prescribed rate of interest i.e. 10.75% per annum.
18. The policy instructions of affordable housing scheme will not cover such type of cases where the builder has not struck to

the policy guidelines in any manner. Thus, the complainant is entitled to get back the deposited amount with the respondent alongwith prescribed rate of interest i.e. 10.75% per annum.

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 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.

20. The complainants made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
21. The complainants 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. As the respondent have failed to appear before the authority and to submit the reply in such period, despite due and proper service of notices, it appears that the respondents do not want to pursue the matter before the authority by way of making their personal appearance by adducing and producing any material particulars in the matter. Thus, the authority hereby proceeds *ex-parte* on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainants in their pleading.
23. Complaint was filed on 03.12.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 04.12.2018, 21.12.2018 and 08.01.2019. Besides this, a penalty of

Rs.5,000/- and Rs.10,000/- was also imposed on 21.12.2018 and on 08.01.2019 for non-filing of reply even after service of notices. 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 proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint.

24. A final notice dated 19.03.2019 by way of email was sent to both the parties to appear before the authority on 09.04.2019.

25. complainant has booked a flat no. T11-1404 in project "Aashray", sector-89, Gurugram. Complainant has paid an amount of Rs.6,87,784/- to the respondent against a total sale consideration of Rs.25,47,350/- under affordable housing scheme. The project is still lying abandoned and the respondent merrowed the hard earned money of the

complainant which is not justified by any patents of logical law, hence the authority decides to refund the amount alongwith prescribed rate of interest i.e. 10.75% per annum.

26. The policy instructions of affordable housing scheme will not cover such type of cases where the builder has not struck to the policy guidelines in any manner. Thus, the complainant is entitled to get back the deposited amount with the respondent alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of issuance of this order.

DECISION AND DIRECTIONS OF THE AUTHORITY

27. 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 refund the deposited amount paid by the complainant after alongwith

prescribed rate of interest i.e. 10.75% per annum within
a period of 90 days from the date of issuance of this order.

28. Complaint is disposed of accordingly.

29. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2019

Judgement uploaded on 23.04.2019

HARERA
GURUGRAM