

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

Complaint no. : 324 of 2018
Date of first hearing: 19.07.2018
Date of decision : 10.01.2019

Mr. Mohit Kumar Chadha
H.no. D-4 Ashok Vihar
New Delhi-110052

Versus

Complainant

NEO Developers Private Limited
1205 B, tower B, Signature Tower, South
City-I, NH-8, Gurugram
Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Kamal Dahiya Advocate for the complainant

Shri Satish Gola Company Secretary on behalf of
the respondent



ORDER

1. A complaint dated 24.05.2018 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. Mohit Kumar Chadha, against the promoter NEO Developers Private Limited, on account of violation of the buyer's agreement executed for unit no. 49 on ground floor of the tower B in the project "NEO SQUARE" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid.*

* By the virtue of an agreement with M/S Shrimaya Buildcon Pvt ltd. the company has sufficient rights to construct, develop, market and sell all that land bearing 2.71 acres at village Pawala, Khusropur Distt. Gurugram, Haryana.

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

| | | |
|----|----------------------------------|---------------------------------------|
| 1. | Name and location of the project | "NEO SQUARE" in Sector 109, Gurugram |
| 2. | Unit No. | No.49, on ground floor of the tower B |
| 3. | Unit area | 565 sq. ft. |
| 4. | Nature of project | Commercial project |
| 5. | DTCP licence | 102 of 2008 dated 15.05.2008. |
| 6. | Basic sale price | Rs. 51,13,250/- |



| | | |
|-----|---|--|
| 7. | Registered/ Not Registered | Registered -109 of 2017 dated 24.08.2017 |
| 8. | Revised date of possession as per RERA registration | 23.08.2021 |
| 9. | Date of buyer's agreement | 30.11.2013 |
| 10. | Payment plan | Construction linked instalment plan |
| 11. | Total consideration | Rs. 65,62,836/- |
| 12. | Total amount paid by the complainant | Rs.19,79,415/- |
| 13. | Date of delivery of possession. As per clause 5(2) is 36 months from the date of builder buyer agreement or from date of start of construction plus grace period of 6 months from | 30.05.2017 Due date has been calculated from the date of buyer's agreement |
| 14. | Delay of number of months/ years | 1 years 7 months and 11 days |
| 15. | Penalty as per builder buyer agreement clause 5(6) | Rs.10/- per sq. ft. per month of the super area |

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A buyer's agreement was executed between the parties for unit no.49 on ground floor of the tower B according to which the possession of the aforesaid unit was to be delivered by 30.05.2017. Further, the promoter has failed to deliver the possession of the said unit



to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 19.07.2018. The case came up for hearing on 19.07.2018, 04.09.2018, 26.09.2018, 26.10.2018, 29.11.2018 and 10.01.2019. The reply has been filed on behalf of the respondent.

Facts of the complaint

5. It is submitted by the complainant that with a view to occupy a presence around the Gurugram- Manesar area for his business and based on various promises, representation, warranties and time lines offered by the respondent company to the petitioner through its authorised real estate, dealers, brochure and many personal meetings with the MD of the respondent company, the petitioner had handed over a cheque of Rs. 4,00,000/- dated 01.03.2012.
6. That on the 24.05.2012, the respondent company issued an allotment letter with the ref. no. NEOD/NS/00053 for the unit



number 49 measuring 610 sq. ft. in “NEO SQUARE” commercial project situated at Sector 109, Gurugram.

7. That after collecting almost 30% of the total payment, the respondent company on 15.10.2012 offered to the petitioner to visit their office and sign the buyers agreement. The buyers agreement was signed and executed by the petitioner on 30.11.2013. As per clause 5.2 respondent company is committed to deliver the possession around 30.11.2016 i.e. 36 months from the date of execution of the agreement.
8. That it is conceded fact that by the end of 2015, the construction of the project had barely started and the project was going to be indefinitely delayed. While the respondent is continuously harassing the petitioner for more and more installments.
9. That on the 01.06.2015, the petitioner made its apprehension, with regard to the delay in construction of the project, quite clear to the respondent vide an email dated 01.06.2015 and requested the respondent to update the status of the project



along with how they intend to compensate the petitioner for the delayed period.

10. It is pertinent to mention here that as late as April 2018, the respondent company has been completed only the basic RCC work, which usually is comprised of only 40% of the total construction.

11. That the respondent company not only delayed the entire project but also attempted to forfeit the entire deposit of the petitioner. The same is evident from the email dated 13.07.2016. wherein the respondent company sent a final notice for more payments without committing any date of delivery of possession. The email categorically and discreetly states that in case of any delay in the payment, the respondent would cancel the allotment and forfeit the entire amount.

12. The petitioner met MD of the respondent company on 17.07.2017 and once again he was assured that the construction would be completed by January 2018. From the latest pictures taken from the respondent website itself, it is more than evident that project is not only way behind the



schedule but it leaves a huge question mark on the ability of the respondent to complete the project.

Issues raised by the complainants

- i. Whether the project is delayed or not?
- ii. Whether the respondent is liable to be prosecuted for the violation of RERA provision section 18(1) namely section 18(3) and 14(2)?

Relief sought by complainant

- i. Urgent stay on any cancellation or creation of third party on the property / shop allotted the petitioner vide application form dated 01.03.2012.
- ii. Refund of the petitioner's entire amount along with the compounding interest rate @ 18% p. a till date of actual payment of refund by the respondent company.
- iii. Compensation of Rs. 1,00,000/- should be awarded as reimbursement of expenses in fighting for this relief.
- iv. Additional compensation of Rs. 25,00,000/- for mental harassment.



Respondent's reply

13. It is also submitted that the retail space allotted to the complainant was terminated on 08.07.2016, much before the RERA came into effect and does not made any correspondence with the respondent regarding the cancellation of retail space.
14. It is submitted that as per and in terms of payment plan the due date of payment up to 10% of basic sale price of the unit was 02.03.2012. Accordingly, an amount of Rs.5,24,492/- was due and payable on or before 01.03.2012 by the complainant. However, the complainant had paid Rs. 4,00,000/- on 01.03.2012.
15. It is submitted that respondent issued construction linked demand on 01.12.2015 as per the terms of the payment plan agreed by the complainant in builder buyer agreement upon start of the construction, accordingly construction started in the December 2015, accordingly the due date of possession will be April 2019.
16. It is submitted that the project is registered with the RERA authority vide Registration no. 109 of 2017 dated 24.08.2017



and the hon'ble authority have granted the registration till 23.08.2021.

17. It is submitted that the construction of the project was in full swing at the end of the year 2015 and the respondent issued demand of Rs. 3,98,039/- on 01.12.2015, at the stage of start of 3rd basement. The due date of handing of possession will be only after April 2019 as per builder buyer agreement from the date of start of the construction. Therefore, the present complaint is premature.
18. Final notice was issued by the respondent on 13.07.2016 for payment of Rs. 5,34,081/- asking the complainant to make the payment on or before 28.07.2016 failing which allotment of the unit shall stand cancelled, but the complainant failed to make the payment of due instalment.
19. It is further submitted that the respondent had no knowledge about the site visitation by the complainant as the complainant did not inform the respondent about his site visitation and no officer of the respondent accompanied the complainant for site visitation.



Determination of the issues

20. Regarding the **first issues** raised by the complainants, as per clause 3(a) of the agreement, the respondent company was bound to deliver the possession of the said unit within 36 months with a grace period of 6 months of the date of execution of the agreement to the complainant which comes to 30.05.2017 but the respondent has not delivered the possession of the said flat till date thereby delaying the possession by 1 year 7 months and 11 days.

“3. Possession and holding charges

5(2) ...the company proposes to offer the possession of the said apartment to the allottee within a period of 36 months from the date of execution of builder buyer agreement(commitment period)...The allottee further agrees and understands that the company shall additionally be entitled to a period of 6 months (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the company.”

The respondent has breach the terms of the agreement as the it did not deliver the possession of the said unit within the stipulated time

As the possession of the flat was to be delivered by 30.05.2017 as per the clause referred above, the authority is of the view



that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016

21. With respect to **second issue** raised by the complainant, As such complainant is well within his right to claim refund alongwith prescribed rate of interest i.e 10.75%.

Findings of the authority

22. **Jurisdiction of the authority-** As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

23. The preliminary objections raised by the respondent regarding subject matter jurisdiction of the authority stands rejected. 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.

24. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
25. 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.
26. As per clause 5 (2) of the builder buyer agreement dated 30.11.2013 for unit no. 49, ground floor, tower-B, NEO SQUARE, Sector-109, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of BBA + 6 months grace period which comes out to be 30.5.2017. It was a construction linked plan. However, the respondent has not delivered the unit in time. complainant has already paid Rs.19,79,415/- to the



respondent against a total sale consideration of Rs.65,62,836/-. As such complainant is well within his right to claim refund alongwith prescribed rate of interest i.e 10.75%.

27. Keeping in view default on the part of complainant, respondent is directed to forfeit 10% of the total sale consideration amount and refund the balance amount deposited by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

DECISION AND DIRECTIONS OF THE AUTHORITY:

28. 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 the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to forfeit 10% of the total sale consideration amount and refund the balance amount deposited by the complainant alongwith prescribed rate



of interest i.e. 10.75% per annum within 90 days from today.

26. The order is pronounced.

27. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date : 10.01.2019
Judgement uploaded in 23.04.2019



HARERA
GURUGRAM

