

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

Complaint No. : 325 of 2018
Date of Institution : 13.06.2018
Date of Decision : 10.01.2019

Ms. Renuka Saroj
A1/316 Janak Puri, New Delhi-58

Complainant

Versus

M/s Neo Developers (P) Ltd.
Registered Office: 1205B, Tower B,
Signature Tower,
Gurgaon, Haryana 122001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Kamal Dahiya
Shri Satish Gola

Advocate for the complainant
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 Ms. Renuka Saroj, against the promoter M/s Neo Developers (P) Ltd., on



account of the allotment on 24.05.2012 for unit no. 48 having 610 sq. ft. approx. in the project "Neo Square", Sector-109, Gurugram.

* 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, Sector-109, Gurgaon
2.	Nature of project	Commercial project
3.	Registered/ unregistered	Registered
4.	RERA registration no.	109 of 2017 dated 24.08.2017
5.	Revised date of possession as per RERA registration	23.08.2021
6.	Provisional allotment dated	24.05.2017
7.	Unit no.	48 measuring 610 sq. ft.
8.	BBA	Not executed
9.	Total cost	Rs. 63,45,168.28/-
10.	Total amount paid by the complainant	Rs. 15,00,000/-
11.	Percentage of consideration amount	23 % Approx.
12.	Plan	Construction linked plan
13.	Date of cancellation by respondent	08.07.2016
14.	Due date of delivery of possession	Cannot be ascertained
15.	Delay in handing over possession	Cannot be ascertained
16.	Penalty clause	Cannot be ascertained



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. 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 complaint

5. The complainant Mrs. Renuka Saroj submitted an application for booking of a retail space admeasuring 565 sq. ft. at the rate of Rs. 9500/- sq. ft. in the respondent company. The total cost of the shop was Rs. 63,45,168.28/- .
6. The complainant submitted that the respondent after having received Rs. 7,50,000 i.e. 15 % of the total cost of the shop,



issued an allotment letter for a retail space no. 48 in NEO Square, Sector-109, Gurgaon. The area of the shop allotted was changed to 610 sq. ft. of carpet area as compare to 565 sq. ft. of the carpet area as originally prescribed in the application form.

7. Thereafter, the complainant refused to sign the buyer's agreement and requested the respondent company to make the necessary correction in the agreement and sent it to her for signature as per the terms laid down in the application form. The corrected buyer's agreement was never send to the complainant and the same was refused by the respondent to provide a copy of the amended buyer's agreement. The complainant vide several emails and whatsapp messages requested the respondent to send the copy of BBA and to execute the same.
8. A demand notice was sent to the complainant wherein the respondent threatened to cancel the property in case of non-payment of the instalment. The complainant had made a payment of Rs. 15,00,000/- to the respondent party which



was equivalent of approx. 30% of the total cost of the shopping space.

9. Issues raised by the complainant

- 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)?

10. Relief Sought

- i. Urgent stay on any cancellation or creation of third party rights on the property allotted to the complainant vide application form dated 02.03.2012.
- ii. Refund of the complainant's entire money along with the compounding interest @ 18 % p.a. till date of actual payment of refunds by the respondent company.

Respondent's reply

11. The respondent submitted that complainant made an application form to respondent for booking, registration and provisional allotment of unit in the project under construction linked plan, subject to other terms and



conditions. Respondent has allotted a retail space no. 48 in Neo Square, Sector-109 Gurgaon.

12. The respondent dated 08.07.2016 cancelled the unit allotted to the complainant as the complaint had failed to make the payment according to the payment schedule in spite of various demands sent by the respondent dated 22.06.2012,20.11.2012.

Preliminary objections

13. The respondent submitted that the neither buyer agreement nor any other contract subsists between the complainant and respondent as on date or as on date of complaint or any time after the date of termination.
14. That the instant complaint is liable to be dismissed as the hon'ble authority is not clothed with the jurisdiction to entertain a complaint or dispute, ex post facto, even in respect of a buyer agreement/allotment letter which pertains to a period prior to RERA., and which has been terminated well before RERA coming into effect and as is not in subsistence or



existence any time after such termination or at any time after coming into effect of RERA.

15. The respondent submitted that the complainant has admitted that the total amounts paid till July 2012 being only Rs.15,00,000/-. It is pertinent to note that in spite of various reminders from time to time, complainant failed to adhere to the payment schedule as agreed at the time of booking. Complainant had himself made default in payment.

16. The respondent submitted that mail dated 15.10.2012, inviting the complainant for execution of buyer's agreement but the complainant did not come to the office of the respondent to sign the agreement. Thereafter, the respondent had sent a reminder to the complainant on 02.11.2012 to come and sign the agreement but the complainant failed to do so. The complainant had paid only 15,00,000/- till date which is less than 30 % of BSP.

17. It is pertinent to mention that the complainant in order to cover his own failure is misleading this hon'ble authority by annexing producing WhatsApp message and mails dated July



2017/ August 2017 which were sent well after the cancellation of the unit by the respondents.

Determination of issues

18. With respect to **first and second issues** raised by the complainant, authority is of view that no buyer's agreement was executed inter-se the parties. As per provisional allotment letter dated 24.05.2012, a flat/unit no. 48, in project "NEO SQUARE", Sector 109, Gurugram was allotted to the complainant. It was a construction linked plan in which complainant has made only payment of Rs.15,00,000/- against a total sale consideration of Rs.63,45,168/-. Since no BBA was executed inter-se the parties, as such complainant is well within his right to claim refund along with prescribed rate of interest i.e 10.75%.

Findings of the authority

19. **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.

20. 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.

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

22. 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.

23. No buyer's agreement was executed inter-se the parties. As per provisional allotment letter dated 24.05.2012, a flat/unit



no. 48, in project “NEO SQUARE”, Sector 109, Gurugram was allotted to the complainant. It was a construction linked plan in which complainant has made only payment of Rs.15,00,000/- against a total sale consideration of Rs.63,45,168/-. Since no BBA was executed inter-se the parties, as such complainant is well within his right to claim refund along with prescribed rate of interest i.e 10.75%.

24. 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.

Directions of authority

25. 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

Dated: 10.01.2019

Judgement uploaded in 23.04.2019

HARERA
GURUGRAM

