

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

Complaint No. : 26 of 2019
First date of hearing: 02.04.2019
Date of decision : 02.04.2019

Mr. Hari Ballabh Sharma.
C/o. Mr. Bhagwan Singh Choudhary,
Address: - 9, Advocate Ajay Chaudhary House,
near old kaun, Rangpuri, Mahipalpur,
New Delhi- 110037.

Complainant

Versus

M/s. Pareena Infrastructure P. Ltd.
(Through its Director)
Address: - C-1/7A, 2nd floor, Omaxe City,
Centre Mall,
Sohna Road, Gurugram, Haryana.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Amit Kumar Srivastava Advocate for the complainant.
Shri Prashant Sheoran Advocate for the respondent.

ORDER

1. A complaint dated 18.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Hari Ballabh Sharma against the promoter, M/s Pareena Infrastructure P. Ltd. with respect to apartment buyer's agreement dated 19.07.2016 in respect of apartment no. 308,



2nd floor, Tower T5 in the project, namely 'Laxmi apartments' located at Sector 99A, Gurugram- Manesar urban complex for not affecting the surrender of allotment and refund of paid amount which is an obligation of the respondent under section 18(1) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 19.07.2016 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondent under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"Laxmi apartments" at sector- 99 A, Gurugram- Manesar Urban Complex.
2.	Nature of real estate project	Affordable housing colony
3.	DTCP License no.	106 dated 14.08.2014
4.	Total area of the project	Cannot be ascertained
5.	Allotted apartment/flat no.	308, 3 rd floor, tower T5.
6.	Measuring carpet area of the allotted apartment	424.833 sq. ft. carpet area
7.	RERA Registered / not registered	Registered vide no. 25 of 2017
8.	Date of booking	05.04.2016
9.	Date of allotment letter	24.06.2016 (Annx C-2)
10.	Date of apartment buyer's agreement	19.07.2016 (Annx C-3)



11.	Payment plan	Time linked payment (Pg.50 of the complaint)
12.	Total consideration as per allotment letter	Rs. 17,49,330.50/- (Annx C-2)
13.	Total amount paid by the complainant till date	Rs. 15,70,537/-
14.	Due date of delivery of possession as per apartment buyer's agreement. Note – Environment clearance was received on 15.03.2016. No building plans was annexed.	15.03.2020 (clause 8.1 -4 years from the date of grant of environment clearance or from the date of sanction of building plans, whichever is later)
15.	Date of email for surrender of allotment	23.10.2018 (Annx C-6)
16.	Revised date for delivery of possession as per RERA certificate	14.09.2020

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. An apartment buyer agreement dated 19.06.2016 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by 15.03.2020. The respondent did not give effect to the surrender of allotment made by the complainant and intun failed to refund the paid amount of the complainant with cancellation which is the obligation of the builder under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The

respondent appeared on 02.04.2019. The case came up for hearing on 02.04.2019. The reply has been filed on behalf of the respondent on 04.02.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly put facts relevant for the disposal of present complaint are that in 2016 the respondent approached to the complainant for booking of a flat in the residential project, namely "Laxmi Apartments- Affordable Housing Scheme" situated at Village- Gopalpur, Sector-99A, Gururgram, Manesar Urban Complex, Haryana. The complainant visited to the project site and after repeated requests and offers made by the respondent, agreed to book a flat in the said upcoming project.

7. The complainant submitted that after inquire about the said project with representative of the respondent, the complainant convinced and expressed his interest for booking of flat and asked to provide him detail of payment plan and according to the payment plan complainant became agreed for the time link payment plan and at the time of booking construction was started on the project and representative of the respondent told to the complainant that possession of the said flat will be handed over within 4 years from the date of building sanction plan.

8. The complainant submitted that it was informed to the complainant that it is an affordable housing scheme approved by HUDA hence HUDA will redraw the vacant unit and the complainant was require to pay booking amount 5 % of the flat value as booking amount and fill the form for redraw, that the complainant agreed with the above said process of allotment and made payment for the redraw of flat on 15/04/2016 and paid booking amount Rs. 87,467/- vide cheque no. 360981 dated 15/04/2016 for the redraw of flat in the project of respondent and submitted booking form to the respondent.

9. That after the above said payment the complainant received a letter from the respondent for invitation for draw of lots of project on 23.06.2016 and the complainant attend the draw process and the respondent allotted a flat in the affordable group housing project as "Laxmi Apartments- affordable housing scheme" situated at village- Gopalpur, Sector-99A, Gurugram, Manesar urban complex, Haryana through the draw of lots vide letter dated 24/06/2016 and allotted a flat no. 308, Tower-T-5, and the total cost of the flat is 17,49,330/- excluding EDC and IDC and other charges, and the complainant along with this letter of provisional allotment also received a demand letter for the

payment of Rs. 3,49,866/- for the payment of at the time of allotment of flat.

10. The complainant submitted that the respondent executed apartment buyer agreement on 19.07.2016 in favour of the complainant and through this allotment letter the respondent allotted flat bearing no. 308, 3rd floor, tower-T-5, admeasuring 424.833 sq. ft. in the project of "Iaxmi apartments- affordable housing scheme" situated at village- Gopalpur, Sector-99A, Gurugram, Manesar urban complex, Haryana. The contents of the said Allotment with the terms and conditions may kindly be read as part and parcel of this paragraph of this complaint.

11. The complainant submitted that the complainant after execution of the above said agreement made all the payment demanded by the respondent time to time and the respondent issued valid payment receipt to the complainant for all the complaint and the complainant till May 2018 made total payment of Rs. 15,70,537/-. That the complainant made all the payment time to time and looking for the possession of the said flat as per the agreement but the construction is not as per the agreement it seems to take some time for the possession.

12. The complainant in the meantime face some personal finance issue and decided to cancel his booking with the respondent and take his paid amount refund as per the affordable housing policy 2013 of the Haryana Govt. and Town and Country Planning Dept of Haryana Govt. notification in which it is clearly mention that the allottee have right to cancel his booking or withdraw from the project and the promoter is entitled to forfeit the booking amount and interest if any is due and refund the balance amount to the allottee within 90 days from the date of cancellation.

13. He send an email and letter dated 23.10.2018 to the respondent and requested to cancel his booking and after deduction of earnest money Rs. 25,000/- as mention in the agreement and refund the remain amount but the respondent did not bother to respond on the said email or letter send by the complainant.

14. The complainant also made a complaint to the District Town and Country Planning, Gurgaon for the cancellation of said flat and the dept also send a letter to the respondent to resolve the said issue by the respondent also avoid the said letter dated 15.11.2018 and kept silent on the said issue. After the said letter

of DTCP Gurgaon again visited to the office of the respondent for the redressal of the said issue but the respondent is not ready to listen his grievance.

15. That the complainant is in urgent need of money for some personal use but due to the unprofessional attitude and negligent in service the complainant is facing financial hardship.

16. The complainant paid a sum of Rs. 15,70,537/-to the respondent from 2016 to 2018 and the respondent is liable refund the said amount to the complainant immediately after receiving request of the complainant according to the Govt. Policy but the respondent ignore all the things and kept silent.

17. That in view of the above said facts and circumstances of the case the complainant is seeking refund of his paid amount with from the respondent.

Issues to be determined -

- Whether the respondent is liable to refund the paid amount of the complainant alongwith interest @ 18% p.a. according to the policy of affordable housing scheme 2013 and notification 2017 about the affordable housing?

- Direct the respondent to refund the entire amount of Rs. 15,70,537/- to the complainant alongwith interest after deduction of earnest money as per rule.

Respondent's reply:-

18. The respondent submitted that the construction work of the said project is at an advance stage and the structure of various towers has already been completed and remaining work is endeavoured to be completed as soon as possible.

19. It has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and foundation less allegations will be admitted then its other genuine allottees of the project, who will stand to be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

20. The respondent submitted that certain extremely important facts were concealed by the complainant while drafting the present complaint. It is submitted that since the complainant had signed the apartment buyer agreement out of his own accord

and free will. He is also bound by the terms and condition of the said apartment buyer agreement. It is submitted that as per clause 8.1, the date of possession will be 4 years from the grant of environmental clearance or sanction of building plans, whichever is later. It is submitted that the agreement in question was executed on 21.01.2014 and the complainant on said date had specific knowledge that environmental clearance was granted just 3 months prior to signing of builder buyer agreement as per buyer's agreement date of possession is in year 2020, thus the present complaint is pre-mature and liable to be dismissed, on this ground alone.

21. The complainant had already made a complaint before DTCP against the respondent qua the issue raised in this complaint and the said issue is yet to be decided. It is submitted that complainant as well as respondent are still pursuing the said complaint filed by complainant before DTCP. That the brief facts of the said complaint are as follows:

- a. On 26.10.2018 complainant had filed a complaint to DTCP.
- b. On 15.11.2018 DTCP requested to resolve the matter.
- c. On 08.01.2019 respondent reverted to said request letter along with its submissions and relevant documents. In the

said reply respondent duly explained the situation and even disclosed that a representation filed by several Builders against provisions of the affordable housing policy is also pending before DTCP for adjudication.

22. As admitted by the complainant himself the booking amount was Rs. 87,467/- in para no 2D thus the complainant has no right ask for forfeiture of Rs. 25,000/- only. It is submitted that if the complaint does not wish to pay further it shall be deemed to be his fault an appropriate order to deduct 10% of the total sale price and deduction of interest + taxes shall be passed against the complainant, in the interest of justice.

Determination of Issues-

23. As regards **the core issue** raised by the complainant, it is to be noteworthy from the perusal of record and the submissions made by the parties, the complainant vide email dated 23.10.2018 requested for the surrender of allotment of unit and refund of the paid amount after deduction of earnest money as per the provision of surrender laid down in affordable housing policy 2013. Relevant portion of section 7.5 of the said scheme is reproduced below -

“7.5 Cancellation by Allottee- *The Allottee shall have the right to cancel/withdraw his allotment in the Project as provided in the Act: Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation.”*

24. Since, the respondent by not giving effect the surrender of allotment of the complainant and inturn not refunding the balance amount paid by the complainant after forfeiting the booking amount as per section 7.5 of the scheme (mentioned above) has violated the provision of section 11(4)(a) of the Act ibid. Thus, the respondent is liable to refund the balance amount after deducting the Rs.25,000/- plus taxes alongwith interest at the prescribed rate of 10.75% per annum in terms of section 18(1) of the Act.

Findings of the authority-

25. 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 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.

26. Project is registered with the authority.

27. Arguments heard. As per clause 8.1 of the apartment buyer's agreement dated 19.07.2016 for unit no. 308, tower T-5 in the project "Laxmi Apartment", Sector 99A, Gurugram, possession of the allotted unit was to be handed over from the date of grant of environment clearance or from the date of sanction of building plan, whichever is later. The date of receipt of environment clearance in the present case is 15.03.2016. Hence, the due date of delivery of possession on calculation comes out to be 15.03.2020. The complainant has already paid Rs. 15,70,537/- to the

respondent as against the total sales consideration of Rs. 17,49,330/-.

28. Since the complainant had booked the unit under the affordable housing scheme and under the policy of which the complainant is at liberty to wriggle out from the project at any time by forgoing Rs. 25,000/- in the form of earnest money.

29. Since, the respondent by not giving effect the surrender of allotment of the complainant and inturn not refunding the balance amount paid by the complainant after forfeiting Rs. 25,000/- as per section 7.5 of the scheme (mentioned above) has violated section 11(4)(a) of the Act *ibid*. Thus, the respondent is liable to refund the balance amount after deducting the booking amount in terms of section 18(1) of the Act.

Decision and directions of the authority -

30. After taking into consideration all the material facts produced by 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 directions:-

- The respondent is directed to accept the surrender email dated 23.10.2018 of the complainant and refund the deposited amount without interest by deducting Rs. 25,000/- and

other taxes, if any, paid by the respondent to the government within a period of 90 days from the date of this order.

31. The order is pronounced.
32. Case file be consigned to the registry.

(Dr. K.K. Khandelwal)
Chairman

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -02.04.2019



HARERA
GURUGRAM