

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

**Complaint no. : 94 of 2018**  
**Date of first hearing : 15.03.2018**  
**Date of decision : 11.04.2019**

Mrs. Nandini Modi R/o 36, Amrita Shergill  
Marg, New Delhi-110003

**Complainant**

Versus

M/s Ansal Housing & Construction Ltd.  
through Mr. Deepak Ansal, Chairman &  
Managing Director & Others  
Registered office: 606, 6<sup>th</sup> floor,  
Indraprakash Building, 21 Barakhamba  
Road, New Delhi 110001

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri RD Jataiin, Ms. Sonali Joon and Mr. Akshay Naloo

Advocates for the complainant

Shri Deepankar Dutt Sharma

Advocate for the respondent

**ORDER**

1. A complaint dated 15.03.2018 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 Mrs. Nandini



Modi) against the promoter M/s Ansal Housing & Construction Ltd. on account of violation of clause 30 of the apartment buyer's agreement executed on 24.07.2012 for unit no. 502, tower N in the project "Estella" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since the apartment buyer's agreement has been executed on 24.07.2012, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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 are as under: -

1.	Name and location of the project	Estella, Sector-103, Gurugram
2.	Project area	15.743 acres
3.	DTCP licence no.	17 of 2011
4.	Nature of project	Group housing colony
5.	Unit no.	0502, tower N



6.	Unit admeasuring	1725 sq. ft.
7.	Whether project is registered	Not registered (applied for registration on 31.07.2017)
8.	Apartment buyer's agreement executed	24.07.2012
9.	Total Sale consideration	Rs. 58,86,400/- as per page no. 48
10.	Total amount paid by the complainant	Rs. 61,60,458/-
11.	Date of obtaining required sanctions plan	28.11.2011 (as admitted by respondent in para 4 of reply)
12.	Due date of delivery of possession as per clause 30 of the agreement- within 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approved necessary for commencement of construction, whichever is later plus 6 months grace period (from the date of agreement i.e 24.07.2012)	24.01.2016 <b>The grace period of 6 months has been allowed to the respondent for the delay caused due to exigencies beyond control of the respondent</b>
13.	Delay of number of months/ years upto 28.08.2018	3 years, 2 months and 22 days
14.	Penalty clause as per builder buyer agreement	Clause 35- Rs. 5/- per sq ft. per month on super area for delay



4. As per the details provided above, which have been checked as per record of the case file. An apartment buyer's agreement is available on record for the abovementioned unit no. 0502,

tower N according to which the possession of the aforesaid unit was to be delivered by 24.01.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 19.04.2018. The case came up for hearing on 19.04.2018, 08.05.2018, 31.05.2018, 11.07.2018, 28.08.2018, 13.09.2018, 11.10.2018, 22.11.2018, 08.01.2019, 18.01.2019, 15.02.2019 and 11.04.2019. The reply filed by respondent has been perused by the authority.

#### **FACTS OF THE CASE**

6. The complainant submitted that apartment buyer's agreement was executed at New Delhi on 24.07.2012 according to clause 30 of agreement possession of the apartment was to be delivered within a period of 36 months from the signing of the



agreement and a grace period of 6 months was also mentioned by the respondent.

7. The complainant submitted that he executed flat buyer's agreement with the respondent to buy flat no. 0502, under the project namely "Estella" at New Delhi on 24.07.2012.
8. The complainant submitted that the total payable sale consideration including other charges raised by developer was Rs. 61,18,989/-. And the complainant has made a payment of Rs. 61,60,458/- to the respondent in due course of time with regard to the same.
9. The complainant submitted that he has been always in compliance with the terms of the apartment buyer's agreement and has been making regular payments towards the payment of the instalments due had been raised by the respondent with respect to the stages of construction since the same being a construction linked plan.
10. The complainant submitted that according to the said agreement, he was ought to received the physical of the flat within 36 months from the date of signing of the agreement or



within an extended period of further 6 months subject to force majeure conditions, that is, January 2016.

11. The complainant submitted that as per clause 23 of the apartment buyer's agreement the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.

12. The complainant submitted that as per clause 35 entitles the respondent for reasonable extension in the delivery of the possession of the apartment and rather cleverly, the developer/ respondent had specifically accepted a meagre liability to pay Rs. 5/- per sq. ft. per month on the super area for the delay in offering of possession of the apartment beyond 42 months.

13. The complainant submitted that the act of the respondent herein have caused severe harassment both physical and





mental and that the respondent has duped the hard earned money invested by the complainant by its act of not handing over the possession even after the stipulated period of 6 months.

#### 14. Issues raised by the complainant

- i. Whether or not the respondent failed to perform upon the said agreement and could not handover the possession of flat within the stipulated time period mentioned in agreement dated 24.07.2012?
- ii. Whether the respondent should be penalized under section 59 of RERA?
- iii. Whether the respondent is liable for false advertisement under section 12 of RERA act?
- iv. Whether or not the interest rate of Rs. 5 per sq. ft. per month as mentioned in clause 35 of the apartment buyers agreement with regard to the delay in offering possession of the unit adequate rate of interest with respect to the same, and whether, further penalty over and above the



above mentioned meagre rate of compensation is payable to the complainant herein by the respondent?

- v. Whether the respondent has diverted the funds collected from allottees in other commercial projects?

**15. Relief sought by the complainant**

- i. To refund the amount of Rs. 61,60,458/- paid by the complainant for the said unit.
- ii. Direct the respondent severally and jointly to pay interest @24% p.a. compounded quarterly on the amount of Rs. 61,60,458/-
- iii. Direct the respondent to pay such penalty towards the delay in delivery of possession of the unit over and above the meagre rate of Rs. 5 per sq. ft. per month along with pendent lite and future compensation at the same rate.
- iv. Direct the respondent to pay an interest of 24% of the principle amount for delayed possession.





**Reply filed on behalf of the respondent**

16. The respondent submitted that the project namely 'Estella' situated in Village Nawada Fatehpur, Sector-103 of Gurugram Haryana, presently the Gurgaon Manesar Urban Plan 2021 is being developed by the M/s Ansal Housing & Construction Ltd. under license no. 17 of 2011 dated 08.03.2011 received from Director, Town & Country Planning, Haryana.
17. The respondent submitted that the land of the project is owned by M/s Ish Kripa Properties Pvt. Ltd. That M/s Ish Kripa Properties Pvt. Ltd. had under an arrangement granted, conveyed and transferred rights, entitlement and interests in the development, construction of the said project. The District Town & Country Planning Haryana has granted the approval/sanction of the building plans of the project vide memo no. ZP-733/JD/(BS)/2011/11636 dated 28.11.11. The project work is under construction and a considerable amount of construction has already been done
18. The respondent submitted that already an application has been submitted before the HARERA for registration of the



project on 31.07.2017. That the respondent has not received the registration of the project yet.

19. The respondent submitted that without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant perfectly within time had there been no force majeure circumstances beyond the control of the respondent. However, there were several reasons and circumstances absolutely beyond the control of the respondent, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon; orders passed by National Green Tribunal whereby mining of sand in Haryana and Rajasthan was banned, Reservation agitation in Haryana; orders of National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016; demonetization etc. adversely effected the progress of the project. That the respondent would pay the respondent



appropriate compensation as per the terms and conditions of the said allotment letter duly executed by the complainant.

20. The respondent submitted that this hon'ble authority has no jurisdiction to entertain present complaint as the project has yet not received the registration certificate under RERA.

21. The respondent submitted that the complaint is not maintainable and the same is liable to be dismissed on the ground that the project has not received registration certificate under RERA and hence this hon'ble authority has no jurisdiction to entertain present complaint.

22. The respondent submitted that no cause of action has arose against the respondents as in terms of the RERA Act the developer has changed the completion date and has undertaken to complete the project on or before 30.06.2020. Hence, on this ground alone the complaint is liable to be dismissed.

23. The respondent submitted that the intent of the legislation in introducing the RERA act is to regularize the real estate sector. It is not supposed to function retrospectively. It is made clear



by the judgment passed by the Hon'ble High Court of Bombay in **Neelkamal Realtors Suburban Ltd. vs Union of India and Ors.** decided on 06.12.2017, the Hon'ble High Court of Bombay has held that the RERA Act is to be applied prospectively not retrospectively. That the affidavit filed by the Union in the said case stated "The Act provides for impositions of penalties for violations of the provisions of the Act only subsequent to 1<sup>st</sup> May, 2017, as section 3 was notified for commencement with effect from 01.05.2017." It is pertinent to mention here that section 13 of the RERA Act along with other sections came in force from 01.05.2017.

24. The respondent submitted that he would have handed over the possession to the complainant perfectly within time had there been no force majeure circumstances beyond the control of the respondent. However, there were several reasons and circumstances absolutely beyond the control of the respondent, such as, interim Orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon; orders passed by



National Green Tribunal whereby mining of sand in Haryana and Rajasthan was banned, reservation agitation in Haryana; orders of National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016; demonetization etc. adversely effected the progress of the project. The respondent would pay the respondent appropriate compensation as per the terms and conditions of the said allotment letter duly executed by the complainant. That the para under reply of the complaint needs no reply being matter of record. However, the payments for which valid receipts have been issued by the respondent are not denied.

#### **Determination of issues**

25. After considering the facts and submissions made by both the parties and perusal of records the issue wise determination given by the authority are as follows-
26. With respect to the **first and fourth issue**, the authority came across that as per clause 30 of apartment buyer's agreement, the possession of the said apartment was to be handed over



within 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approved necessary for commencement of construction, whichever is later plus 6 months grace period. The clause regarding the possession of the said unit is reproduced below:

*“ 30. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of this agreement or within 36 months of obtaining all the required sanctions and approvals necessary for commencement for construction, whichever is later subject to timely payment of all the dues.....”*

Accordingly, the due date of possession was 24.01.2016 and the possession has been delayed by 3 years 2 months and 22 days till the date of decision. As far as the grant of statutory approvals and the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:





*“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”*

27. Therefore, under section 18(1) proviso respondent is liable to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act *ibid* read with rule 15 of the rules *ibid*, to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.70% per annum on the amount deposited by the complainants with the promoter on the due date of possession i.e. **24.01.2016** upto the date of offer of possession.





28. With respect **second issue**, keeping in view the above facts and as per the records of the authority, the project is registerable under section 3 of the Act ibid and the respondent has not registered the project with the Haryana Real Estate Regulatory Authority as on date. The authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter.
29. With respect to the **third and fifth issue** the complainant has only made an assertion without substantiating the same and material particulars. As such the issue cannot be decided.

#### **Findings of the authority**

30. 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.



31. 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.

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

33. 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.

34. The complainant by way of this complaint seeks directions against the respondent to refund an amount of Rs.61,60,458/- deposited with the respondent for purchase of flat/unit.

35. Brief facts leading to this complaint are that complainant had booked a unit no. 0502, tower N in project Estella, Sector 103,



Gurugram and BBA to this effect was executed inter-se the parties on 24.07.2012. By virtue of clause 30 of the BBA, respondent was obligated to hand over the booked unit complete in all respects to the complainant within a period of 36 months from the date of execution of BBA or within 36 months from the date of obtaining all the required sanctions and approvals for commencement of construction whichever is later with 6 months grace period which comes out to 24.01.2016. Against total sale consideration of Rs. 58,86,400/- the complainant had so far paid an amount of Rs.61,60,458/- to the respondent.

36. During the course of arguments, complainant has alleged that despite lapsing the due date of possession, the respondent has miserably failed to deliver the unit in time.

37. Considering the facts and circumstances in the given circumstances, the authority is not inclined to order refund of the deposited amount instead the complainant is entitled for delayed possession charges at the prescribed rate of interest @ 10.70% p.a. w.e.f. 24.01.2016 till actual handing over the booked unit.



38. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
39. The promoter shall not charge anything from the complainant which is not part of the BBA.

### **Decision and directions of the authority**

40. 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 issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.70% p.a. from due date of possession i.e. 24.01.2016 till the offer of the possession to the allottee.
- 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 10<sup>th</sup> of subsequent month.



- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed not charge anything from the complainant which is not part of the BBA.

41. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter.

42. The order is pronounced.

43. Case file be consigned to the registry.

**(Samir Kumar)**

Member

**(Subhash Chander Kush)**

Member

Haryana Real Estate Regulatory Authority, Gurugram



Dated : 11.04.2019