

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

Complaint no. : 1786 of 2018
First date of hearing : 13.03.2019
Date of decision : 02.04.2019

Col. Vinod Kumar Myne
R/o. A-317, Defence Colony,
New Delhi- 110024.

Complainant

Versus

M/s Sana Realtors Pvt. Ltd.
Regd. office: H-69, Upper Ground Floor,
Connaught Place, New Delhi-110001.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Ms. Priyanka Agarwal
Shri Samrat Jasra

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 06.12.2018 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 complainant Col. Vinod Kumar Myne against the promoter M/s. Sana Realtors Pvt. Ltd., on account of violation of the clause 15 of flat buyer agreement executed on 18.02.2010 in respect of shop/unit described

below for not handing over possession by the due date i.e. 18.02.2013 which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer agreement has been executed on 18.02.2010 i.e. prior to the commencement of the Act *ibid*, 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 contractual 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	"Precision SOHO Tower", sector 67, Gurugram, Haryana.
2.	Nature of the project	Commercial colony
3.	Project area	2.456 acres
4.	Registered/not registered	Not registered
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	Occupation certificate granted on	18.07.2017 (Annx R-1)

8.	Date of execution of flat buyer agreement between original allottee and respondent.	18.02.2010 (Annx P/2)
9.	Office space/unit no. as per the said agreement	510, 5 th floor
10.	Measuring area of the allotted office space	525 sq. ft.
11.	Payment plan	Construction linked payment plan
12.	Total consideration amount as per clause 1 of the said agreement	Rs.24,14,500/- (Pg.20 of the complaint)
13.	Total amount paid by the complainant till date as per transfer letter dated 05.07.2013	22,54,315/- (Annx P/4)
14.	Due date of delivery of possession as per clause 15 of flat buyer agreement 3 years from the date of execution of buyer agreement i.e. 18.02.2010	18.02.2013
15.	Letter of offer of possession	27.07.2017 (Annx R-5)
16.	Delay in handing over possession from due date of possession till date of offer of possession	1 year and 7 months approx.
17.	Penalty clause as per flat buyer agreement	Not given the agreement

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. A flat buyer agreement dated 18.02.2010 is available on record for the aforesaid office space. As per clause 15 of the flat buyer agreement dated 18.02.2010, the due date of handing over possession was

18.02.2013 and the possession was offered to the complainant on 27.07.2017. The respondent has not paid any interest for the period of delay in handing over the possession. Therefore, the promoter has not fulfilled their committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 13.03.2019. The case came up for hearing on 13.03.2019 and 02.04.2019. The reply filed on behalf of the respondent on 09.01.2019 which has been perused by the authority.

Facts of the complaint: -

6. Briefly stated, the facts of the complaint are that on 17.12.2009, one Mrs. Sapna Dhawan (original allottee) booked office space/unit no. 510, 5th floor, tower no. A, admeasuring 525 sq. ft. in the respondent's project, namely 'precision SOHO tower' at sector 67, Gurugram. On 18.02.2010, flat buyer's agreement for the allotted office space was executed between the original allottee and the respondent. The complainant had purchased the aforesaid office space from the original allottee

and the same was transferred in favour of complainant vide transfer letter dated 05.07.2013.

7. The total consideration of the said office space was agreed at Rs. 24,14,500/- as against which the complainant has made total payment of Rs. 22,54,315/- in favour of respondent.
8. The complainant submitted that as per clause 15 of the buyer agreement, the respondent was under obligation to deliver the possession of the office space within 3 years from the date of signing of the flat buyer agreement dated 18.02.2010. It was alleged by the complainant that the possession was offered by the respondent in 2018.
9. The complainant alleged that the respondent did not provide the details of status/development of the project despite repeated reminders. On visiting the site, complainant was shocked to see that the project was lying in a raw, desolate state and in a state of utter neglect and abandonment. It was further alleged by the complainant that the builder/respondent had extracted more than 93% amount of total sales consideration from him 5 years back, citing milestones of progress and development.

10. The complainant submitted that after receiving the letter of payment demand at the time of possession dated 27.07.2017, the complainant visited the site to check the actual status of the project. It was alleged by the complainant that the respondent at no stage informed the buyer on the status and development of the project, but kept on demanding payments in the garb of development which was never carried out. The respondent within a period of 39 months from 17.12.2010 to 07.03.2013 raised the demand more than 90%. To meet this huge costs raised by the respondent, complainant had to not only liquidate their investments, but had to borrow money through unsecured loans at high rate of interest.
11. The complainant submitted that the construction of the block in which the complainant office is situated was booked with a promise by the respondent to deliver the office by 18.02.2013 but the same was not completed within time for the reasons best known to the respondent which clearly shows ulterior motive of the respondent was to extract money from the innocent people fraudulently.

12. The respondent has failed to meet the obligations and with malaise intentions have collected huge amount of money from the complainant. This act of part of the respondent has not only cause huge financial losses, but have also offset the family life. Hence, the complainant was constrained to file the present complaint before this authority.

Issues to be decided: -

1. Whether the respondent has breached the provisions of the Act as well as of the agreement by not delivering the possession of the allotted office space within time bound manner?
2. Whether the respondent is liable to pay interest on the amount to them by the complainant?

Reliefs sought by the complainant: -

- Direct the respondent to pay interest on paid amount of Rs. 22,54,315/- for delayed period w.e.f. 18.02.2013 till actual delivery of possession as per prescribed rate in RERA Act.

Respondent's reply:

3. The respondent submitted that the present complaint is liable to be dismissed as the present project does not fall within the purview of the Act *ibid*. The occupation certificate in respect of the project in question was issued by the competent authority vide memo no. ZP-589/SD(BS)/ 2017/17063 dated 18.07.2017. The occupation certificate also contains the description of the building with license no.72 of 2009 dated 26.11.2009 for total area measuring 2.456 acres developed by M/s Sana Realtors Pvt. Ltd.
4. The respondent submitted that the present complaint is liable to be dismissed as the complainant has made wrong averments in the complaint and has made wrong allegations against the respondent without any substantial evidence. Hence, the present complaint is not maintainable.
5. The respondent submitted that the present complaint is not maintainable as it is not filed before the competent authority i.e. adjudicating officer as the relief sought by the complainant does not fall within the jurisdiction of this hon'ble authority. Hence, the present complaint is liable to be dismissed.

6. The respondent submitted that the present complaint is not maintainable as the possession of the property in question was offered to the complainant after receipt of the occupation certificate. Further, the complainant was also intimated that the sale deed of the property in question is ready for execution, but the complainant is deliberately not coming forward to take the possession and to get the conveyance deed executed.
7. The respondent submitted that section 19(6) of the Act ibid was not complied by the complainant, which says that every allottee who has entered into an agreement for sale to take an apartment, plot or building shall be responsible to make the necessary payments including registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges etc. But no necessary payments were made by the complainant after the completion of the project. Hence, the present complaint is not maintainable and is liable to be dismissed.
8. The respondent submitted that as per clause 41 and 42 of the flat buyer agreement, the complainant shall be liable to pay as and when demanded by the respondent, the stamp duty,

registration charges and other legal and incidental charges for execution and registration of conveyance deed. It is also submitted that the complainant is also liable to pay any loss or damages suffered by respondent for non-payment or delay in payment, non-performance of the terms and conditions of the agreement. Hence, the present complaint is not maintainable and is liable to be dismissed.

9. The respondent submitted that clause 8 of the flat buyer agreement incorporates that “the time of payment of installments as stated in schedule of payment (annexure -I) and applicable stamp duty, registration, fee, maintenance and other charges payable under this agreement as and when demanded is the essence of this agreement”.
10. The respondent submitted that the delay in handing over possession of the project was beyond the control of the respondent. It is submitted that clause 15 of the said agreement, relied upon by the complainant, also provide for the exemption for delay, if any, caused is beyond the control of the respondent, the same shall be excluded from the time period so calculated. It is not out of place to mention here that

the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented. It is worth to note here that initially there were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised. Since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start.

11. The respondent submitted that initially there was a 66 KV electricity line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL for shifting of the said electricity line. HVPNL subsequently demanded a sum of Rs.46,21,000/- for shifting the said electricity line and lastly even after the deposit of the said amount, HVPNL took about one and half years for shifting the said electricity line. It is pertinent to mention here that until the electricity line was shifted, the construction on the plots was not possible and hence the

construction was delayed for about two years. It is pertinent to note here that the diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the removal of high tension wires in the year 2008 i.e. a year even before the license was granted to the respondent so that the time can be saved and project can be started on time.

12. The respondent submitted that the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. It is submitted that in the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water. Thereafter, the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year,

due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December 2012 and the dispute was settled by the respondent by paying more to the earlier contractor and thereafter appointed a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January 2013 immediately to resume the work at the site without delay.

13. The respondent submitted that the project was complete in all respect in the year 2015 when the occupation certificate was applied. Lastly in July 2017, occupation certificate was issued, and the delay of two years was on account of the delay in compliances by the authorities and as such the respondent is not responsible for any delay. The development and construction has been diligently done by the respondent and the obligations which the respondent was to discharge have been onerously discharged without failure. The respondent has diligently done his part and requisite documents to prove its diligence are annexed with reply, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

14. The respondent submitted that the payments to be made till date are outstanding and the complainant was proposed to take the possession and to get the sale deed registered after making the payment of outstanding amount. The area of the office space was changed and the fresh demand was raised. However, the complainant deliberately is not making payment of outstanding amount of Rs.3,44,730/-.
15. The respondent submitted that the complainant deliberately is not taking possession of the property in question and has filed the present complaint with the sole purpose to harass the respondent and to create undue pressure to extort illegal money from the respondent. Hence, the present complaint is not maintainable and is liable to be dismissed with heavy cost.

Determination of issues: -

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

16. With respect to the **issue no. 1 and 2** raised by the complainant, as per clause 15 of the flat buyer agreement dated 18.02.2010 the possession of the allotted office space

was to be handed over within 3 years from the date of this agreement i.e. 18.02.2010. Therefore, the due date shall be computed from 18.02.2010. The relevant clause is reproduced as under:

“15. That the possession of the said premises is proposed to be delivered by the developer to the allottee within 3 years from the date of this agreement.”

17. Accordingly, the due date of delivery of possession of unit/office space was 18.02.2013. However, the respondent sent a letter of payment demand at the time of possession to the complainant on 27.07.2017 (Annexure R-5) after the receipt of occupation certificate dated 18.07.2017. Therefore, delay in handing over possession shall be computed from due date of handing over of possession till letter of offer of possession. Since, the possession has been delayed by 4 years, 4 months and 12 days from due date of possession till the offer of possession, thereby violating the terms of the said agreement. As the promoter has failed to fulfil his obligation under section 11(4)(a) of the Act, 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 complainant, at the prescribed

rate, for every month of delay till the handing over of possession.

Findings of the authority:-

18. 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.

19. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued to the promoter

to comply with the provisions and fulfil obligation under section 37 of the Act.

20. Arguments heard. As per clause 15 of the flat buyer's agreement dated 18.02.2010 for unit no. 510, 5th floor in the project 'Precision SOHO Tower', Sector 67, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of agreement which comes out to be 18.02.2013.

21. Occupation certificate has been received by the respondent on 18.07.2017. However, the respondent has not delivered the possession of the unit in time. Though the possession was offered to the complainant on 27.07.2017. Complainant has already paid Rs. 22,54,315/- to the respondent against a total sales consideration of Rs. 24,14,500/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum with effect from 18.02.2013 till 27.07.2017 as per the provision of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

Decision and directions of the authority: -

22. 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 is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay from the due date of possession i.e. 18.02.2013 till the offer of the possession by the respondent i.e. 27.07.2017.
- ii. The respondent is directed to pay interest accrued from the due date of possession i.e. 18.02.2013 till the date of offer of possession by the respondent i.e. 27.07.2017, on account of delay in handing over of possession to the complainant within 90 days from the date of decision.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. Interest on the due payments from the complainant shall

be charged at the prescribed rate of interest i.e. 10.75% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession.

iv. The promoter shall not charge anything from the complainant which is not the part of flat buyer's agreement dated 18.02.2010.

23. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful. A copy of this order be endorsed to the registration branch.

24. The order is pronounced.

25. 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