

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

Complaint no : 1791 of 2018
First date of hearing : 13.03.2019
Date of decision : 02.04.2019

M/s Asset Deals,
189, Munirka Enclave,
Munirka, New Delhi.

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

Representative on behalf of
complainant

Shri Samrat Jasra

Advocate for respondent

ORDER

1. A complaint dated 09.12.2018 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 M/s Asset Deals., against the promoter M/s Sana Realtors Pvt. Ltd., on account of violation of the clause 15 of flat buyer agreement executed on 20.04.2010 in respect of unit described below for not handing over possession by the due date 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 20.04.2010 i.e. prior to the commencement of the Act ibid, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations 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
8.	Date of execution of flat buyer agreement	20.04.2010
9.	Office space/unit no. as per the said agreement	516, 5 th floor
10.	Unit measuring as per the said agreement	525 sq. ft.

11.	Payment plan	Construction linked payment plan
12.	Total consideration amount as per clause 1 of the said agreement	Rs. 16,95,750/- (excluding taxes)
13.	Total amount paid by the complainant till date as per receipts annexed with the complaint	Rs. 09,38,305/- [as per receipts annexed]
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. 20.04.2010	20.04.2013
15.	Delay in handing over possession till date of offer of possession	4 years 3 months
16.	Penalty clause as per flat buyer agreement	Not given in the agreement
17.	Date of offer of possession	20.07.2017

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 20.04.2010 is available on record for the aforesaid unit. As per clause 15 of the flat buyer agreement dated 20.04.2010, the due date of handing over possession was 20.04.2013. The respondent has not paid any interest for the period it delayed in handing over the possession. Therefore, the promoter has not fulfilled its 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 its 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 has been perused.

BRIEF FACTS:

6. The complainant Mr. Vineet Kumar Chellani, proprietor of Asset Deals r/o- 189, Munirka Enclave, Munirka, New Delhi, India is a law abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent being a developer and promoter of real estate since long time. Based on the advertisement and the brochure circulated complainant showed interest in purchasing a SOHO space in project "Precision SOHO Tower" being developed by respondent.
7. Based on promises and commitment made by the respondent, complainant booked a SOHO apartment admeasuring 525 sq. ft. unit no. 516 in project "Precision SOHO Tower" at Sector 67, Gurugram-122102, Haryana.
8. The respondent to dupe the complainant even executed flat buyer agreement between M/s Sana Realtors Pvt Ltd. and

M/s. Asset Deals on 20.04.2010, just to create a false belief that the project shall be completed in time bound manner.

9. The complainant has paid Rs 11,38,305/- and the respondent in an endeavor to extract money from allottees devised a payment plan under which respondent citing milestone for construction progress stages, or development of the site, and after taking the same respondent has not bothered to committed development of the project in time bound manner.
10. The total value of unit is Rs. 16,95,750/- as per flat buyer agreement and out of that respondent extracted total amount of Rs. 11,38,305/- This is more than 65% of total sales consideration before May 2013 and builder offered the possession in 2018.
11. That the complainant has repeatedly been seeking an update on the progress in the development of the project. However, the queries of the complainant were never replied to. Finding ITS repeated efforts being thwarted, the complainant became suspicious of the motives and intentions of the respondent and decided to visit the site itself and assess the state of development. The complainant, as a result, visited the site many times (2010 to 2017) to ascertain the status of the project site.

12. The complainant was shocked and surprised beyond comprehension to find that the project was lying in a raw, desolate state and in a state of utter neglect and abandonment. As per clause 15 of flat buyer agreement, builder is obliged and liable to give possession of said unit within 36 months from execution of flat buyer agreement. Accordingly, the unit should have been delivered way back before 20.04.2013.
13. That the respondent at no stage informed the complainant regarding the status and development of the project, but kept on demanding payments in the garb of development which was never carried out.
14. The respondent has failed to meet the obligations and with malafide intentions have collected huge amount of money from the complainant. This act on part of the respondent has not only caused huge financial losses, but have also offset the family life.
15. The complainant with good intentions have paid all demands raised by respondent amounting to more than 65% of the project cost. However respondent has failed to meet its obligations and commitments. This undue delay in handing over the possession of the unit for more than 5 years from committed date as per agreement is not only a breach of

trust, but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainant.

ISSUE TO BE DECIDED:

16. The sole relevant issue in the present complaint is whether the respondent has not completed the construction as per plan and has not handed over the possession to the complainant as on date thereby breaching the terms of the said agreement?

RELIEF SOUGHT BY THE COMPLAINANT:

17. The complainant is seeking the following reliefs:
- Direct the respondent to immediately give possession of unit and to restrain the respondent from raising any fresh demand and increasing the liability of the complainant.
 - Pass any other order that this hon'ble authority deem fit to meet the ends of justice.

RESPONDENT'S REPLY:

18. 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 being developed by M/s Sana Realtors Pvt. Ltd.

19. 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.
20. 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.
21. 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.

22. 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.
23. 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.

24. 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”.
25. 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.

26. 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.

27. 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.

28. 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.
29. The respondent submitted that the complainant has not paid the outstanding amount of Rs. 7,78,065/- since 25.08.2017.

the respondent after receipt of occupation certificate made on offer of possession on 20.07.2017 and to get the sale deed registered after making the payment of outstanding amount.. However, the complainant deliberately is not making payment of outstanding amount of Rs. 7,78,065/-.

30. 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 ISSUE:

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:

31. With respect to the **sole issue**, as per clause 15 of the flat buyer agreement, the possession of the said unit was to be handed over within 3 years from the date of this agreement i.e. 20.04.2010. Therefore, the due date shall be computed from 20.04.2010. 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.”

32. Accordingly, the due date of possession was 20.04.2013. and the respondent has received occupation certificate on 18.07.2017, thereafter respondent raised demand “at the time of possession” on 20.07.2017. Therefore, delay in handing over possession shall be computed from due date of handing over possession till letter of offer of possession. The possession has been delayed by 4 years 3 months from due date of possession till date of 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), the promoter is liable under proviso to section 18(1) 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:

33. 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.

34. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*. 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.

35. The authority observed that as per clause 15 of flat buyer agreement dated 20.04.2010 for the said flat in "Precision SOHO Tower", Sector 67, Gurugram possession was to be handed over to the complainant within a period of three years from the date of the agreement i.e. 20.04.2010 which comes out to be 20.04.2013. However, respondent has not delivered the apartment in time. Possession has been offered to the complainant on 20.07.2017. Complainant has already paid Rs. 9,38,305/- to the respondent against a total sale consideration of Rs. 16,95,750/-. However, the refund cannot

be allowed in the present case, as the respondent has completed the project and has obtained occupation certificate dated 18.07.2017 from the competent authority. As the promoter has failed to fulfil his obligation by not handing over the possession within the stipulated time, 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 w.e.f. 20.04.2013 till 20.07.2017, at the prescribed rate i.e. 10.75% for every month of delay till the offer of possession.

DIRECTIONS OF THE AUTHORITY:

36. 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 in the interest of justice and fair play:
- i. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
 - ii. The respondent is directed to pay interest accrued from the due date possession i.e. 20.04.2013 till date of offer of possession i.e. 20.07.2017, on account of delay in handing over of possession to the complainant within 90 days from the date of decision.

- iii. The promoter shall not charge anything from the complainant which is not a part of the flat buyer agreement.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as being granted to the complainant in case of delayed possession.
37. The order is pronounced.
38. 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