

PROCEEDINGS OF THE DAY

Day and Date	Monday and 22.10.2018
Complaint No.	428/2018 Case titled as Ms. Shilpa Mahajan V/S Neo Developers Pvt. Ltd.
Complainant	Ms. Shilpa Mahajan
Represented through	Shri Neeraj Mahajan, husband of the complainant in person.
Respondent	Neo Developers Pvt. Ltd.
Respondent Represented through	Shri Venkat Rao Advocate for the respondent.
Last date of hearing	28.9.2018
Proceeding Recorded by	Naresh Kumari

Proceedings

Arguments heard.

Complainant presented his case in detail. He stated that he seeks time for getting reply under RTI Act (by way of adopting dilatory tactics). At this juncture, any protraction by way of seeking more time will not be in the interest of justice.

It has been alleged by the counsel for the respondent that the earnest money deposited by the buyer has been forfeited on account of the fact that the complainant was not forthcoming by way of fulfilling his obligatory liabilities as per provisions of Real Estate (Regulation & Development) Act, 2016.

No doubt the buyer had deposited Rs.15,72,638/- with the builder but failure on the part of the buyer, the builder had no option but to forfeit the earnest money. Intimation to this effect has already been conveyed to him vide letters dated 8.7.2016 and 6.4.2018. Full and final settlement amount in this context has been offered as refund to the buyer. However, the complainant has not come to receive the same. Calculation sheet of refund was presented by the builder which has been placed on record. It has been examined in detail. It is observed that the service tax, brokage charges and prospective interest has been deducted from the principal amount which is superfluous and not valid.

In view of the situation stated above, the calculation sheet may be corrected to this extent. Only 10% of the earnest money may be deducted by way of forfeiture. No extra money on any other pretext may be deduced.

The complaint is disposed off accordingly. Detailed order shall follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

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

Complaint no. : 428 of 2018
First date of hearing: 07.08.2018
Date of Decision : 22.10.2018

Ms. Shilpa Mahajan,
R/o C-114, Shakti Nagar Extension, Delhi -
11052

Complainant

Versus

M/s Neo Developers Pvt. Ltd.
1205 B, tower B, signature towers,
South city - 1 NH8 Gurugram - 122001

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Neeraj Mahajan

Husband of complainant in
person

Shri Venkat Rao

Advocate for the respondent

ORDER



1. A complaint dated 13.06.2018 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. Shilpa Mahajan, against the promoter M/s Neo Developers Pvt. Ltd., on account of violation of the clause 5.2 in addition with 5.4 of

the buyer's agreement executed on 06.12.2012 in respect of shop number 45, ground floor, block/tower 3 in the project 'Neo Square' sector 109, Gurugram with a super area of 565 sq. ft. for not handing over possession on the due date i.e. 06.06.2016 which is an obligation under section 11(4)(a) of the Act ibid.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	Neo square, Sector 109, Gurugram
2.	Nature of project	Commercial complex
3.	Shop no.	45, tower B, ground floor
4.	Shop measuring	565 sq. Ft
5.	RERA registered/ not registered.	Registered (109 of 2017)
6.	Revised date of completion as per registration certificate	23.08.2021
7.	Date of execution of apartment buyer's agreement	06.12 2012
8.	Payment plan	Construction linked plan
9.	DTCP licence no.	102 of 2008
10.	Total amount paid by the complainant till date	Rs. 15,72,638 /-
11.	Total consideration amount	Rs.65,09,041/-
12.	Date of delivery of possession as per clause 5.2 of buyer's agreement (36 Months + 6 months grace period from the date of agreement)	06.06.2016
13.	Delay in handing over possession till date	2 years 4 months



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An agreement dated 06.12.2012 is available on record for the aforesaid shop no. 45, according to which the possession of the same was to be delivered by 06.06.2016. Therefore, the promoter has not fulfilled his committed liability till date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 7.08.2018. The case came up for hearing on 07.08.2018, 20.09.2018 and 22.10.2018. The reply has been filed by the respondent on 18.09.2018

Facts of the complaint

5. The complainant stated that she had booked a shop in the commercial project "Neo Square", Sector 109, Gurugram in the year 2012. The respondent took 30 % of the payment from the complainant without showing her any building sanction plans, any allotment letter and no builder agreement.
6. The complainant submitted that there was no response from the respondent side for almost 2 years. The respondent company collected money against the shop no. 45 and had no



intention of delivering it on time as their only intention was to collect money from investor by exploiting the booming and unregulated real estate market in Gurugram 2012.

7. The complainant submitted that due to the harassment and deluged with payment demand letter, she made frantic calls to the managing director of the respondent company to empathise him with her problems as to how the excessive delay has crippled her financially and emotionally, but he simply snubbed her innumerable pleas and caused many sleepless nights to her and her family.
8. The complainant submitted that she visited the site many times in the last six years and was disappointed every time as the work progress was way behind schedule.
9. The complainant further submitted that decision of the respondent company in not providing any honourable exit to the complaint and ultimately forfeiting all her money in malicious, arbitrary, illegal, unjust, unfair and breach of natural justice and fair play and is unsustainable in the eyes of law and liable to be prosecuted under section 18 (1) and other relevant sections of the Real Estate (Regulation and Development) Act 2016.



Issues raised by the complainant are as follow:

- i. Whether the project Neo Square of the respondent company has been delayed or not?
- ii. Why did the respondent company repeatedly change the layout of the shops, its size and its location without even informing the complainant whose money is used to fund it?
- iii. Whether the respondent company is liable to be prosecuted under the RERA Act, 2016 for violations of other provisions other than sections 14(2), 18(1) and 18(3)?

10. Relief sought:

The complainant is seeking the following relief:

- i. Compensation @18% per annum till date on the principal amount paid of Rs.10,82, 754/- under section 18 of the Real Estate (Regulation and Development) Act 2016.
- ii. Compensation of Rs. 10,000/- be awarded as the reimbursement of the expenses in fighting for this relief.
- iii. Additional compensation of Rs. 25,00,000 under section 18 of the Real Estate (Regulation and Development) Act 2016 for mental, emotional and financial harassment inflicted upon the complainant, her future, and her family by



the misconduct of the respondent company and its director.

Respondent's reply

11. The respondent submitted the fact that as the concerned project namely "Neo Square" is located in Dwarka expressway in Sector 109, Gurugram, thus the authority has completed territorial jurisdiction to entertain the present complaint.
12. The respondent submitted that the complainant has not approached this Id. authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.
13. The respondent submitted that neither the 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. The builder buyer agreement/ allotment letter/ booking application form stated in the complaint, was terminated in good faith, due to breach of terms of the buyer agreement by the complainant, in



accordance with said buyer agreement by respondent on 08.07.2016 (contradictory to the agreement dated 06.12.2012 as per annexure 11). Accordingly, as such the instant complaint is liable to be dismissed with costs.

14. The respondent submitted 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 complainant has no cause of action to file the instant complaint against respondent since the delay in completion of project as claimed by the respondent has not occurred, even considering the erstwhile executed builder buyer's agreement on the date of complaint and or as per the disclosures made under RERA registration of the project, hence the complaint may be dismissed.



16. It is submitted that complainant made an application on 28.05.2012 for booking/registration and provisional allotment for a unit in the project under construction linked

plan, subject to other terms and conditions including the 'Payment Schedule' thereof. It is pertinent to note that in spite of booking/ blocking the unit, complainant failed to make any payment along with the application form. Further, the application form clearly stated the provisional registration and tentative size of the unit and complainant applied with full knowledge and free will. It is submitted that such changes in size/layout etc have been expressly agreed by the complainant at the time of booking and /or entering into buyer agreement and have been in accordance with the approved plans. However, it is upon feverish follow up by the respondent, complainant made an initial payment on 31.05.2012, with a delay of almost two and half months from the date of booking.

17. It is further submitted that the complainant was always in delay and default of payments as per agreed payment schedule and cleared the overdues only on 08.09.2012 with a delay of over 3.5 to 4 months. Immediately, after the clearing of dues, the respondent issued the allotment letter on 13.09.2012 and subsequently entered into a builder buyer agreement dated



12.02.2013 which is again contradictory to the agreement attached with the complaint.

18. It is further submitted that the builder buyer agreement was finally terminated by the respondent on 08.07.2016 in good faith, due to breach of terms of the buyer agreement by the complainant, in accordance with said buyer agreement.
19. It shall be illegal, unconstitutional, unjust, unfair and opposed to equity and fair play to entertain the complaint by the hon'ble authority, ex post facto even on such agreements terminated and not in subsistence or existence in the RERA regime.

Determination of issues

20. The complainant has raised issues regarding delay of possession, change in layout of the shops, size and location without information to the complainant regarding the violation of the provision of Haryana Real Estate (Regulation and Development) Act, 2016.



21. The complainant herself is a defaulter as she has not paid instalment due towards her after 08.09.2012. As the complainant is left with no legal rights or interest in the said project, the issues raised by her become infructuous.

22. As per section 19 of the Haryana Real Estate (Regulation and Development) Act, 2016, the rights and the duties of the allottees, which is reproduced as under:

Section 19 – Rights and Duties of Allottees

Clause (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

clause (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

23. As the possession of the flat was to be delivered by 06.06.2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:



“11.4 The promoter shall—

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common*

areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

24. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

24. 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 and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.



Inferences drawn by the authority

25. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
26. In the case of ***DLF Ltd. v. Bhagwati Narula***,¹ revision petition no. 3860 of 2014 it was held by the National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainant unless it can show that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus, amount beyond 10% cannot be forfeited and if done so that would be unreasonable.



¹ 1(2015) CPJ 319 (NC)

Decision and directions of the authority

27. Keeping in view that the buyer deposited a sum of Rs.15,72,638/- with the builder but failure on the part of the buyer, the builder had no option but to forfeit the earnest money. Intimation to this effect has already been conveyed to him vide letters dated 08.07.2016 and 06.04.2018. Full and final settlement amount in this context has been offered as refund to the buyer. However, the complainant has not come to receive the same. Calculation sheet of refund was presented by the builder which has been placed on record. It has been examined in detail. It is observed that the service tax, brokerage charges and prospective interest has been deducted from the principal amount which is superfluous and not valid. In view of the situation stated above, the calculation sheet may be corrected to this extent.

28. 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 directs the respondent only 10% of the earnest money may be deducted by way of forfeiture. No extra money on any other pretext may be deducted.



29. The order is pronounced.

30. The file is consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 22.10.2018

Judgement uploaded on 21.12.2018

