BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 2650 of 2019
First date of hearing : 17.09.2019
Date of decision : 19.12.2019

Sompal Roshanlal Goyal
R/o: C-201, Kanti Apartment, Bandra West,
Mount Mary Hill Road, Mumbai, Maharashtra-400050 **Complainant**

Versus

M/s Athena Infrastructure Ltd.
Office address: M62 & 63, First Floor,
Connaught Place, New Delhi-110001. **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:
Ms. Vridhi Sharma Advocate for the complainant
Shri Rahul Yadav Advocate for the respondent

ORDER

1. The present complaint dated 07.08.2019 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the flat buyer agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Indiabulls Enigma", Sector 110, Gurugram.
2.	Project area	15.6 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	213 of 2007 dated 05.09.2007(valid upto 04.09.2019) 64 of 2012 dated 20.06.2012(valid upto 19.06.2020) 10 of 2011 dated 29.01.2011(valid upto 28.01.2017)
5.	Name of licensee	Athena Infrastructure Ltd.
6.	RERA Registered/ not registered	**Registered in three phases** **i. 351 of 2017 dated 20.11.2017(Phase-I)** **ii. 354 of 2017 dated 17.11.2017(Phase-II)** **iii. 353 of 2017 dated 20.11.2017(Phase-1A)**
7.	Unit no.	B031, 3rd floor, Tower B
8.	Unit measuring	3400 sq. ft.
9.	Date of execution of buyer's agreement	25.07.2011 (Pg. 28 of the complaint)

10.	Payment plan	Construction linked payment plan
11.	Total consideration as per applicant ledger dated 22.02.2017 at page 51 & 52 of the complaint	Rs.1,85,30,998/-
12.	Total amount paid by the complainants as per applicant ledger dated 22.02.2017 at page 51 & 52 of the complaint	Rs.1,77,90,450/-
13.	Due date of delivery of possession as per clause 21 of the said agreement i.e. 3 years with a 6 months' grace period from date of execution of the flat buyers agreement i.e. 25.07.2011	25.01.2015
14.	Specific relief sought	i. To direct the respondent to pay the prescribed interest on the entire amount paid by the complainants from the date of respective deposits till the date of possession. ii. Direct the respondent to deliver immediate possession of the unit.

3. As per clause 21 of the agreement, the possession was to be handed over within a period of 3 years with a 6 months' grace period from the date of execution of the flat buyer agreement i.e. 25.07.2011. Clause 21 of the buyer agreement is reproduced below:

"21. The developer shall endeavour to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of the flat buyers agreement subject to timely payment by the buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer..."

4. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the buyer's agreement and failed to offer the possession in terms of section 18 of the Act read with the Rules. Hence, this complaint inter alia for the aforementioned reliefs.

5. The respondent contests the complaint inter alia on the grounds mentioned in the reply which according to respondent beyond his control.

6. According to the respondent has made huge investments in obtaining requisite approvals and carrying on the construction and development of **'INDIABULLS ENIGMA'** project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by Developer by investing all the monies that it has received from the buyers / customers and through loans that it has raised from financial institutions. In spite of the fact that the real estate market has gone down badly the Respondent has managed to carry on the work with certain delays caused due to various above mentioned reasons and the fact that on

an average more than 50% of the buyers of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the project has never been stopped or abandoned and has now reached its pinnacle in comparison to other Real Estate Developers / promoters who have started the project around similar time period and have abandoned the project due to such reasons.

7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.

8. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 21 of the flat buyer agreement executed between the parties on 25.07.2011, possession of the booked

unit was to be delivered within a period of 3 years plus 6 months grace period from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 25.01.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 25.07.2011 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession interest @ 10.20% p.a. w.e.f. 25.01.2015 till actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

10. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 25.01.2015 till the actual date of offer of possession. 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 10th of subsequent month.

ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

(i). Complaint stands disposed of. File be consigned to registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.12.2019

Judgement uploeded on 17.01.2020