

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

Complaint no. : 557 of 2019
First date of hearing: 28.08.2019
Date of decision : 05.02.2020

1. Mr. Anil Kumar Ahlawat
 2. Mrs. Reena Ahlawat
- Both R/o: - House no. 1003, 1st floor,
Sector-17, Panchkula- 134109

Complainants

Versus

- 1.M/s Ramprashtha Promoters and
Developers Private Limited.
 - 2.Blue Bell Proptech Pvt. Ltd.
- Both R/o: - Regd. office: C-10, C Block
Market, Vasant Vihar, New Delhi- 110057
Through its Directors Also at: -
114, Sector-44, Gurugram-122002.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Shivali
Sh. Dheeraj Kapoor

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 28.02.2019 has been filed by the complainants/allottees 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 agreement for sale 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	"SKYZ", Sector- 37D, Gurugram.
2.	Project area	60.5112 acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no. and validity status	33 of 2008 dated 19.02.2008 valid till 18.02.2020
5.	Name of licensee	SA Infratech Private Limited.
6.	Registered/ not registered	Registered vide no. 320 of 2017 dated 17.10.2017
7.	RERA registration valid up to	31.03.2019 Note: - already expired but the respondent has applied for extension of one year and the status of RERA extension application is pending.



		(as per page no. 18 of reply)
8.	Date of execution of buyer's agreement	27.01.2012 [Page 32 of complaint]
9.	Date of execution of Allotment letter	27.01.2012 [Page 29 of complaint]
10.	Unit no.	102, 1 st floor, tower D [Page 35 of complaint]
11.	Unit measuring	1750 sq. ft.
12.	Payment plan	"Construction linked payment plan" [Page 48 of complaint]
13.	Total consideration as per Applicant ledger dated 29.04.2019 (annexure R/2 at page 39 of reply)	Rs.63,28,750/-
14.	Total amount paid by the complainants as per payment schedule and receipt information dated 29.04.2019 (annexure R-2 page no 41 of reply and alleged by complaints)	Rs.56,72,096/-
15.	Due date of delivery of possession as per clause 15(a) of the apartment buyer agreement: by 31.08.2014 + 120 days of grace period for applying and obtaining the occupation certificate in respect of the group housing project. [Page 40 of complaint]	31.12.2014
16.	Delay in handing over possession till date	Possession has not been handed over so far

17.	Status of the project	Ongoing
18.	Specific relief sought	To direct the respondents: - i. to immediately deliver the possession ii. to pay delay penalty on the entire amount paid by the complainants till the date of possession

3. As per clause 15(a) of the agreement, the possession was to be handed over by 31.08.2014 plus grace period of 120 days for applying and obtaining the occupation certificate in respect of the Group Housing Complex, which comes out to be 31.12.2014. Clause 15(a) of the apartment buyer agreement is reproduced below:

"15. POSSESSION

(a) Time of handing over the possession

Subject to terms of this clause and subject to the Allottee having complied with all the terms and condition of this Agreement and the Application, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by DEVELOPERS. DEVELOPERS propose to hand over the possession of the

Apartment by 31/08/2014 the Allottee agrees and understands that DEVELOPERS shall be entitled to a grace period of hundred and twenty days (120) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

4. The respondents have utterly failed in fulfilling their obligation of delivery of the unit as per the apartment buyer agreement and failed to offer of possession in terms of section 11(4) (a) and 18(1) of the Act read with Rules. Hence, this complaint for the inter alia reliefs detailed above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. The respondent submitted that there was no intentional delay in the construction on the part of the respondent. Delay was due to reasons detailed in the reply which were beyond its control.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

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

Arguments heard.

9. The Authority is of the view that the Act is to protect the rights of the stake-holders i.e. the promoters, allottees 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.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainant 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 15(a) of apartment buyer agreement executed between the parties on 27.01.2012, possession of the booked unit was to be delivered within stipulated time that is by 31.08.2014 plus grace period of 120 days for applying and obtaining the occupation certificate in respect of the Group Housing Complex. Therefore, the due date of handing over



possession comes out to be 31.12.2014. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 27.01.2012 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 31.12.2014 till offer of possession of the booked unit as per the proviso to section 18(1) of the Act read with rules 15 of the Rules.

11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- (i) The respondents are directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 31.12.2014 till the offer of possession;
 - (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.;
 - (iii) The respondents are directed to pay interest accrued so far from 31.12.2014 till the date of this order to the complainant within 90 days from the date of decision and



subsequent interest to be paid by the 10th of each succeeding month till the offer of possession;

- (iv) Interest on due payment from the complainant shall be charged at the prescribed rate of interest @10.20% by the promoter which is same as is being granted to the complainant in case of delayed possession charges;
- (v) The respondent shall not charge anything from the complainant which is not part of the Apartment Buyer Agreement.
- (vi) Complaint stands disposed of.
- (vii) File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 05.02.2020

Judgement Uploaded on 12.02.2020