

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 4996 of 2019

Date of decision : 14.10.2021

PAWAN TIWARI AND
PRIYANKA TIWARI
R/O : 460 A, Jawahar Colony,
Faridabad- 121005

Complainants

Versus

MVN INFRASTRUCTURES PVT. LTD.
ADDRESS : 58 A/1, Kalu Sarai
New Delhi

Respondent

APPEARANCE:

For Complainants:

Col. Raj Vijay Rohlania
Advocate

For Respondent:

Brighu Dhami -Advocate

ORDER

1. This is a complaint filed by Pawan Tiwari and Priyanka, Twari
(also called as buyers) under section 31 of The Real Estate

(Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.

2. As per complainants, on 06.08.2014, they jointly booked a flat in project "**MVN ATHENS SOHNA**", situated at sector-5, Sohna, Gurugram. The respondent vide email dated 06.02.2015 informed complainants that in draw of lots held on 04.02.2015, they (complainants) have been allotted Flat No. B6-705 admeasuring 477.37 sq. ft (carpet area) for a total consideration of Rs 17,58,793 including BSP, EDC, IDC etc. A buyer's agreement dated 10.02.2015 was executed between parties.
3. As per the Clause 3.1 of buyer's agreement, the possession of the unit was proposed to be delivered by the developer to the allottee within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later, with grace period of 6 months. The respondent failed to complete the construction work and consequently failed to deliver the same, till date.

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4. As per the payment plan opted by the complainants, they made timely payment of Rs 18,18,121 i.e. more than the agreed consideration, along with miscellaneous and additional charges etc, but to their utter dismay the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement.
5. After expiry of due date of delivery of possession, complainants visited office of respondent to ascertain date of providing possession of allotted flat. The respondent assured to handover the possession of unit in December 2018-Januray 2019. The project is nowhere near completion till date.
6. The respondent has partly completed the project. There is no electricity received from DHBVNL and occupants are being supplied electricity through captive Diesel Generators, cost of which is recurring and is prohibitively high. The project does not have authorised water supply connection and it is being supplied to the occupants through unauthorised borewell.
7. In this way, they (complainants) are forced to file present complaint, seeking refund of entire amount of Rs 18,18,121, along with interest at prevailing rate for every month of delay.



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8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	"MVN ATHENS SOHNA" , situated at sector-5, Sohna, Gurugram
2.	Project area	6.50625 acres
3.	Nature of the project	Residential Colony (Affordable Housing Scheme)
4.	DTCP license no. and validity status	49 of 2014 dated 18.06.2014 valid up to 15.05.2020
5.	Name of licensee	M/s MVN Infrastructure Pvt. Ltd.
6.	RERA Registration	Registration No. 284 of 2017 dated 10.10.2017
UNIT DETAILS		
1.	Unit no.	Flat No. B6-705,
2.	Carpet area	477.37 sq. ft.
3.	Date of Booking	06.08.2014
4.	Date of Buyer's Agreement	10.02.2015

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5.	Due Date of Delivery of Possession As per Clause No. 9.1: The possession of the said premises is proposed to be delivered within 4 years from the date of approval of building plans or grant of environment clearance whichever is later with grace period of 6 month.	19.01.2019
6.	Environment Clearance	05.01.2015
7.	Building Plan approval	05.09.2014
8.	Delay in handing over of possession till date	1 year 1 month
PAYMENT DETAILS		
9.	Total sale consideration	Rs 17,58,793
10.	Amount paid by the complainants	Rs 18,18,121

9. The respondent contested the claim by filing reply dated 13.03.2020. It is contended that two HT lines were running through the project and to change the alignment of these lines, it (respondent) approached HVPNL, and again Hon'ble Punjab and Haryana High Court by filing a Civil Writ Petition No. 18929 of 2014. DTCP filed a reply in that matter

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acknowledging the fact that HT wires would affect the project.

The said writ petition was disposed off vide order dated 26.07.2017, with direction to respondent to make representation before DTCP.

10. It (respondent) requested for revision of building plans due to such HT wires. Revised building plans were approved on 16.05.2016. The respondent in compliance of order of Hon'ble High Court made representation before DTCP. The DTCP vide its order dated 13.09.2018, agreed to treat period of September 5, 2014 to May 16, 2016 as zero period, for commencement of project and grant of license. As per said order, date of commencement of project shall be deemed as May 16, 2016. In this way, project is required to be completed on or before May 15, 2020.

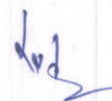
11. The occupation certificate for the towers 5-10 has been granted on May 29, 2019. The occupation certificate of the tower in which the unit of complainants is situated shall also be obtained within the time provided under the law. As the time for handing over the possession of the unit in question has not yet expired therefore complaint is premature.

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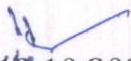
12. The respondent is ready to make the refund as per the Affordable Housing Policy as amended through notification dated 05.07.2019 and agreement executed between parties.
13. Contending all this, respondent prayed for dismissal of complaint.
14. It is not in dispute that the complainants were allotted a unit admeasuring 477.37 sq. ft (carpet area) in project "**MVN ATHENS SOHNA**" an Affordable Group Housing Project.
15. The respondent had agreed to hand over possession of booked unit within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. Even if, as contended by respondent, the project got delayed due to HT lines, it was not unexpected even. High tension wires were already there, well within knowledge of respondent. It was latter's responsibility to remove the same. It cannot be termed as force majeure circumstances. Furthermore, the project is still not complete and occupation certificate for the tower in which the unit of complainant is situated has not been obtained till date.
16. Despite being asked, learned counsel for respondent could not tell likely date of handing over possession of unit in

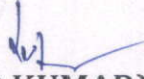

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question to the complainants. It is well settled that a buyer cannot be made to wait for indefinite period, to get possession of his/her dream house. As per complainants and not denied by respondent, environment clearance of project was received on 05.01.2015 while building plans were approved on 05.09.2014. Taking later date i.e. 05.01.2015 as commencing period due date of possession comes to 05.01.2019. The respondent has thus failed to handover possession of unit in agreed period.

17. Complaint in hards is allowed and respondent is directed to refund the amount received from complainants i.e. Rs 18,18,121 within 90 days from today alongwith interest @ 9.30% per annum from the date of receipt of payment till its realization. The respondent is also burdened with litigation cost of Rs. 50,000/- to be paid to the complainants.

File be consigned to the registry.


19.10.2021


(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram

Judgement uploaded on 22.10.2021.