



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

Complaint no. : 1233 of 2020
Date of filing complaint : 13.03.2020
First date of hearing : 29.04.2020
Date of decision : 12.07.2022

1	Sumiti Suhag	Complainants
2	Sukhbir Singh Suhag R/O: - Flat no. A-106, NTPC, CGHS, Plot no. 10, Sector-19 B, Dwarka, New Delhi	
Versus		
1.	M/s Selene Construction Limited Regd. Office at: - M-62&63, First Floor, Connaught Place, New Delhi-110001	Respondents
2.	Vindhyachal Land Development Limited. Regd. Office at: Indiabulls Finance Centre, Tower-1, 15th floor, CS 612 613, S.B. Marg, Elphinstone W, Mumbai, Maharashtra-400013	

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Complainants in person with Shri Bhupender Pratap Singh Advocate	Advocate for the complainants
Sh. Rahul Yadav	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/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 under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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:

3. S.N.	Particulars	Details
1.	Name of the project	Indiabulls Centrum Park
2.	Nature of project	Residential Complex
3.	RERA Registered/ Not Registered	Not Registered
4.	DTPC License no.	N/A
	Validity upto	N/A
	Name of licensee	N/A
	Licensed area	N/A
7.	Unit no.	P083, 8 th floor, Tower-P [page no. 26 of complaint]



8.	Unit measuring	Sper Area- 1481 sq. ft. (page no. 60 of complaint]
9	Date of Provisional Allotment	12.12.2013 (page no. 18 of complaint)
10	Date of execution of floor buyer's agreement	24.01.2014. (page no. 21 of complaint)
11.	Possession clause	21. Possession The Developer shall endeavor to complete the construction of the/said building/Unit within a period of three years, with an 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 demanded by the Developer. The Developer on completion of the construction/development shall issue final call notice to the Buyer. who shall within 30 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made

		applicable irrespective of the fact that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the holding charges@ Rs.5per sqft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer.
12.	Due date of possession	24.07.2017 (calculated from the date of execution of buyer agreement inclusive of grace period)
13.	Basic Sale Price	Rs. 76,55,000/- (page no. 26 of complaint)
14.	Total amount paid by the complainant	Rs. 1,32,99,828/- (page no. 9 of complaint)
15.	Occupation certificate dated	Not on Record
16.	Offer of possession	03.04.2018 (page no. 61 of complaint)

B. Facts of the complaint

4. That the respondent nos 1 and 2 are co-developers of the residential group housing society called "Indiabulls Centrum Park" in sector 103 Gurgaon and on believing the representation of the respondents, the complainants booked an apartment on 13.08.2012 bearing number P083, in Tower P, on 8th Floor, ad



measuring 1481 sq.ft in super area for a total basic sale price of Rs. 76,55,000/-

5. That the respondents with dishonest intention, on 22.02.2018 raised a demand stating that the project is ready for possession and the complainants are liable to pay the demand due at the time of possession. The respondents by way of that letter asked the complainants to make a payment of Rs. 7,57,912/-.
6. That the complainants in response to the final demand notice, dated 22.02.2018, vide email dated 6.03.2018 registered her protest with the respondents asking among other things for correction in agreement date, payment of compensation for construction delays and refund of interest levied by the respondents.
7. That the complainants got transferred to Mumbai in the meanwhile. Learning of the transfer the respondents offered that it could give the complainants a better than market price for a flat in one of its projects in Mumbai in lieu of her grievances and her demand for compensation for delay in respect of the flat in Gurgaon.
8. That the complainants visited the site of the Mumbai project on 19.05.2018 and learnt that the delivery will not happen until 2023 and that the entire monies of Rs. 90.78.328/- paid by her till date will be adjusted towards the part consideration of the said flat in one go
9. That after learning about the Mumbai project the complainants vide email dated 25.05.2018 sought refund of



the monies paid for the project, no settlement having worked out with the respondents. That on sensing the persistence of the demand for refund of the complainants, the respondents offered a 4BHK apartment to the complainants purportedly at a discounted price, for an additional full and final consideration of Rs. 42,21,500/- including all taxes, over and above the Rs. 90,78,328/- already paid by her towards the unit bearing number P-083, in lieu of the grievances of her including demand for compensation for the delay in possession. It is pertinent to note that the said Tower G3 did not receive the occupation certificate from the competent authorities until 01.01.2019.

10. That the complainants accepted the offer and accordingly paid a sum of Rs. 42,21,500/- towards a 4 bedroom apartment bearing number G3-191 on the 19th floor in tower G3. The said payments were made vide cheques dated 7.02.2019 and 10.05.2019 drawn on Oriental Bank of Commerce.
11. That the respondents thereafter refused to allot the 4BHK apartment to the complainants and instead insisted on her accepting a 4 BHK apartment on the 20th floor and demanded an additional sum of Rs. 5,00,000/ purportedly towards GST as a precondition for honoring its commitment to allot 4 BHK apartment to her.
12. That the complainants saw through the extortionist design of the respondents and vide email dated 8.07.2019 sought refund of extra monies paid towards the 4 bedroom flat and



reversion of allotment to the originally booked i.e. P083. The complainants followed up on the said email on 26.07.2019, 31.07.2019 and 05.08.2019 but to no avail.

13. That to the best knowledge of the complainants the respondents do not have a permanent electricity, water and sewerage disposal connection from the competent authorities in spite of having demanded and recovered the entire consideration (and more) from the complainants and other allottees. The group housing society is not even gated posing a serious security risk to the residents living there. Till date the respondents have also not been able to secure a permanent water and electricity connection.
14. That given the delay and the sheer denial of service by the respondents. The complainants are seeking refund of the entire monies paid till date with interest calculated at the prescribed rate of interest from the date of payment till the date

15. Relief sought by the complainants:

The complainants have sought following relief(s):

- To direct the respondents to refund total amount of Rs. 1,32,99,828.
- To direct the respondents to levy maintenance charges, holding charges or penal interest on the complainants in view of the peculiar circumstances of this case.
- Declare the one sided clauses of the standard form of the BBA, particularly clauses 11,21 and 22 a unfair and enforceable against the complainants.

B. Reply by the respondents

16. That the instant compliant filed by the complainants are outside the preview of this Hon'ble Authority as they themselves approached the respondents and showed interest to book unit in the project. Thereafter they post understanding the terms & conditions of the agreement(s) had voluntarily executed flat buyer agreement (hereinafter referred as "FBA") with the respondents on 24.01.2014.

17. It is pertinent to mention herein that the complainants are further falsifying its claim from the very fact that, they have filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit. However, the complainants from the very beginning were aware, that the period of delivery as defined in Clause 21 of Flat Buyer's Agreement is not sacrosanct as in the said clause it is clearly stated that "the Developer shall endeavour to complete the construction of the said building/unit" within the stipulated time.

18. It is submitted that the respondents have failed to deliver possession of the unit booked by the complainants. That the instant complaint is preferred on baseless facts misrepresenting the same. The respondents have already handed offered possession of the subject unit to them on 03.04.2018, however they have failed to take possession of the unit till date.

19. It is stated that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green



Tribunal whereby the construction activities were stopped, Non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above mentioned reasons, the Project of the respondents were severely affected and it is in these above elaborated circumstances, which were beyond the control of the respondents, that the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.

20. Further, as per the license to develop the project, external development charges were paid to the State Government and the State Government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. That the State Government terribly failed to provide the basic amenities due to which the construction progress of the Project was badly hit.

21. Furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of top soil for the manufacture of

bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 (fifty) kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project.

22. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx.. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of scarcity of the sand and other materials which derived from the stone crushing activities , which directly affected the construction schedules and activities of the project

23. Copies of all the relevant do 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.

E. Jurisdiction of the authority

24. The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the

jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

E. II Subject-matter jurisdiction

26. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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.

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.1 Direct the respondents to refund the entire amount of Rs.1,32,99,828/- along with interest.

27. The section 18(1) is applicable only in the eventuality where the promoters fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoters have offered possession of the unit **after obtaining occupation certificate** and on demand of due payment at the time of offer of possession the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
28. The due date of possession as per agreement for sale as mentioned in the table above is 24.07.2017 and there is delay of 2 years 7 months 18 days on the date of filing of the complaint. The allottee in this case has filed this application/complaint on 13.03.2020 after possession of the unit was offered to them after obtaining occupation certificate by the promoter. The allottee never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made to them and demand for due payment was raised then only filed a complaint before the authority. The occupation certificate /part occupation certificate of the



buildings/towers where allotted unit of the complainants is situated is received after obtaining occupation certificate. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:

- (i) Allottee wishes to withdraw from the project; or
- (ii) Allottee does not intend to withdraw from the project

29. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottee has tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of



possession and allottee's interest for the money he has paid to the promoter are protected accordingly.

30. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

31. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). This judgement of the Supreme Court of India recognized unqualified right of the allottee and liability of the promoter in case of failure to complete or unable to give possession of



the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the allottee has failed to exercise this right although it is unqualified one. He has to demand and make his intentions clear that the allottee wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made him entitle to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottee in case of failure of promoter to give possession by due date either by way of refund if opted by the allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.

32. In the case of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.2021***, some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made. The Hon'ble Apex

court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. However, the developer was obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees.

As per proviso to sec 18(1)

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such as rate as may be prescribed.

33. The authority hereby directs that the allottee shall be paid by the promoter an interest for every month of delay till handing over of possession at prescribed rate i.e. the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within the timelines provided in rule 16(2) of the Haryana Rules 2017 *ibid*. The allottee is obligated to take the possession of the apartment since the construction is completed and possession has been offered after obtaining of occupation certificate from the competent authority. However, the



developer is obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees.

F.II Direct the respondents not to levy maintenance charges, holding charges or penal interest on the complainants in view of the peculiar circumstances of this case

34. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondents shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year and the respondents shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

F.III Declare the one sided clauses of the standard form of the BBA, particularly clauses 11,21, and 22 a unfair and enforceable against the complainants

35. The complainants have not specified any particular clause to be declared arbitrary and unilateral except clause no.11,21 and

22. The authority observes that said mentioned clauses deal with delay payment interest and possession clause and the same are dealt under relief No.1 sought by the complainants. Furthermore, as per section 2(z) of Act of 2016, the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default

F. Directions of the Authority:

36. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondents are directed to pay interest at the prescribed rate of 9.70% p.a. for every month of delay from the due date of possession i.e. 24.07.2017 till the date of offer of possession i.e. 03.04.2018 plus two months i.e. 03.06.2018 to the complainant(s) as per section 19(10) of the Act.
- ii) The arrears of such interest accrued from 24.07.2017 till offer of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period



HARERA
GURUGRAM

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37. Complaint stands disposed of.
38. File be consigned to the Registry.

V.I-3

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022

