

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

Complaint no. : 1955 of 2018
First date of hearing : 14.03.2019
Date of decision : 14.03.2019

1.Mr. Chandra Pal singh Singh Bhadauria
2.Smt. Meera Singh Bhadauria
Both R/o : C-69, Defence Colony, New Delhi-110024 **Complainants**

Versus

M/s Pioneer Urban Land and Infrastructure
Ltd. (through its managing director)
Office at: Paras Downtown Centre, 7th floor,
Golf Course Road, Gurugram, Haryana-122002 **Respondent**

CORAM:

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

APPEARANCE:

Shri K.P. Pandey Advocate for complainant
Shri Ishaan Dang Advocate for the respondent

ORDER

1. A complaint dated 26.11.2018 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 complainants Mr. Chandra

Pal Singh Bhadauria and Smt. Meera Singh Bhadauria, against the promoter, M/s Pioneer Urban Land Infrastructure Ltd, on account of violation of the clause 11.2 of apartment buyer's agreement executed on 04.06.2012 in respect of unit described as below for not handing over possession on the due date i.e. 04.03.2016, which is an obligation under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement has been executed on 04.06.2012, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of Statutory obligations on the part of promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Araya, Sector 62, Gurugram
2.	Project area	24.606 acres
3.	Nature of real estate project	Group housing colony
4.	Allotment letter dated	04.04.2012
5.	RERA registered/ not registered	Registered

6.	RERA Registration No.	101 of 2017 dated 24.08.2017
7.	RERA Registration valid upto	31.12.2019
8.	Unit no.	A-1602, 16 th floor, tower A
9.	Unit area measuring	5514 sq. ft.
10.	DTCP no.	268 of 2017 dated 03.12.2007
11.	Payment plan	Construction linked payment plan
12.	Total sales consideration	Rs. 5,66,57,564/- (as per the clause 3.1 of the apartment buyer's agreement)
13.	Amount paid by the complainants	Rs. 6,05,98,650.17/- (as per customer ledger dated 02.01.2019 pg 100 of reply)
14.	Apartment buyer's agreement executed on	04.06.2012
15.	Due Date of delivery of possession (clause 11.2-39 months from the date of excavation plus a grace period of 180 days) Date of excavation i.e. 14.05.2012	14.02.2016
16.	Delay in handing over possession	2 years 6 months 14 days
17.	Occupation certificate received on	23.07.2018
18.	Intimation of possession	28.08.2018
19.	Penalty clause as per clause 11.5 apartment buyer's agreement	Rs. 10/- per sq.ft. per month of the super area of the said unit per month for the period of delay

4. 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. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent counsel appeared on 14.03.2019. The case came up on hearing on 14.03.2019. The reply was filed by the respondent which has been perused by the authority.

Brief facts

5. Brief facts leading to the present leading to complaint are that the complainants had booked an apartment bearing no.A-1602,16th floor, tower A in Gurugram. The respondent issued allotment letter on 04.04.2012. Subsequently, buyer's agreement was executed between the complainants and the respondent on 04.06.2012. The total agreed sale consideration of the above apartment was Rs. 5,66,57,564/-. Out of the above agreed sale consideration, the complainants have already paid Rs. 6,05,84,650/-. The above payment were duly received and acknowledged by the respondent against receipts.
6. The complainants further submitted that as per clause 11.2 of the agreement the respondent agreed to deliver possession of the apartment within 39 months from the date of excavation

plus grace period of 180 days after expiry of 39 months for applying and obtaining the occupation certificate in respect of the project. The respondent was to deliver possession of the booked apartment by 30.06.2015. There is 40 months delay in handing over possession.

7. The complainants submitted that vide intimation for possession letter dated 28.08.2018, the respondent informed them that they are in process of giving possession of the apartment and asked to remit the remaining amount as per intimation letter within 60 days. The complainants submitted before this hon'ble authority that in the aforementioned intimation of possession letter, the respondent had not stated anywhere that they obtained occupancy certificate and completion certificate from the competent authority nor shared with the complainant. The respondent did not share the occupation certificate with them.
8. It is submitted by the complainants that they came to know from the site inspection, that the construction work is still going on in the project and the respondent has not made all facilities of the project upto mark.

9. The complainants respectfully further submitted that the apartment is not fit for human rehabilitation as the construction work is already going on.
10. The complainant further submitted that seeing inordinate delay in the project the complainants made arrangement for their accommodation in Delhi and therefore , now the complainants do not want to continue with the project. The complainants are not willing to continue with the project and seeking refund of their entire deposit amount with interest at the rate of 18 % per annum as per RERA.
11. The complainant submitted that the respondent has not completed the construction work site and the apartment booked by the complainants are still not complete. Seeing the development work in the project , the complainants have no hope that the respondent will able to handover possession of booked apartment to the complainants in near future.

Issues raised by complainant

- i. Whether the complainants are entitled for refund of their entire deposited amount of Rs.6,05,98,650.17/- as per provision of the RERA Act, 2016 ?
- ii. Whether the respondent has violated the terms of apartment buyer agreement dated 04.06.2012 and as such, the complainants are entitled to get their entire amount refunded with interest @ 18% per annum?

Relief sought by the complainant

- i. Direct the respondent to refund the entire deposited amount of Rs.6,05,98,650.17/- to the complainants, in the interest of justice.
- ii. Direct the respondent to pay interest to the complainants at prescribed rate on the deposited amount from date of making payment till its realization on prorated basis, in the interest of justice.
- iii. Restrain the respondent not to raise any kind of demand towards holding charges or any other charges till completion of entire project.

Respondent reply

12. The respondent submitted that the respondent has failed to perform any obligations arising out of the buyer's agreement dated 04.06.2012. It is wrong and denied that the respondent deliberately and intentionally failed to deliver possession of the booked apartment to the complainants in the allegedly agreed period of time. It is wrong and denied that the complainants have not been offered possession of the apartment till date. It is pertinent to mention that the complainants were offered possession of the apartment by the respondent vide Letter of Intimation of Possession dated 28.08.2018. It is wrong and denied that there has been delay of 38 months in handing over of possession of the apartment by the respondent.

13. The respondent submitted that the complainants were allotted an apartment bearing no. A-1602 (hereinafter referred to as the 'said unit') on the 16th floor of tower-A in the project known as ARAYA at Sector 62, Golf Course Extension Road, Gurgaon (hereinafter referred to as the 'said project') being developed by the respondent and having a tentative

super area of 5514 sq. ft. (approx.) along with parking space for three cars vide allotment letter dated 04.04.2012. The aforesaid allotment was made by the respondent in furtherance of the application form which had been voluntarily and consciously executed by the complainants. Prior to submission of application for allotment, the complainants had made detailed and elaborate enquiries with regard to capacity, competence and capability of the respondent to undertake the conceptualization, promotion, construction, development and implementation of the residential group housing project. Only after being fully satisfied in all respects did the complainants take the informed and well thought of decision to submit the application for allotment. Subsequently, buyer's agreement dated 04.06.2012 had been voluntarily executed by the complainants.

14. It is pertinent to mention that the application for issuance of occupation certificate in respect of the said unit was made on 04.04.2018. The occupation certificate has been thereafter issued on 23.07.2018. Occupation Certificate for tower A of Araya was received on 23.07.2018 vide memo no. ZP-338-C-

VOL-I/SD(BS)/2018/21712. It is pertinent to mention that the construction of the tower in which the said unit is located has already been completed. Moreover, the occupation certificate has been granted for the aforesaid tower after due and thorough inspection by the officials of the relevant statutory authority who confirmed that the tower is habitable. The corresponding paragraph of the complaint pertaining to the description of the said project is a matter of record. It is a matter of record that excavation work in the said project commenced on 14th of May, 2012.

15. The respondent submitted that the total sale consideration agreed for the said unit was Rs. 5,66,57,564/-. It is wrong and denied that till date, the complainants have paid an amount of Rs. 6,05,84,650/-. It is pertinent to mention that the revised total sale consideration after final demand inclusive of other charges but exclusive of taxes amounts to Rs. 5,79,41,536/-.
16. The respondent submitted that it is pertinent to mention that only such allottees, who have complied with all the terms and conditions of the buyer's agreement dated 04.06.2012 including making timely payment of instalments are entitled

to receive compensation under the buyer's agreement. In the case of the complainants, the complainants had delayed payment of instalments and are consequently not eligible to receive any compensation from the Respondent. In spite of the same, the respondent, in good faith, has already credited compensation in the complainants account to the tune of Rs. 16,32,506/- (penalty at the rate of Rs. 10/- per square feet per month as per clause 11.5 of buyer's agreement dated 04.06.2012) on 28.08.2018.

17. The respondent submitted that the complainants are not entitled to contend that the alleged period of delay continued even after receipt of offer for possession. The complainants have consciously refrained from obtaining possession of the unit in question. Consequently, the complainants are liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession. After issuance of intimation for possession, the buyers/allottees have been approaching the respondent for getting their apartments registered. As on date, conveyance deeds for 4 units have already been registered out of the 66 apartments.

18. It is further submitted by the respondent it is submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse attributable to the respondent. It is the complainants who have consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. Moreover, the complainants have already been duly compensated as per the terms of buyer's agreement dated 04.06.2012 and have no valid and subsisting ground to claim any more compensation. The present complaint is nothing but an abuse of the process of law
19. The respondent submitted that the complaint in this regard is grossly barred by limitation.
20. The respondent submitted that in a completely unforeseeable ruling by the Hon'ble Supreme Court of India dated 08.05.2009, the hon'ble apex court suspended all the mining operations in the aravalli hill range falling in state of Haryana

within the area of 448 sq. kms. approx. in the district of Faridabad and Gurgaon including Mewat. This ban by the hon'ble apex court, led to a situation of scarcity of the sand and other materials which were derived from the stone crushing activities, which directly affected the construction schedules and activities of the respondent.

21. That it is submitted by the respondent herein that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments, severely affected the real estate and these reasons were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held liable for things that were/are not in control of the respondent.
22. The respondent submitted that there is an arbitration clause in the agreement as per which the dispute/differences pertaining to the said transaction should be refer to arbitration and therefore this is not maintainable.

Determination of issues

23. With respect to the **first and second issue**, the authority came across clause 11.2 which is reproduced hereunder

“clause 11.2 – developer shall apply for OC within 39 months from the date of excavation subject to government approvals and sanctions + 180 days grace period”

Therefore, the due date of possession comes out to be 14.02.2016 and the possession has been offered by the respondent on 28.08.2018, so there has been a delay of 2 years 6 months(appox.) in handing over of possession. The complainants cannot be entitled to refund as they have already been offered possession and it will affect the interest of other allottees who wish to continue with the project. The complainants are however entitled to delay possession charges from the due date of possession till the offer of possession at the prescribed rate i.e. 10.75% p.a.

Findings of the authority-

24. The preliminary objection raised by the respondent regarding the jurisdiction of the authority stands dismissed. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

25. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has observed that since, the respondent has delayed the delivery of possession by more than two years, hence the complainant is entitled to pay delay possession charges at the prescribed rate of interest @ 10.75% p.a. in terms of section 18 of the Real Estate (Regulation and Development) Act, 2016. Occupation certificate has been received by the respondent on

20.3.2018 and offer of possession has been issued to the complainant on 28.8.2018.

26. As per clause 11.2 of the builder buyer agreement dated 04.06.2012 for unit no. A1602, 16th floor, in project Araya, Sector 62, Gurugram, possession was to be handed over to the complainant within a period of 39 months from the date of start of excavation work + 6 months grace period which comes out to be 04.03.2016. However, the respondent has not delivered the unit in time.

Decision and directions of the authority -

27. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 14.02.2016 as per the provisions of section 18 (1) of the Real Estate

(Regulation and Development) Act, 2016 till offer of possession i.e. 28.08.2018.

- ii. 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 on or before 10th of every subsequent month.
- iii. Counsel for the respondent is directed not to charge any holding charges from the complainant.

28. The order is pronounced.

29. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated :14.03.2019

Judgement uploaded on 28.05.2019