

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

Complaint no. : 120 of 2019
First date of hearing: 23.04.2019
Date of Decision : 23.04.2019

1. Mr. Tarun Lal
2. Mrs. Anesha Shahrawat Lal
R/o. A-3, 1202, World spa east, Sector -30/41
Gurugram, Haryana- 122001.

Complainants

Versus

M/s Pioneer Urban Land and Infrastructure Ltd.
(through its director)
Corporate office at: Paras downtown centre, 7th
floor, Golf course road, sector 53, Gurugram,
122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Kailash Pd. Pandey Advocate for complainants
Shri Ishaan Dang Advocate for the respondent

ORDER

1. A complaint dated 10.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Tarun Lal and Mrs. Anesha Shahrawat Lal, against the respondent M/s Pioneer Urban Land and Infrastructure Ltd. (through its

director), on account of violation of clause 11.2 with respect to apartment buyer's agreement dated 18.06.2012 in respect of unit no. A-2201, in the project, 'Araya' located at Sector 62, Sohna, Gurugram for not delivering the possession by the due date, which is in violation of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 18.06.2012 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, So, penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application for non-compliance of statutory obligations on the part of the 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" at Sector 62, Gurugram
2.	Nature of project	Group housing colony
3.	Total area of the project	24.606 acres
4.	Unit admeasuring	4279 sq.ft.
5.	Date of apartment buyer's agreement	18.06.2012
6.	DTCP license no.	268 of 2007 dated 03.12.2007
7.	Unit no.	A-2201, 22 th floor, tower A

8.	RERA registered / Not registered	101 of 2017 dated 24.08.2017
9.	RERA registration valid upto	31.12.2019
10.	Payment plan	Instalment linked payment plan
11.	Total consideration as per clause 3.1 of the apartment buyer's agreement	Rs. 4,41,69,244/-
12.	Total amount paid by the complainant till date as stated in memorandum customer ledger dated 02.01.2019	Rs.44,900,632/- (Annx C/5)
13.	Date of excavation	14.05.2012 as admitted by the respondent
14.	Due date of delivery of possession as per clause 11.2 of the apartment buyer's agreement 39 months from the date of excavation plus grace period of 180 days	14.02.2016
15.	Delay in possession till offer of possession	2 years 6 months 14 days
16.	Letter of intimation of possession	28.08.2018
17.	Occupation certificate issued on	23.07.2018

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 18.06.2012 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by 14.02.2016. The respondent has failed to fulfil its obligation, which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 23.04.2019. The case came up for hearing on 23.04.2019. The reply filed on behalf of the respondent.

FACTS OF THE COMPLAINTS: -

6. The complainants submitted that they have booked an apartment bearing no A-2201 in tower A super area 4279 sq. ft. (397.52 sq. mtr) in the project 'Araya' Sector 62, Golf Course Extension Road, Gurugram dated 16.03.2012, the complainant booked the apartment and the respondent confirmed the booking of the apartment in favour of the complainants and subsequently issued allotment letter along with payment schedule on 19.03.2012.
7. The complainant further submitted that the apartment buyer's agreement was executed between the complainants and the respondent on 18.06.2012. In the apartment buyer's agreement dated 18.06.2012, it was mentioned that the construction of the project shall be completed and possession would be offered to the complainants within 39 months from the date of excavation.
8. The complainants further submitted that they have made all payments well within stipulated period as per the payment

schedule. They have paid the entire sale consideration to the respondent as per their demand and no dues are left unpaid on the part of the complainants except the last payment which is payable at the time of offer of possession of the apartment.

9. The complainants further submitted that they approached the respondent on various occasions and requested to hand over the possession of the apartment to the complainants as per promise made at the time of purchase but the respondent deliberately and intentionally failed to do so.
10. The complainants submitted that it is necessary to submit before this hon'ble authority that the respondent has not provided occupation certificate to the complainants till date. The project is not complete. All facilities as promised at the time of booking of apartment are not in order and the premises is not fit for human rehabilitation.
11. The complainants further submitted that they are willing to take possession of the apartment but the respondent has not developed the project in accordance with the agreement. The construction work in aforesaid flat is still going on due to which there is dust and dirt all over the premises. Furthermore, the complainants submitted that club and associated facilities, as mentioned in annexure VI

specifications, are part of the home specifications and in these circumstances they cannot take possession of the project.

12. The complainants further submitted that vide intimation for possession dated 28.08.2018, the respondent informed the complainants that they are in process of giving possession of the apartment and asked to remit the remaining due amount.
13. The complainants further submitted that being aggrieved by the aforesaid acts of the respondents, he was constrained to file the present complaint before this authority.

ISSUES TO BE DETERMINED -

- a. Whether the respondent is right to offer possession without completing the project as per specifications agreed to at the time of booking of apartment and without providing occupancy certificate and completion certificate?
- b. Whether the complainants can be forced to take immediate possession of their booked apartment no. A-2201 situated in tower-A, "Araya" located on Sector 62, Gurugram, Haryana without providing all basic facilities as per specifications in terms of agreement?
- c. Whether the complainants are entitled for interest on the deposited amount as per provisions of section 18 of Real

Estate (Regulation and Development) Act, 2016 for delay period ?

- d. Whether the respondent has violated the terms of ‘ apartment buyer’s agreement ’ dated 18.06.2012 and thereby delaying possession?

RELIEFS SOUGHT:-

- a. Direct the respondent to give possession of apartment no. A-2201 situated in Tower-A, “Araya” located in Sector 62, Gurugram, Haryana to the complainants immediately, in the interest of justice.
- b. Direct the respondent to pay interest @ 18% per annum to the complainants for the delay period on the deposited amount, in the interest of justice.

RESPONDENT’S REPLY

14. The respondent submitted that the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the ‘Act’) are not applicable to the project in question. It is pertinent to mention that the company has already received the occupancy certificate for the Tower in question and also offered possession to the complainant.
15. The respondent submitted that the present complaint is not maintainable before this Hon’ble Authority. The complainants

has filed the present complaint seeking interest, possession and compensation for alleged delay in delivering possession of the apartment booked by the complainants. It is respectfully submitted that complaints pertaining to possession, compensation and refund are to be decided by the Adjudicator under Section 71 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this Hon'ble Authority.

16. The respondent submitted that the complainants had booked the apartment in question, bearing no. A-2201 on the 22nd floor of tower-A in the project known as " ARAYA "at sector 62, Golf course extension road, Gurgaon being developed by the respondent and having a tentative super area of 4279 sq. ft. (approx.) along with parking space for three cars mentioned in apartment buyer's agreement dated 18.06.2012, which was executed between the parties.
17. The respondent submitted that the complainants have no locus standi or cause of action to file the present complaint because clause 48 of the apartment buyers agreement dated 18.06.2012 states that, *"If, however the completion of the building is delayed by force majeure circumstances, then the intending allottee*

agrees that the developer shall be entitled to the extension of time of delivery of the possession of the said apartment.”

18. The respondent further submitted 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 had been received on 23.07.2018.
19. The respondent submitted that the said project is registered under RERA Act, 2016 and HRERA Rules, 2017 registration no. 101 of 2017 dated 24.08.2017 and the date of completion as per RERA registration is 31.12.2019.
20. The respondent submitted that the complainants were offered possession of the above-mentioned unit through letter of offer of possession dated 28.08.2018. The complainants were called upon to remit balance payment including delayed payment charges/interest and to complete the necessary formalities/documentation necessary for handover of the said unit to the complainants. However, the complainants did not take any steps to complete the necessary formalities or to pay the balance amount payable by them.
21. The respondent submitted that right from the beginning, the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to

issue demand notices, reminders etc, calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by the complainants.

22. The respondent further submitted that only such allottees, who have complied with all the terms and conditions of the buyer's agreement dated 18.06.2012 including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. The complainants had delayed payment of instalments and are consequently not eligible to receive any compensation from him.
23. The respondent further submitted that he in a good faith, has already credited compensation in the complainants account of Rs. 13,01,938/- as per clause 11.5 of apartment buyer's agreement dated 18.06.2012 i.e. @ Rs. 10/- per sq. ft. per month.
24. The respondent submitted that the clause 11.6 of the apartment buyer's agreement dated 18.06.2012 stipulates that under no circumstances the possession of the allotted unit be given to the allottees unless and until the allottees has made full payment of the sale consideration to the respondent.
25. The respondent submitted that the complainant have completely misconstrued, misinterpreted and miscalculated the time period as determined in the buyer's agreement. Since,

the complainants have defaulted in timely remittance of payments as per schedule of payment the date of delivery of possession is not liable to be determined. However, instead of seeing reason and clearing their outstanding dues and taking possession of the said unit, the complainants have proceeded to file the present false and frivolous complaint.

26. The respondent submitted that the construction of the tower in question/said unit stands completed and they have received the occupation certificate in respect of the same. And further that as soon as the balance payment is remitted by the complainants and the necessary formalities completed, the respondent shall hand over possession of the said unit to the complainants.
27. The respondent submitted that 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 complainant 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.
28. The respondent further submitted that the complainants have assailed clauses of the apartment buyer's agreement after 6

years which is grossly barred by limitation. And further respondent contemplated that the hon'ble authority does not have jurisdiction to adjudicate upon the legality and correctness of the contents and due execution of the apartment buyer's agreement.

29. The respondent had submitted that due to ruling made 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 Gurugram 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.
30. The respondent contemplated that the agreement has formulated a device of resolution of the disputes which ought to have been invoked by the complainants, if they were aggrieved in the manner alleged in the complaint.
31. The respondent submitted that the clear and unequivocal mandate provided under the aforesaid amended section 8 leaves no manner of doubt that the parties are to be referred to arbitration as per aforesaid clause 51 of the buyer's

agreement. The earlier law on the subject has altogether been made inapplicable.

32. The respondent further submitted that the allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

DETERMINATION OF ISSUES-

33. In respect of **first issue** raised by the complainants, the respondent has a right to offer possession as occupancy certificate was issued by the concerned authority on 23.07.2018 for tower A of "Araya" . As the respondent has obtained occupation certificate , it is implied that the project is complete and fit for occupation. Therefore, the construction of the said project is complete. Thus, the respondent is justified in offering right to possession.
34. In respect of **second issue** raised by the complainants, the complainants have not given sufficient information regarding facilities which has not been provided. However, as per annexure VI annexed to the apartment buyer's agreement, a list of specifications are provided. The respondent however is bound to provide the complainants with those specifications.
35. In respect of **third issue**, raised by the complainants, As per clauses 11.2 apartment buyer's agreement dated 18.6.2012

possession was to be handed over to the complainants within a period of 39 months from the date of excavation i.e. from 14.05.2012 + 180 days grace period which comes out to be 14.02.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.44,900,632/- to the respondent against a total sale consideration of Rs.4,41,69,244/- Therefore, the complainants are entitled for interest on the deposited amount as per the provision of section 18 of Real Estate (Regulation and Development) Act, 2016 i.e. 10.70%, if any compensation/interest has been paid by the respondent that can be set off.

Findings of the authority-

36. 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.
37. 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.

38. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

39. As per clauses 11.2 apartment buyer's agreement dated 18.6.2012 for unit no.A-2201, tower-A, in project "Araya" Sector-62, Gurugram, possession was to be handed over to the complainants within a period of 39 months from the date of excavation i.e. from 14.05.2012 + 180 days grace period which comes out to be 14.02.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.44,900,632/- to the respondent against a total sale consideration of Rs.4,41,69,244/-.

DECISION AND DIRECTIONS OF THE AUTHORITY -

40. 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) Respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.70% per annum w.e.f 14.2.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession i.e.28.08.2018.
- (ii) Complainants are directed to pay outstanding dues, if any, after adjustment of interest for delayed period.

- (iii) The promoter shall not charge anything from the complainants which is not part of the builder buyer's agreement.
- (iv) Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.70% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
- (v) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.

41. The order is pronounced.

42. Case file be consigned to the registry.

(Samir Kumar)

Member

Dated: -23.04.2019

(Subhash Chander Kush)

Member

Judgement uploaded on 28.05.2019

HARERA
GURUGRAM