

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

Complaint no. : 3176 of 2023
Date of complaint: 21.07.2023
Date of decision : 22.03.2024

1. Savi Singh Bedi
2. Surbir Kaur Bedi
Both R/o: - K-11/5, First Floor, DLF Phase – II,
Gurugram, Haryana

Complainants

Versus

M/s Bestech India Private Limited
Office: Bestech House, Plot no. 51, Sector - 44,
Gurugram, Haryana

Respondent

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

None

Sh. Ashwarya hooda Advocate

**Complainants
Respondent**

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 provisions 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Park View Sanskruti", Sector- 92, Gurugram.
2.	Project area	12.7875 acres
3.	Nature of the project	Residential group housing
4.	DTCP license no. and validity status	i. 13 of 2009 dated 21.05.2009 valid up to 20.05.2024 ii. 43 of 2011 dated 13.05.2011 valid up to 12.05.2024
5.	Name of licensee	Spring Water Properties Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no. p	101, 1 st floor, Tower/block- A (Page no. 38 of the complaint)
8.	Unit area admeasuring	2120 sq. ft. (Super area) (Page no. 38 of the complaint)
9.	Allotment letter	10.05.2013 (Page no. 31 of the complaint)
10.	Date of execution of agreement	25.09.2013 (Page no. 35 of the complaint)
11.	Possession clause	3. POSSESSION a). Offer of possession That subject to terms of this clause and subject to the apartment allottee(S) having



complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of *Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later.* It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the APARTMENT ALLOTTEE(S) of different Towers as and when completed and in a phased manner.

(Page no. 43 of the complaint)

12.	Grace period	Grace period of 6 months allowed being unqualified.
13.	Approval of building plans	04.05.2013 [Page no. 132 of the reply]
14.	Due date of possession	25.03.2018 25.03.2017 +1 year (Note: - 36 months from date of agreement (25.09.2013) or the date of building plans (04.05.2013) whichever is later + 6 months grace period) 1 year is to be added in the due date of possession for delay on account of existence of gas pipeline.
15.	Basic sale consideration	Rs.1,41,53,480/- (Page 39 of complaint)
16.	Amount paid by the complainants	Rs.1,39,31,885/- (Page 21 of complaint)
17.	Occupation certificate	19.06.2018 (Page no. 149 of the reply)
18.	Offer of possession	14.07.2018 (Page no. 101-104 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the complainants are persons of limited means who had opted to purchase an apartment No. 101, Tower-A, Park View Sanskruti, Sector-92, Gurugram from the respondent. That since the complainants are permanent resident of London, U.K., therefore the complainants have

authorized Mr. Jagpal Singh Intezar to sign, file, verify and prosecute the complaint on their behalf and to do all necessary things vide special power of attorney dated 23.05.2022.

- II. That the respondent allured the public at large including the complainants through different pamphlets, advertisements and representatives and made them to apply for booking of an apartment bearing No. 101, Tower-A, Park View Sanskruti, Sector-92, Gurugram measuring 2120 Sq. Ft. for total consideration of 141,53,480/-. That the complainants made booking of the apartment with the respondent and paid booking amount of Rs.20,00,000/- vide receipt No. 196, 197 & 198 all dated 10.05.2013. That after a delay of 4.5 months from the date of the booking, after repeated requests of the complainants, the respondent signed apartment buyer's agreement dated 25.09.2013 with them. That as per Para 3 of the agreement dated 25.09.2013. the respondent was to hand over the possession of the flat within 36 months + 6 months (grace period from the date of signing of apartment buyer's agreement i.e. by 24.03.2017.
- III. That in March 2017, when the complainants visited the site, they found that the construction has not been completed by the respondent and the considerable work is left which will take another 2 years to complete. That the complainants paid total sum of Rs. 139,31,885/- to the respondent towards the cost of the flat up to 09.12.2017 but the respondent failed to give possession of the flat to the complainants in agreed period. That finally vide their letter dated 14.07.2018, the respondent offered possession of the flat to the complainants and sent a demand of 23,38,569/- without appreciating the fact that the complainants had already paid Rs.139,31,885/- and the complainants

are further entitled to the interest on invested amount for the delay in possession of the flat.

IV. That when the complainants visited the respondent and told them that they had already made the payment of sum of Rs. 139,31,885/- by 09.12.2017 itself and further they are eligible to be compensated for the delay in delivery of the possession of the flat. They accordingly asked the respondent to revise the demand letter after giving them the credit of Rs.139,31,885/- and compensation for the delay in delivery of the possession. The respondent agreed to send the revised demand letter to the complainants after adjustment of the interest for the delayed period. But the respondent did not send the revised demand letter for long on pretext of the pandemic period of Covid-19. That the complainants got surprised rather shocked to receive the letter dated 07.04.2022 vide which the respondent had arbitrarily demanded a sum of Rs.33,06,533/- from the complainants and further threatened to cancel the allotment of the flat and to deduct arbitrary sum of Rs.5810,390/- from the amount invested by the complainants. That arbitrary amounts has been charged on different accounts from the complainants in contravention of agreed payment plan :-

- a) External Façade Charges
- b) Electricity Connection Charges
- c) Misc. Charges for Registration
- d) Electricity Security Deposit
- e) FTTH Charges
- f) Club Charges
- g) Advance Maint. Charges
- h) VAT
- i) Interest
- Total
- Rs. 18,33,825/-

V. That the respondent is charging interest @18% per annum compounded quarterly from the complainants for alleged delayed payment.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).
 - I. Hand over the possession of the flat immediately to the complainants;
 - II. Revise the demand letter dated 07.04.2022 by removing the charges of Rs. 18,33,825/- arbitrarily added in the demand letter;
 - III. Pay the complainants interest @18% per annum compounded quarterly on 139,31,885/- for the period of delay in delivery in possession of the flat;
 - IV. Pay a sum of Rs.25,000/- towards the cost the present case to the complainants;
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - i. 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. That the complaint is barred by limitation and liable to be dismissed on this ground as well. The possession of the apartment was offered by the respondent to the complainants as far back as on 14.07.2018. However, they have refrained from taking possession for reasons best known to themselves and duly accepted by them.
 - ii. That the complainants have no locus standi or cause of action to file the present complaint. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the complainants are investors and defaulters and not "aggrieved persons" under the Act and as such the present complaint is not maintainable at their behest. The complainants never



intended to reside in the apartment in question but has invested in the same for taking benefits after resale of the apartment. However due to recession in the real estate market, the complainants could not get desired benefits and hence defaulted in the payments towards Respondent.

- iii. That allotment letter was issued in favour of the complainant no 1 on 10.05.2013 whereby apartment bearing no A-101 was provisionally allotted to the complainant no 1. The payment plan was appended along with the allotment letter reflecting the total sale consideration payable by the complainant no 1 to be Rs 1,41,53,480/- That buyer's agreement in respect of the apartment was dispatched to the complainant no 1 for execution under cover of letter dated 08.08.2013. The buyer's agreement was willingly and consciously executed by the complainant no 1 on 25.09.2013. The respondent issued various payment demands and reminder letters to complainant no 1. That the name of complainant no 2 was added as a co allottee on 09.12.2017 upon a request made by the complainants and upon execution of necessary documents.
- iv. That however, the complainants failed to make any payment and failed to take possession of the unit. Hence reminders for possession dated 14.11.2018, 12.12.2018, 12.01.2019 and 10.05.2019 were issued by the respondent, That despite numerous reminders, the complainants still refused to clear their outstanding dues and take possession of the unit. Hence, the respondent issued the final notice dated 7th April 2022 whereby the complainants were called upon to make payment of outstanding dues as per the attached statement of account failing which the allotment in favour of the complainants was liable to be dismissed, with forfeiture of earnest money and other amounts in



accordance with the buyer's agreement dated 25.09.2013. That the following circumstances (which were beyond the reasonable control of the respondent) will comprehensively establish that no lapse can be attributed to the respondent insofar implementation of the aforesaid project by the respondent is concerned: -

(a) It shall not be out of place to mention that at that stage the respondent was unaware of the existence of Gas Pipeline running across the project. Even said combined Zoning Plan dated 3rd September 2011 the Town & Country planning Department failed to earmark the gas pipeline running through the land forming part of the complex. Based on said zoning plan the respondent prepared the building plans for the complex and subsequently applied for sanction of the building plans vide letters dated 22nd of November 2012 and 29th of January 2013.

Building Plans with respect to the complex were sanctioned by the Town & Country planning Department vide memo bearing number ZP-577/JD(BS)/2013/38657 dated 4th of May 2013.

(b) That it is pertinent to mention that even till this stage the gas pipeline running through the complex was not earmarked by the Town & Country planning Department in the said site plan forming part of the Building Plans approved by the Town and country Planning Department Haryana.

(c) That It is only when the respondent started excavations of the site for the purpose of carrying out the construction of the complex, somewhere in the month of April/May 2013, the officers of GAIL approached the site and raised objections and apprised the respondent with regard to existence of the gas pipeline running through the complex. The respondent made enquiries from GAIL as



well as Town and Country Planning Department and explored options for possibility of shifting of the said Gas Pipeline. It was conveyed by GAIL that the shifting of Gas pipeline was not possible. It is pertinent to mention that at this stage the respondent once again approached the Town and Country Planning Department for revision of site plan of the complex. The Town and Country Planning Department advised the respondent that since location of only one tower was to be realigned, the respondent could safely commence construction of the complex in its entirety after shifting the location of tower h so as to build it beyond the prohibited distance from the gas pipeline. The respondent was further intimated by Town and country Planning Department Haryana that after completing the construction of the complex the respondent could apply for occupation certificate and at that stage necessary modifications shall be incorporated in the competition drawings of the complex. With this assurance the respondent commenced the construction of the complex.

- (d) That it shall not be out of place to mention that vide order 08.11.2016 Haryana State Pollution Control Board, in compliance of order dated 08.11.2016 of Hon'ble National Green Tribunal, directed all construction activity in Delhi NCR to be stopped due to rise in pollution levels. The construction activity was stalled for almost 7 to 10 days which led to demobilisation of the labour force at site due to which the construction activities almost came to stand still for a period of almost 1 month.
- (e) That from the facts and circumstances set out in the preceding paras, it is evident that the respondent has acted strictly in accordance with the terms and conditions of the contract between

the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint by the complainants are fabricated and concocted with a view to try and justify their own breaches and lapses. They are defaulters and cannot be permitted to take advantage of their own wrongdoing. They are not entitled to demand possession of the unit and the respondent is not under any obligation to hand over possession until and unless complete payment in accordance with the buyer's agreement is received from the them. The complainants are not entitled to any relief under RERA. This is without prejudice to the submission of the respondent that RERA is not applicable to the project in question and that the delay, if any, has been caused due to reasons which were wholly beyond the power and control of the respondent.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents, submissions by the parties and written submissions of the complainant.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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) The promoter shall-

(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.

11. 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 promoter 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

- I. Hand over the possession of the flat immediately to the complainants;
- II. Pay the complainants interest @18% per annum compounded quarterly on 139,31,885/-for the period of delay in delivery in possession of the flat;

12. On the last date of hearing, the counsel for the complainants stated that they are seeking delayed possession charges. Additionally, alleges that the respondent has sent offer of possession on 14.07.2018 which was accompanied with a demand of Rs.33,06,533/-. Further stated that the demand is including interest on delayed payment but no credit of delayed possession charges was given in the statement of account, hence, the complainants are seeking delayed possession charges as well as possession

of the unit. The version of the respondent is that there was a gas pipeline at site which came in its knowledge while starting the excavation and on account of that, they approached the authorities and zero period of one year was granted to them which needs to be excluded for computing the due date of possession of the unit and further to that as per letter dated 05.04.2017 which is Annexure R8 at page 100 where the allottee has clearly mentioned that "I consciously and irrevocably waived all the rights pertaining to realization of any amount from the developer with respect to claim for any compensation for delay." hence the complainants are not entitled to any delayed possession charges and further to that a waiver of interest was also given to the allottee which is also mentioned in the letter dated 05.04.2017. The counsel for the complainant stated that as per OC dated 19.06.2018 which is R26 at page 149 it is mentioned that application for OC was moved by the respondent on 22.02.2018.

13. It is observed that as per annexure R8 wherein the allottee has clearly waived their rights for seeking relief of delay in compensation from the respondent. Accordingly, the complainant cannot seek delayed possession charges as rule of estoppel will squarely apply in the present case. It implies that the said rule will precludes someone from arguing anything contrary to a claim made or act done previously by that person so the complainant cannot seek delayed interest after waving off that right with respect to delayed possession charges.
14. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The complainant(s) are directed to pay outstanding dues, if any, and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

if any, and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

15. Separate proceeding to be initiated by the planning branch of the Authority for taking an appropriate action against the builder as the project has not been registered.
16. No case of DPC is made out.

G. Directions of the authority

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

- i. The complainant(s) are directed to pay outstanding dues, if any, and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
18. Complaint stands disposed of.
 19. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2024