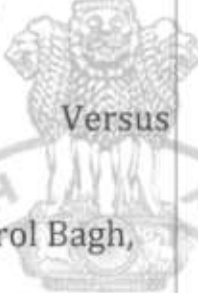


**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no.: 4851 of 2023
Date of decision:- 11.09.2024

Kalpana Rawat
R/o:- N-1001, Floor-10th,
BPTP Spacio, Sector-37-D,
Kadipur, Gurugram, Haryana.

Complainant


Versus

M/s. Apex Buildwell Pvt. Ltd.
Regd. office: 14A/36, Wea Karol Bagh,
New Delhi-110053.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sunil Kumar (Advocate)

Complainant

Sh. Harshit Batra (Advocate)

Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 10.11.2023 has been filed by the complainant/allottee 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 as provided 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Our Homes", Scetor-37-C, Gurugram.
2.	Nature of the project	Affordable group housing
3.	Area of project	10.144 acres
4.	DTCP license	Licence no.-13 of 2012 dated 22.02.2012
5.	RERA Registered	Registered vide no. 40 of 2019 dated 08.07.2019 valid upto 01.12.2019
6.	Allotment letter	Not available
7.	Builder Buyer Agreement	09.02.2013 (As on page no. 17 of complaint)
8.	Unit no.	431, Tower-Rose, Floor-4 (As on page no. 19 of complaint)
9.	Unit area	48 sq.mtrs. [Carpet area]

		(As on page no. 19 of complaint)
10.	Possession clause	<p>Clause 3 POSSESSION</p> <p>a. Offer of Possession: That subject to terms of this Clause 3, 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 hand over the possession of the APARTMENT within a period of thirty (36) months, with a grace period of 6 months, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plan/revised plan and approval of all concerned authorities including the Fire Service Department, Civil Aviation Department, traffic Department, pollution Control Department etc., as may be required for commencing, carrying on and completing the said Complex subject to force majeure, restraints or restriction from any court/authorities. It is however understood between the parties</p>

		<i>that the possession of various Blocks/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 allottees of different Block/Towers as and when completed and in a phased manner.</i>
11.	Date of environmental clearance	26.06.2013
12.	Due date of possession	26.06.2017
13.	Basic sale consideration	Rs. 16,00,000/-
14.	Total amount paid by the complainant	Rs. 16,00,000/-
16.	Occupation certificate	29.11.2019
17.	Offer of possession	Not available
18.	Unit handover	Not available
19.	Conveyance deed	24.06.2020

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:

- I. That the respondent launched an affordable group housing project called "Our Homes" at Sector - 37C, Gurugram, under the license no. 13 of 2012 dated 22.02.2012 issued by the DTCP, Haryana, Chandigarh.
- II. That the complainant is a law abiding citizen. The respondent advertised about the project and painted a rosy picture of the project in its advertisements making tall claims.

- III. In 2012, the respondent issued an advertisement and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the building plan approvals have been obtained from the concerned authority.
- IV. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent. Relying on the representations and assurances given by the respondent and on belief of such assurances, the complainant booked a unit in the project towards the booking of the unit bearing no. 431 on 4th Floor in Tower-Rose having an area admeasuring 516.67 sq.ft. for a total sale consideration of Rs.16,00,000/-.
- V. That a Buyer's Agreement was executed between the complainant and the respondent on 20.02.2013. As per annexure of the buyer's agreement the sale price of the said apartment was Rs.16,00,000/- inclusive of basic sale price, EDC, IDC, preferential location charges.
- VI. As per Clause-3(a) of the Apartment Buyer's Agreement, the respondent agreed to deliver the possession of the unit within period 36 months plus 6 months from the date of commencement of construction upon receipt of all project related approval. Due date of possession is calculated from the date of agreement i.e. Hence, the due date of possession comes out to be 02.06.2017
- VII. As per the demands raised by the respondent , the complainant has paid a total sum of Rs.16,00,00, towards the said unit against total sale consideration of Rs.16,00,000 /-. That the payment plan

was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed.

VIII. That the complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. In terms of Clause 3(a) of the Buyer's Agreement, the respondent was under an obligation to complete the construction and to offer the possession on or before 02.06.2017. That the complainant approached the respondent in person to know the fate of the construction and offer possession in terms of the Buyer's Agreement, respondent misrepresented to the complainant that the construction would be completed soon. The conveyance deed was executed on 24.06.2020.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay delayed possession charges along with interest.

D. Reply by respondent:

5. The respondent has made following submissions by way of reply:
- That the complainant has not come before the Authority with clean hands and has suppressed vital and material facts. At the outset, it is imperative to note that the complainant, in the present complaint has annexed the incomplete copy of all the documents on which she is relying therefore, it is most humbly submitted before the. Authority to kindly direct the complainant to file the complete set of documents and thereupon, the respondent

reserves his right to file the fresh documents/informations with regards to the same during the pendency of the matter.

- II. That the complainant approached the respondent and expressed her interest in booking of an apartment in the Low Cost/Affordable Group Housing project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, she took an independent and informed decision uninfluenced in any manner by the respondent to book the unit in question.
- III. That thereafter, the complainant vide an application form dated 06.09.2012 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 431, located on the 4th Floor, Tower- Rose admeasuring 516.67 sq. ft. (tentative area) was allotted to the complainant.
- IV. Thereafter, a Buyer's Agreement dated 09.02.2013 was executed between the parties.. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.
- V. That as per Clause 5(iii)(b) of the Affordable Housing Policy, 2013, the due date of possession of the unit in question is 4 years from the date of sanction of Building Plans or receipt of environment clearance, whichever is later. It is submitted that the benefit of grace period may also be given to the respondent as per the terms and conditions of the Agreement dated 05.02.2013.

- VI. However, it is pertinent to mention here that the due date/possession clause provided under clause 3 of the Builder Buyer Agreement dated 09.02.2013 was subjective in nature and depended on the allottee/complainant complying all the terms and conditions of the Agreement.
- VII. It is to be noted that the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. That a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 pandemic.
- VIII. That remittance of timely payments by the complainant was of essence and it was an obligation of the complainant to remit all the outstanding dues as per the terms and conditions of the Affordable Housing Policy, 2013 and Agreement executed between the parties. However, the complainant delayed in remitting the same resulting the hampering the construction of the project.
- IX. That the respondent has complied with all of its obligations, not only with respect to the Buyer's Agreement with the complainant but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the Occupation Application before the concerned Authority and successfully attained the Occupation Certificate on 29.11.2019.



That it is pertinent to mention here that after receiving of the Occupation Certificate, the possession of the said unit was lawfully offered to the complainant.

- X. That thereafter the physical possession was taken by the complainant on 24.08.2020 without any demur. It is now, after over 3 years of the offer of possession that the complainant has approached Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. Without prejudice to the contents of the respondent, it is submitted that the present complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter.
- XI. That there exist a delay of 3 years 10 months 15 days in filing of the present complaint and hence the same is liable to be dismissed. Without prejudice to the rights and the contentions of the respondent, it is submitted that the order passed by the Apex court in suo moto no. 3 of 2020 has no applicability in the present case.
- XII. That after giving the lawful possession of the unit to the complainant, the Conveyance Deed was also executed between the complainant and the respondent on 24.06.2020. It is submitted that after execution of the Conveyance Deed, the contractual relationship between the parties stands fully satisfied and comes to an end.
6. During the proceedings dated 10.07.2024, the counsel for the respondent stated that the complaint is barred by limitation and further, conveyance deed has also been executed between the parties. He further submitted that the complainant has sold the unit

vide sale deed dated 21.09.2023 to Ms. Lata Babele and therefore, the complainant is no more an allottee in the matter and the complaint is liable to be dismissed. The Authority had directed the counsel for the complainant to file reply in regard to the same within a period of 2 weeks , but no reply has been filed till date. Meanwhile on 04.09.2024, the counsel for the respondent has filed an application for dismissal of the complaint.

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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. 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

9. 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.

E. II Subject matter jurisdiction



10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

G.I Direct the respondent to delayed possession charges along with interest.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges along with interest on the amount paid. Proviso to section 18 provides 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 rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
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 the possession, at such rate as may be prescribed.*

13. In the present complaint, the complainant is seeking delay possession charges on the total amount paid by her to the respondent for the delay caused by the respondent in handing over the possession of the unit to the complainant. However, during the proceedings of the case, the Authority was apprised by the counsel of the respondent with the fact that the complainant has sold the subject unit to a third party vide sale deed dated 27.09.2023 and the sale deed is brought on record by the counsel alongwith the application of dismissal of complaint.
14. After considering the contentions advanced by the parties, two issues arises before the Authority for consideration :
- Whether the complainant herein falls within the definition of allottee as per section 2(d) of the Act of 2016 and;
 - Whether at the date of filing of complaint any cause of action to claim with regard to delayed possession charges survived in her favour?
15. That the Buyer's Agreement was executed between the parties on 09.02.2013. On the due date for handing over of possession in terms of the agreement, the unit was not complete and the respondent/promoter failed to offer possession of the allotted unit on the due date of handing over of possession. Admittedly, the possession of the unit was offered on 01.12.2019. The conveyance deed for the allotted unit was executed in favour of complainant by



the respondent/promoter on 24.06.2020. However, after taking physical possession of the allotted unit and execution of the conveyance deed, the complainant sold the subject unit in favour of Mrs. Lata Balele vide sale deed dated 27.09.2023. The present complaint was filed on 10.11.2023 by the complainant who is the erstwhile allottee, seeking delayed possession charges under section 18 of the Act of 2016. Now, the issue for determination before the Authority is whether the complainant herein was an allottee at the time of filing of complaint as per provisions of section 2(d) of the Act of 2016 which is reproduced as under:-

"2 In this Act, unless the context otherwise requires-

*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, **has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".***

(Emphasis supplied)

16. Accordingly, following are allottees as per this definition:

- (a) **Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.
- (b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

17. In the present complaint, the complainant is no more an allottee under the provisions of the Act as the complainant does not fall under any of the two categories stated above as the complainant has already transferred the subject unit in favour of Mrs. Lata Babele (subsequent allottees/present owners) vide sale deed dated 27.09.2023. After transferring the unit, the complainant does not have any right, title or interest in the said unit. Thus, the complainant has no locus standi to claim delay possession charges under section 18 of the Act as she does not fall under the definition of allottee as defined under section 2(d) of the Act 2016.
18. In light of the above-mentioned findings of the authority, the complainant is not entitled to any relief and the present complaint stands dismissed on merits accordingly.
19. File be consigned to registry.


Ashok Sangwan
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.09.2024

HARERA
GURUGRAM