



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

**Complaint no.- 2394 of 2019
Date of First hearing-15.10.2019
Date of decision- 11.12.2019**

**Ms. Sangita Narula
R/o. 45, North Avenue Road,
Punjabi Bagh West,
New Delhi - 110026.**

Complainant

Versus

**M/s Godrej Properties Ltd.
(through its Director/A.R.)
Address: - Plot no. 35, 3rd floor, UM House,
Sector- 44, Gurugram, Haryana.**

Respondent

CORAM:

**Shri Samir Kumar
Shri Subhash Chander Kush**

**Member
Member**

APPEARANCE

Shri Praveen Kumar

Advocate for the complainant

Shri Kapil Madan and Shri Saurabh Gauba

Advocates for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of 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.No.	Heads	Information
1.	Project name and location	Godrej Frontier, Sector 80, Gurugram.
2.	Project area	13.7437 acres
3.	Nature of project	Group housing colony
4.	RERA registered/ not registered	Not registered
5.	RERA registration valid upto	N/A
6.	License No. & validity status	88 of 2008 dated 7.5.2008 valid upto 6.5.2020
7.	Name of licensee	Conway Developers Ltd.
8.	Unit no., Tower no.	1103, Tower G
9.	Carpet area	2262 sq. ft. (super area)
10.	Increase/decrease in super-area	N/A
11.	Date of execution of agreement	7.12.2018 (Pg. 50 of the complaint)
12.	Payment plan	Construction linked payment plan (Pg. 106 of the complaint)
13.	Total sale consideration	Rs. 1,01,09,492/- (as per agreement, Pg. 67 of the reply)
14.	Total amount paid by the complainant	Rs. 1,00,91,859/- (as per SOA dt. 17.12.2018, Pg. 92-93 of the complaint)
15.	Due date of delivery of possession as per agreement	Clause 4.2 - Apartment was ready for possession, on the date of execution of agreement dated 07.12.2018. However, possession notice was to be issued. (sic)
16.	Period of delay in handing over possession till date	No delay
17.	Status of project (ongoing/complete)	OC received
18.	Details of Occupation Certificate, if any,	Date of OC granted, if any, by the competent Authority - 16.10.2014

		Area/Tower for which OC obtained- Tower A1 to A4, B to G
19.	Date of offer of possession, if any	22.10.2014 (Annx G, Pg. 130 of the complaint)
20.	Specific relief sought	<ul style="list-style-type: none"> • Possession of the flat in question; • Quashing of demand for maintenance charges; • Return of Rs. 2,97,204/- and Rs. 25,212/- as paid by the complainant towards maintenance charges and electricity charges.

3. The complainant has made the booking of apartment/unit no. 1103, Tower G in Godrej Frontier, Sector 80, Gurugram with the respondent. Possession of the said apartment/unit has been offered on 22.10.2014 after receipt of occupation certificate from the competent authority on 16.10.2014. However, the apartment buyer's agreement for the apartment in question was executed on 7.12.2018 for the reasons stated in the complaint. The respondent kept on making demands of payments from the complainants as per the details given in the complaint but despite making payments, the respondent has not handed over the possession of the subject apartment to her and the respondent has charged Rs. 2,97,204/- towards maintenance and electricity charges. The grievance of the complainant is that the respondent has kept on charging maintenance charges and club membership charges time and again via demand letters which was illegal and the respondent has failed to redress the grievance of the complainant despite repeated reminders. Hence, this complaint for the following reliefs :-

- *Delivery of possession of the apartment and registry of the same be done in favour of the complainant;*
- *Restrain the respondent from raising invoice in the name of complainant while the possession is retained forcefully by them;*
- *Refund of Rs. 2,97,204/- as charged by the respondent towards maintenance charges and electricity charges.*

4. On the date of hearing the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

5. The respondent contests the complaint on following grounds: -
 - 1.They duly completed the said project/ apartment (in a phased manner) with all amenities as promised. It is submitted that the respondent received the occupancy certificate from Directorate of Town and Country Planning (DTCP) on 16.10. 2014.
 - 2.It is submitted that the respondent called upon the complainant to take possession of the apartment vide letter dated 22.10.2014.
 - 3.It is submitted that vide the possession letter, the complainant was clearly notified that the maintenance charges shall be applicable from 31st day from the issuing of possession letter. Furthermore, clause 14 of the terms and conditions annexed with the application form clearly stated that maintenance and electricity charges shall have to be paid by the complainant which may be levied by the association or by a maintenance agency employed or hired for the same purpose.
 4. It is submitted that the respondent in the past has offered certain waivers regarding holding charges, maintenance charges as mark of a goodwill gesture, and has always answered the queries of complainant thus treated the

complainant as their most valued customers, however, the complainant has now developed a habit of seeking unreasonable waivers and is now trying to take undue advantage by raising frivolous and false allegations against the Respondent.

5. It is submitted that the complainant has miserably neglected to perform her part of the obligation in as much as the complainant has miserably failed to clear payment against maintenance charges issued as payable under the agreed terms and conditions. As on date an amount of Rs.1,50,121/- is still due and payable by the complainant towards maintenance charges.
6. It is submitted that the complainant has defaulted on various invoices dated 07.03 .2017, 17.03.2017, 20.05.2017, 07.06.2017, 27.07.2017 and 11.07.2018. The complainant was asked to clear an outstanding amount of Rs.6,95,597/- and Rs.1,29,223/- vide letter dated 22.10.2014, however, the complainant failed to do full payment and also failed to comply with clause 2.4 of the agreement. Again vide an email dated 04.07.2018 the respondent requested for an amount of Rs. 54,070 / -. But yet again the complainant failed to comply and has since continued to be in default with regard to payments due to the respondents, Further the respondent requested the complainant to clear a sum of Rs. 41,759/- and Rs. 98,713/- vide email dated 02.08.2018 and 14.2.2019.
7. It is submitted that instead of paying the balance consideration, the complainant started ranking frivolous

issues in order to somehow arbitrarily seek waivers and possession without clearing the dues, in view to cover up its own defaults of not making the payment.

8. The complainant with the intention of avoiding maintenance charge has not taken the possession and is harassing the company through a well architected plan. Respondent being a developer of the project, the respondent can only offer possession of the apartment and as a matter of fact and respondent has indeed sent numerous letters thereby offering possession to the complainant. However, in order to avoid payment of maintenance charges, the complainant has willingly not turned up to take the possession.

6. It is prayed that the complaint be dismissed.

7. Copies of all the relevant documents 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.

8. The Authority on the basis of information and explanation and other submissions made and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.

9. Arguments are heard.

10. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also

to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

11. On consideration of the circumstances, the evidence and other record and submissions made by both the complainant and respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the complainant is in contravention of the provisions of section 19(6) of the Act. Accordingly, it is the failure of the complainant-allottee to fulfil her obligations, responsibilities to take the possession of the subject apartment within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 19(6) of the Act on the part of the complainant is established. At the same time, the respondent is also not entitled to levy any maintenance charges without handing over the possession of the subject apartment to the complainant.

12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act :-

1. Since the occupation certificate as well as offer of possession letter have been issued much prior to the coming into force of RERA, as such complainant is directed to take possession of the allotted unit within a period of 30 days from the date of passing


of this order failing which the respondent is entitled to charge holding charges.

2. Respondent is also directed to get the conveyance deed executed within a period of 30 days after handing over actual possession of the allotted unit to the complainant and thereafter the respondent is entitled to charge maintenance charges from the date of handing over of possession. The relevant portion with respect to charging of maintenance charges is as under: -

“Maintenance charges shall mean all costs, charges, fees, etc. by whatever name called, including but not limited to requisite security deposit, periodic maintenance charges, sinking funds, etc. payable by the buyer after actual possession to be developer association and/or maintenance agency, as the case may be, for the right to use common areas or facilities and limited common area and facilities in the project and does not include the charge for actual consumption of utilities in the apartment, which shall be charge son actual consumption basis.”

13. The complaint stands disposed of accordingly.
14. The case file be consigned to registry.


(Samir Kumar)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated - 11.12.2019