

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

Complaint no. : 1666 of 2019
Date of First hearing: 17.09.2019
Date of decision : 19.12.2019

1. Sh. Vinish Bhalotra
2. Ms. Sunita Bhalotra

Residents of:- E-012, Raheja's Atlantis,
Sector – 31,32, Gurugram(Haryana)

...Complainants

Versus

M/s Tashee Land Developers Pvt. Ltd.
Address: 517A Narain Manzil, 23
Barakhamba Road, Connaught Place,
New Delhi-110001

...Respondent

CORAM:

Sh. Samir Kumar
Sh. Subhash Chander Kush

Member
Member

APPEARANCE:

Sh. Sushil Yadav
Sh. Gaurav Srivastava

Advocate for the complainants
Advocate for the respondent

ORDER

1. A complaint dated 12.04.2019 was filed 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) by the complainants Sh. Vinish Bhalotra and Ms. Sunita Bhalotra against the promoter M/s Tashee Land Developers



Pvt. Ltd. in respect of flat described below in the project 'Capital Gateway', sector 111, Gurugram for not delivering the possession on due date which is in violation of section 11(4)(a) of the Act.

2. Since, the flat buyer's agreement was executed on 25.07.2013, i.e. prior to the commencement of the Act, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Act.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Capital Gateway" in Sector 111, Gurugram
2.	Nature of real estate project	Group housing colony
3.	Total area of the project	10.462 acres
4.	Flat no.	201, 2 nd floor, tower 'C'
5.	Unit area	1990 sq. ft.
6.	RERA Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018 (for phase-I, tower A to G and phase II Tower H to J)
7.	Revised date of completion as per RERA registration certificate	31.12.2020 (for phase I) 31.12.2021 (for phase II Tower H to J)
8.	DTCP license	34 of 2011 dated 16.04.2011
9.	Date of flat buyer's agreement	25.07.2013
10.	Total consideration	Rs. 76,82,585/-

		(as per summary details at pg. 50 of the complaint)
11.	Total amount paid by the Complainants	Rs. 68,90,534/- (as per summary details at pg. 50 of the complaint)
12.	Payment plan	Construction linked payment plan
13.	Date of delivery of possession [As per Clause 2.1 of the flat buyer's agreement- within 36 months from the date of sanction of building plans, i.e. 07.06.2012 (as per building plan approval) + 180 days grace period]	07.12.2015
14.	Relief sought	Possession along with prescribed interest

4. The details provided above have been checked on the basis of the record available in the case file. A flat buyer's agreement dated 25.07.2013 is available on record, according to which the possession of the subject unit was to be handed over by 07.12.2015. However, the respondent has neither delivered the possession till date nor paid the penalty amount for delay as per the terms of agreement dated 25.07.2013.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for pleading guilty or pleading not guilty. The case came up for hearing on 17.09.2019. The reply has been filed by the respondent on 09.05.2019 and the same has been perused by the authority.

Respondent's reply:-

6. Reply is not signed by any one, nor authority letter to file the reply has been filed on behalf of the respondent. Hence, this is no reply in the eyes of law. Anyhow, according to the respondent, project could not be completed within time due to force majeure circumstances.

Arguments are heard:-

7. As per clause 2.1 of the flat buyer's agreement executed on 25.07.2013, possession of the booked unit was to be handed over within a period of 36 months along with a grace period of 180 days from the date of sanction of building plans. The relevant clause is reproduced below:-

"...the confirming party proposes to handover the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of building plans of the said colony, the purchaser agrees and understands that the first party/confirming party shall be entitled to a grace period of 180 days, after the expiry of 36 months....."

8. The sanction of building plans was approved on 07.06.2012. Thus, the possession of the subject unit was to be handed over to the allottee by 07.12.2015. Since, the respondent has not handed over the possession of the subject unit till now, the complainants are liable to get the delayed possession charges @ 10.20% per annum as per provisions of section 18(1) of the Act read with rule 15 of the Rules from the due date of handing over the possession till date of offer of possession.



9. 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.
10. 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 section 35(1) read with rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the agreement for sale dated 25.07.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established.

Decision and directions of the authority: -


11. The authority exercising its power under section 37 of the Real Estate(Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:-

- i. The respondent shall pay delayed possession charges at prescribed rate of interest @ 10.20 % per annum w.e.f. 07.12.2015 till offer of possession as per the proviso to section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not a part of the BBA.
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @ 10.20% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

12. Complaint stands disposed of.

13. Case file be consigned to the registry.


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


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

Date: 19.12.2019

Judgement uploaded on 17.01.2020

