

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

**Complaint no. : 2159 of
2018**

First date of hearing : 18.04.2019

Date of decision : 17.12.2019

Shailendra Kumar Mishra
R/o A/10/154, Air India Colony, Vasant Vihar,
South West Delhi - 110057

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
14A-36, WEA, Karol Bagh, New Delhi

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Vinayak Gupta Advocate for complainant
Shri Sandeep Choudhary Advocate for respondent

ORDER

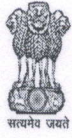
1. A complaint dated 27.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) by the

complainant Shailendra Kumar Mishra against the respondent M/s Apex Buildwell Pvt. Ltd on account of violation of clause 3(a) of the apartment buyer's agreement executed on 22.02.2013 in respect of the unit described in the table given below for not handing over possession on the due date i.e. 02.06.2017 which is an obligation under section 11(4)(a) of the Act.

2. Since the apartment buyer's agreement dated 22.02.2013 was executed prior to the commencement of the Act, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Apartment	589, 5 th floor Tower Iris
3.	Project area	10.144 acres
4.	Admeasuring super area of the unit	48sq.mtrs
5.	RERA registered/not registered	Registered
6.	Registration no.	40 of 2019
7.	Revised date of RERA registration	01.12.2019
8.	DTCP license no.	13 of 2012 dated 22.02.2012
9.	Nature of real estate project	Affordable group housing colony



10.	Date of execution of apartment buyer's agreement	22.02.2013
11.	Payment Plan	Time linked plan
12.	Total sale consideration (BSP of the apartment as per agreement dated 22.02.2013)	Rs. 16,00,000/-
13.	Total amount paid by the complainant till date (as per provisional allotment letter dated 23.10.2018)	Rs. 12,80,000/-
14.	Consent to establish granted by the Authority on (Taken from similar cases)	02.12.2013
15.	Due date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months' grace period from the date of commencement of construction upon receipt of all approvals)	02.06.2017 Note: Possession not offered so far
16.	Relief sought(in specific terms)	<ul style="list-style-type: none">• To direct the respondent to pay delayed possession interest• To direct the respondent to hand over the possession.

4. The details provided above have been checked on the basis of the records available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement dated 22.02.2013 is available on record for the aforementioned apartment according to which the possession of

the aforesaid unit was to be delivered by 02.06.2017. The respondent has failed to fulfil its contractual obligation by neither delivering the possession within the stipulated period nor paying the compensation as per the terms of the agreement dated 22.02.2013.

5. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the buyer's agreement and failed to offer the possession in terms of section 18 of the Act read with Rules. Hence, this complaint for the aforementioned reliefs.
6. 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.
7. The respondent contests the complaint inter alia on the ground mentioned in the reply according to which the reason to delay was beyond his control.

Arguments heard.

- By virtue of clause 3 (a) of the Builder Buyer Agreement executed between the parties on 22.02.2013, possession of the



booked unit was to be delivered within a period of 36 months plus 6 months' grace period from the date of commencement of construction. The consent to establish was granted by the competent authority on 2.12.2013. Therefore, the due date of handing over possession comes out to be 2.6.2017.

- 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.
- 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 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 apartment buyer's agreement

dated 22.02.2013 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.

- The respondent has failed to hand over the possession by the due date which is in violation of obligation of promoter under section 11 (4)(a) of the Act. As such the complainant is held entitled for delayed possession charges @ 10.20 % p.a. w.e.f. 2.6.2017 as per provisions of section 18(1) Act till actual date of offer of possession.
- 8. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -
 - i. The respondents shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.20% p.a. from due date of possession i.e. 02.06.2017 till actual date of offer of the possession.
 - ii. The arrears of interest accrued so far shall be paid to the complainant 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. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @ 10.20% by the promoter which is the same is being granted to the complainant in case of delayed possession charges.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for delayed period.
- v. The respondent shall not charge anything from the complainant which is not part of apartment buyer's agreement.
- vi. On 13.07.2019, a team of local commissioner consisting S/Shri Sumeet, Nikhil and Satyjeet, Engineer Executive of the authority has gone to visit the site. However, the builder adopted strong arm tactic against them and a complaint to this effect was filed in local police station. The builder as per the provisions of RERA Act cannot and should not deny any home buyer to visit the site to see the progress of the project. A warning is being issued to the promoter/builder to desist

such type of wrong tactic in future. All the complainants are directed to visit the site in peaceful manner.

9. The order is pronounced.
10. Case file be consigned to the registry


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:17.12.2019

JUDGEMENT UPLOADED ON 17.01.2020