



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

Complaint no. : 3283 of 2019

First date of hearing : 19.12.2019

Date of decision : 19.12.2019

Pranav Kumar

NT 4-701, Eldeco Uthopia, Sector 93A, Noida,
U.P.

Complainant

Versus

ATS Real Estate Builders Private Limited
ATS Tower, Plot No. 16, Sector 135, Noida-
201305

Respondent

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Sh. Sushil Yadav

Sh. M.K. Dang and Mr. Garvit
Gupta

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint dated 06.08.2019 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 to the allottee as per the flat buyer agreement executed inter se them.



2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	"ATS Marigold", Sector 89A, Gurugram.
2.	Project area	11.125 Acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	87 of 2013 dated 11.10.2013 valid upto 10.10.2017 (No further record is available)
5.	Name of licensee	Vatika Ltd.
6.	Registered/ not registered	Registered (55 of 2017)
7.	Unit no.	5184 ,18 th floor , Tower 5
8.	Unit measuring	1750 sq. ft.
9.	Date of execution of buyer's agreement	16.02.2015
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per applicant ledger dated 18.07.2019 at page 45 of the complaint	Rs.1,42,05,903/-
12.	Total amount paid by the complainants as per applicant ledger dated 18.07.2019 at page 45 of the complaint	Rs.9,662,778/-
13.	Due date of delivery of possession as per clause 6.2 of the said agreement i.e. 42	16.02.2019



	months with a 6 months grace period from date of execution of the flat buyers agreement i.e. 16.02.2019.	
14.	Specific relief sought	<ol style="list-style-type: none">i. To direct the respondent to pay the prescribed interest per annum from the promised date of delivery till the actual possession of the flat is delivered to the complainant.ii. Direct the respondent to deliver immediate possession of the unit.

3. As per clause 6.2 of the agreement, the possession was to be handed over within a period of 42 months with a 6 months' grace period from the date of execution of the flat buyer agreement i.e.16.02.2015 . Clause 6.2 of the buyer agreement is reproduced below:

“6.2. The developer shall endeavour to complete the construction of the apartment within 42 months from the date of this agreement, with a grace period of 6 months , subject always to timely payment of all the charges including the basic sale price , stamp duty , registration fees and other charges as stipulated herein ...”

4. The project is an ongoing project in terms of the Act. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the buyer's agreement and failed to



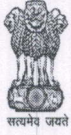
offer the possession in terms of section 18 of the Act read with Rules. Hence, this complaint for the aforementioned reliefs.

5. 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.
6. The respondent contests the complaint on the grounds that the complainant made the delay in making payments of the amount towards the sale consideration and that the construction tower in question is almost complete and the respondent shall apply for grant of the OC soon. Hence 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 the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
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 the complainants and the 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. By virtue of clause 6.2 of the flat buyer agreement executed between the parties on 16.02.2015, possession of the booked unit was to be delivered within a period of 42 months plus 6 months' grace period from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 16.02.2019. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the allotment letter dated 16.02.2015 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.
11. As such the complainants are entitled for delayed possession charges at the prescribed rate of 10.20% p.a. w.e.f. 16.02.2019 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:



- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 16.02.2019 till the offer of possession . The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
 - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
- (i). Complaint stands disposed of. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.12.2019

Judgement uploaded on 17.01.2020