

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

Complaint no. 3608 of 2019
Date of First hearing 18.12.2019
Date of decision 18.12.2019

Shri Mohit Khirbat

Address – Flat No. D1/703, Parsvnath Exotica,
Sector 53, Gurugram (Haryana)

Complainant

Versus

1. M/s. Hometown Properties Pvt. Ltd.

2. M/s Mascot Buildcon Pvt. Ltd.

Both Regd. Office: -294/1, Vishwakarma Colony,
Mehrauli Badarpur Road, Opposite ICD Lal Kuan,
New Delhi - 110044.

Respondents

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE.

Shri Sukhbir Yadav

Shri S. K. Sharma

Shri Gulshan Sharma

Advocate for the complainant

G.M. of the respondent

Advocate for the respondent

ORDER

1. The present complaint dated 22.08.2019 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	Oodles Skywalk, Sector 83, Gurugram
2.	Project area	3.0326 acres
3.	Nature of project	Commercial project
4.	RERA registered/ not registered	Registered vide no. 294 of 2017 dated 13.10.2017
5.	RERA registration valid upto	31.12.2019
6.	License No. & validity status	License No. 08 of 2013 dated 05.03.2013 valid upto 4.3.2017
7.	Name of licensee	M/s. Omaxe Ltd. and others.
8.	Unit no., Tower no.	G-22, Ground floor (shifted from shop no. G-26)
9.	Carpet area	241.540 sq. ft. (super area)



10.	Increase/decrease in super-area	N/A
11.	Date of execution of agreement	6.4.2015 (Pg. 51 of the complaint)
12.	Payment plan	Construction linked payment plan (as per Pg. 54 of the complaint)
13.	Total sales consideration	33,43,096/- (as per demand letter cum SOA dated 18.7.2019, Pg. 76 of the complaint)
14.	Total amount paid by the complainant	22,69,989.42/- (as per demand letter cum SOA dated 18.7.2019, Pg. 76 of the complaint)
15.	Due date of delivery of possession as per agreement	06.07.2018 (Clause 38 – 36 months + 3 months' grace period from the date of execution of agreement or commencement of construction, whichever is later) <ul style="list-style-type: none"> Note- As per demand letter dated 18.7.2019, construction was commenced on 30.3.2014, so due date has been calculated from the date of execution of agreement.
16.	Period of delay in handing over possession till date	1 year, 5 months and 12 days.
17.	Status of project (ongoing/complete)	ongoing
18.	Details of Occupation Certificate, if any,	Not available
19.	Date of offer of possession, if any	Not offered till dated
20.	Specific relief sought	<ul style="list-style-type: none"> Direct the respondent to handover the possession of shop with occupation certificate and specification and also direct the respondent to pay interest for every month of delay from due date of possession till handing over of the possession; Direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road,

		water, sewerage, etc. before handing over the physical possession of the shop.
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3. As per the space buyer's agreement in question vide clause no. 38 the possession was to be handed over within a period of 36 months plus grace period of three months from the date of execution of agreement or commencement of construction, whichever is later. The due date of delivery of possession on calculation from the date of execution of agreement comes out to 06.07.2018.

The relevant clause of the space buyer's agreement reads as under:

"38. The "Company" will based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months.....of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months...."

4. Possession of the shop in question has not been offered or given so far despite repeated reminders and requests. It was alleged by the complainants that respondent fails to honour the obligations under buyer's agreement. Hence, this complaint.

For the following reliefs:-

1. Direct the respondent to handover the possession of shop with occupation certificate and specification and also direct the



respondent to pay interest for every month of delay from due date of possession till handing over of the possession;

2. Direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, etc. before handing over the physical possession of the shop. However, despite service of notice through speed post as well as vide email the respondent did not file its reply to the complaint.
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. However, despite service of notice through speed post as well as vide email the respondent did not file its reply to the complaint.
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 complainant 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 complainant and respondent and based on the findings of the authority regarding contravention as per the 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 30.7.2017 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. Arguments heard. By virtue of clause 38 of the space buyer's agreement executed between the parties on 06.04.2015, possession of




the booked shop was to be delivered with a period of 36 months plus 3 months grace period from the date of commencement of construction i.e. 30.03.2014, therefore, the due date of handing over of possession comes out to be 06.07.2018. Hence, the complainant is entitled for delayed possession charges at the prescribed rate of interest as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.


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

1. The complainant is entitled for delay possession charges at the prescribed rate of interest of 10.20% p.a. with effect from 06.07.2018 (due date of delivery of possession) till the offer of possession;
2. The arrears of interest accrued so far from the due date of delivery of possession, 30.07.2017 till the date of this order shall be paid to the complainants within a period of 90 days and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent English calendar month;
3. The complainant is directed to pay outstanding dues, if any after adjustment of interest for the delayed period. Interest on the due payments from the complainant shall be charged by the

respondent at the prescribed rate of interest @ 10.20% p.a. which is the same as is being granted to the complainant in case of delayed possession charges.

4. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.
13. Complaint stands disposed of.
14. Case file be consigned to the registry.


Samir Kumar
(Member)


Subhash Chander Kush
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date: -18.12.2019.

