

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

Complaint no. : 1038 of 2019
First date of hearing : 03.10.2019
Date of decision : 17.12.2019

M/s Neeleshwari Diagnostics Pvt. Ltd.
(through its authorised signatory)
Address: L 32/7, DLF city, Phase 2,
Gurugram, Haryana: 122002.

Complainant

Versus

M/s Ansal Phalak Infrastructure Pvt. Ltd.,
Address: 1202, Antriksh Bhawan,
16, Kasturba Gandhi Marg,
New Delhi: 1110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Manish Yadav Advocate for the complainant
Ms. Charu Yadav Sharma AR Advocate for the respondent
with Siddharth Yadav
advocate

ORDER

1. A complaint dated 26.03.2019 was filed under section 31 of the Real Estate (Regulation and Development Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 (in short, the rules) by the complainant M/s Neeleshwari Diagnostics Pvt. Ltd. against the promoter M/s Ansal Phalak Infrastructure Pvt. Ltd. , on account of violation of clause 5.1 of the floor buyer agreement executed on 23.05.2012, in respect of apartment/unit bearing no. D1558FF with area measuring 2198 sq. ft. in the project "Sovereign Floors Esencia " at Sector 67 , Gurugram for not handing over the possession by the due date which is an obligation on the promoter under section 11(4)(a) of the Act.

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

1.	Name and location of the project	Sovereign Floors Esencia, Sector 67, Gurugram
2.	Nature of project	Integrated residential colony
3.	Registered/Unregistered	Registered 336 of 2017 dated 27.10.2017
4.	RERA registration valid up to	31.12.2019
5.	DTCP license no.	21 of 2011 dated 24.03.2011
6.	Date of agreement	23.05.2012
7.	Unit no.	D1558FF
8.	Area of unit	2198 sq. ft.

9.	Total consideration as per payment plan annexed on page no. 47 of the complaint	1,60,94,550/-
10.	Total amount paid by the complainant (as per the averments in the complaint)	Rs. 1,56,91,278/-
11.	Due date of possession as per clause 5.1 of the agreement: Within 30 months + grace period of 6 months from date of execution of agreement or date of sanction of building plan ,whichever is later.	23.05.2015 (Calculated from the date of execution of agreement) (Note: Possession not offered so far)
12.	Reliefs Sought	1. To direct the respondent to pay delay possession charges to the complainant . 2. To direct the respondent company to handover possession of the apartment .

3. 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 . A floor buyer agreement dated 23.05.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 23.05.2015. 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 23.05.2012. Hence this complaint.

4. The respondent has utterly failed in fulfilling their obligation of delivering the unit as per the floor buyer agreement and failed to offer the possession in terms of section 18 of the Act read with the Rules. Hence, this complaint for the aforementioned relief.
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. Copies of all the relevant documents have been filed and placed on the record, authenticity of which is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
7. The Authority on the basis of information, explanation, 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.

Arguments heard.

- As per clause 5.1. of the floor buyer agreement dated 23.05.2012 executed between the parties, the respondent was duty bound to deliver the possession of the allotted unit to the complainant within a period of 30 months plus six months as grace period which comes out to be 23.05.2015.
- 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 respondents are in

contravention of the provisions of the Act. By virtue of clause 5.1 of the floor buyer agreement executed between the parties on 23.05.2012, possession of the booked unit was to be delivered within a period of 30 months with 6 months' grace period from the date of execution of the agreement or the date of sanction of the building plan whichever falls later. Therefore, the due date of handing over possession comes out to be 23.05.2015 (calculated from the date of execution of the agreement). Accordingly, it is the failure of the promoters to fulfil their obligations, responsibilities as per the floor buyer agreement dated 23.05.2012 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 respondents is established.

- As such the complainants are entitled for delayed possession charges w.e.f. 23.05.2015 till the date of offer of possession at the prescribed rate of interest i.e. 10.20.% p.a. as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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 to the respondent:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.20% per annum w.e.f. 23.05.2015 till the date of offer of possession as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 read with rule 15 of the rules.
- 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 each subsequent month.
- iii. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.20% p.
 - a. by the promoter which is same as is being granted to the complainant in case of delayed possession.
- iv. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The promoter shall not charge anything from the complainant which is not part of the floor buyer agreement.

9. Complaint stands disposed off

10. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 17.12.2019

JUDGEMENT UPLOADED ON 28.01.2020

HARERA
GURUGRAM