

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

Complaint no. : 2526 of 2019
Date of first hearing: 17.09.2019
Date of decision : 19.12.2019

M/s. Amrit Corp. Limited.

(Through its Executive Director)

Address:- A-95, Sector 65, Noida (U.P.)

Regd. Office:- CM/28 C, 1st floor, Gagan
Enclave, Amrit Nagar, G.T. Road, Ghaziabad
(U.P.) 201009

Complainant

Versus

M/s. Ashiana Landcraft Realty Pvt. Ltd.

(Formerly known as M/S Viroma Developers
Pvt. Ltd.)

Address:- 3H, Plaza M6,
District Center Jasola, New Delhi – 110025

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Gayatri Verma
Shri S.M. Ansari

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 19.06.2019 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 complainant M/s. Amrit Corp. Ltd. through its



executive Director Mr. Jagdish Chand Rana against the promoter M/s Ashiana Landcraft Realty Pvt. Ltd., on account of violation of clause 11.2 of apartment buyer's agreement (ABA, in short) executed on 19.09.2014, in respect of flat bearing no. A-804, Floor no. 08, Tower no. T2 which subsequently changed to apartment no. A-1604, 16th Floor, Tower no. T2 (as is made clear by the respondent in the reply to the complaint) with area measuring 1565 sq. ft. in the project "The Centre Court" at Sector 88A, 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	"The Center Court" in Sector 88A, Gurugram
2.	Nature of real estate project	Residential group housing colony
3.	RERA Registered/ Unregistered	Registered 46 of 2017 dated 11.08.2017
4.	Registration Valid up to	30.06.2020
5.	Total area of the project	14.025 acres
6.	DTCP License no.	46 of 2013 dated 08.06.2013
7.	Apartment no.	A-1604,16th floor ,Tower T2(Revised unit)
8.	Unit area	1565 sq. ft. super built up area



9.	Date of apartment buyer's agreement (legible copy filed with the reply to the complaint)	19.09.2014
10.	Total consideration as per page 60 of the complaint	Rs. 1,05,72,460/-
11.	Total amount paid by the Complainant as per the averments (page no. 9 of the complaint)	Rs. 1,04,20,970/-
12.	Payment plan	Construction linked payment plan
13.	Due date of delivery of possession [Clause. 11.2- 42 months plus 6 months' grace period from the date of agreement]	19.09.2018 (Note: possession not offered so far)
14.	Reliefs Sought (in specific terms)	1. To direct the respondent to pay delay possession charges to the complainant. 2. To direct the respondent 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 complainants and the respondent. An illegible copy of apartment buyer's agreement dated 19.09.2014 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered



by 19.09.2018. 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 19.09.2014.

4. 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 the 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 inter alia on the grounds mentioned in the reply which according to him were beyond his control.
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 both the



parties is of considered view that there is no need of further hearing in the complaint.

Arguments heard.

9. As per clause 11.2 of the apartment buyer's agreement dated 19.09.2014 executed between the parties, the respondent was duty bound to deliver the possession of the allotted unit to the complainants within a period of 42 months plus six months as grace period which comes out to be 19.09.2018.
10. 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.
11. 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. By virtue of clause 11.2 of the apartment buyer's agreement executed between



the parties on 19.09.2014, possession of the booked unit was to be delivered within a period of 42 months plus six months' grace period from the date of execution of agreement. Therefore, the due date of handing over possession comes out to be 19.09.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 19.09.2014 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.

12. As such the complainants are entitled for delayed possession charges w.e.f. 19.09.2018 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.
13. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.20% per annum w.e.f. 19.09.2018 till the date of offer of possession of the subject apartment to the

complainant 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 the 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 apartment buyer's agreement.

14. Complaint stands disposed off.
15. Case file be consigned to the registry.

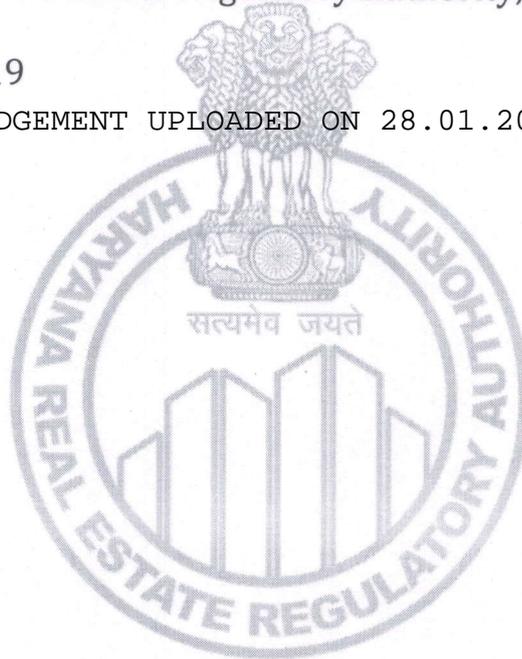

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:19.12.2019

JUDGEMENT UPLOADED ON 28.01.2020



HARERA
GURUGRAM