



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

| | |
|--------------------------------|--|
| Day and Date | Wednesday and 25.7.2018 |
| Complaint No. | 176/2018 case titled as Mr. Abhishek Mehta & anr. Versus M/S Sare Gurugram Pvt. Ltd. |
| Complainant | Mr. Abhishek Mehta & anr. |
| Represented through | Complainant in person with Shri Sushil Yadav, Adv. |
| Respondent | M/S Sare Gurugram Pvt. Ltd. |
| Respondent Represented through | Shri Manoj Kumar, Advocate for the respondent. |

Proceedings

The project is registered.

The documents submitted by the counsel for the respondent were taken on record. The project is in seven phases. For the phases-I and phase-II occupation certificate was received on 19.3.2014. For phase-III project part occupation certificate for 372 units was applied on 11.7.2017 and part occupation certificate was granted on 20.12.2017. As such, on the date of coming into force of the Rules, there was neither occupation certificate for these units, nor the application was complete as mentioned above. From the perusal of the record annexure VI, the NOC from the Director, Fire Services Haryana was issued on 4.10.2017. Accordingly, the application made to the competent authority for issuing partial occupation certificate was not complete on the date of application. Accordingly, on the date of coming into force the Real Estate (Regulation and Development) Act, 2016 and The Haryana Real Estate (Regulation and Development) Rules, 2017 there was no partial occupation certificate with the respondent for this phase and also the application was not complete in all respects on the date of application i.e. 11.7.2017. Similarly, for 453 units occupation certificate was applied on 30.4.2017 for which occupation certificate is awaited. From the perusal of Annexure-VII, it is clear that the NOC from the Director Fire Services, Haryana was not submitted alongwith the application. Accordingly part of this phase is also registerable. From the perusal of Annexure-VI it is further evident that the internal work was also not complete as per the report of Chief Administrator, HUDA.

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम


New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Occupation certificate was applied in April 2017 which is still awaited and necessary documents with the application have not been attached. Accordingly, the application cannot be said to be complete. The respondent is directed to apply for registration for phase-III within one month from today. For rest of the units, registration stands already applied and granted.

The interest for the delayed amount accrued so far after adjusting any due against the allottee be paid within 45 days from this order. Interest for every month of delay till handing over the possession for future months be paid before 10th of every subsequent month. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the Registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)
25.7.2018


Subhash Chander Kush
(Member)

PROCEEDINGS OF THE DAY

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
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भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
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**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint No. : 176 of 2018
Date of Institution : 19.04.2018
Date of Decision : 25.07.2018

1. Abhishek Mehta R/o H Block 101, Rohan Vasantha Apartment, Varthur Road, Marathahalli, Bengaluru, Karnataka-560037
2. Priya Mehta R/o H Block 101, Rohan Vasantha Apartment, Varthur Road, Marathahalli, Bengaluru, Karnataka-560037

...Complainants

Versus

1. M/s Sare Gurugram Private Limited
Regd. Office E-7/12, LGF, Malviya Nagar,
New Delhi- 110017

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member



APPEARANCE:

Complainant in person with
Shri Sushil Yadav
Shri Manoj Kumar

Advocate for the complainants

Advocate for the respondent



ORDER

1. A complaint dated 19.04.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants (Mr. Abhishek Mehta & Priya Mehta) against the promoter (M/s SARE Gurugram Private Ltd.) on account of violation of Clause 3.3 of the Flat Buyers' Agreement executed on 29.08.2012 for unit no. 106, tower 15 in the project described as below for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.
2. The particulars of the complaint are as under: -

| | | |
|----|---|---|
| 1. | Name and location of the project | Green Parc 2, Phase 4, Crescent Parc, Sector 92, Gurugram |
| 2. | Flat/Apartment/Plot No./Unit No. | 106, T-15, First floor |
| 3. | Booking amount paid by the buyer to the builder/promoter/company vide agreement | Rs. 4,79,399/- |
| 4. | Total consideration amount as per agreement | Rs. 57,03,590/- |
| 5. | Total amount paid by the complainants upto date | Rs 56,90,000/- |
| 6. | Percentage of consideration amount | 99% Approx. |
| 7. | Date of delivery of possession. (36 months from the date of commencement of construction i.e. 10.01.2013) | Clause 3.3, Jan 10, 2016 |



| | | |
|-----|---|---------------------------------------|
| 8. | Delay of number of months/ years upto 25.07.2018 | 2 years 7 months |
| 9. | Penalty Clause as per builder buyer agreement | Clause 3.3, Rs 5/ Sq. ft per month |
| 10. | Cause of delay in delivery of possession | No valid reason |

3. As per the details provided above, which have been checked as per record of the case file, a flat buyer agreement is available on record for Unit No. 106, Tower T-15, first floor, adm. 1261.00 sq. ft. super area, according to which the possession of the aforesaid unit was to be delivered by January 2016. The promoter has failed to deliver the possession of the said unit to the complainants by the due date nor has paid any compensation i.e. @ Rs. 5 per Sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 29.08.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

4. In the present complaint, the complainants are seeking the following reliefs:

i. Interest on amount of Rs. 56.90 Lacs at 18% interest rate from 10th January 2016 till date.

ii. To refund amount of Rs. 56.90 lacs paid against the flat.



- iii. To repay EMI of Home loan the complainants had taken i.e. Rs. 29 Lacs.
- iv. To repay the rent they had to pay from 10th January 2016 till date @ Rs. 25,000 p.m.
- v. To repay Rs. 2,66,755 to cover the loss of home loan insurance.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 24.05.2018. The case came up for hearing on 24.05.2018, 10.07.2018 & 25.07.2018. The reply has been filed on behalf of the respondent on 07.06.2018. The respondent contended that as per the registration certificate issued to them by the Interim Haryana Real Estate Regulatory Authority, Panchkula, the completion date is extended to 31.03.2019 and hence the complaint is premature. On the contrary, the respondent is contending that the parties are bound by the terms and conditions of the agreement and any relief beyond the terms and conditions of the Flat buyers' agreement are unjustified. The respondent further stated that taking home loans and paying rent is the sole discretion of the allottee and that the respondent is not liable on any account for such liability.



As per clause 3.3 of the Flat buyers' agreement, the Company proposed to hand over the possession of the said unit by January

2016. The clause regarding possession of the said unit is reproduced below:

" 3.3 POSSESSION

(a) Time of handing over the possession

The Company shall endeavour to offer possession if the said flat within a period of 36 months from the date of commencement of construction and subject to timely payment by the allottee towards the basic sale price and other charges as demanded in terms of this agreement....."

Accordingly, the due date of possession was January 2016 as the complainants have stated that the construction of the project was commenced on 10th January 2013 and the same has not been disputed by the respondent. As far as the penalty clause in case of delay in possession is concerned which is Rs. 5/sq. ft. of the super area per month, it is held to be one sided as also held in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

".....Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."



6. As the possession of the flat was to be delivered by January 2016 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

7. The complainants made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:



"34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

"37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

8. As per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay to the complainant interest at the prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled his obligation. Section 18(1) is reproduced below:

"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee



does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

9. As far as the reliefs sought against sr.no. iii, to v are concerned, the jurisdiction to adjudge the same lies with the adjudicating officer and the complainants have made a declaration before the authority that they are not appearing before the authority for compensation.

The complainants have sought refund of the amount paid by them along with interest @18% p.a. and intend to withdraw from the project. However, keeping in view the present status of the project and intervening circumstances, the Authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. Also, the date declared by the respondent in HRERA Registration is 31.03.2019 and the promoter is duty bound to handover the possession by that date otherwise penal consequences will follow. The refund of deposited amount will also have adverse effect on the other allottees. As per proviso to section 18(1) of the Act, if the



complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

11. Thus, the Authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to give interest at prescribed rate i.e. 10.45% on the amount paid by the complainants i.e. Rs. 56,90,000/- from the date of possession as per the flat buyers' agreement i.e. 10th January, 2016 till actual date of handing over possession after adjusting any due against the allottee to be paid within 90 days of this order. The Respondent is further directed to give interest on amount for the month on 10th of the subsequent month.
12. Further, from the perusal of documents submitted by the counsel of the respondent, it is observed that on the date of coming into force of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 there was no partial occupation certificate with the respondent for phase-III and also the application was not complete in all respects on the date of application i.e. 11.07.2017. Similarly, occupation certificate for 453 units was applied on 30-04-2017, which is still awaited. It is evident from the perusal of document that the NOC from the Director, Fire Services, Haryana





was not submitted along with the application. Accordingly, part of this phase is also registrable. Further, internal work was also not complete as per the report of the Chief Administrator, HUDA. Therefore, the respondent is directed to apply for registration for phase-III within one month from the date of hearing i.e. 25.07.2018. For rest of the units, registration stands already applied and granted.

13. The order is pronounced.
14. Case file be consigned to the registry.


(Samir Kumar)
Member


HARERA
GURUGRAM


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

