

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

Complaint no. : 2947 of 2019
First date of hearing : 16.10.2019
Date of decision : 09.01.2020

1. Mahesh Chand Goyal

**Address:-E-11/8, Vasantvihar,
New Delhi-110057**

Complainant

Versus

**1. M/s Puri Construction Private
Limited**

**Address:-4-7B, Ground Floor,
Tolstoy House 15 and 17, Tolstoy
Marg,
New Delhi-110001**

2. Florentine Estates of India Limited

**Address:- 112-115, First Floor,
Tolstoy House 15 and 17, Tolstoy
Marg,
New Delhi-110001**

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Vridhi Sharma Advocate for the complainant
Shri Himanshu Juneja A.R on behalf of the respondents

ORDER

1. The present complaint 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	
1.	Project name and location	"Emerald Bay", Sector-104, Gurugram
2.	Project area	15.337 acres
3.	Nature of project	Residential Group Housing Colony
4.	RERA registered/ not registered	Registered
5.	RERA registration valid upto	136 of 2017 dated 28.08.2017 valid up to 28.02.2020

6.	License No. & validity status	68 of 2012 dated 21.06.2012 valid up to 20.06.2018
7.	Name of licensee	1. Florentine Estate of India 2. Stepsrealty
8.	Unit no., Tower no.	703, 7 th floor, Block-A1
9.	Super area	2450 sq. ft.
10.	Date of execution of agreement	09.10.2013 (page no. 36 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total consideration	Rs. 2,50,26,116 /- (as per sales customer ledger, page no. 49 to 51 of the reply)
13.	Total amount paid by the complainant	Rs. 2,33,52,953.81/- (as per sales customer ledger, page no. 49 to 51 of the reply)
14.	Due date of delivery of possession as per agreement	09.04.2018 (as per clause 11A, 48 months from the date of execution of agreement plus 180 days grace period, page no. 52-53 of the ABA)
15.	Date of offer of possession, if any	08.02.2019 (page no. 57 of the reply)

16.	Status of project	OC received on 21.11.2018 for tower A1 along with other towers
17.	Period of delay in handing over possession till offer of possession i.e. 08.02.2019	9 months 30 days
18.	Specific relief sought (in specific terms)	<ul style="list-style-type: none"> • To direct the respondents to deliver immediate possession of the apartment along with prescribed rate of interest on the amount already paid by the complainant

3. As per clause 11(a) of the agreement, the possession was to be delivered within a period of 48 months from the date of agreement plus 180 days grace period i.e. 09.04.2018. Clause 11(a) of the buyer agreement is reproduced below:

"11 (a). POSSESSION

(a) Time of handing over the possession

The company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said building/said apartment/villa within a period of forty eight 48) months from the date of execution of this agreement unless there shall be delay or failure due to force majeure condition including but not

limited to reason mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues /payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement. The apartment/villa allottee agrees and understand that beyond 48 months that the company shall be entitled to period of an edition one hundred eighty(180) days, for applying and obtaining the occupation certificate in respect of the group housing complex.

4. It is stated that the respondents have raised unnecessary demands to pay final instalment of Rs. 29,86,246/- which is to be raised at the time of Offer of possession. Respondents company without compensating the delay charges and without adjusting the same from the outstanding amount had raised such as exorbitant amount which is illegal in nature.
5. Possession of the apartment/unit/plot has been offered on 08.02.2019. However, it is allegation of the complainant that the respondents have failed to give physical possession of the unit as per the agreement and no interest for the delayed period was offered by the respondents to the complainants till date. Hence, this complaint for the inter alia reliefs detailed above.
6. On the date of hearing, the Authority explained to the respondents/promoters 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.

7. The respondents submitted that there was no intentional delay in the construction on the part of the respondents. Delay was due to reasons detailed in the reply which were beyond its control. It is stated that the respondents have raised all the demands as per the construction linked payment plan and allegations on the respondents trying to extract money from the complainant is wrong and hence denied.
8. 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.
9. 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.
10. Arguments heard
11. 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.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and based on the findings of the authority the Authority is satisfied that

the respondents are in contravention of the provisions of the Act. By virtue of clause 11(a) of apartment buyer's agreement executed between the parties on 09.10.2013 possession of the booked unit was to be delivered within time i.e. 09.04.2018. Accordingly, it is the failure of the respondents/promoters to fulfil their obligations, responsibilities as per the apartment buyer's agreement. The complainant has paid Rs. 2,33,52,953/-as per sales customer ledger against total sale consideration of Rs. . 2,50,26,116/- as per sales customers ledger at page no. 49 to 51 of the reply. As such the complainant is entitled for delayed possession charges i.e. 10.20% p.a. w.e.f. 09.04.2018 to 08.02.2019 as per provisions of section 18(1) of the real estate (Regulation and Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. The respondents have raised an issue w.r.t. total amount paid by the complainant for the allotted unit and submit that the respondents have added certain taxable amounts in the consolidated price of the allotted unit for which no delayed possession charges is admissible. While going through the record, the authority has come to the conclusion that the amount paid by the complainants to the respondents on account of certain taxes shall not attract delayed possession charges.

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

- (i) The respondents are directed to pay interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 09.04.2018 till the date of offer of possession i.e. 08.02.2019 to the complainant within 90 days from the date of decision
- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

14. Complaint stands disposed of.

15. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date 09.01.2020

Judgment uploaded on 10.02.2020


HARERA
GURUGRAM