

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

Complaint no. : 2752 of 2019
First date of hearing: 24.09.2019
Date of decision : 09.01.2020

Mrs. Shweta Bajaj,
R/o: Flat no. 12C, Tower 22, Central Park
Resorts, Sector 48, Gurugram-122001,
Haryana.

Complainant

Versus

M/s. Pareena Infrastructure Private Ltd.,
(Through M.D/Authorized representative)
Registered office: Flat no. 2, Palm apartment,
Plot 13B, Sector- 6, Dwarka, New Delhi- 110075.
Corporate Office: Office Space# C-7A, 2nd floor,
Omaxe City Centre, Sector- 49,
Sohna Road, Gurugram (Haryana) - 122018.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav
Shri Prashant Sheoran

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 01.07.2019 has been filed by the complainant/allottee 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	Details
1.	Project name and location	"Coban Residencies" at Sector 99 A, Gurugram.
2.	Project area	10.5875 acres
3.	Nature of project	Residential Colony
4.	RERA registered/ not registered	Not Registered
5.	License No. & validity status	10 of 2013 dated 12.03.2013 valid up to 11.03.2017
6.	Name of licensee	M/s Monex Infrastructure Pvt. Ltd.
7.	Unit no., Tower no.	1402, 14 th floor, tower- 6
8.	Super area	1550 sq. ft.
9.	Date of execution of agreement	22.01.2014
10.	Payment plan	Construction linked payment plan
11.	Total sale consideration	Rs. 96,37,865/- (as per statement of account dated 16.05.2019, page 85 of complaint)

12.	Total amount paid by the complainant	Rs. 66,48,417.30/- (as per statement of account dated 16.05.2019, page 86 of complaint)
13.	Due date of delivery of possession as per agreement (clause-3.1 read with clause 5.1 of the agreement dated 22.01.2014: 4 years from the date of start of construction or execution of agreement, whichever is later plus 6 months extended period)	16.04.2019 (calculated from the date of excavation which is 16.10.2014 as mentioned in statement of accounts at pg. 89 of the complaint)
14.	Status of project	Ongoing
15.	Period of delay in handing over possession till date	8 Months 24 days
16.	Relief sought (in specific terms)	<ul style="list-style-type: none"> • That the respondent be directed to pay interest on delayed possession at prescribed rate from due date of possession till date of handing over the possession; • That the respondent be directed to define the date of completion of the project and to hand over the possession; • That the respondent be directed to get the project registered; • That the respondent be directed to refrain from raising any demand before obtaining registration certificate from Hon'ble Authority.

3. As per clause 3.1 read with clause 5.1 of the agreement, the possession was to be delivered within a period of 4 years plus 180 days grace period from the date of agreement (i.e. 29.10.2013) or from the date of start of construction (i.e. 16.10.2014) whichever is later. The due date of delivery of possession comes out to be 16.02.2019 as calculated from the date of excavation which is 16.10.2014. Clause 3.1 of the Apartment buyer agreement is reproduced below:
- 3.1 *“That the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located within 4 years of the start of construction or execution of this agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee....”*
- 5.1 *“..further extended by a period of 6 months if so required by the Developer...”*
4. The respondents have utterly failed in fulfilling their obligation of delivery of the unit as per the apartment buyers agreement and failed to offer these possession in terms of section 11(4) (a) and 18 of the Act read with Rules. Hence, this complaint for the inter alia reliefs detailed above.
5. 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.

6. The respondent submitted that there was no intentional delay in the construction on the part of the respondent. Delay was due to reasons detailed in the reply which were beyond its control.
7. Copies of all the relevant documents including Apartment Buyers Agreement and Provisional Allotment Letter among others 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 although other important documents such as Occupation Certificate and offer of possession are not placed on record.
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. Arguments heard.
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 to 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 the complainant 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 is in contravention of the provisions of the Act. By virtue of clause 11(a) of apartment buyers agreement executed between the parties on 22.01.2014, possession of the booked unit was to be delivered within time by 16.04.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyers agreement dated 22.01.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondents is established. As such complainant are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. till offer of possession of the booked unit as per the proviso to section 18(1)(a) of the Act read with rules 15 of the Rules.
12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- (i) The respondent is 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. 16.04.2019 till the offer of possession to the complainant within 90 days

from the date of decision and subsequent interest to be paid by the 10th of each succeeding month.

- (ii) The complainant is directed to pay outstanding dues, after adjustment of interest for the delayed period.

Complaint stands disposed of.

File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 09.01.2020

Judgment uploaded on 10.02.2020


(Subhash Chander Kush)

Member