

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

**Complaint no. : 2116 of 2019**  
**First date of hearing: 04.10.2019**  
**Date of decision : 03.01.2020**

Smt. Neerja Talwar  
R/o: B-48, Rosewood City, Sector 49, Gurugram **Complainant**

Versus

Cosmos Infra Engineering (India) Pvt Ltd  
Office: A-5, C-5, D-5 Vandhna Building, Tolstoy **Respondent**  
Marg, New Delhi- 110001

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri K.K Talwar  
Shri Vineet Chadha  
None for the respondent

Husband of Complainant  
Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 04.06.2019 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	"Cosmos Express 99" in Village Dhankot, Sector 99, Gurugram.
2.	Project area	12.031 acres
3.	Nature of project	Group housing complex
4.	RERA registered/not registered	62 of 2019
5.	RERA registration valid upto	30.09.2021
6.	License no. & validity status	70 of 2011 dated 22.07.2011 valid up to 21.07.2015
7.	Promoter 1 / Name of the licensees	M/s Shivnandan Buildtech Pvt. Ltd.
	Promoter2/Developer (change of developer)	M/s Cosmos Infra Engineering India Pvt. Ltd.
8.	Unit no., tower no.	C-504, type 'Silver coprate'
9.	Area	1770 sq. ft.
10.	Date of execution of flat buyer agreement	<b>04.08.2013</b>



11.	Payment plan	Construction linked plan
12.	Total sale consideration	Rs.86,58,375/- (as per agreement, page 43 of the complaint)
13.	Total amount paid by the complainant	Rs. 32,94,299/- (as per receipts attached)
14.	Due date of delivery of possession as per flat buyer's agreement	04.02.2018 (date has been calculated from the agreement)  Clause 3.1 read with 5.1- construction shall be completed in 4 years from the start of construction or execution of this agreement (04.08.2013), whichever is later + 6 months grace period, i.e. by 04.02.2018.
15.	Delay in handing over possession till 03.01.2020	1 year 11 months
16.	Specific relief sought	1. Directing the respondent to handover the possession of the said flat in question as early as deemed fit by Hon'ble forum. 2. Grant interest to the complainant as prescribed

		<p>till the date of possession of the flat.</p> <p>3. Any other order as deemed fit and proper be also passed in favour of the complainant and against the respondent.</p>
--	--	--

3. As per clause 3.1 read with 5.1 of the flat buyer's agreement, the construction shall be completed in 4 years from the start of construction or execution of this agreement (04.08.2013), whichever is later plus 6 months grace period. Relevant portions of clause 3.1 and 5.1 of the 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, in 04 years from the start of construction or execution of this agreement whichever is later..."*

*"5.1 In case within a period as provided hereinabove, further extended by a period of 6 months if so required by the developer, the developer is unable to complete*

*construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement, then the flat allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- per sq. ft. per month of the super area till the date of notice of possession as provided hereinabove in this agreement.*

4. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainants seek delay interest as per section 18(1) of the Act. The complainant reserves her right to file a separate application for seeking compensation before the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainant. Hence, this complaint for the reliefs as stated above.
5. On the date of hearing, the respondent was not present despite service of notice through speed post and email of which delivery report is annexed with the file. Thus the service is complete and case is proceeded ex-parte.
6. 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.

7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
8. 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.
9. 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 respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 read with 5.1 of the flat buyer's agreement executed between the parties on 04.08.2013, the construction was to be completed in 4 years from the start of construction or execution of this agreement

(04.08.2013), whichever is later plus 6 months grace period. The respondent has failed to file reply despite service of notice and date of construction could not be ascertained, as such the due date of delivery of possession has been calculated from the date of execution of the agreement i.e 04.08.2013. Thus the due date of possession comes out to be 04.02.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 04.08.2013 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. As such the complainant is entitled for delayed possession charges @10.20% p.a. w.e.f. 04.02.2018 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

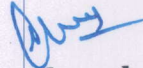
10. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 04.02.2018 till the offer of possession. The arrears of interest accrued till date of decision shall be paid to the complainant within a period

- of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10<sup>th</sup> of every subsequent month.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The respondent shall not charge anything from the complainant which is not part of the agreement.
  - iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
11. Complaint stands disposed of.
12. File be consigned to registry.

  
(Samir Kumar)

Member

  
(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.01.2020

Judgement uploaded on: 13.02.2020