

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

Complaint no. : 903 of 2018
First date of hearing : 21.01.2019
Date of decision : 23.01.2020

Mrs. Tanveer Kamal and
Mr. Anupam Kamal
R/o: D-64, Hauz Khas, New Delhi

...Complainants

Versus

M/s Orris Infrastructure Pvt Ltd.
Office: Through its Managing Director-
Vipul Agora, 308/309, 3rd floor,
M.G Road, Gurugram-122001

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sanjeev Sharma
None present

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.10.2018 has been filed by the complainants/allottees 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.

- 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	
1.	Project name and location	"Floreal Towers", Sector 83, Gurugram, Haryana
2.	Project area	9.052 acres
3.	Nature of project	Commercial Complex
4.	RERA registered/ not registered	Not Registered
5.	License No. & validity status	licence no. 260 of 2007 dated 14.11.2007 valid up to 13.11.2024
7.	Name of licensee	Seriatim Land & Housing Pvt. Ltd.
8.	Unit no., Tower no.	327, 3 rd floor, tower- B
9.	Super area	500 sq. ft
10.	Date of execution of agreement	19.05.2009 (pg. 27 of the space buyer agreement)
11.	Payment plan	Assured return plan (clause 1.1 of the space buyer agreement)
12.	Total sale consideration	Rs.21,85,605/- (Statement of Account page no.52)
13.	Total amount paid by the complainant	Rs.12,63,125/- (Statement of Account page no.52)
14.	Due date of delivery of possession as per agreement (clause	19.05.2012

	10.1 - within 36 months from the date of execution of agreement or sanction of plans or commencement of construction whichever is later)	(as calculated from the date of execution of the space buyer agreement)
15.	Date of Offer of constructive possession	21.02.2018 (annexure-5, page no.50)
16.	Status of project	Complete
17.	Details of Occupation Certificate	Received on 16.08.2017 (as per Annexure-R6 at pg. 29 of the reply)
18.	Period of delay in handing over possession till 21.02.2018	5 years 9 months 2 days
19.	Specific relief sought	<ul style="list-style-type: none"> • That the respondent be ordered to make refund of the amount paid; • That the respondent be ordered to pay interest accrued on the amount paid; • That orders be passed against the respondent for failure to register itself with the Authority u/s 59 of the act.

3. As per clause 10.1 of the space buyer agreement, the possession was to be delivered within 36 months from the date of execution of agreement or sanction of plans or commencement of construction whichever is later. The due date of delivery of possession is calculated from the date of

agreement i.e. 19.05.2009 which comes out to be 19.05.2012.
Clause 10.1 of the buyer agreement is reproduced below:

“10. POSSESSION

10.1 SCHEDULE FOR THE POSSESSION OF THE SAID UNIT

The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/ said unit within the period of thirty six months from the date of execution of the space buyer agreement by the company or sanction of plans or commencement of construction whichever is later unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1,11.2,11.3 and clause 38 or due to failure of allottees to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given in Annexure-1 as per the demands raised by the company from time to time or any failure on the part of the allottees to abide by any terms or conditions of this space buyer agreement.

4. 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.

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.

5. 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.
6. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
7. Arguments heard.
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 complainants 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 10.1 of the space buyers agreement executed between the parties on 19.05.2009, possession of the booked unit was to be delivered within time by 19.05.2012. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the space buyers agreement dated 19.05.2009 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 19.05.2012 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.


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 interest at the prescribed rate of 10.20% p.a. for every month of delay from the due date of possession i.e. 19.05.2012 till the offer of possession to the complainant within 90 days from the date of decision.
- (ii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

Complaint stands disposed of.

File be consigned to registry.

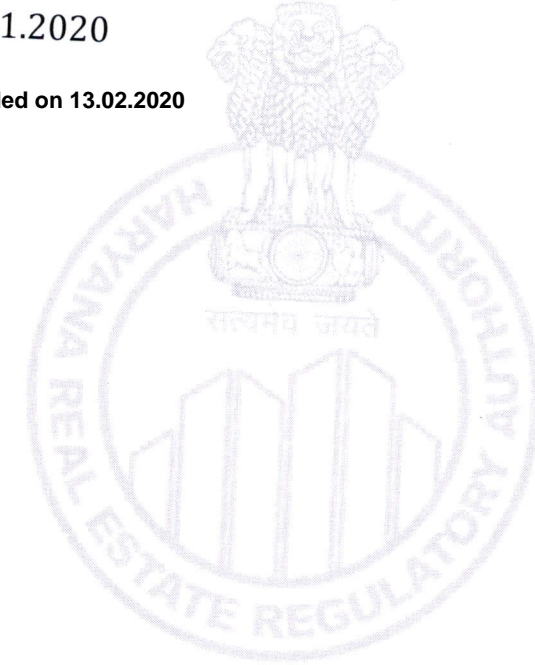

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 23.01.2020

Judgment uploaded on 13.02.2020



HARERA
GURUGRAM