

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

Complaint no.: 1259 of 2019
Date of First hearing: 09.07.2019
Date of decision : 23.01.2020

1. Mr. Abhishek Mittal
2. Ms. Natasha Gupta
Both Rr/o: C-3/29, Ashok Vihar,
Phase-II, Delhi-110052

Complainant

Versus

M/s Orris Infrastructure Pvt. Ltd.,
Office at: - J-10/5, DLF Phase II,
MG Road, Gurugram (Haryana) – 122002.

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE

Sh. Kuldeep Kohli
Ms. Charu Rustagi

**Advocate for the complainant
Advocate for the respondent**

ORDER

1. The present complaint dated 18.04.2019 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.

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	Aster Court, Sector-85, Gurugram
2.	Project area	25.018 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/ not registered	Not Registered
5.	License No. & validity status	39 of 2009 dated 24.07.2009 and 99 of 2011 dated 17.11.2011 valid up to 16.11.2019
7.	Name of licensee	BE OFFICE AUTOMATION PRODUCTS PVT LTD and 9 others
8.	Unit no., Tower no.	702, 7 th Floor, Tower 2A
9.	Super area	1250 sq. ft. (revised area: 1312 sq. ft. as per the statement of account dated 04.09.2019)
10.	Date of execution of agreement	13.09.2011 (Annexure-C/2, pg. 27)
11.	Payment plan	Construction linked payment plan
12.	Total sale consideration	Rs. 43,84,547/- (as per statement of Account dated

		04.09.2019 at pg. 19 of the reply)
13.	Total amount paid by the complainant	Rs. 40,83,284/- (as per statement of Account dated 04.09.2019 at pg. 19 of the reply)
14.	Due date of delivery of possession as per agreement (Clause 10.1 - 36 months plus 6 months grace period from the date of execution of agreement or sanction of building plan or commencement of construction whichever is later)	13.03.2015 (Note - No documents pertaining to sanction of building or commencement of construction has been annexed, so the due date of delivery of possession has been calculated from the date of agreement)
15.	Offer of possession	20.10.2018 (Annexure-C/5 of the complaint)
16.	Date of receiving Occupation certificate	18.10.2018 (page 25 of the complaint)
16.	Period of delay in handing over possession	year months days

17.	Specific relief sought	<ul style="list-style-type: none">• To direct the respondent to hand over the possession of the apartment;• To direct the respondent to pay interest on delayed possession from the scheduled date of possession on the total payment made by the complainant.
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3. As per clause 10.1 of the space buyer agreement, the possession was to be delivered within 36 months plus grace period of 6 months from the date of execution of apartment buyer agreement by the company 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. 13.09.2011 which comes out to be 13.03.2015. Clause 10.1 of the buyer agreement is reproduced below:

"10. POSSESSION

10.1 Schedule for the possession of the said Apartment

"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 36 months plus grace period of 6 months from the date of execution of the apartment

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 respondent/promoter 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.
5. 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.
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 and submissions made by the parties.
7. The Authority on the basis of information, explanation, other submissions made and the documents filed by the parties is of considered view that there is no need of further hearing in the complaint.
8. Arguments heard.

9. The Authority is of the view that 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.
10. On consideration of the circumstances, the evidence and other record submissions made by the parties 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 apartment buyers agreement executed between the parties on 13.09.2011, possession of the booked unit was to be delivered within time by 13.03.2015. However, the offer of possession has been made on 20.10.2018, accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyers agreement dated 13.09.2011 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. 01.03.2014 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.

11. Hence, the Authority hereby pass this order and issue the following 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. 13.03.2015 till the offer of possession 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.
12. Complaint stands disposed of.
13. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 23.01.2020


(Subhash Chander Kush)

Member