

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

Complaint no.: 1329 of 2018

Date of first hearing: 08.05.2019

Date of decision: 23.01.2020

Mr. Sunil Jain
Mrs. Vandana Jain,
R/o: D-18, Green Park Main, New Delhi
Versus

Complainants

M/s Orris Infrastructure Pvt. Limited.
(Through its managing director)
Regd. Office: Vipul Agora, 308/309, 3rd
Floor, M.G. Road, Gurugram, Haryana-
122002

Respondent

CORAM

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE

Sh. Sanjeev Sharma
Ms. Charu Rustagi

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

ORDER

1. The present complaint dated 19.11.2018 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.

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	"Floreal Towers", Village Kherki Dhaula, Sector 83, Gurugram
2.	Project area	9.052 acres
3.	Nature of project	Commercial Complex
4.	RERA registered/ not registered	Not Registered
5.	License No. & validity status	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.	505, 5 th floor, tower B
9.	Super area	750 sq. ft.
10.	Date of execution of agreement	06.04.2009
11.	Payment plan	Down payment plan
12.	Total sale consideration	Rs. 33,86,275/- (As per statement of account, page 57)
13.	Total amount paid by the complainant	Rs. 24,63,094.50/- (As per statement of account, page 57)

14.	Offer of possession	31.03.2018 (Annexure-6, at pg. 55 of the complaint)
15.	Due date of delivery of possession as per agreement (Clause 10.1 - 36 months from the date of execution of the agreement or sanctions of plans or commencement of construction, whichever is later.)	06.04.2012 (Note: Due date calculated from date of agreement as date of sanction plan or commencement of construction is not on record.)
16.	Period of delay in handing the offer of possession dated 31.03.2018	5 years 11 months 25 days
17.	Specific relief sought	<ul style="list-style-type: none"> To direct the respondent to make full refund of the excess amount collected on account of any area in excess of the carpet area; To direct the respondent to make payment of the interest accrued on amount collected by the respondent from the complainant.

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. 06.04.2009 which comes out to be 06.04.2012.

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 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 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.
7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants are of considered view that there is no need of further hearing in the complaint.
8. Arguments heard.
9. 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 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 10.1 of the apartment buyers agreement executed between the parties on 06.04.2009, possession of the booked unit was to be delivered within time by 06.04.2012. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyers agreement dated 06.04.2009 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. 06.04.2009 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 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. 06.04.2009 till the offer of possession i.e. 31.03.2018 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.

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

Judgment uploaded on 13.02.2020