

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

**Complaint no. : 6629 of 2019**  
**First date of hearing : 14.02.2020**  
**Date of decision : 14.02.2020**

Sh. Rishi Ram  
R/o: House no. 222/31-A, Gali No.3,  
West Rajiv Nagar, Gurugram

**Complainant**

**Versus**

M/s Apex Buildwell Pvt. Ltd.  
Registered Office at: 14A/36, W.E.A. Karol  
Bagh, New Delhi-110005  
Also at :-Plot No. 25-B, Sector -32, Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Anil Sura Advocate for the complainant  
Shri Sandeep Chaudhary Advocates for the respondent

**ORDER**

1. The present complaint dated 15.01.2020 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Our Homes", Sector 37-C, Gurugram.
2.	Project area	10.144 acres
3.	Nature of the project	Low Cost /Affordable group housing colony
4.	DTCP license no. and validity status	13 of 2012 dated 22.02.2012 Valid/renewed up to 01.12.2019
5.	Name of licensee	Prime IT Solution and Phonix Datatech Service
6.	RERA registered/ not registered	<b>Registered vide no. 40 of 2019 dated 08.07.2019</b>
7.	RERA registration valid up to	<b>01.12.2019</b>
8.	Date of provisional allotment letter	23.10.2012 [Annexure C-1 at page 15 of complaint]
9.	Unit no.	496, 4 <sup>th</sup> Floor, Tower/Block: IRIS [Page 22 of complaint]
10.	Unit measuring	48 Sq. Mtrs.



11.	Date of execution of apartment buyer's agreement	15.02.2013 [Page 19 of complaint]
12.	Payment plan	Construction/Time Linked Plan [Page 7 of complaint]
13.	Total consideration	Rs.16,00,000/- (Basic Sale Price) As per clause 1.2 of apartment buyer's agreement
14.	Total amount paid by the complainant as alleged by the complainant in complaint	Rs.15,66,952/-
15.	Date of Issue of Consent to Establish by the office of Haryana State Pollution Control Board	02.12.2013 <b>(Note: Time for computation of due date of delivery of possession )</b>
16.	Due date of delivery of possession as per clause 3(a) of the said agreement i.e. 36 months from the date of commencement of construction of the complex upon receipts of all projects related approvals i.e. 02.12.2013 plus grace period of 6 months. [Page 28 of complaint]	02.06.2017 <b>Note:</b> Due date will be calculated from the date of Issue of Consent to Establish
17.	<b>Date of offer of possession to the complainant</b>	Possession has not been offered so far
18.	Delay in handing over possession till date of decision i.e. 14.02.2020	2 years 8 months 12 days



19.	Relief Sought (in specific terms)	To direct the respondent to deliver the physical possession of the unit along with the delayed interest at the prescribed rate of interest.
-----	-----------------------------------	---

3. As per clause 3(a) of the apartment buyer's agreement, the possession was to be handed over within a period of 36 months from the date of commencement of construction of the complex upon the receipts of all projects related approvals including sanction of building plan/revised plan and approval of all concerned authorities plus grace period of 6 months. Clause 3(a) of the buyer's agreement is reproduced below:

*"3(a) offer of possession*

*...the Developer proposes to handover the possession of the said apartment within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."*

4. The complainant submitted that even after a lapse of more than three and a half years from the stipulated date of delivery of possession, the respondent is not in a position to handover the possession of the flat. Thus, the complainant is entitled to receive the loss due to delay in offer of possession from the respondent as the aforesaid loss is directly connected to the persistent and continuing deficiency in service on the part of



the respondent. Hence, this complaint for the aforementioned relief:

5. 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.
6. The respondent contests the complaint on the following grounds:
  - i. The respondent submitted that the delay being occasioned is beyond the control of the respondent i.e. firstly due to the grant of Consent to Establish which was issued by the HSPCB on 02.12.2013 and thereafter due to the lapse of License and the same is excusable as contemplated and agreed by the parties vide para 3(b)(i)&(ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months plus 6 months' grace period is extendable and the complainant is estopped from filing the present complaint. According to the respondent, the delay was beyond its control.
7. 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.



8. The Authority on the basis of information, explanation, other submissions made, and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

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 documents and other record and submissions made by the parties 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(a) of the apartment buyer's agreement executed between the parties on 15.02.2013, possession of the booked unit was to be delivered within a period of 36 months plus 6 months' grace period from the date of commencement of construction of the complex upon the receipts of all project related approvals including sanction of building plan/revised



plan and approval of all concerned authorities. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. In the present case, the consent to establish from HSPCB was granted to the respondent on 2.12.2013. Therefore, the due date of handing over possession will be computed from 2.12.2013. Thus, the due date of delivery comes out to be 02.06.2017. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 15.02.2013 executed between the parties. As such this project is to be treated as on-going project and the provisions of the Act *ibid*, shall be applicable equally to the builder as well as the allottee. 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 respondent is established. As such the complainant is entitled to delay possession charges at the rate of the prescribed interest @ 10.20% p.a. w.e.f. 02.06.2017 till the date of actual offer of possession as per provisions of section 18(1) of the Act read with rule 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 the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 02.06.2017 till the offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of each subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

12. Complaint stands disposed of.

13. File be consigned to registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated:14.02.2020