

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

Complaint no. - 5999 of 2019

Date of First hearing- 04.02.2020

Date of decision- 04.02.2020

1. Mr. Naresh Goyal; and

2. Mrs. Kusum Goyal

Address- House no. 40, 1st floor, Block C,
Greenwood City, Sector 45, Gurugram.

Complainants

Versus

M/s Lotus Realtech Private Limited

Address- 501, Block C, Nirvana Courtyard,
Nirvana Country, Gurugram.

Respondent

CORAM:

Dr. K.K. Khandelwal

Shri Samir Kumar

Chairman

Member

APPEARANCE-

Shri Abhay Jain and Shri Saurabh Sachdeva

Shri Jagbir Singh Dahiya

Advocate for the complainants

Advocate for the respondent



ORDER

1. The present complaint has been filed by the complainants/allottees 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	Lotus Elise, Sector 99, Gurugram
2.	Project area	12.031 acres
3.	Nature of project	Group housing complex
4.	RERA registered	Registered vide no. 71 of 2019 dated 25.11.2019 (for 3.11 acres)
5.	RERA registration valid upto	30.09.2021
6.	License No. & validity status	70 of 2011 dated 22.07.2011 valid upto 21.07.2015
7.	Name of licensee	M/s. Shivanand Buildtech Pvt. Ltd.
8.	Unit no., Tower no.	304, Tower H
9.	Carpet area	1450 sq. ft. (super area)



11.	Date of execution of agreement	04.10.2013 (Pg 31 of the reply)
12.	Payment plan	Construction linked payment plan (CLP as per allotment letter dated 21.06.2013, Pg. 28 of the complaint)
13.	Total sale consideration	Rs. 55,23,950/- (as submitted by the complainants)
14.	Total amount paid by the complainant	Rs. 44,84,346/- (as submitted by the complainants)
15.	Due date of delivery of possession as per agreement	04.10.2017 (clause 3.1 of the agreement: - 4 years from the start of construction or execution of agreement whichever is later) <ul style="list-style-type: none"> • Note - Due date has been calculated from the date of agreement as the date of start of construction is not available in the record.
16.	Period of delay in handing over possession till date of order	2 years and 4 months.
17.	Status of project (ongoing/complete)	Ongoing
19.	Date of offer of possession, if any	N/A
20.	Relief sought (in specific terms)	<ul style="list-style-type: none"> • Direct the respondent to pay interest for every month of delay at the prescribed rate of interest from the due date of delivery of possession till handing over of possession. • Direct the respondent to complete the construction and handover the possession of the subject flat.

3. As per the apartment buyer agreement in question vide clause no. 3.1 the possession was to be handed over within a period of 4 years from

the date of construction or execution of agreement whichever is later which comes out to 30.10.2017.

The relevant clause of the apartment buyer agreement reads as under:

“3.1 That the Developer shall, under normal condition, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen.....”

4. Possession of the apartment has not been offered or given so far.

Hence, this complaint.

For the following relief :-

- Direct the respondent to pay interest for every month of delay at the prescribed rate of interest from the due date of delivery of possession till handing over of possession.
- Direct the respondent to complete the construction and handover the possession of the subject flat.

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.

The respondent contests the complaint on following grounds:-

1. That the complainants have no cause of action and locus standi to file this complaint before this forum, which is not maintainable in the present form. The present complaint is an abuse of the process of law and had been filed with the sole

object of harassing and pressurizing the respondent to submit to the unreasonable greedy demands of the complainant. The present complaint is based on false, frivolous and baseless grounds solely to suit the misconceived motive of the complainants. The complaint is devoid of any valid cause of action or any true grievance qua the respondent and in favour of the complainant.

2. That the complainants had not come before this forum with clean hands, who had suppressed the material facts from this hon'ble forum and thus the complaint is liable to be dismissed at the initial stage itself.
3. That the complainant had not paid the full basic price of Rs 55,23,950 lac plus I.D.C, E.D.C and other applicable charges being the cost of the allotted flat till date and thus they cannot allege a default in respect of the allotted flat in not delivering timely possession.
4. That the complaint is time barred.
5. That the project is already registered with the office of HARERA Gurugram vide registration no. 71 of 2019 dated 28.11.2019. The status of the project is that around 80% construction is already completed as is clear from the photographs annexed with the reply.

6. That the construction of the project has been delayed due to unavoidable circumstances beyond the control of the respondent. Some of the significant causes are as under –
- non availability of labour manpower for few months when construction was in progress.
 - stay order passed by the NGT, Delhi whereby construction in all the projects situated within NCR was stopped for few months.
 - financial crunch with the respondent when construction was going on as a large number of allottees including the complainants did not pay the due demanded instalments well within time.
 - the engineer/architects etc. suggested some changes in the structures/building plans already sanctioned by the competent authority as a result of which the construction work was suspended for few months.
6. As per the reply of the respondent the unit has not been handed over to the allottee so far. However, the respondent has put the entire blame on the allottees by pleading that the allottees are not making timely scheduled payments of the sale consideration amount in time. Respondent has also made a futile attempt to take recourse to force majeure clause.
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 and explanation and other submissions made and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.
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 both the complainant and respondent and based on the findings of the authority regarding contravention as per provisions of section 35(1) read with rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 04.10.2013 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.

11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act :-
- i. The complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.20% p.a. with effect from 04.10.2017 (due date of delivery of possession) till the offer of possession.
 - ii. The arrears of interest accrued so far from the due date of delivery of possession i.e. 04.10.2017 till the date of this order shall be paid to the complainants within a period of 90 days and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent English calendar month.
12. Complaint stands disposed of.
13. Case file be consigned to the registry.



Dr. K. K. Khandelwal
(Chairman)



Samir Kumar
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Date - 04.02.2020

