



Complaint no. 652 of 2019

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

**Complaint no.- 652 of 2019
Date of first hearing - 04.12.2019
Date of decision- 04.02.2020**

- 1. Ms. Pushpa Mishra; and**
- 2. Mr. Girja Nandan**

**Both R/o. 22/1, Hamelia Street Vatika City,
Sector 49, Gurugram.**

Complainants

Versus

M/s International Land Developers P. Ltd.

**Address:- B-418, New Friends Colony,
New Delhi - 110025.**

Respondent

**CORAM:
Dr. K.K. Khandelwal**

Shri Samir Kumar

Chairman

Member

APPEARANCE-

Shri Sanjeev Sharma

Shri Venkat Rao

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	Arete, Sector 33, Gurugram.
2.	Project area	11.6125 acres
3.	Nature of project	Residential group housing project
4.	RERA registered	Registered vide no. 44 of 2019 (Phase 1 for area 8.79 acres)
5.	RERA registration valid upto	02.07.2022
6.	License No. & validity status	44 of 2013 dated 04.06.2013 valid upto 03.06.2019
7.	Name of licensee	International Land Developers P. Ltd.
8.	Unit no., Tower no.	1502, Tower C
9.	Carpet area	1275 sq. ft. (super area)
11.	Date of execution of apartment buyer agreement	26.06.2014 (Pg. 75 of the complaint)
12.	Payment plan	Construction linked payment plan (Pg. 57 of the complaint)
13.	Total sale consideration	73,50,575/- (as per payment plan, Pg. 57 of the complaint)
14.	Total amount paid by the complainant	50,11,268.50/- (as per SOA, Pg. 72 of the complaint)

15.	Due date of delivery of possession as per agreement	26.12.2018 (clause 10.1 48 months from the date of execution of agreement + 6 months' grace period)
Note - Complete copy of apartment buyer agreement has not been filed by the complainant, so possession clause has been taken from the copy of buyer's agreement annexed in similar cases for the project in question.		
16.	Period of delay in handing over possession till date	one year, one month and 9 days. NOTE - complete copy of agreement has not been filed by the complainants.
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 provide copy of application for occupation certificate (OC). • Direct the respondent to provide a copy of declaration with respect to the common areas, parking area, carpet area, etc. made by them to the competent authorities. • Direct the respondent to pay delayed possession charges at the prescribed rate of interest.

3. As per the apartment buyer agreement in question vide clause no. 10.1 the possession was to be handed over within a period of 48 months from the date of execution of agreement plus grace period of six months which comes out to 26.11.2018.

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

".....the Developer shall endeavour to complete the construction of the Said Apartment within 48 (Forty Eight) months



from the date of execution of this Agreement and further extension/grace period of 6(six months.)”.

4. Possession of the apartment has not been offered or given so far. Hence, this complaint for the following reliefs-

- Direct the respondent to provide copy of application for occupation certificate (OC).
- Direct the respondent to provide a copy of declaration with respect to the common areas, parking area, carpet area, etc. made by them to the competent authorities.
- Direct the respondent to pay delayed possession charges at the prescribed rate of interest.

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: -

- i. That the present complaint is devoid of merits and hence liable to be dismissed.
- ii. That the reliefs sought by the complainants is in the nature of compensation and therefore, the present complaint is not maintainable before the Authority. The complaint pertaining to the compensation and interest for a grievance under section 12, 14, 18 and 19 of the Act are required to be filed before the Adjudication officer under rule 29 of the Rules, 2017 read with section 31 and section 71 of the Act.





- iii. That the complainants have paid Rs. 50,11,268.50/- only till date. However, the complainants are misleading the Authority by misleading the figures.
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 complainant-allottee by pleading that it is the complainant who has made violation of the terms of the buyer's agreement by 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 the complaint is of the 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. The complainant has intended to forego other reliefs and is only pressing for the relief of delayed possession charges by filing an application for the same, which is taken on record. Reply has also been filed by the respondent which is taken on record. Arguments heard at length.

11. 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 section 35(1) read with rule 28(2)(a), the Authority observed that the due date of delivery of possession i.e. 26.11.2018 Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 01.11.2014 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.

12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act :-


1. The complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.20% p.a. with effect from 26.11.2018 (due date of delivery of possession) till the offer of possession in terms of section 18(1) of the Act read





with Haryana Real Estate (Regulation and Development) Rules, 2017.

2. The arrears of interest accrued so far from the due date of delivery of possession 26.12.2018 till the date of this order shall be paid to the complainants at the prescribed rate of interest i.e. 10.20 % p.a. within a period of 90 days and thereafter monthly payment of interest till offer of possession shall be paid on or before 10th of each subsequent English calendar month.
13. Complaint stands disposed of.
14. 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

judgement uploaded on 11.02.2020

