

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

**Complaint no. : 2330 of 2019**  
**First date of hearing : 10.09.2019**  
**Date of decision : 22.01.2020**

**M/s SMK Plastics Pvt. Ltd.**  
(through AR Sameer Bhargava)  
**Address:** A-25, Naraina Industrial Area, Phase-  
II, New Delhi

**Complainant**

Versus

**Parsvnath Developers Limited**  
**Address:-**Parsvnath Metro Tower, Near  
Shahdara Metro Station, Shahdara, Delhi-  
110032  
**Corporate Office:**6<sup>th</sup>floor, Arunachal  
Building, 19, Barakhamaba Road, New Delhi  
110001  
**2.Parsvnath Hessa Developers Private  
Limited**  
**Address:-**Parsvnath Metro Tower, Near  
Shahdara Metro Station, Shahdara, Delhi  
110032

**Respondents**

**CORAM:**  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**  
**Sukhbir Yadav**  
**Deeptanshu Jain**

Advocate for the complainant  
Advocate for the of the respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 complainants, 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	Parsvnath Exotica, Village Wazirabad, Sector-53, Gurugram
2.	Project area	23.815 acres
3.	Nature of project	Group Housing Scheme
4.	RERA registered/ not registered	Not Registered
5.	License No. & validity status	69 to 74 of 1996 dated 03.05.1996 valid upto 02.05.2019, 52 to 57 of 1997 dated 14.11.1997 valid upto 13.11.2019
6.	Name of licensee	M/s Puri Construction Ltd. M/S Florentine Estate India Ltd. M/S Mad Entertainment Network Ltd., Sunil Manchanda, Arjun Puri, Mohinder Puri,
7.	Increase area	105 sq. ft.
8.	Unit no., Tower no.	B1-501, 5 <sup>th</sup> floor, Tower-B1
9.	Super area	3495 sq. ft. (revised area)

10.	Date of execution of agreement	03.06.2005 <b>(page no. 22 of the complaint)</b>
11.	Payment plan	Construction linked payment plan
12.	Basic sale price as per agreement	Rs. 88,98,750/- <b>(page no. 24 of the complaint)</b>
13.	Total amount paid by the complainant	Rs. 1,00,47,764.50 <b>(as per statement of account, page no. 48 of the complaint)</b>
14.	Due date of delivery of possession as per agreement. <b>Note- (as alleged by complainant in his complaint, the date of start of construction is 12.10.2007 page no. 7)</b>	12.04.2011 <b>(as per clause 10a, 36 months of commencement of construction of the block in which the flat is located plus 6 months grace period, at page 28 to 29 of the complaint)</b>
15.	Relief sought	<ul style="list-style-type: none"> <li>To direct the respondents to deliver immediate possession of the flat with occupation certificate along with prescribed rate of interest on the amount already paid by the complainant.</li> </ul>

3. As per clause 10(a) of the agreement, the possession was to be delivered within a period of 36 months of commencement of construction of the particular block with a grace period of (6) months i.e. 12.04.2011. Clause 10(a) of the buyer agreement is reproduced below:

“10 (a). POSSESSION

(a) *Time of handing over the possession*

*Construction of the flat is likely to be completed within a period of the particular block in which the flat is located, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service dept., civil aviation deptt., traffic deptt., pollution control deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, dispute with contractor/work force etc. and circumstances beyond the control of the developers and subject to timely payments by the flat buyers in the scheme.*

4. That the respondents have utterly failed in fulfilling their obligation of delivery of the unit as per the apartment buyer's agreement and failed to offer of possession in terms of section 11(4) (a) and 18 of the Act read with Rules. Also, respondents have failed to procure the occupancy certificate. There is deficiency of

service on the part of the respondent and as such they are liable to compensate to the complainant. Hence, this complaint for the inter alia reliefs detailed above.

5. As per BBA, the possession of the allotted unit was to be given to the complainant within 12.04.2011. However, no possession has been offered by the respondents to the complainant.
6. On the date of hearing, the Authority explained to the respondents/promoters 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.
7. The respondents submitted that they could not get the occupation certificate on account of the fact that condition of construction of EWS units have not been complied by them. There is no intentional delay in the construction on the part of the respondents. Delay was due to reasons detailed in the reply which were beyond its control. The respondents further submitted that they raised all the demands as per the construction linked payment plan.
8. 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 submission made by the parties.
9. The Authority on the basis of information and explanation and 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.

10. Arguments heard

11. The Authority is of the view that the act is to protect the rights of the stakeholders i.e. the promoters, allottees 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.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and based on the findings of the authority the Authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 10(a) of apartment buyer's agreement executed between the parties on 03.06.2005 possession of the booked unit was to be delivered within stipulated time i.e. 12.04.2011. Accordingly, it is the failure of the respondents/promoters to fulfil their obligations, responsibilities as per the apartment buyer's agreement. The complainant has paid Rs. 1,00,47,764.80/- against Basic sale price as per agreement Rs. 88,98,750/- under all circumstances, it is the bounden duty of the respondents to offer possession after completing all the formalities w.r.t obtaining of occupation certificate from the competent authority. Since no OC has been brought on record and as such, the delay is on the part of the respondents to deliver the unit and the complainants is entitled for delayed possession charges @10.20% till the offer of possession after getting OC from the competent

the project has not been completed as on date and it shall be treated as an on-going project and the provisions of RERA Act shall be applicable in this regard.

13. Hence, the Authority hereby pass the following order and

issue directions under section 34(f) of the Act that:

(i) The respondents are directed to pay interest at the prescribed rate of 10.20% till the actual offer of possession after getting OC from the competent authority.

(ii) The complainant is directed to pay outstanding dues, if any, after adjustment of DPC;

(iii) The respondents shall not charge anything which is not part of the flat buyer's agreement.

14. Complaint stands disposed of.

15. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 22.01.2020

  
(Subhash Chander Kush)

Member

**Judgment uploaded on 24.02.2020**