

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

Complaint no. : 1680 of 2019
First date of hearing : 28.08.2019
Date of decision : 22.01.2020

Endurance Technologies Limited

**Address:- E-92, MIIDC Industrial Area,
Waluj Aurangabad, Maharashtra-431136**

Complainant

Versus

1.Parsvnath Developers Limited

**Address:-Parsvnath Metro Tower, Near
Shahdara Metro Station, Shahdara, Delhi-
110032**

**Corporate Office:6thfloor, 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**

**Corporate Office:6thfloor, Arunachal
Building, 19, Barakhamaba Road, New Delhi
110001**

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	26.905 (23.815+3.09) 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, 52 to 57 of 1997, 1079 of 2006, 1080 of 2006
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, Ram Prakash
7.	Increase area	105 sq. ft.
8.	Unit no., Tower no.	B5-301, 3 rd floor, Tower-B5
9.	Super area	3495sq. ft. (revised area)
10.	Date of execution of agreement	26.02.2007 (page no. 32 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total sale consideration	Rs. 2,20,35,000/- (excluding taxes and other charges, page no. 34 of the complaint)
13.	Total amount paid by the complainant	2,16,84,459/- (as alleged by the complainant, at page no. 10 of the complaint)
14.	Due date of delivery of possession as per agreement. Note (as alleged by complainant in his complaint, the date of start of construction is 17.02.2010 page no. 9)	17.08.2013 (as per clause 10a, 36 months of commencement of construction of the block in which the flat is located plus 6 months grace period)
15.	Relief sought	<ul style="list-style-type: none"> To direct the respondents to deliver immediate possession of

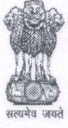
		the flat with occupation certificate along with prescribed rate of interest on the amount already paid by the complainant.
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3. As per clause 10(a) of the agreement, the possession was to be delivered within a period of 36 months of commencement of construction of the particular block with a grace period of six (6) months. The complainant in its complaint has alleged that the construction had commenced on 17.02.2010, hence the due date of delivery is 17.08.2013. Clause 10(a) of the flat buyer agreement is reproduced below:

"10 (a). 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 deliver 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 respondents and as such they are liable to compensate to the complainant since the Respondents have joint as well as several liabilities towards 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 17.08.2013. However, it is strange to note that even after lapse of 7 years, 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 have 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 and 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 complainant 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 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.
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 flat buyer agreement executed between the parties on 26.02.2007 possession of the booked unit was to be delivered within stipulated time i.e. 17.08.2013. Accordingly, it is the failure of the respondents/promoters to fulfil their obligations, responsibilities as per the flat buyer



agreement. The complainant has paid Rs.2,16,84,459/- against total sale consideration of Rs.2,20,35,000/- (excluding taxes). 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 complainant is entitled for delayed possession charges @10.20% till the actual offer of possession after getting OC from the competent authority. Counsel for the respondents have produced various judgment/ citation and the same have been perused and placed on record. Since 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. As such, the judgment/authorities produced by the counsel for the respondents are not fully applicable in this context.

13. Hence, the Authority hereby pass this order and issue direction 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 respondent shall not charge anything which is not part of the flat buyers agreement.

14. Complaint stands disposed of.
15. File be consigned to registry.


(Samir Kumar)

Member

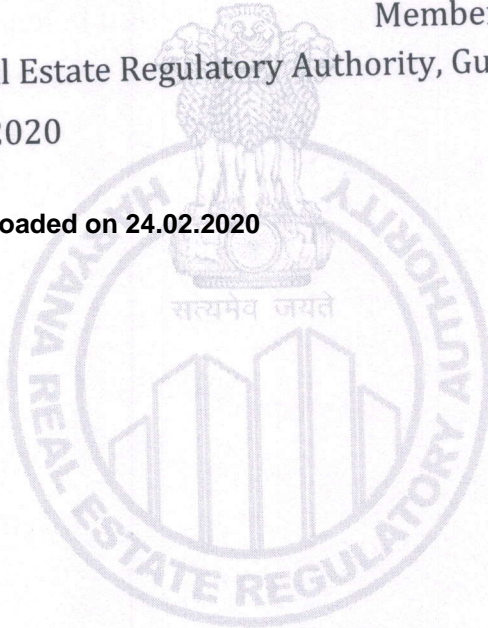
Haryana Real Estate Regulatory Authority, Gurugram

Date 22.01.2020


(Subhash Chander Kush)

Member

Judgment uploaded on 24.02.2020



HARERA
GURUGRAM