

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

Complaint no. : 1604 of 2019
First date of hearing : 10.09.2019
Date of decision : 22.01.2020

Smiriti Infosoft Pvt. Ltd.

Address- 198 Jor Bagh, Lodhi Colony, Delhi

Complainant

Versus

Parsvnath Developers Limited

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sachin Rao
Deeptanshu Jain

Advocate for the complainant
Advocate for the of the respondent

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 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	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	85 sq. ft.
8.	Unit no., Tower no.	D4-604, 6 th floor, Tower-D4
9.	Super area	2895 sq. ft. (revised area)
10.	Date of execution of agreement	02.06.2005 (page no. 22 of the complaint)

11.	Payment plan	Construction linked payment plan
12.	Basic sale price as per flat buyers agreement	Rs. 77,27,500/- (page no. 24 of the complaint)
13.	Total amount paid by the complainant	Rs. 80,71,877/- (as per customer ledger, page no. 74 to 75 of the complaint)
14.	Due date of delivery of possession as per agreement. (as per clause 10(a), 36 months of commencement of construction of the block in which the flat is located within 6 months grace period, page 28 to 29 of the complaint)	02.12.2008 Note: the due date has been calculated from date of execution of agreement since no documents to show the start of construction have been attached)
15.	Relief sought	<ul style="list-style-type: none"> To direct the respondent to deliver immediate possession of the flat with occupation certificate along with prescribed rate of interest on the amount already paid by the complainant.

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. 02.12.2008. Clause 10(a) of the 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 dept., traffic dept., pollution control dept., 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 respondent has utterly failed in fulfilling his 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 (1) of the Act read with Rules. Also, respondent has failed to procure the occupancy certificate. There is deficiency of service on the part of the respondent and as such he is liable to compensate 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 on 02.12.2008. However, no possession has been offered by the respondent to the complainant.
6. 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.

7. The respondent 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 respondent. Delay was due to reasons detailed in the reply which were beyond its control. It is stated that the respondent has 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 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 allottee 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

respondent is in contravention of the provisions of the Act. By virtue of clause 10(a) of apartment buyer's agreement executed between the parties on 02.06.2005 possession of the booked unit was to be delivered within time i.e. 02.12.2008. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement. The complainant has paid Rs. 80,71,877/- against basic sale price of Rs. 77,27,500/-. Under all circumstances, it is the bounden duty of the respondent 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 authority. 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.

13. 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 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;



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(iii) The respondent 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

Judgment uploaded on 24.02.2020


(Subhash Chander Kush)

Member

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