

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

**Complaint no.- 5383 of 2019**  
**Date of first hearing - 11.12.2019**  
**Date of decision- 19.02.2020**

**Mrs. Preetha Nair.**

**Address-** Villa no. 20, Z-block,  
Tatvam Villa, Sohna Road,  
Sector 48, Gurugram- 122018.

**Complainant**

**Versus**

- 1. M/s. Advance India Projects Limited.**
- 2. M/s Haamid Real Estates Private Limited**

**Address:-** 232 B, 4<sup>th</sup> floor,  
Okhla Industrial Estate, Phase -III,  
New Delhi - 110020.

**Respondents**

**CORAM:**

**Shri Samir Kumar**

**Member**

**Shri Subhash Chander Kush**

**Member**

**APPEARANCE-**

**Shri Akash Gupta**

**Advocate for the complainant**

**Shri Jasmeet Singh**

**Authorized representative of the respondents**

**Shri M.K. Dang**

**Advocate for the respondents**

**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	The Peaceful Homes, Sector 70A, Gurugram
2.	Project area	27.4713 acres
3.	Nature of project	Group housing colony
4.	RERA registered	Unregistered
5.	License No. & validity status	16 of 2009 dated 29.5.2019 valid upto 28.5.2024



6.	Name of licensee	M/s. Haamid Real Estate P. Ltd. and others
7.	Unit no., Tower no.	A-124, Tower A
8.	Carpet area	2925 sq. ft. (super area)
9.	Date of execution of flat buyer's agreement	24.11.2014 <b>(Pg. 17 of the complaint)</b>
10.	Payment plan	Construction linked payment plan <b>(as per SOA dated 04.05.2019, Pg. 15 of the complaint)</b>
11.	Total sale consideration	2,03,91,509/- <b>(as per SOA dated 04.05.2019, Pg. 15 of the complaint)</b>
12.	Total amount paid by the complainant	2,00,03,145.20/- <b>(as per SOA dated 04.05.2019, Pg. 15 of the complaint)</b>
13.	Due date of delivery of possession as per agreement	<b>10.11.2017</b> <b>(Clause 11(a): 36 months + 6 months' grace period from the date of commencement of construction)</b> <b>Note - as per SOA construction was commenced on 10.05.2014</b>
14.	Period of delay in handing over possession till date	Continuous
15.	Status of project (ongoing/complete)	Ongoing
16.	Relief sought (in specific terms)	<ul style="list-style-type: none"> <li>Direct the respondent to pay delayed possession charges at the prescribed rate of interest and handover possession of the unit.</li> </ul>

3. As per the buyer agreement in question vide clause no. 11(a) the possession was to be handed over within a period of 36 months from the date of commencement of construction plus 6 months' grace

period. As per statement of accounts dated 04.05.2019 (annexure P1 of the complaint) construction was commenced on 10.05.2014, so the due date of delivery of possession on calculation from the said date comes out to be 10.11.2017.

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

*".....the Company endeavours to hand over the possession of the Unit to the Allottee within a period of 36 (Thirty Six) months from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work at the Project Land and this date shall be duly communicated to the Allottee ("**Commitment Period**"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six) months ("**Grace Period**")....."*

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

Hence, this complaint for the following reliefs-

- Direct the respondent to pay delayed possession charges at the prescribed rate of interest and handover the possession of the unit.

5. Notice of the complaint was duly served to the respondent by the Authority. Tracking report in this regard is available on the record.

Despite service of notice, the respondent has not filed reply to the complaint. However, brief note of arguments alongwith supportive


case laws has been filed by the respondent which has been taken on record.

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. 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. 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. 10.11.2017 Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 24.11.2014 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 :-
  - The complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.20% p.a. with effect from 10.11.2017 (due date of delivery of possession) till the offer of possession in terms of section 18(1) of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

- The arrears of interest so accrued from due date of delivery of possession (10.11.2017) till the date of order be paid on the prescribed rate of interest within a period of 90 days of the order and thereafter monthly interest be paid on or before 10<sup>th</sup> of each subsequent English calendar month till offer of possession.
  - The complainant is directed to pay the outstanding dues, if any, alongwith prescribed rate of interest i.e. 10.20% per annum to the respondent. She is also directed to take over the possession of the unit within a period of one month failing which the respondents shall be entitled to charge holding charges from the complainant.
13. Complaint stands disposed of.
14. Case file be consigned to the registry.

  
**Samir Kumar**  
**(Member)**

  
**Subhash Chander Kush**  
**(Member)**

**Haryana Real Estate Regulatory Authority, Gurugram.**

Date - 19.02.2020.