

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

New complaint no. : 873 of 2020
Old Complaint no. : 3972 of 2019
First date of hearing: 11.11.2019
Date of decision : 09.01.2020

Shri Arun Kumar Gangal and Pratibha Gangal
R/o C2, 11A DDA, MIG Flats, Lawrence Road,
Keshav Puram, Delhi -110035

Complainants

Versus

M/s CHD Developers Ltd.
Regd. office: 201, Radha Chambers, Plot No.
19-20, G Block, Community Centre, Vikaspuri,
New Delhi - 110018

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Santosh K. Pandey
Shri Ravi Agrawal

Advocate for the Complainant
Advocate for the respondent

ORDER

1. The present complaint dated 13.09.2019 has been filed by the complainants-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	"106 Golf Avenue", Sector 106, Gurugram, Haryana
2.	Project area	12.344 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	69 of 2012 dated 03.07.2012 valid till 02.07.2016
5.	Name of licensee	Empire Realtech.
6.	RERA Registered/ not registered	Registered vide no. 8 of 2019 dated 21-02-2019
7.	HRERA registration valid up to	30.06.2021
8.	Unit no.	T-02-06/05 [Page 24 of complaint]
9.	Unit measuring (super area)	1183 sq. ft.
10.	Date of execution of allotment letter	17.12.2012 [Annx B, Page 22 of complaint]
11.	Total consideration as per BBA pages 27 of the complaint.	Rs.64,59,731/-
12.	Total amount paid as per demand letter dated 16.12.2015 and two receipts dated 30.12.2015 at pg. 66 to 68 of the complaint	Rs.59,04,460 /-

13.	Due date of delivery of possession as per clause 13 of the said apartment buyer agreement i.e. 42 months from the date of execution of the agreement plus grace period of 6 months. [Page 35-36 of complaint]	17.12.2016
14.	Offer of possession to the complainants	Not offered till date
15.	Delay in handing over possession till <i>date of decision i.e. 09.01.2020</i>	3 years 23 days
16.	Status of the project	OC not received till date
17.	Relief sought	<p>i. To direct the builder to provide the possession of the apartment.</p> <p>ii. To give compensation in the form of interest for delayed possession from 16.06.2016.</p> <p>iii. To pay litigating cost.</p>

3. As per clause 13 of the Apartment buyer agreement, the possession was to be handed over within a period of 42 months from the date of execution of agreement (17.12.2012) plus grace period of 6 months which comes out to be 17.12.2016. Clause 13 of the apartment buyer agreement is reproduced below:

"13. Time of handing over of possession: ...

(I) Barring unforeseen circumstances and force majeure events, court indulgence as stipulated hereunder, the possession of the said apartment is proposed to be delivered by the company to the allottee within 42 months(three and half years) from the date of execution of this agreement, subject to payment by the allottee(s) towards the basic sale price and other charges, as demanded in terms of this agreement. The time frame for delivery of possession provided herein above is tentative and shall be subject to force majeure, court indulgence and timely prompt payment of all installments and the formalities for completion required. The company shall be entitled to avail time for completion of construction of the project if the delay occurs due to departmental delay or any other circumstance beyond the power and control of the company. The company shall be entitled to six(6) months additional period in the event there is delay in handing over possession. However, in case of delay beyond the period of six(6) months and such delay is attributable to the company, the company shall be liable to pay compensation @Rs10.00(Rupees ten only) per sq. ft. per month of the super area of the apartment for the period of further delay. The adjustment of compensation, if any, shall be done at the time of conveyance of the flat and not earlier...."

4. The possession of the subject apartment has not been offered by the respondent to the complainants so far. The complainants seeks possession, delayed possession charges with interest, and litigation cost. Hence, this complaint for the relief as stated above.
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.

6. 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.
7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
8. 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.
9. The respondent contended that there is no merit whatsoever in the complaint filed and the same is liable to be dismissed with costs. The respondent submits that the complainants has sought to wrongly portray as if no work has been carried out and that the construction is far from completion.

10. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the apartment buyer agreement executed between the parties on 17.12.2012, possession of the booked unit was to be delivered within a period of 42 months plus 6 months' grace period from the date of execution of said agreement. As such the due date of delivery of possession on calculation comes out to be 17.12.2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 17.12.2012 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. As such the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest i.e. 10.20% p.a. w.e.f. 17.12.2016 (due date of delivery of possession) till the actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules. The complainants has paid Rs. 59,04,460/- as per demand letter dated 16.12.2015 and two

receipts and two receipts dated 30.12.2015 – pg 66 to 68 of the complaint against total sale consideration of Rs. 64,59,733/-

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

- i. As such the complainants are entitled for delayed possession charges @10.20 % p.a. w.e.f. 17.12.2016 till offer of possession as per provisions of section 18(1) of the Real estate (Regulation and Development) act,2016. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainants which is not part of the BBA.
- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest

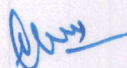
@10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

12. Complaint stands disposed of.

13. File be consigned to registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member

Date: 09.01.2020

Judgement Uploaded on: 18.02.2020