

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

Complaint no. : 3248 of 2019
First date of hearing : 21.11.2019
Date of decision : 22.01.2020

Mr. Anuj Kumar Singh

Mrs. Shalini Singh

Address- M-154, Tower M, New Town Heights,
Sector-90, Gurugram, Haryana-122505

Or

Legitime India, L-49 D, 1st floor, L- Block, Saket,
Delhi-110017

Complainants

Versus

M/s Spire Development Pvt. Ltd.

Address:- 5-D, Plaza, M-6, District Centre
Jasola, New Delhi-118025

M/s Magic Eye Development Pvt. Ltd.

Address:- GF-09, Plaza M6, Jasola, District
Centre, Jasola, New Delhi

Respondents

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Ms. Shivali

Advocate for the complainants

Ms. Neelam Gupta and

Shruti Sen

Advocate for the of the respondents

ORDER

1. The present complaint has been filed by the complainants/allottees 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 promoters shall be responsible for all obligations, responsibilities and functions to the allottees 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	"The Plaza at 106", Sector-106, Gurugram
2.	Project area	3.725 acres
3.	Nature of project	Commercial colony
4.	RERA registered/ not registered	Registered 72 of 2017 dated 21.08.2017 valid upto 31.012.2021
5.	License No. & validity status	65 of 2012 dated 21.06.2012 valid upto 20.06.2020
6.	Name of licensee	Magic Eye Developers Pvt. Ltd.
8.	Unit no., Tower no.	1802, 18 th floor, Tower B-2,
9.	Super area	700 sq. ft.
10.	Date of execution of agreement	22.02.2013(page no. 29 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total sale consideration	Rs. 43,02,655/- (including tax) (as per applicant ledger, page no. 53 of the complaint)
13.	Total amount paid by the complainants	Rs. 32,95,543/-

		(as per applicant ledger on page no.53 of the complaint)
14.	Due date of delivery of possession as per agreement. (as per clause 9.1, within a period of 3 years from the date of execution of this agreement, along with two grace periods of six months each, page no. 38 of the complaint)	22.02.2017
15.	Relief sought	<ul style="list-style-type: none"> To direct the respondents to deliver immediate possession of the unit along with prescribed rate of interest on the amount already paid by the complainants.

3. As per clause 9.1 of the agreement, the possession was to be delivered within a period of 3 years from the date of execution of this agreement along with two grace periods of six months each, which comes out to be 22.02.2017. Clause 9.1 of the buyers agreement is reproduced below:

“9.1 Schedule For Possession of the Said Unit

The developer based on its present plans and estimates and subject to all just exception/force majeure/statutory prohibitions/courts order etc. contemplates construction of the said building/said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each, unless there is a delay for reasons mentioned in clause 10.1, 10.2 and clause 37 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in Annexure-C or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by all or any of the term or conditions of this agreement.

4. That 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(1) of the Act read with Rules. The respondent's company with malafide intent gave false assurances to the complainants regarding the new dates of handing over the possession without assigning any reason whatsoever for such a prolonged delay.
5. 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.

6. The respondents submitted that 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.
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 and submission made by the parties.
8. The Authority on the basis of information and explanation and other record submissions made and documents filed by the parties of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. 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.
11. On consideration of the circumstances, the evidence and other records and submissions made by the complainants 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 11(a) of buyer's agreement executed between the parties on 22.02.2013 possession of the booked unit was to be

delivered within time i.e. 22.02.2017. Accordingly, it is the failure of the respondents/promoters to fulfil their obligations, responsibilities as per the buyer's agreement. The complainants have paid Rs. 32,95,543/- against total sale consideration of Rs. 43,02,655/- at page no. 53 of the complaint. Under all circumstances, it is the bounden duty of the respondents to offer possession after completing all the formalities despite receipt of OC on 28.11.2019.

12. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) read with section 18(1) of the Act:

- (i) The respondents are directed to pay interest at the prescribed rate of 10.20% till the actual offer of possession, on the amount deposited by the complainants;
- (ii) The complainants are 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 buyers agreement.

13. Complaint stands disposed of.

14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 22.01.2020


(Subhash Chander Kush)

Member