

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

New Complaint no. : 843 of 2020
Old Complaint no. : 4088 of 2019
First date of hearing : 13.12.2019
Date of decision : 13.02.2020

1. Shri. Harish Kumar
2. Smt. Anil Kumari

Both R/O:- D-138, Govind Puri,
Chhoti Market, Modi Nagar,
Ghaziabad(UP)

Complainants

Versus

M/s Vigneshwara Developers Pvt. Ltd..
Regd. Office:- D-16/C, Bhagwani House,
Hauz Khas, New Delhi-110016

Respondent

CORAM:

Shri. Samir Kumar
Shri. Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. Dham Raj Janghu proxy Advocate for the complainants
counsel of Shri. Sanjeev Sharma
Advocate
None present on behalf of Advocate for the respondent
respondent

EX-PARTE ORDER

1. The present complaint has been filed by the complainants/allottees in 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 allottees as per the developer-anchor unit agreement 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	"Darsons & Kissons iValley Information Technology Park", Manesar, Gurugram
2.	Project area	10 acres
3.	Nature of the project	Information Technology Park (Commercial Complex)
4.	DTCP license no. and validity status	N/A
5.	Name of licensee	N/A
6.	RERA Registered/ not registered	Unregistered
7.	HRERA registration valid up to	N/A
8.	Unit no.	N/A
9.	Unit measuring (super area)	250 sq. ft.
10.	Date of execution of developer-anchor agreement	07.09.2008
11.	Total sales consideration	Rs. 18,75,000/- (at Page 22 of the agreement)
12.	Total amount paid by the complainants	Rs. 19,25,000/- (at Page 22 of the agreement)
13.	Due date of delivery of possession <u>as per clause 11 of the agreement-within a period of 60 months from the date of finalization of construction and</u>	07.09.2013 Note:- the date of finalization of construction cannot be ascertained from the



	<u>after necessary approvals and sanctions have been obtained from government authorities</u>	complaint file, thus the due date of handing over the possession has been calculated from the date of execution of the agreement.
14.	Offer of possession to the complainants	N/A
15.	Specific reliefs sought	Direct the respondent to handover the possession & pay interest for the period of delay in handing over the possession.

3. As per clause 11 of the developer-anchor agreement, the possession was to be handed over within a period of 60 months from the date of finalization of construction. Since, there is no evidentiary proof for ascertaining the date of finalization of construction the due date of handing over the possession has been calculated from the date of execution of the agreement which comes out to be 07.09.2013. Clause 11 of the developer-anchor agreement is reproduced herein below:

"11 The possession of the unit is proposed to be delivered by the Developer to the proposed Allottee(s) within sixty months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from Govt. Authorities....."

4. The possession of the subject apartment has not been offered till date by the respondent. The complainants seeks delay interest as per section 18 of the Act. The complainants reserves their right to file a separate application for seeking compensation from the Adjudicating Officer on account of



extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs 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. Also, the respondent has not filed reply to the complainants despite being represented through advocate and service of notice in this respect.
6. Notices w.r.t. filing of reply were issued to the respondent for making his appearance. However, despite due and proper service of notices, the respondent failed to file the reply before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings ex-parte and decide the matter on merits by taking into account legal/factual propositions as raised by the complainants in his complaint.
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 submissions of the parties during hearing.

8. The Authority on the basis of information, explanation, other submissions made and the documents filed by the complainants is of considered view that there is no need of further hearing in the complaint.
9. Arguments have been heard.
10. The Authority is of the view that the Act is to protect the rights of the stake-holders i.e. the promoter, 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 record, submissions made by the complainants 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 11 of the developer-anchor unit agreement executed between the parties on 07.09.2008, possession of the booked unit was to be delivered within a period of 60 months from the date of finalization of construction. Since, the date of finalization of construction cannot be ascertained, the due date of handing over the possession has been calculated from the date of execution of the agreement. As such the due date of delivery of possession comes out to be 07.09.2013.

Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the developer-anchor unit agreement dated 07.09.2008 to hand over the possession within the stipulated period even after receipt of entire consideration from the complainants. 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 @10.20% p.a. w.e.f. 07.09.2013 till the physical offer of possession of the allotted unit after receipt of occupation certificate as per provisions of section 18(1) of the Act read with rule 15 of the Rules.


12. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:
 - i. The respondent shall pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 07.09.2013 till the physical offer of possession of the allotted unit after receipt of occupation certificate within a period of 90 days from the date of this order and thereafter monthly payment of interest shall be paid by the 10th of every 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 developer-anchor agreement.
13. Complaint stands disposed of.
14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 13.02.2020

Judgement uploaded on 19.02.2020