

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

**Complaint No. : 98 of 2018**  
**First date of hearing : 19.04.2018**  
**Date of Decision : 10.07.2018**

Mr. Tarun Agarwal, R/o 518, 1<sup>st</sup> floor,  
Sector -5, Gurugram, Haryana-122001

**...Complainants**

Versus

M/s Selene Construction Ltd. M -62 & 36,  
1<sup>st</sup> Floor, Connaught Place, New Delhi -  
110001

**...Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sanchit Kumar with  
complainant in person

Advocate for the complainants

Shri Arun Kumar Yadav with  
Tarun Arora legal  
representative of company

Advocate for the respondents

**ORDER**

1. A complaint dated 21.03.2018 was filed section 31 of The Real Estate (Regulation & Development Act,2016) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules,2017 by the complainant, Mr. Tarun Agarwal against promoter M/s Selene Construction Ltd. on



account of violation of clause 10.1 of flat buyer's agreement executed on 12.09.2010 for unit no.093, 9<sup>th</sup> floor, tower B in project "Indiabulls Centrum Park" for not giving timely possession on due date i.e. 3 years from the date of execution of the builder buyers agreement dated 12.09.2010 which is an obligation under section 11 (4) (a) of the act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the Project	Indiabulls Centrum Park, Sector -103, Gurugram
2.	Unit No.	093, 9th floor, tower B
3.	Registered/Un-registered	Registered
4.	RERA Registration no.	10 of 2018
5.	Booking amount paid by the buyer to the builder/promoter vide agreement	Rs. 3,80,250/-
6.	Total consideration amount as per agreement dated 20.09.2010	Rs. 44,71,976/-
7.	Total amount paid by the complainant upto date	Rs. 42,75,587/-
8.	Date of delivery of possession from the date of execution of flat buyer agreement	3 years i.e. 20.09.2013



9.	Delay of number of months/ years upto date 10.07.2018	4 years 10 months
10.	Penalty Clause as per builder buyer agreement	Clause 10.2 of BBA i.e. Rs.5/- per sq.ft. per month for the period of delay
11.	Cause of delay in delivery of the said unit	No valid reason explained by the promoter.

3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is available on record for Unit No. K2052, 5th floor, sector 103 Gurugram in the project "Indiabulls Centrum Park" according to which the possession of the aforesaid unit was to be delivered by 20.09.2013. The respondent company has not delivered the possession till 10.07.2018. The builder being in a dominating position has made a one-sided agreement. The promoter has not fulfilled his committed liability as on date. Neither he has delivered the possession of the unit no. 093, 9th floor, tower B as on date to the purchaser nor has paid any compensation i.e. @ Rs.5/- Sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 20.09.2010.



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 19.04.2018. The case came up for hearing on 19.04.2018, 08.05.2018, 07.06.2018 & 10.07.2018. the reply filed on behalf of the respondent has been found to be vague and evasive as they have contended that the parties are bound by the terms and conditions of the agreement.
5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The respondent alongwith the representative of the company made a statement in the court stating that they are ready to handover the possession of the said unit to the complainant. They further put forth before the court that they have applied for part occupational certificate for the said tower in issue.
6. On the statement made by the respondent, the complainant agreed on not withdrawing from the project and instead take possession of the said flat.
7. As per agreement for sale, clause no. 10.1 the possession of the flat was to be handed over within 3 years, with a six months grace period thereon from the date of execution of



the flat buyer agreement. The clause regarding the possession of the said flat is reproduced below:

10.1. The developer shall endeavour to complete the construction of the said building/unit within a period of three years with a six months grace period thereon from the date of execution of the flat buyer agreement subject to timely payment by the buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer. The developer on completion of the construction/development shall issue final call notice to the buyer, who shall within 30 days thereof, remit all dues and take possession of the unit. In the event of his/her failure to take possession of the unit within the stipulated time for any reason whatsoever he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/cost and any other levies on account of the allotted unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the buyer has not taken possession of the unit or has not been enjoying benefit of the same. The buyer in such an eventuality shall also be liable to pay the holding charges @Rs.5 per sq.ft. (of the super area) per month to the developer, from the date of expiry of said thirty days till the time possession is actually taken over by the buyer.

8. As per date of execution of builder buyer agreement, the due date of possession was 20.09.2013 (excluding the grace period) and with respect to the terms of the flat buyer agreement they have been drafted mischievously and is completely one sided. As per para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors.** (W.P 2737 of 2017), the Bombay HC bench held that:



*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

9. As the possession of the flat was to be delivered by 20.09.2013 as per the clause referred above, the authority is of the view that the promoter has violated section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*"11.4 The promoter shall—*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*



10. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:



**“34 (f) Function of Authority -**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”*

It has been requested by the complainant that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

11. Keeping in view the present status of the project and intervening circumstances, the complainant wishes to continue with the project and as per section 18(1) proviso of the Act ibid it's an obligation of the promoter to pay interest for every month of delay till handing over the possession at such rate as may be prescribed. Herein, the promoter has failed to pay the interest as may be prescribed as per section 18(1). Further the Complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Section 18(1) is reproduced below.



**18 (1) Return of amount and compensation --**

1. If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -
  - (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
  - (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

*He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

12. Thus, the Authority, exercising powers vested in it under section 37 of The Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to give interest at the prescribed rate for every month of delay from the due date of possession on the amount deposited by the complainant till the actual possession is given. The balance amount shall be paid by the respondent to the complainant within two months from today i.e. 10.07.2018 and further the payment shall be made by them on every month till handing








over the actual possession of the said unit. The Authority further directes that if the possession is not given on the date committed by the respondent then the penal consequences will follow.

13. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer.
14. The order is pronounced.
15. Case file be consigned to the registry.



  
**(Sanvir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

