

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

**Complaint no. : 1846 of 2019**  
**First date of hearing : 19.12.2019**  
**Date of decision : 19.02.2020**

Shri Vikas Chadha  
**R/O:-** B1/281, Janakpuri,  
New Delhi-110058

**Complainant**

Versus

M/s T.S. Realtech Pvt. Ltd.  
**Regd. Office:-** E-26, L.G.F.,  
Panchsheel Park, New Delhi-110017

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Smt. Vridhi Sharma  
Shri Gautam Patra  
Shri Mukul Sanwariya

Advocate for the complainant  
AR of the respondent  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 builder buyer unit agreement 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	"Iris Broadway", Sector-85-86, Gurugram
2.	Project area	2.8 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	40 of 2012 dated 22.04.2012 valid upto 21.04.2020
5.	Name of licensee	T.S Realtech
6.	RERA Registered/ not registered	<b>Registered</b> vide registration no. 168 of 2017 dated 29.08.2017
7.	HRERA registration valid up to	31.12.2021
8.	Unit no.	A-308, 3 <sup>rd</sup> Floor, Block-A
9.	Unit measuring (super area)	804 sq. ft.
10.	Date of execution of space buyer's agreement	20.08.2013
11.	Total sales consideration	Rs. 62,63,920/- (as per SOA dated 13.05.2019 on pg. 86 of the reply)
12.	Total amount paid by the complainant	Rs. 59,98,600/- (as per SOA dated 13.05.2019 on pg. 86 of the reply)
13.	Due date of delivery of possession <u>as per recital IV of the space buyer's agreement- within a period of 42 months from the date of receipt of all permissions</u> and	25.02.2018 <b>Note:- due date of handing over the possession is calculated from the date of consent to establish i.e.</b>



	<u>commencement of construction</u>	<b>25.08.2014 which was placed on record during hearing.</b>
14.	Status of the project	OC received on 29.03.2019 (annexed as Annexure R-5 on pg. 81 of the reply)
15.	Date of offer of possession to the complainant	12.04.2019 (as per letter of offer of possession annexed as Annexure R-6 on pg. 83 of the reply)
16.	Delay in handing over the possession till date of offer of possession i.e. 12.04.2019	1 year 1 month 18 days
17.	Specific reliefs sought	i. Direct the respondent to grant immediate possession of the office space bearing no. A-308 along with prescribed rate of interest for the delay caused in handing over possession.

3. As per recital IV of the space buyer's agreement, the possession of the subject unit was to be handed over within a period of 42 months from the date of receipt of all permissions and commencement of construction. The due date of handing over the possession is calculated from the date of consent to establish i.e. 25.08.2014 which comes out to be 25.02.2018. Recital IV of the space buyer's agreement is reproduced herein below:

*"[IV] The Company intends to commence the development of the said Commercial Colony consisting of commercial spaces, office spaces and such other amenities, facilities as may be permissible under law in accordance with the Building Plans and utmost*



*endeavor will be made to complete the same by the end of 42 (Forty Two) Months from the date of receipt of all permissions and commencement of construction."*

4. The possession of the subject commercial unit has been offered vide letter dated 12.04.2019 by the respondent. The complainant seeks delay interest as per section 18 of the Act. The complainant reserve 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 complainant. Hence, this complaint for the reliefs as stated above.
5. On the date of hearing, the Authority explained to the Respondent 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 respondent contests the complaint on the following grounds:-
  - i. The respondent submitted that the claim for the compensation would be adjudged by the Adjudicating Officer as appointed under Section 71 of 2016 Act and that too keeping in view the factors mentioned in Section 72 of 2016 Act. No complaint can be entertained much less before this Ld. Authority in respect of the matters to be adjudicated by the Adjudicating Officer.
  - ii. The respondent submitted that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure-A, which is

required to be executed inter-se the promoter and the allottee. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between the respondent company and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the Space Buyer's Agreement, executed much prior to coming into force of 2016 Act.

- iii. The respondent submitted that the project of the promoter is in four phases i.e. phase I, II, III & IV. The phase I of the project includes Block-A, phase II includes Block-B and phase III, IV includes Block C and Block D. In the present case, the complainant purchased one SOHO (Shop Office Home Office) Commercial Unit in the said project bearing No. 308, 3<sup>rd</sup> Floor, Block-A. That the unit of the complainant falls under phase I against which the OC has been received vide letter dated 29.03.2019. Moreover, the respondent has offered the possession to the complainant on 12<sup>th</sup> April 2019.
- iv. The respondent submitted that the complainant has made payment of Rs. 59,98,600/- against unit no. A-308 i.e. 95% out of the total consideration. The respondent has raised the last demand on 12.04.2019 for the allotted unit, which has not been paid by the complainant till date. As the



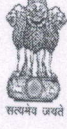
complainant was defaulter in making the payments and has not complied with the terms and conditions of the Space Buyer's Agreement.

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 complainant and the respondent during hearing.
8. The Authority, on the basis of information, explanation, other submissions made and the documents filed by the complainant and the respondent, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. On consideration of the circumstances, the evidence and other record, submissions made by the complainant 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 recital IV of the space buyer's agreement executed between the parties on 20.08.2013, possession of the booked unit was to be delivered within a period of 42 months from the date of receipt of all permissions and commencement of construction. As such the due date of delivery of possession is calculated from the date of consent to establish i.e. 25.08.2014 which comes out to be 25.02.2018. According to the reply filed by the respondent, the




possession has been offered to the complainant on 12.04.2019 which has been delayed by 1 year 1 month and 18 days.

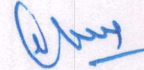
11. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 20.08.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @10.20% p.a. w.e.f. 25.02.2018 till the date of offer of possession i.e. 12.04.2019 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 complainant from due date of possession i.e. 25.02.2018 till the offer of possession i.e. 12.04.2019 within a period of 90 days from the date of this order.
  - ii. The complainant is directed to pay outstanding payments, if any, after adjustment of interest for the delayed period.
  - iii. The interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.



- iv. The respondent shall not charge anything from the complainant which is not part of the space buyer's agreement.
- v. No holding charges shall be charged by the Respondent during the pendency of present complaint.
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: 19.02.2020

Judgement uploaded on 11.03.2020.