

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

Complaint no. : 1517 of 2019
Date of first hearing : 29.08.2019
Date of decision : 03.03.2020

1. Nikhil Modi
2. Anita Modi

Both R/o Flat no. A - 2302, Heritage One,
Opposite Paras Trinity, Sector - 62, Gurugram
- 122413, Haryana

Complainants

Versus

M/s Sidhartha Buildhome Pvt. Ltd.
Registered Office :- Shop no. 1&4, local
Shopping Center, Pushp Vihar, Madangir, New
Delhi - 110062

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Jitendra Sharma proxy
counsel for Mohit Kumar
Shri Prashant Sheoran

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint dated 24.04.2019 has been filed by the complainant-allottee in Form CRA 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 complaint are as under:

1.	Name and location of the project	"NCR One", Sector 95, Gurugram.
2.	Nature of the project	Group housing colony
3.	Project area	10.712 acres
4.	DTCP license no.	64 of 2008 dated 19.03.2008 valid upto 18.03.2016
5.	RERA registered/not registered	Not registered
6.	Unit no.	E - 601, 6 th Floor
7.	Unit measuring	1496 sq. ft.
8.	Apartment buyer's agreement executed on	03.05.2012
9.	Payment plan annexed with the said agreement	construction linked plan (page 52 of complaint)
10.	Total consideration amount as per payment plan annexed with the said agreement.	Rs.4,640,760/- (page 52 of complaint)
11.	Total amount paid by the complainants as per statement of account dt. 21.07.2015	Rs. 3,676,018 /- (Note: annexed at page 93 of complaint)
12.	Due date of delivery of possession as per apartments buyer's agreement	15.05.2016 Note: the due of possession has been

	(Clause 11 of the said agreement, 36 months from the date of start of foundation of a particular tower in which the apartment is located plus grace period of 6 months...)	calculated from the date of start of foundation i.e. 15.11.2012 as submitted by respondent in its reply pg. no. 04
13.	Delay in handing over the possession till date of decision i.e. 03.03.2020	3 years 9 months 17 days
14.	Relief sought	Delayed possession charges with interest

3. As per the apartment buyer agreement in question vide clause no. 11.1 the possession was to be handed over within a period of 36 months from date of start of foundation of a particular tower in which the apartment is located with a grace period of 6 months. The relevant clause of the apartment buyer's agreement reads as under: -

".....The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said apartment, within a period of 36 months from the date of start of foundation of a particular tower in which the apartment is located with a grace period of six(6) months, on receipt of sanction plans/revised building plans and approvals of all the concerned authorities.."

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through its counsel appeared on 29.09.2019, 01.10.2019, 22.10.2019, 15.11.2019, 18.01.2020 and

03.03.2020. The authority has given multiple chances to respondent to file reply. The reply has been filed on behalf of the respondent on 10.05.2019.

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. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-
 - i. The respondent submitted that as per buyer agreement clause 11.2 the date of possession was to handover within 36 months plus 6 months grace period from the date of start of foundation of the particular tower i.e. 15.11.2012.
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.
8. The Authority on the basis of information and explanation and 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. On consideration of the circumstances, the evidence and other record and 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 clause 5 of the apartment buyer's agreement executed between the parties on 03.05.2012, possession of the booked unit was to be delivered within a period of 36 months from the date of start of foundation of a particular tower in which the apartment is located with a grace period of six(6) months. As such the due date of delivery of possession on calculation comes out to be 15.05.2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 03.05.2012 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 complainant is entitled for delayed possession charges at the prevalent prescribed rate of interest i.e.10.15% p.a. w.e.f. 15.05.2016 (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.

10. Arguments heard at length. The authority is of the considered view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants. As per terms and conditions of apartment buyer agreement executed between the parties, the complainants are entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.15% per annum on the amount deposited by the complainants with the respondent from the due date of possession till the offer of physical possession of the allotted unit on receipt of occupation certificate.
11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- i. The respondent is directed to pay delayed possession charges @10.15 % p.a. w.e.f. 15.05.2016 till date of offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act,2016.
 - ii. The arrears of interest accrued so far shall be paid to the complainant by the respondent 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.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the apartment buyer's agreement.

12. Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the act be issued to the respondent which will be decided separately. Registration branch is directed to do the needful. A copy of this order be sent to the registration branch for taking necessary action.

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: 03.03.2020

Judgment uploaded on 02.06.2020