

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

Complaint no. : 1749 of 2019
First date of hearing : 10.09.2019
Date of decision : 03.03.2020

Mr. Virender Kumar Garg
Address: Flat No- 21, Saubhagya Apartment,
Sector-21D, Faridabad, 121001

Complainant

Versus

M/s Sidhartha Buildhome Pvt. Ltd.
Office: Plot no.6, 5th Floor,
Sector 44, Gurugram-122003.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Virender Kumar Garg
Shri Prashant Sheoran

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 22.04.2019 has been filed by the complainant/allottees 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 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	"NCR ONE", Sector 95, Gurugram, Haryana
2.	Project area	10.712 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	64 of 2008 dated 19.03.2008 valid upto 18.03.2016
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	E-405, 4 th floor, tower/block- E [Page 02 of the agreement]
7.	Unit measuring (super area)	1780 sq. ft. [Page 03 of the agreement]
8.	Date of execution of flat buyer agreement	06.03.2012
9.	Payment plan	Construction linked payment plan
10.	Total consideration as alleged by the complainant in its complaint	Rs.53,23,000/- (as per the agreement)
11.	Total amount paid by the complainant	Rs.51,53,504/- (as per excel sheet dt. May 2019)

12.	Due date of delivery of possession as per (Clause 11.1- 36 months from the date of start of foundation of particular tower in which the apartment is located with a grace period of 6 months) Note: due date of possession has been calculated from the date of execution of agreement i.e. 06.03.2012 [Page 11 of the agreement]	06.09.2015
13.	Offer of possession to the complainant	Not offered
14.	Delay in handing over possession till date of decision i.e. 03.03.2020	4 years 5 months and 26 days
15.	Status of the project	OC not received till date
16.	Specific reliefs sought	i. Direct the respondent to pay interest for every month of delay at rate of prescribed rate of interest till date on paid amount.

3. As per clause 11.1 of the flat buyer agreement dated i.e. 06.03.2012, the possession was to be handed over 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 6 months. The due date of possession has been calculated from the date of execution of agreement. Accordingly, the due date of possession comes out to be

06.09.2015. Clause 11.1 of the allotment letter is reproduced below:

“11. Completion of construction:

11.1 The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete 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 06 months, on receipt of sanction plans/revised Building plans and approvals of all the concerned authorities.....

4. The complainant submitted that the respondent made incorrect and false statement in its advertisement material in order to induce him to book a flat in its project “NCR ONE” at sector-95, Gurugram, Haryana stating that the project shall be a state of art premier project and shall be one of its kind with all modern facilities/amenities. It was represented by the respondent that the said project will be developed after completing the entire development and obtaining the completion certificate from the local authority.
5. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seek delay interest as per section 18 of the Act. Hence, this complaint for the reliefs as stated above.
6. 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.

7. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-
 - i. The respondent submitted that the complainant himself is defaulting in the payment and that too for a period of 1 and half year. It is further submitted that respondent continues to bonafidely develop the project in question despite of there being various instances of non-payments of instalments by various allottees.
 - ii. It is submitted that the respondent had applied for the registration of project but the same was not granted due to some issues which were arises due to scarcity of fund.
8. 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.
9. 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.
10. 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 11.(1) of the flat buyer agreement executed between the parties on 06.03.2012, 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 6 months. The due date of possession has been calculated from the date of execution of agreement. Accordingly, the due date of possession comes out to be 06.09.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 06.03.2012 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 are entitled for delayed possession charges @10.15% p.a. w.e.f. 06.09.2015 till the date of offer of physical 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.

11. 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 complainant. As per terms and conditions of apartment buyer's agreement executed between the parties, the complainant is 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 complainant with the respondent from the due date of possession till the offer of physical possession of the allotted unit after receipt of occupation certificate.

12. 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 the interest at the prescribed rate i.e. 10.15% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 06.09.2015 till the offer of physical possession of the allotted unit after receipt of occupation certificate.
 - ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly

- payment of interest till the offer of possession shall be paid before 10th of every 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 allotment letter.
 - v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @10.15% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
13. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent which will be decided separately). A copy of this order be sent to the registration branch for taking necessary action.
14. Complaint stands disposed of.
15. File be consigned to registry.
- (Samir Kumar)**
Member
Haryana Real Estate Regulatory Authority, Gurugram
- (Subhash Chander Kush)**
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2020

Judgment uploaded on 02.06.2020