

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

Complaint no. : 1977 of 2019
Date of first hearing : 12.09.2019
Date of decision : 03.03.2020

1. Shakun Dhingra
2. Isha Dhingra
Both R/o M-198, 2nd floor, Vikas Puri,
New Delhi-110018

Complainants

Versus

M/s Sidhartha Buildhome Pvt. Ltd.
Address: Plot No. 6, 5th Floor, Sector-44,
Gurugram, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Ashma Marwah
Shri Prateek Gupta

Advocate for complainant
Advocate for the respondent

ORDER

1. A complaint dated 09.05.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Shakun Dhingra and Ms. Isha Dhingra, against the promoter M/s Sidhartha Buildhome Pvt. Ltd., on account of violation of the

clause 9 read with clause 11 of the shop buyer's agreement dated 29.03.2013 in respect of unit described below in the project 'NCR One' for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the shop buyer's agreement has been executed on 29.03.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. 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
5.	RERA registered/not registered	Not registered
6.	Shop/unit no.	7, ground floor, tower-shop
7.	Unit measuring	196 sq. ft.
8.	Shop buyer's agreement	29.03.2013

	executed on	
9.	Payment plan annexed with the said agreement	Time linked payment plan
10.	Total consideration amount as per payment plan annexed with the said agreement.	Rs.16,42,480/- (page 30 of complaint)
11.	Total amount paid as alleged by the complainants in its complaint	Rs.16,18,629/-
12.	Due date of delivery of possession as per shop buyer's agreement (as per clause 9.1 read with clause 11 of the said agreement, 36 months plus grace period of 6 months, which shall be intimated to the buyer(a) from the date of receipt of all statutory approvals...)	29.09.2016 (Note: The date of receipt of all statutory approvals is not on record, therefore, the due date is calculated from the date of execution of the said agreement i.e. 29.03.2013.)
13.	Delay in handing over the possession till date of decision i.e. 03.03.2020	3 years 05 months 4 days
14.	Penalty clause as per clause 10 of the said agreement	Rs.5/- per sq. ft. of the super area of the shop.
15.	Relief sought	Delayed possession charges with interest

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A shop buyer's agreement dated 29.03.2013 is available on record for the aforesaid unit according to which the possession of the said shop was to be delivered by 29.09.2016. Neither the

respondent has delivered the possession of the said unit as on date to the complainants nor has paid any compensation in terms of clause 10 for the delay so caused in terms of the said agreement duly executed between the parties. Therefore, the respondent has failed to fulfil its committed liability as on date.

5. 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 12.09.2019. The case came up for hearing on 12.09.2019. The reply filed on behalf of the respondent on 03.06.2019 which has been perused by the authority.
6. As per clause 9.1 of the shop buyer's agreement dated i.e. 29.03.2013, the possession was to be handed over within a period of 36 months plus 6 months grace period from the date of receipt of all statutory approvals but there is no document on record regarding statutory approvals, so the due date of possession has been calculated from the date of execution of agreement i.e. 29.03.2013. The due date of possession comes out to be 29.09.2016. Clause 9.1 of the shop buyer's agreement is reproduced below:

"9. Completion of construction:

- (I) *The developer based on its present plans and estimates and subject to all just exceptions,*

contemplates to complete construction of the said Building/said Apartment within the period of 36 months plus grace period of 6 months, which shall be intimated to the Buyer(s) from the date of receipt of all statutory approvals, unless there shall be delay or there shall be failure due to reasons mentioned in the Clauses mentioned herein this Agreement or due to failure of Buyer(s) to pay in time the price of the Apartment along with all other charges and dues in accordance with the schedule of payments given Annexure-B or as per the demands raised by the Developer from time to time or any failure on the part of the Buyer(s) to abide by any terms or conditions of this Shop Buyer Agreement.....

7. The possession of the subject shop has not been offered by the respondent to the complainants so far. The complainants seek delay interest as per section 18 of the Act. Hence, this complaint for the reliefs as stated above.
8. 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.
9. 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.
10. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-

- i. The respondent submitted that complainants have also filed the application for the amendment of complaint. It is submitted that there is no provision of the amendment of complaint in the Real Estate (Regulation and Development) Act, 2016. Therefore, the present application is liable to be dismissed. Further, the complainants have not even explained why the amendments sought to be incorporated were not included in the original complaint. In absence of the same, the amendment application is liable to be dismissed.
- ii. The respondent submitted that the respondent is continuously developing the project in question. However, there being various instances of non-payments of the timely instalments by various allottees in the project which has affected the pace of the construction works. Despite of the same, the construction works is in progress and the respondent is making all its effort to complete the project as soon as possible. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the

capability of the respondent to deliver the project as soon as possible. Each and every penny of the amount which were realised from the complainants have already been spent in the development work of the proposed project. On the other hand, the respondent is still ready to deliver the unit in question on its due completion to the complainant, of course, subject to payment of due instalments and charges.

- iii. The respondent submitted that the delay, if any, which has been caused in completion of the construction is not attributable to the respondent and the same is due to reasons which are beyond the control of the respondent. There are several reasons for delay such as delay on the part of the allottees in making the timely payment as a result of which a huge and substantial amount of money is outstanding against them as arrears, ban of construction imposed by various orders of the High Court, National Green Tribunal and due to agitations, which hampered the construction process. Further, the prohibition on ground water extraction pursuant to the orders of the Hon'ble High Court of Punjab and Haryana has also caused the considerable delay. It pertinent to

mention here that as per clause 9.1 of the agreement "*if non delivery of possession is as a result of any Act, Notice, Order, Rule and Notification of the Government and/or any other Public or Competent Authority or due to delay in sanction of building/zoning plans... or for any other reasons beyond the control of the Developer then the buyer(s) agree that the developer shall be entitled to the extension of time for delivery of possession of the said Apartment*". The complainant is bound to adhere to the terms and conditions as stipulated in the agreement.

- iv. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which contemplates the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 44 of the said agreement. The complainants with mala-fide intention is trying to bypass the agreed terms which governs the present dispute at hand. Further, the terms of the agreement are valid and binding upon the parties and hence, the complainants cannot bypass the terms and conditions thereof including the arbitration clause and prefer the present complaint at this juncture as per their

- convenience and to mount undue pressure on the respondent company.
- v. The respondent submitted that the construction of the project is in progress and the respondent will deliver the possession of the shop to the complainants on due completion of the construction as soon as possible.
11. 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.
12. 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.
13. 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.
14. 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 BBA 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. 10.05% 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 on receipt of occupation certificate. Counsel for the respondent has apprised the court w.r.t. dire circumstances under which the complainant/allottee is living.

15. 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 @10.05 % p.a. w.e.f. 29.09.2016 till actual offer of physical 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 each subsequent month through cheque.
- 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 shop buyer's agreement.
16. 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.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2020


(Subhash Chander Kush)

Member

Judgment uploaded on 02.06.2020