

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

**Complaint no.** : 2720 of 2019  
**First date of hearing:** 22.10.2019  
**Date of decision** : 03.03.2020

1. Mrs. Sunita Verma  
R/o : WZ-1261/A, Nangal Raya, New Delhi-  
110046  
Also at : Donisi Avenue, Thornhill, Ontario, L4J  
6G6, Canada

**Complainant**

Versus

M/s Sidhartha Buildhome Pvt. Ltd.  
(through its Directors/Managing  
Director/Authorized Signatory)  
Regd. office: Plot No- 128, Sector- 44,  
Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Shashi Kant Sharma Advocate for the complainant  
Shri Prateek Gupta Advocate for the respondent

**ORDER**

1. The present complaint dated 08.07.2019 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	"Estella", Sector 103, Gurugram, Haryana
2.	Project area	15.743 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	RERA Registered/ not registered	<b>Not registered</b>
6.	Unit no.	A-703, 7 <sup>th</sup> floor, tower-A <b>Note: the subject unit was provisionally allotted to Mr. Naresh Kumar and Ms. Anita and the said flat was transferred from the previous allottees to the complainant on 27.08.2012. [Page 42 of complaint]</b>
7.	Unit measuring (super area)	1725 sq. ft.
8.	Date of execution of flat buyer agreement	25.06.2019



		Note: new fresh apartment buyer agreement executed between the parties [Page 41 of complaint]
9.	Payment plan	Construction linked payment plan [Page 69 of complaint]
10.	Total consideration as alleged by the complainant in its complaint	Rs. 60,00,250/- (as per SOA dated 24.06.2019) pg. 23 of the complaint)
11.	Total amount paid by the complainant as per the complaint pg. 06	Rs.58,50,523/- (as per SOA dated 24.06.2019) pg. 24 of the complaint
12.	Due date of delivery of possession as per (Clause 12.1- 36 months plus 6 months grace period from the date of receipt of all statutory approvals) <b>Note:</b> due date of possession has been calculated from the date of grant of EC i.e. 20.02.2015	20.08.2018
13.	<b>Offer of possession to the complainant</b>	<b>Not offered</b>
14.	Delay in handing over possession till i.e. 03.03.2020	1 years 6 month and 12 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 prescribed rate of interest till date on paid amount.



3. The complainant submitted that the market sale representative of the respondent shown one residential apartment i.e. A-703, tower- A, on the 7<sup>th</sup> floor, having the super area of 160.26 sq.ft. (1725 sq.ft.) Haryana along with one car parking in sector- 103 at dwarka expressway, gurugram, Haryana in project estella. It is further submitted that complainant shown her willingness and interest for purchase of said unit of Mr. Naresh Kumar and Mrs. Anita and accordingly all the formalities regarding transfer of flat has been completed between the complainant and original allottees.
4. As per clause 12.1 of the flat buyer agreement dated i.e. 25.06.2019, 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 (20.02.2015) which comes out to be 20.08.2018. Clause 12.1 of the allotment letter is reproduced below:

**"12. Completion of construction:**

- (1) *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 Apartment Buyer Agreement.....*

5. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seeks 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. 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 respondent contests the complaint and submissions made therein, in brief, as summarized as under:-
  - i. The respondent submitted that earlier the flat no- A-703, tower-A, admeasuring 1725 sq.ft. in the project estella, sector- 103, Gurugram was provisionally allotted to Mr. Naresh Kumar and Ms. Anita. Subsequently, the said flat was transferred from the previous allottees to the complainant on 27.08.2012.

- ii. The respondent submitted that it 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 peace of the constructions works.
- iii. It is further submitted that a buyer's agreement has sent to complainant for signatures. However, the same was never signed by the complainant never returned it back to it. Since the complainant is the resident of the Canada, therefore, the respondent could not do anything. In July 2019, the complainant informed the respondent that she is back from Canada and buyer agreement can be executed. The respondent, in good faith executed the buyer's agreement with the complainant on 25.06.2019.
- iv. It is submitted that a numerous allottees have defaulted in payments demanded by respondent, which has resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds.
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 12.1 of the flat buyer agreement executed between the parties on 25.06.2019, possession of the booked unit was to be delivered within a period of 36 months plus 6 months' grace period from the date of receipt of all statutory approvals. As such the due date of delivery of possession comes out to be 20.08.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 25.06.2019 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. 20.08.2018 till offer of possession 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 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 on 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. 20.08.2018 till the offer of possession.
  - 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 10<sup>th</sup> of every subsequent month.
- iii. The complainant are 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

Dated: 03.03.2020

Judgment uploaded on 02.06.2020