

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

Complaint no. : 6064 of 2019
First date of hearing : 15.01.2020
Date of decision : 03.03.2020

1. Mr. Raj Rani Grover
R/o : House No-231-E, Sector-5, Part-6, Near **Complainant**
Petrol Pump, Gurgaon- 122001

Versus

M/s Sidhartha Buildhome Pvt. Ltd.
Regd. office: 168-169, Amar Colony, Lajpat
Nagar, New Delhi- 110024

Also at: Plot No-128, Ground Floor, Sector-44, **Respondent**
Gurugram, Haryana- 122001

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Manish Yadav
Shri Prateek Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 02.12.2019 has been filed by the complainants/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 complainants, 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.
2.	Project area	15.743 acres
3.	Nature of the project	Residential group housing project
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	Name of licensee	M/s Sidhartha Buildhome Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	H-306, Tower-H, 3 rd floor [Page 11 of complaint]
8.	Unit measuring (super area)	1245 sq. ft.
9.	Date of receipt of environment clearance	20.02.2015
10.	Date of execution of flat buyer agreement	07.04.2012 [Page 16 of complaint]
11.	Payment plan	Construction linked payment plan [Page 23 of complaint]

12.	Total consideration	Rs. 50,26,120/- as per SOA dated 10.11.2019 pg. 49 of reply
13.	Total amount paid by the complainant	Rs.49,68,424/- as per SOA dated 10.11.2019 pg. 49 of reply
14.	Due date of delivery of possession as per clause 12.1 of the said apartment buyer agreement i.e. 36 months from the date of receipt of all statutory approvals plus 6 months grace period (20.02.2015) [Page 29 of complaint]	20.08.2018
15.	Offer of possession to the complainants	Not offered
16.	Delay in handing over possession till i.e. 03.03.2020	1 year 6 months and 12 days
17.	Status of the project	OC not received till date
18.	Specific reliefs sought	i. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

3. As per clause 12 of the flat buyer agreement dated i.e. 07.04.2012, the possession was to be handed over within a period of 36 months from the date of receipt of all statutory approvals (20.02.2015) which comes out to be 20.08.2019. Clause 12 of the allotment letter is reproduced below:

“12. Completion of construction:

12.1 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 said Apartment along with all other charges and dues in accordance with the schedule of payments given In 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.....

4. The possession of the subject apartment 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.
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. 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.
7. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-

- i. The respondent submitted that an allotment letter dated 12.07.2011 issued to complainant wherein the complainant provisionally allotted a residential apartment in tower-H, 3rd floor, unit no-306 in the project "estella" situated at sector-103, Gurugram, Haryana. Subsequently an apartment buyer agreement executed between the parties.
 - ii. The respondent submitted that the construction work is in progress and they are making all its efforts to complete the project as soon as possible. Furthermore, the respondent after completing the due finishing work, will handover the possession of the booked apartment to the complainant.
8. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants 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 complainants 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 19(I) and 19(II) of the flat buyer agreement executed between the parties on 07.04.2012, 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 07.04.2012 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 complainants are entitled for delayed possession charges @10.15% p.a. w.e.f. 20.08.2018 till date of 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 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 after 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 the interest at the prescribed rate i.e. 10.15% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 20.08.2018 till the date of offer of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainants 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 complainants 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 complainants which is not part of the flat buyer agreement.

12. Complaint stands disposed of.


13. 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