

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

Complaint no. : 2814 of 2019  
First date of hearing : 22.10.2019  
Date of decision : 03.03.2020

1. Mr. Prashant Kalia  
2. Mrs. Shivangi Kalia  
Both R/o Tower 6, Apartment 1703, Fresco,  
Nirvana Country, Sector-50, Gurgaon, Haryana **Complainants**

Versus

M/s Siddhartha Buildhome Pvt. Ltd.  
**Office at:** Sidhartha House, 5<sup>th</sup> floor, Plot No 6,  
Sector 44, Gurugram, Haryana 122003

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Mr. Aayush Rai proxy counsel Advocate for the complainants  
for Shri Abhijeet Gupta  
Shri Prateek Gupta Advocate for the respondent

**ORDER**

1. The present complaint dated 09.07.2019 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	"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 till 18.03.2016
5.	RERA Registered/ not registered	<b>Not Registered</b>
6.	Unit no.	C-1704, 17 <sup>th</sup> floor, tower-C [Page 56 of complaint]
7.	Unit measuring (super area)	2240 sq. ft.
8.	Date of execution of apartment buyer agreement	20.03.2012 [Page 54 of complaint]
9.	Payment plan	Construction linked payment plan [Page 42 of complaint]
10.	Total consideration	Rs.67,68,400/- (as per SOA dated 19.04.2019) [Page 56 of complaint]



11.	Total amount paid by the complainants	Rs. 64,13,141/- (as per SOA dated 27.05.2019) page 13 of the reply
12.	Due date of delivery of possession as per clause 11.1 of apartment buyer agreement i.e. 36 months plus 6 months grace period from the date of start of foundation [30.06.2012] of a particular tower in which the subject apartment is located) [Page 31 of complaint]	30.12.2015 Note: the due date of possession has been calculated from the date of start of foundation of tower i.e. <b>30.06.2012</b> [page 60 of complaint]
13.	<b>Offer of possession to the complainants</b>	<b>Not offered</b>
14.	Delay in handing over possession till i.e. 03.03.2020	4 years 02 months and 03 days
15.	Status of the project	OC not received till date
16.	Specific reliefs sought	<p>i. Direct the respondent to immediately deliver the peaceful vacant physical possession of the flat in question.</p> <p>ii. Direct the respondent to pay delayed possession charges.</p>

3. As per clause 11.1 of the apartment buyer agreement dated i.e. 20.03.2012, the possession was to be handed over within a period of 36 months plus 6 months grace period from the date of start of foundation of particular tower in which the subject apartment is located. The due date of possession has been



calculated from the date of start of particular tower i.e. 30.06.2012. Accordingly, the due date of possession comes out to be 30.12.2015. Clause 11.1 of the apartment buyer agreement 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 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. The complainants reserve their right to file a separate application for seeking cost of litigation from the Adjudicating Officer. 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. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-
  - i. The respondent submitted that the complainants were provisionally allotted a residential apartment bearing no.



C-1704, admeasuring 2240 sq.ft. Tower-C in the project "NCR ONE", sector-95, Gurugram, Haryana.

- ii. The respondent submitted that an apartment buyer's agreement dated 20.03.2012 was executed between the complainants and the respondent detailing the terms and conditions with respect to the allotment of the aforesaid apartment.
  - iii. The respondent submitted that it has completed the construction of the tower, wherein the flat of the complainants is situated and it has offered the possession for fit outs period on 29.09.2018. As and when the completion certificate is received from the competent authority, the respondent will immediately issue the offer of physical possession with final demand as per the apartment buyer agreement dated 20.03.2012.
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 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 11(1) of the apartment buyer agreement executed between the parties on 20.03.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of start of foundation of a particular tower in which the subject apartment is located. The due date of possession has been calculated from the date of start of particular tower i.e. 30.06.2012. Accordingly, the due date of possession comes out to be 30.12.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 20.03.2012 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 complainants are entitled for delayed possession charges @10.15% p.a. w.e.f. 30.12.2015 till 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 flat buyer agreement executed between the parties, the complainants 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 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 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. 30.12.2015 till the 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 10<sup>th</sup> 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 allotment letter.
  - v. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @10.15% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
12. 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.
13. Complaint stands disposed of.
14. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:03.03.2020

JUDGEMENT UPLOADED ON 04.06.2020