

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

Complaint no. : 2841 of 2019
First date of hearing : 22.10.2019
Date of decision : 23.01.2020

1. Mr. Dheeraj Sarraju
2. Mrs. Usha Sarraju
Both R/o 1004, Pharaohs,
The Nile (Omaxe), Near Sai Dham Temple,
Sohna Road, Sec-49, Gurugram-122018

Complainants

Versus

Selene Construction Ltd.
M/s ~~Sepset Properties Pvt. Ltd.~~
Regd. office: M-62-63, 1st Floor, Cannaught
place, New Delhi

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Dheeraj Sarraju and Smt. Usha Sarraju Complainants in person
Shri Amber Barthwal Advocate for the complainants
Shri Rahul Yadav Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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

*Corrected vide order
dated 08/06/2020.*

that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the flat buyers agreement 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	"Indiabulls Centrum Park", Sec-103, Daultabads, Gurugram
2.	Project area	17.081 acres
3.	Nature of the project	Residential Complex
4.	DTCP license no. and validity status	252 of 2007 dated 02.11.2007 valid upto 01.11.2017 50 of 2011 dated 05.06.2011 valid upto 04.06.2019 63 of 2012 dated 19.06.2012 valid upto 18.06.2020
5.	Name of licensee	M/s Selene construction Ltd.
6.	RERA Registered/ not registered	Registered vide no. 10 and 11 of 2018
7.	RERA registration valid up to	31.07.2021
8.	Unit no.	G2233, 23 rd Floor, Tower/block no.-G2 [Page 25 of complaint]
9.	Unit measuring (super area)	2875 sq. ft.



10.	Date of execution of Flat buyer agreement	05.02.2014 [Page 20 of complaint]
11.	Date of offer of possession	12.06.2019 [Page 72 of the complaint Annexure p-8]
12.	Payment plan	Construction linked payment plan [Page 65 of complaint]
13.	Total consideration of the subject unit	Rs. 1,60,66875/- [Page 76 of complaint]
14.	Total amount paid by the complainants as per the complaint	Rs. 1,58,90,663/- [page 77 of complaint]
15.	Due date of delivery of possession as per clause 21 – 3 year + 6 months' grace period from the date of execution of agreement subject to timely payment by the Buyer(s) of Total sale price payable according to the payment plan applicable to him or as demanded by the developer.	05.08.2017
16.	Delay in handing over possession till date of offer of possession i.e. 12.06.2019	1 year 10 months 7 days
17.	Specific reliefs sought	i. Direct the respondent to pay interest for delay in handing over possession from the due date of possession as per Flat buyers agreement, till the date of actual handing over of the physical possession of the flat to the complainants;

3. As per clause 21 of the Flat Buyer(s) agreement dated 05.02.2014, the Developer had undertaken to endeavor to complete the unit within a period of three years plus six months grace period from the date of execution of Flat Buyer(s) agreement subject to timely payment by the Buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer. Accordingly, the due date of possession comes out to be 05.08.2017 which has been calculated from the date of execution of agreement. Clause 21 of the Flat Buyer(s) agreement is reproduced below:

"21. Possession: The Developer shall endeavor to complete the construction of the said building /unit within a period of three years, with an six months grace period thereon from the date of execution of flat Buyers agreement subject to timely payment by the Buyers(s) of Total sale price payable according to the payment plan applicable to him or as demanded by the developer."

4. The possession of the subject apartment has been offered by the respondent to the complainants on 12.06.2019. The complainants seeks 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 interalia 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. The respondents through its reply has submitted that the delay if any has been earned due to unavoidable circumstances which has not in the control of the respondent.
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 and submissions made during the hearing.
7. The Authority on the basis of information, explanation, other submissions made and the documents filed by the parties arguments have been heard is of considered view that there is no need of further hearing in the complaint.
8. The Authority is of the view that the Act is to protect the rights of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are

held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

9. On consideration of the circumstances, the evidence and other record and submissions made by the parties 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 21 of the Flat Buyer(s) agreement executed between the parties on 05.02.2014, possession of the booked unit was to be delivered within 3 years + 6 months' grace period from the date of execution of agreement subject to timely payment by the buyer(s) of total sale price payable according to the payment plan applicable to him or as demanded by the developer. Hence, the due date of possession has been calculated from the date of execution of agreement which comes out to be 05.08.2017. Accordingly, it is the failure of the promoter to fulfil his obligations and responsibilities as per the flat buyers agreement dated 05.02.2014 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 @10.20% p.a. w.e.f. 05.08.2017 till offer of possession i.e.


12.06.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

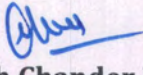
10. The Authority hereby pass this order and issue the following directions under section 34(f) of the Act:

- i. The complainants are entitled for delayed possession charges @ 10.20% per annum w.e.f. 05.08.2017 till offer of possession i.e. 12.06.2019.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 05.08.2017 till the offer of possession i.e. 12.06.2019.
- iii. The complainants are directed to take over the possession of the unit within one month. The respondent is directed to complete the residential unit in all respects before handing over the possession;
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- v. The respondent shall not charge anything which is not part of the Flat Buyers agreement.

11. Complaint stands disposed of.

12. File be consigned to registry.

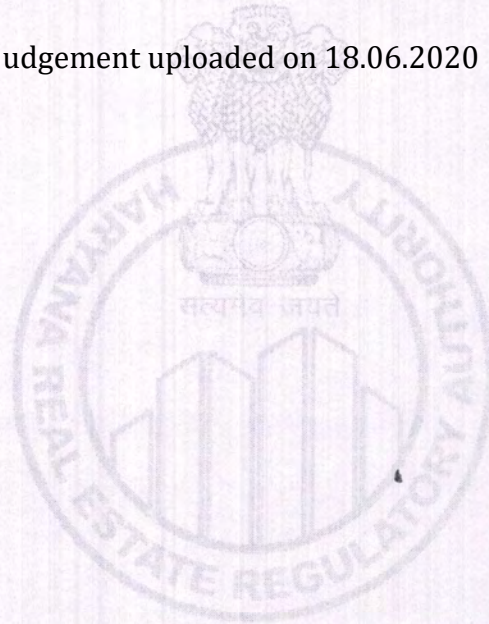

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2020

Corrected judgement uploaded on 18.06.2020



HARERA
GURUGRAM



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 23.01.2020
Complaint No.	CR/2841/2019 Case titled as Dheeraj Sarraju And Usha Sarraju V/S Selene Constructions Limited
Complainant	Dheeraj Sarraju And Usha Sarraju
Represented through	Complainants in person with Shri Amber Barthwal Advocate
Respondent	Selene Constructions Limited
Respondent Represented through	Shri Rahul Yadav Advocate
Last date of hearing	27.11.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana


Proceedings

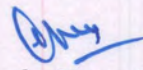
Arguments heard.

As per facts of the case, the complainant is entitled for delayed possession charges @ 10.20% per annum as per section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The complainant is directed to take over the possession of the unit within one month. As per statement of the complainant's counsel, certain issues w.r.t paint work are yet to be rectified by the respondent. Accordingly, the respondent is directed to complete the residential unit in all respects before handing over the possession.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.


Samir Kumar
(Member)
23.01.2020


Subhash Chander Kush
(Member)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16