

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

Complaint no. : 2021 of 2019

First date of hearing : 11.09.2019

Date of decision : 23.01.2020

1. Mr. Kamal Agarwal
R/o Plot No. 12 & 14, Road No. 16,
Sector-1, New Panvel, New Mumbai

Complainant

Versus

M/s Selene Construction Ltd.
Corporate office: M-62 & 63, 1st Floor,
Cannaught place, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Vijender Parmar
Shri Rahul Yadav

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 24.05.2019 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 flat Buyers agreement 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 | "Indiabulls Centrum Park", Sec-103, Daultabad, 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 (phase II and 11 of 2018 Phase I) |
| 7. | RERA registration valid up to | 31.07.2021 |
| 8. | Unit no. | G2063, 6 th Floor, Tower/Block No. G2 [Page 29 of complaint] |
| 9. | Unit measuring (super area) | 2875 sq. ft. |
| 10. | Date of execution of flat buyer agreement | 15.07.2011 [Page 25 of complaint] |



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|-----|--|--|
| 11. | Payment plan | Construction linked payment plan [Page 42 of complaint] |
| 12. | Total consideration of the subject unit (as per Statement of account dated 05.03.2019) | Rs. 92,46,714/- [Page 46 of complaint Annexure C-2] |
| 13. | Total amount paid by the complainant as per the complaint (as per Statement of account dated 05.03.2019) | Rs. 99,29,981/- [page 47 of complaint] |
| 14. | 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. | 15.01.2015 |
| 15. | Date of offer of possession | 05.03.2019 [Page 25 of the annexure- A of reply] |
| 16. | Delay in handing over possession till date of offer of possession i.e. 05.03.2019 | 4 year 1 month and 18 days |
| 17. | Specific reliefs sought | i. Direct the respondent to pay the delay possession interest as per the prescribed rate to the complainant. |

3. As per clause 21 of the Flat buyer agreement dated 15.07.2011, the developer had undertaken to endeavor to complete the unit within a period of 3 years + 6 months' grace period from



the date of execution of Flat buyer agreement or 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 15.01.2015 which has been calculated from the date of execution of flat Buyers agreement. Clause 21 of the flat Buyers agreement for sale is reproduced below:

"21. Possession:

(1) The Developer shall endeavor to complete the construction of the said 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 Buyer(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 Flat has been offered by the respondent to the complainant on 05.03.2019. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves his 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 were 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, submissions made and the documents filed by the parties is of considered view that there is no need of further hearing in the complaint.
8. Arguments heard.
9. 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.

10. On consideration of the circumstances, the evidence and other record, 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 Buyers agreement executed between the parties on 15.07.2011, possession of the booked unit was to be delivered within a period of 3 years + 6 months grace period from the date of execution of flat Buyers 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 15.01.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat Buyers agreement dated 15.07.2011 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 is entitled for delayed possession charges @10.20% p.a. w.e.f.



15.01.2015 till offer of possession i.e. 05.03.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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

- i. 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 complainant from due date of possession i.e. 15.01.2015 till the offer of possession i.e. 05.03.2019.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of DPC;
- iii. The respondent shall not charge anything which is not part of the Flat Buyers Agreement.

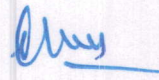
12. Complaint stands disposed of.

13. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 23.01.2020

Judgement uploaded on 30.06.2020