

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

Complaint no. : ³³⁹⁷~~3397~~ of 2019
First date of hearing : 15.11.2019
Date of decision : 03.03.2020

1. Smt. Nirmala Devi
RR : H.No- 7, I Block, Ashok Vihar Phase-2, Near
Wisdom Valley School, Gurgaon-122001

Complainant

Versus

M/s Siddhartha Buildhome Pvt. Ltd.
Regd. office: Shop No- 1&4, Local Shopping
Centre, Pushp Vihar, Madangir, Delhi

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

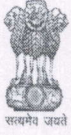
APPEARANCE:

Shri Manish Chauhan
Shri Prateek Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 26.11.2019 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 95, Gurugram, Haryana
2.	Project area	15.743 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	B-303, 3 rd floor, tower-B [Page 24 of complaint]
7.	Unit measuring (super area)	1725 sq. ft.
8.	Date of execution of flat buyer agreement	25.04.2012 [Page 23 of complaint]
9.	Payment plan	Construction linked payment plan [Page 29 of complaint]
10.	Total consideration as alleged by the complainant in its complaint	Rs. 59,85,243/- (as per clause 3.4 of the said agreement and as per SOA dated 30.03.2017 on page 60 of the complaint)
11.	Total amount paid by the complainant as per the complaint pg. 06	Rs. 58,58,087/- as per SOA dated 30.03.2017
12.	Due date of delivery of possession as per (Clause 12.1- 36 months plus 6 months grace period from the date of	20.08.2018



	receipt of all statutory approvals) Note: due date of possession has been calculated from the date of grant of EC i.e. 20.02.2015	
13.	Offer of possession to the complainant	Not offered
14.	Delay in handing over possession till date of decision i.e. 03.03.2020	1 year 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 prevalent rate of interest till date on paid amount.

3. As per clause 12.1 of the flat buyer agreement dated i.e. 25.04.2012, 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 flat buyer agreement 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 complainant so far. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves her 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. 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. Arguments of both the parties were heard. However, the respondent could not submit any cogent reasoning for not handing over the allotted unit/flat/apartment within stipulated time as per clause 12.1 of the agreement.
8. 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.

9. 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 apartment buyer's agreement executed between the parties on 25.04.2012, 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 25.04.2012 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 complainant is entitled for delayed possession charges @10.15% p.a. w.e.f. 20.08.2018 till actual 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's 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 actual 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 complainant 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 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 10th of each subsequent month.
- iii. The complainant is 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.
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

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member

Dated: 03.03.2020

Judgement uploaded on 30.06.2020