

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

Complaint no. : 3189 of 2019
First date of hearing: 13.11.2019
Date of decision : 12.03.2020

1. Ms. Renu Garg
2. Ms. Surabhi Garg
Both R/o E-042, The Icon, DLF-5, Sector-43,
Gurugram-122009 (Haryana)

Complainants

Versus

M/s Pioneer Urban Land & Infrastructure Ltd.
Corporate office at: Paras Downtown Centre,
7th floor, Sector 53, Golf Course Road,
Gurugram, Haryana-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri K.P. Pandey Advocate for the Complainants
Shri Venket Rao Advocate for the Respondent
Shri Kapil Bansal A.R of the Respondent company

ORDER

1. The present complaint dated 05.08.2019 has been filed by the complainants/allottee 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 under the provision of the Act or the rules and regulations made there under or 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	Pioneer Park(Presidia) Sector-61 and 62, Gurugram
2.	Project area	24.606 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	242 of 2007 dated valid upto 24.10.2017 268 of 2007 dated 03.12.2007 valid upto 02.12.2024
5.	Name of licensee	Pioneer Urban Land and Infrastructure and 4 others
6.	RERA Registered/ not registered	Registered no. 101 of 2017 dated 24.08.2017
7.	RERA registration valid up to	31.12.2019
8.	Unit no.	TD-401, 4 th floor
9.	Unit measuring	2420 sq. Ft.

10.	Date of execution of Buyer's Agreement	21.05.2010 (page no. 34 of the complaint)
11.	Payment plan	Construction linked Payment Plan (Page 57 of the complaint)
12.	Total consideration as per payment plan	Rs. 1,22,66,040/- (as per schedule of payment, page 57 of the complaint)
13.	Total amount paid by the complainants	Rs. 11,219,468.36/- (as per memorandum customer ledger, page 77-79 of the reply)
14.	Due date of delivery of possession as per clause 9.2 of flat buyer's agreement i.e. within 36 months from the date of signing of the buyer's agreement plus 180 days of grace period.	21.11.2013
15.	Offer of possession	14.02.2019 (page 65-67 of the reply)
16.	Delay in handing over possession till offer of possession	5 years 2 months 24 days
17.	Status of the project	OC received for tower D on 14.02.2019(page 29 of reply)
18.	Specific relief sought	i. To direct the respondent to pay delay charges/interest for delay period ii. To direct the respondent to adjust extra amount of Rs. 9,35,344/- collected and other charges under head of increased super area with interest III. Direct the respondent to pay the amount charged on account of GST.

		IV. To direct the respondent to pay additional amount taken towards registration charges.
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3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An apartment buyer's agreement dated 21.05.2010 is available on record for the aforesaid apartment according to which the possession of the said apartment was to be delivered by 21.11.2013. Neither the respondent has offered possession of the subject apartment within stipulated time as per agreement nor has paid any interest for the period it delayed in offer of possession. Therefore, the promoter has not fulfilled its committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filling reply and for appearance. The case came up for hearing on 13.11.2019, 09.01.2020, 22.01.2020, 12.03.2020. The respondent through its counsel appeared on 13.11.2019, 09.01.2020, 22.01.2020, 12.03.2020. The reply filed on behalf of the respondent on 11.10.2019 has been pursued by the authority.
5. As per clause 9.2 of the buyer's agreement, the possession was to be handed over by 21 November 2013. Clause 9.2 of the Buyer Developer Agreement is reproduced hereinafter.

“9.2 POSSESSION OF UNIT

The First party shall make all efforts to apply for the Occupation Certificate of the proposed residential project within 36 months from the date of signing of the buyer's agreement subject to such limitation as be provided in the buyers agreement and the timely compliance of the provisions of the buyers agreement by the second party. The second party agrees and understands that the first party shall be entitled to a grace period of hundred and eighty days (180), after the expiry of 36 months, for applying and obtaining the Occupation certificate in respect of the said complex.

6. The respondent submitted that the possession of the unit was offered through letter of offer of possession on 14.02.2019.
7. **Decision of the Authority**

The complaint has been filed on 05.08.2019 to seek delayed possession charges w.r.t. unit no. TD-401, 4th floor, in Presidia, Gurugram. During the pendency of the complaint, both the parties entered into a settlement that they got the delayed possession charges while executing the conveyance deed w.r.t. the unit in question. **clause 5** of the conveyance deed is re-produced as under:- the vacant and peaceful possession of the said Apartment(was/has been/shall be handed over/delivered by the Vendor to the Vendee(s) and the Vendee(s) confirms that he (has/will) (taken/take) over the possession of the same after physical inspection of the

said Apartment and after having satisfied himself about the quality of workmanship, materials, specifications, extent of construction, super area, facilities and amenities such as electrification work, sanitary fittings and fixtures used and or provided therein and that the, water and sewerage connection etc. have been made and provided in accordance with the drawings, design etc. of the said Apartment. The Vendee(s) has no complaint or claim whatsoever and undertakes not to raise any dispute hereto after in connection therewith individually or collectively including but not limited to any claims for delay in handing over possession of the said Apartment.”

It is quite clear that both the parties have got the conveyance deed executed on the basis of mutual understanding and no duress has been caused to either party. When the complainant has accepted the delayed possession charges offered and adjusted by the respondent. Counsel for the respondent has also produced the provision of section 11(4) (a) which reads as under:- The promoter shall-

- (a) Be responsible for all obligations, responsibilities and functions under the provision of this Act or the rules and regulation made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all

the apartment, plots, or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.”

With a view to fortify his connection/arguments, counsel for the respondent has produced judgment of Hon’ble Supreme Court passed in case titled as Shri Lachoo Mal Vs. Shri RadheyShyam decided on February 10, 1971, para no. 6, the doctrine of waiver has been cited by him which reads as under:-

“The general principal is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus, the maxim which sanction the nonobservance of die statutory provision is cuilibet licat renuntiare juri pro se intoducta (see Maxwell on interpretation of statutes, eleventh edition page 375 & 376). If there is any express prohibition against contacting out of a statute in it then no question can arise of any one entering into a contact which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have


a more extensive operation as a matter of public policy.

In Halsbury's Laws of England, volume 8, Third Edition, it is stated in paragraph 248 at page 143.

Since the conveyance deed has already been executed and there is no contention left inter-se both the parties except the provisions of section 14(3) and 18(2) of the Act. As such the parties cannot come in dispute at a belated stage w.r.t. Delayed Possession charges.

8. Complaint stands disposed of.
9. File be consigned to registry.


(Samir Kumar)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.06.2020
Judgement Uploaded on 30.06.2020