

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

**Complaint no. : 1712 of 2019**  
**First date of hearing : 10.09.2019**  
**Date of decision : 12.03.2020**

1.Mr. Amit Ahuja  
2.Mr. Sahil Ahuja  
3.Mrs. Sudha Ahuja  
All R/o Villa-6, Empire Estate, Sultanpur,  
M.G. Road, New Delhi-110030

**Complainants**

Versus

M/s Pioneer Urban Land & Infrastructure Pvt.  
Ltd.  
Corporate office at: Paras Downtown Centre,  
7<sup>th</sup> 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  
Shri Venket Rao  
Shri Kapil Bansal

Advocate for the Complainants  
Advocate for the Respondent  
A.R of the Respondent company

**ORDER**

1. The present complaint dated 02.05.2019 has been filed by the complainant/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 allottees 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                      | "Araya", Sector-62, Gurugram                                   |
| 2.    | Project area                                   | 24.606 acres   |
| 3.    | Nature of the project                          | Group Housing Colony   |
| 4.    | DTCP license no. and validity status           | 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                | <b>Registered no. 101 of 2017 dated 24.08.2017</b>             |
| 7.    | RERA registration valid up to                  | 31.12.2019   |
| 8.    | Unit no.                                       | 2401, 24 <sup>th</sup> floor, tower TA                         |
| 9.    | Unit measuring                                 | 3858 SQ. FT.   |
| 10.   | Date of execution of Buyer Developer Agreement | 17.07.2012<br>(page no. 34 of the complaint)                   |
| 11.   | Payment plan                                   | Construction linked Payment Plan<br>(Page 28 of the complaint) |

|     |  |  |
|-----|--|--|
| 12. | Total consideration as per payment plan  | Rs. 4,48,31,050/-<br>(page 81 of the reply)  |
| 13. | Total amount paid by the complainants  | Rs. 4,81,71,892.97/-<br>(as per customer ledger dated 15.05.2019, page 100 of the reply)   |
| 14. | Due date of delivery of possession as per clause 11.2 of apartment buyer's agreement i.e. within 39 months from the date of excavation (14.05.2012) as stated by complainant page 7 of the complaint, plus 180 days of grace period. | <b>14.02.2016</b>  |
| 15. | Offer of possession  | 28.08.2018<br>(page 86-88 of the reply)  |
| 16. | Delay in handing over possession till offer of possession  | 2 years 6 month 14 days  |
| 17. | Specific relief sought   | <ul style="list-style-type: none"> <li>i. To direct the respondent to give immediate possession</li> <li>ii. To direct the respondent to pay interest to the complainants for the delay period on the deposited amount as the said act.</li> <li>iii. To direct the respondent to complete all pending work and provide all amenities and facilities as per the apartment buyers agreement.</li> </ul> |

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 17.07.2012 is available on record for the aforesaid apartment according to which the possession of the said apartment was to be delivered by 14.02.2016. 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 filing reply and for appearance. The case came up for hearing on 10.09.2019, 13.11.2019, 09.01.2020, 22.01.2020, 12.03.2020. The respondent through its counsel appeared on 10.09.2019, 13.11.2019, 09.01.2020, 22.01.2020, 12.03.2020. The reply filed on behalf of the respondent on 27.06.2019 has been pursued by the authority.
5. As per clause 11.2 of the buyer developer agreement, the possession was to be handed over by February 2019. Clause 11.2 of the Buyer Developer Agreement is reproduced hereinafter.  
"11.2 POSSESSION OF UNIT

*The developer shall make all efforts to apply for the occupation certificate of the proposed residential project within 39 months from the date of excavation subject to such limitations including but not limited to obtaining the requisite Govt. approvals, sanctions, permits etc. from various departments or appropriate authorities as be provided in this agreement and the timely compliance of the provisions of the agreement by the intending allottee. The intending allottee agree and understands that the developer shall be entitled to a grace period of 180 days, after expiry of 39 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 28.08.2018. The complainants were called upon to remit balance payment including delayed payment charges/interest and to complete the necessary formalities/documentation necessary for handover of the said unit to the complainants. However, the complainants did not take any steps to complete the necessary formalities or to pay the balance amount payable by them.

7. **Decision of the Authority :-**

The complaint has been filed on 02.05.2019 to seek delayed possession charges w.r.t. unit no. A-2401, Tower A, in Araya, Sector-62, Gurugram. During the pendency of the complaint, both the parties entered into a settlement that they got the possession charges while executing the conveyance deed w.r.t.

the unit in question. **clause 6** of the conveyance deed is reproduced as under:- the vacant and peaceful possession of the said Apartment( was/has been/shall be0 handed over/delivered by the Vendor to the Vendee9s) 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, designs 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 Radhey Shyam 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 1493) 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

Dated: 10.06.2020

Judgement Uploaded on 30.06.2020