

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

Complaint no. : 5929 of 2019
First date of hearing : 15.01.2020
Date of decision : 22.10.2020

Shri Raj Kumar Dua
R/o:- Flat No. 805, Tower-8, Sector-3,
Park View Residency, Palm Vihar,
Gurugram-122001

Complainant

Versus

M/s Sidhartha Buildhome Private
Limited
Regd. Office:- 168-169, Amar Colony,
Lajpat Nagar, New Delhi-110024

Respondent

CORAM:
Dr. K.K. Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:
Ms. Ankur Berry
Shri Prateek Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 29.11.2019 has been filed by the complainant/allottee 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 103, Gurugram.
2.	Total licensed project area	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid/renewed up to 07.03.2015
5.	Name of the licensee	Rattan Singh & 8 Others
6.	HRERA registered/ not registered	Not Registered
7.	Date of provisional allotment letter	19.07.2011 (Page 5 of complaint)
8.	Unit no.	D-804, 8 th Floor, Tower-D
9.	Unit measuring (super area)	1910 sq. ft.
10.	Date of execution of apartment buyer agreement	03.02.2014 (Page 10 of complaint)
11.	Payment plan	Construction linked payment plan (Page 35 of complaint)
12.	Total consideration	Rs. 64,49,033/- (As per SOA dated 07.10.2019 on pg. 64 of complaint)

13.	Total amount paid by the complainant.	Rs. 63,47,891/- (As per SOA dated 13.01.2020 on pg. 12 of reply)
14.	Due date of delivery of possession as per clause 12.1 of the said agreement the period of 36 months plus grace period of 6 months , from the date of receipt of all statutory approvals	03.08.2017 (Note:- As, there is no record on place regarding date of receipt of statutory approvals, so the due date of possession is calculated from the date of execution of buyer's agreement i.e. 03.02.2014)
15.	Date of offer of possession to the complainant	Not offered
16.	Delay in handing over possession till date of decision i.e. 22.10.2020	3 years 2 months 19 days

3. As per clause 12.1 of the apartment buyer agreement, the possession was to be handed over within a period of 36 months plus grace period of 6 months, from the date of receipt of all statutory approvals. Therefore, the due date of handing over the possession of the subject unit comes out to be 03.08.2017. Clause 12.1 of the apartment buyer agreement is reproduced below:

"12.1 Completion of Construction

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 complainant submitted that the respondent allotted a unit to him through a provisional allotment letter dated 19.07.2011. That as per the apartment buyer agreement dated 03.02.2014, the payment plan decided between the parties to the agreement is construction linked payment plan. As per the said agreement the total sale consideration amounts to Rs. 64,49,033/-. That the complainant has made regular payments to the respondent as and when demanded but the respondent did not adhere to their end of the agreement. The respondent has made default in delaying the possession of the unit to the complainant. Hence, the present complaint inter alia for following reliefs:
- i. Direct the respondent to pay interest at the prescribed rate per annum on the delay in handing over the possession from the date of booking till realization of the same.
 - ii. Direct the respondent to pay back the amount of Rs. 2,50,000/- charged for the car parking, along with interest.



- iii. Direct the respondent to pay an amount of Rs. 28,090/- charged for deletion of name of co-applicant Sumit Dua.
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. The respondent contests the complaint on the following grounds:
 - i. The respondent submitted that he is continuously developing the project in question. However, there being various instances of non-payments of the timely instalments by various allottees in the project which has affected the pace of the construction works. There are total 62 allottees in Tower D, wherein the complainant, has booked an apartment, out of which, most of the allottees have defaulted in making timely payments and further, there are 20 such allottees, who have defaulted in making the balance payment also. The cumulative effect of delay in making payment by the allottee, especially in construction linked plan (like the present one), is that the entire project suffers due to lack of funds as the developer is unable to execute the project in the absence of funds



and as a result of which the construction could not be completed on time.

- ii. The respondent submitted that it is also relevant to mention here that each and every penny of the consideration amount which was realized from the complainant has been spent in the development work of the proposed project. It has become a matter of routine that baseless and unsubstantiated allegations are made by allottees against the developer with sheer motive to avoid making payment of balance sale consideration. It is further submitted that numerous allottees have defaulted in payments demanded by respondent, which has resulted in delaying of completion of project, yet the respondent is trying to complete the project as soon as possible by managing available funds through other resources. Had the allottees made the payment on time, the project would have been completed by now.
- iii. The respondent submitted that the apartment buyer agreement dated 03.02.2014 provides for the consequences in case of delay in handing over possession of the allotted unit to the allottee viz. compensation @ Rs. 5/- per sq. ft. per month beyond the stipulated period of

completion, subject to timely payment of instalments by the complainant. Therefore, the rights and interest of the complainant is completely protected under the apartment buyer agreement dated 03.02.2014 which was duly signed and executed by the complainant.

- iv. The respondent further submitted that the complaint is also not maintainable for the reason that the agreement contains an arbitration clause which contemplates the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 49 of the agreement. The complainant with mala-fide intention is trying to bypass the agreed terms which govern the present dispute at hand.
- v. Hence, the present complaint deserves to be dismissed at the very threshold.
7. 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.
8. The authority, on the basis of information, explanation, other submissions made and the documents filed by both the parties,



is of considered view that there is no need of further hearing in the complaint.

9. Arguments heard.

10. The counsel for the complainant raised the contention that due date of possession should be calculated as per clause 12 of the application form dated. The contention raised is devoid of merits as the clause 12.1 of the apartment buyer agreement dated 03.02.2014 states that the possession should be handed over to the allottee within a period of 36 months along with a grace period of 6 months from the date of receipt of all statutory approvals. The apartment buyer agreement is the latest document as per records and as per clause 30 of the said agreement it will supersede all the previous undertakings and any other agreement. Clause 30 of the said agreement is reproduced below:-

"30. Entirety

The Apartment Buyer Agreement along with its annexures and the terms and conditions contained in the Application Form constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all undertakings, and other Apartment Buyer Agreement, correspondences, arrangements whether written or oral, if any, between the parties..."



11. The authority finds that in the matter of **Sanjiv Prakash vs Seema Kukreja & Ors.** the Hon'ble High Court of Delhi has passed an order on 22.10.2020. Vide such order it has been decided that if the contract is superseded by another or if the original contract in entirety is put to an end, the arbitration clause, which is a part of it, also perishes along with it. Relevant para of the order is reproduced below:-

"98. It is clear from a reading of the above judgments that the law relating to the effect of novation of contract containing an ARB. PET. 4/2020 Page 55/56 arbitration agreement/clause is well-settled. An arbitration agreement being a creation of an agreement may be destroyed by agreement. That is to say, if the contract is superseded by another, the arbitration clause, being a component/part of the earlier contract, falls with it or if the original contract in entirety is put to an end, the arbitration clause, which is a part of it, also perishes along with it. Hence, the arbitration clause of the MoU, being Clause 12, having perished with the MoU, owing to novation, the invocation of arbitration under the MoU is belied/not justified."

12. On consideration of the documents and submissions made by the parties regarding contravention of provisions of the Act, 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 agreement executed between the



parties on 03.02.2014, possession of the booked unit was to be delivered within a period of 36 months plus grace period of 6 months, from the date of receipt of all statutory approvals. The grace period of 6 months is allowed to the respondent due to contingencies beyond its control. As, there is no record on place regarding date of receipt of statutory approvals, so the due date of possession is calculated from the date of execution of buyer's agreement i.e. 03.02.2014. Therefore, the due date of handing over possession comes out to be 03.08.2017. The possession of the subject unit has not been offered to the complainant till date.

13. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the apartment buyer agreement dated 03.02.2014 to hand over the possession within the stipulated period.
14. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. 9.30% p.a. w.e.f. 03.08.2017 till date of offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.



15. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:

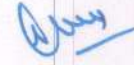
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 03.08.2017 till the offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. Thereafter, the monthly payment of interest till offer of possession so accrues shall be paid on or before 10th of every 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 apartment buyer agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

16. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondent. A copy of this order be endorsed to the registration branch.
17. Complaint stands disposed of.
18. File be consigned to registry.



(Dr. K.K. Khandelwal)

Chairman



(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2020

Judgement uploaded on 04.11.2020