

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

Complaint no. : 369 of 2020
First date of hearing : 27.02.2020
Date of decision : 08.10.2020

1.Jitender Kumar

Address:- 1A, Krishna Complex, NH-8, Near
PNB Bank, Village and Tehsil-Manesar,
District Gurugram

2.Ved Parkash

Address:- Village Manesar, Mohan Patti,
Gurgaon

Complainants

Versus

1.M/s Mascot Buildcon Pvt. Ltd.

Address:- 294/1, Vishwakarma Colony
Opposite ICD, MB Road, Lal Kuan
Mehrauli Badarpur Road, New Delhi-110044

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE

None present
Shri Gulshan Sharma

Advocate for complainants
Advocate for respondent

ORDER

1. The present complaint dated 22.01.2020 has been filed by the complainants/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 obligation, responsibilities and function 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 respondent date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form: -

S.No.	Heads	
1.	Project name and location	"Oodles Skywalk, Sector-83, Gurugram
2.	Project area	3.0326 acres
3.	Nature of project	Commercial Colony
4.	RERA registered/ not registered	Registered vide no. 294 of 2017 dated 13.10.2017 valid upto 31.12.2019
6.	License No. & validity status	08 of 2013 dated 05.03.2013 valid upto 04.03.2017
7.	Name of licensee	Dharam Singh
8.	Unit no., Tower no.	G-5A, Ground Floor, (Retail)
9.	Super area	350.10 sq. ft.
11.	Date of execution of agreement	18.01.2016 (page no. 36 of the complaint)
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration	Rs. 49,43,412/- (excluding tax) (as per apartment buyers agreement, page 38 of the complaint)

14.	Total amount paid by the complainants	Rs. 24,67,683/- (as per receipt attached page 23,30,35,51,52,53 and 54 of the complaint)
15.	Due date of delivery of possession as per agreement (clause 38: -36 months of signing of this agreement or start of construction of the said building whichever is later plus 3 months grace period)	18.04.2019 (the date of start of construction is not available, the due date of delivery of possession is calculated from the date of signing of this agreement)
16.	Offer of possession	Not offered
17.	Period of delay in handing over possession till the date of order i.e. 08.10.2020	1 years 5 months 20 days

3. As per clause 38 of the buyer's agreement dated 18.01.2016 the possession was to be handed over to the complainants within a period of 36 months from the date of signing of the agreement or date of start of construction of the said building plus grace period of 3 months whichever is later. However no document is available to justify the start of construction therefore the due date of possession has been calculated from the date of signing of the agreement which comes out to be 18.04.2019. Clause 38 of the buyer's agreement is reproduced below:

38. POSSESSION

The company will based on its present plans and estimate, contemplates to offer possession of said unit to the allottee within (36) months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later within a grace period of 3 months, subject to force majeure events or government action/inaction.....

4. The complainants submitted that the complainants booked the said unit by paying a sum of Rs. 10,00,000/- vide cheque no. 822791 dated 25.01.2013. However, the respondent was unable to provide any formal receipt on the said date the agreed terms were recorded in brief on the reverse side of the cheque. The respondent deliberately refrained from providing the allotment details and also kept on delaying the execution of the agreement and finally signed a so-called application for provisional allotment of commercial space on 25.04.2013. that the respondent issued a letter of allotment of commercial unit bearing no. G-5A to the complainants vide letter dated 06.11.2014. the respondent however reduced the super area from 500 sq. ft. to 350 sq. ft. and charged an additional amount of Rs. 10,50,300/- on account of preferred location charges(PLC).

5. The complainants submitted that the complainants did not receive any payment plan from the respondent hence they were unaware of the tentative date of payment. The respondent not providing the relevant documents to the complainants and took no steps to execute the builder buyer agreement with ulterior motive. Ultimately the respondent executed the space buyers agreement on 18.01.2016 and made fake, wrongful and fraudulent promises to induce the complainants and other prospective buyers and made them victims of their malice filled plans and have enjoyed large sum of money free of interest for years together. The respondent failed to offer possession of the said unit as per the agreement.. Hence, this complaint inter-alia for the following reliefs:-
- i. To direct the respondent to handover possession of the said unit after measurement of the covered area and super area in presence of the parties within a fixed date and pay compensation for delay of three years.
6. 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.
7. The respondent contests the complaint on the following grounds:

- i. The respondent submitted that the alleged frail allegations levelled under the guise of present complaint, are totally false, incorrect, baseless, absurd and misconceived. That the alleged contentions/averments raised in the complaint, until and less being admitted specifically hereinafter by the respondent same may kindly be treated as denied in its totality;
 - ii. The respondent submitted that the complainants despite being sent repeated notices for payment of due instalments, has not deposited the same thereby deliberately putting obstructions to the fast progressing project;
 - iii. The present complaint filed with respect to obtaining possession of the unit booked with the respondent along with penalty, interest and compensation are totally false and fictitious and is liable to be rejected by this Hon'ble Authority;
 - iv. Hence, the present complaint filed by the complainants before the Authority is liable to be dismissed with cost, being fictitious and frivolous one.
8. Copies of all the relevant documents have been filled 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 submission made by the parties.

9. The Authority, on the basis of information and other submission made and the document filed by the complainants, are of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. On consideration of the circumstances, the evidence and other record and submissions made by the parties and based on the findings of the authority regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act.
12. By virtue of clause 11(a) of the Apartment Buyer Agreement executed between the parties on 18.01.2016, possession of the booked unit was to be delivered within stipulated time i.e. 18.04.2019. Accordingly, 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 18.04.2019 till the offer of possession of the booked unit as per the

provision of section 18(1) of the Act read with rules 15 of the Rules.

13. In view of the above discussion the authority pass an order under section 34(f) of the Act, and issue the following directions:-

- (a) 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 complainants from due date of possession i.e. 18.04.2019 till the offer of physical possession of the allotted unit.
- (b) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and subsequent interest to be paid on/ before 10th of every months.
- (c) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (d) The Six months period on account of Covid-19 is excluded from the delayed possession charges.
- (e) Interest on the due payments from the complainants shall be charged at the prescribed rate 9.30% per

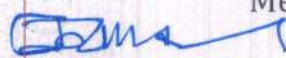
annum by the promoter which is same as is being granted to the complainants in case of delayed possession charges.

14. Complaint stands disposed of.

15. File be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


Dr. K.K. Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.10.2020

Judgement uploaded on 07.11.2020

HARERA
GURUGRAM