

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

Complaint no. : 300 of 2020
First date of hearing: 27.02.2020
Date of decision : 08.10.2020

1.Pramod Kumar Mahansaria

2.Pradeep Kumar Mahansaria

Both R/o Sector 2-A, Plot No. 47, Vaishali,
Ghaziabad, Uttar Pradesh-201010

Complainants

Versus

1.Puri Construction Pvt. Ltd.

Address:- 4-7b, Ground Floor, Tolstoy House
15 and 17, Tolstoy Marg, New Delhi-110001

2.Florebtine Estate of India Limited

Address:- 112-115, Ground Floor, Tolstoy
House 15 and 17, Tolstoy Marg, New Delhi-
110001

Respondents

CORAM:

Dr. K.K. Khendelwal

Shri Samir Kumar

Shri Subhash Chander Kush

Chairman

Member

Member

APPEARANCE:

Pawan Kumar Ray

Shri Himanshu Juneja

Advocate for the Complainants

A.R. on behalf of Respondents

ORDER

1. The present complaint has been filed dated 23.01.2020 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.

- 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	Emerald Bay, Sector-104, Gurgaon
2.	Project area	15.337 acres (OC received for total area 17.1745 acres)
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	68 of 2012 dated 21.06.2012 valid upto 20.06.2018 32 OF 2013 dated 17.05.2013 valid upto 20.06.2020
5.	Name of licensee	Florentine Estate of India and 2 others
6.	RERA Registered/ not registered	Registered no. 136 of 2017 dated 28.08.2017 valid upto 28.03.2020
7.	Unit no.	2202, 22 nd floor, Block B1

8.	Super area	1550 sq. ft.
9.	Date of execution of Flat Buyers Agreement	21.10.2013 (page 24 of the complaint)
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per payment schedule	Rs. 1,60,27,962/- (page 59 of the complaint)
12.	Total amount paid by the complainants	Rs. 1,63,61,167/-/- [As per sales customer ledger , page 42-44 of the reply]
13.	Due date of delivery of possession as per clause 11. (a) 48 months from the date of execution of this agreement plus 180 days grace period	21.04.2018
14.	Offer of possession	07.02.2019 [Page 85 of the complaint]
15.	Delay in handing over possession till offer of possession	9 months 17 days
16.	OC received on	21.11.2018 [page 45 of the reply]

3. As per clause 11 (a) of the Apartment/Villa Buyer Agreement dated 21.10.2013 the possession was to be handed over to the complainants within a period of 48 months plus 180 days grace period from the execution of agreement which comes out to be 21.04.2018. Clause 11(a) of the Apartments Buyers Agreement is reproduced below:

11(a) Schedule for possession of the said apartment/villa

The company based in its present plans and estimate and subject to all just exceptions endeavours to complete construction of the said building/said apartment/villa within a period of 48 months from the date of execution of agreement unless there shall be delay or failure due to force majeure.....beyond 48 months that the company shall be entitled to period of an additional 180 days for applying and obtaining the occupation certificate in respect of the group housing complex.

4. The complainants submitted that the apartment/villas buyer agreement was executed between the complainants and respondents on 21.10.2013. As per the ABA the possession of the said unit was due after 48 months of the date of the agreement. The complainants were offered the offer of possession vide letter dated 07.02.2019 and with the offer of possession a demand for the final payment was also made.
5. The complainants submitted that all the payments have been paid in time with regard to the said unit and has also received the offer of possession, but the possession of the said unit is still not delivered to the complainants. Further there has already been a delay of more than 2 years in delivering the possession of the said apartment and the respondents herein are guilty of unfair trade practice and deficiency in service. Hence, this complaint inter-alia for the following relief:

- i. Direct the respondents to deliver immediate possession of the apartment with all the promised amenities and facilities and to the satisfaction of the complainants
 - ii. Direct the respondents to make the payment of delay penalty charges at prescribed rate of interest on the amount already paid by the complainants to the respondents.
6. On the date of hearing, the Authority explained to the respondents/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 respondents contest the complaint on the following grounds:
 - i. It is submitted that the complaint filed by the complainants is not maintainable under the provisions of RERA Act and applicable rules, as the complaint can only be filed for violation and/or breach of the provisions of the Act and Rules.
 - ii. It is submitted that the complainants have already made all the requisite payments except interest free maintenance security, registration charges, common area maintenance charges and common area power charges and has accepted the offer of possession hence

at this stage the present complaint is not maintainable.
Hence present complaint be dismissed.

- iii. It is submitted that complaint is based upon the ground of expiry of 54 months from the date of agreement, subject to force majeure conditions and apart from other conditions like torrential rains, extreme weather conditions in summers etc. the following major force majeure conditions have affected the construction and its progress in last 5 years and after taking into account the time spent to overcome the effects of these conditions, the timeline to complete construction is within prescribed timelines. Further, adequate mechanism for compensation in case of delay is provided in the agreed terms of Buyers Agreement. In view of the above the delay of completion of construction of 6-12 months is duly covered by the above stated major events and conditions which were beyond the control of the respondent and also being miniscule delay in a project of huge magnitude cannot tantamount to default. Rather the non-payment of timely instalments by the petitioner amounts to default on the part of petitioner.

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.

9. The Authority, on the basis of information and 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.
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 as per provisions of rule 28(2), the Authority is satisfied that the respondents is in contravention of the provisions of the Act. By virtue of Apartment Buyer Agreement executed between the parties on 21.10.2013, possession of the booked unit was to be delivered within stipulated time i.e. 21.04.2018.
12. The offer of possession is only paper possession and physical possession has not been given to him even now. If physical possession has not been given within 3 months of obtaining occupation certificate it is violation of provisions of section 17(1) of the Act.
13. 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 respondents is established. As such complainants is entitled to delayed possession charges at the prescribed rate

of interest i.e. @ 9.30% p.a. w.e.f. 21.04.2018 till offer of possession i.e. 07.02.2019 of the booked unit as per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules.

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

- (i) The respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainants from due date of possession i.e. 21.04.2018 till the offer of possession 07.02.2019;
- (ii) The arrears of interest accrued so far shall be paid to the complainants within a period of 90 days from the date of this order and thereafter monthly payment of interest shall be paid before 10th of every subsequent month;
- (iii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iv) The promoter is directed to give physical possession to the allottee within a period of 7 days and shall not demand any holding charges for the period as far no fault of the allottee the physical possession was not given to the allottee;
- (v) The respondents shall not charge anything from the complainants which is not the part of the agreement;



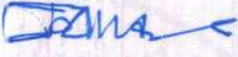
(vi) Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

15. Complaint stands disposed of.

16. File be consigned to 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