

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

Complaint no. : 304 of 2020
First date of hearing: 27.02.2020
Date of decision : 08.10.2020

Mrs. Meenakshi Dhingra
Address:- H. No. A-21/4, DLF City
Phase-I, Gurgaon, Haryana

Complainant

Versus

Pioneer Urban Land and Infrastructure Ltd.
Registered Office:- A-22, 3rd floor,
Green Park, Aurobindo Marg,
New Delhi-110016
Also, at: Pioneer Square, 2nd floor,
Near Golf Course Extension Road,
Sector-62, Gurugram, Haryana

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Pawan Kumar Ray
Shri Venket Rao

Advocate for the Complainant
Advocate for the Respondent

ORDER

1. The present complaint 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 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	Araya, Sector-62, Gurugram
2.	Project area	24.606 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	268 of 2007 dated 03.12.20007 renewed upto 02.12.2024
5.	Name of licensee	Pioneer urban land and infrastructure and Pioneer profin ltd.
6.	RERA Registered/ not registered	Registered no. 101 of 2017 dated 24.08.2017
7.	Unit no.	C-3102, 31 ST floor, T-C
8.	Super area	4690 sq. ft.
9.	Date of execution of Flat Buyers Agreement	07.11.2012 (page 23 of the complaint)

10.	Agreement to sell (between M/s MCTC Exim Pvt. Ltd. and Mrs. Meenakshi Dhingra)	12.12.2012 [page 79 of the complaint]
11.	Payment plan	Construction linked payment plan
12.	Total consideration	Rs. 5,18,42,781/- (as per payment schedule, page 70 of the complaint)
13.	Total amount paid by the complainant	Rs. 5,27,91,342/- [As per memorandum of customer ledger , page 83-85 of complaint]
14.	Due date of delivery of possession as per clause 11.2 of the said agreement 39 months from the date of excavation along with grace period of 180 days	04.03.2016 (the due date is calculated from the date of excavation i.e. 04.06.2012) As stated by complainant in his complaint at page 8
15.	Intimation for possession	17.06.2019 (page 94 of the complaint)
16.	Delay in handing over possession till offer of possession	3 years 3 months 13 days
17.	OC Received on	01.02.2018

3. As per clause 11.2 of the Apartment Buyers Agreement dated 07.11.2012 the possession was to be handed over complainant within a period of 39 months from the date of excavation including grace period of 180 days. The date of excavation admitted by the respondent is 04.06.2012, hence the due date comes to 04.03.2016. Clause 11.2 of the Flat Buyers Agreement is reproduced below:

11.2 Grace Period

“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 limitation including but not limited to obtaining the requisite govt. Approvals..... that the developer shall be entitled to a grace period of 180 days.....”

4. The complainant submitted that in terms of apartment buyer’s agreement dated 07.11.2012 it is substantially clear that the same only takes care of interest of the respondent company. That the aforesaid unit got endorsed in the name of the complainant on 12.12.2012. the complainant has purchased the rights of the original allottee vide agreement to sell dated 12.12.2012 and stepped into the shoes of the original allottee. That the complainant herein has been making all the payments with regard to the aforesaid apartment on time, the respondent company has failed to abide by its term of the agreement.
5. The complainant submitted that the excavation in the present project has started on 04.06.2012 which is an admitted fact. It is in the case of complainant that the respondent has actually delayed in the completion and development of the project and has no moral or legal ground for the levy of the delay penalty on the complainant. The complainant has never

delayed in the making of the payment of instalment. Hence, this complaint inter-alia for the following relief:

- i. To direct the respondent to deliver immediate possession of the unit and to pay the delay penalty charges at the prescribed rate of interest,
 - ii. Pass an order setting aside the illegal demands raised by the respondent including but not limited to levy of delay penalty, HVAT, Advance Maintenance Charges etc.
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 respondents contest the complaint on the following grounds:
- i. It is submitted that the present complaint filed by the complainant is bundle of lies devoid of merits and hence liable to be dismissed with exemplary cost as it is filed without cause of action.
 - ii. It is submitted the complainant has no cause of action to file the present complaint. That it is most humbly submitted that the project is registered under RERA Act, 2016 read with HAREAR Rules, 2017, the OC has been received by the respondent and the possession has been already offered to the complainant.

- iii. It is submitted that the complainant has been offered possession through letter of intimation of possession dated 17.06.2019. the respondent clearly mentioned that in order to take over the possession and requested to clear the outstanding payments, stamp duty, registration charges etc., which the complainant chose to utterly ignore and is trying to shift her onus of failure on the respondent. That the project was delayed due to force majeure conditions which were beyond the control of the respondent.
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 filled by the complainant and 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 respondent is in contravention of the provisions of the Act. By

virtue of Apartment Buyer Agreement executed between the parties on 07.11.2012, possession of the booked unit was to be delivered within a period of 39 months from the date of excavation including grace period of 180 days which comes out to be 04.03.2016. 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 complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. 04.03.2016 @ 9.30% p.a. till the actual handing over of possession of the booked unit as per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules.


12. 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 interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 04.03.2016 till the actual handing over of the possession of the booked unit.
- (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 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 the part of the BBA;
- (v) 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.

13. Complaint stands disposed of.

14. 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