

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

Complaint no. : 1549 of 2019
First date of hearing : 16.10.2019
Date of decision : 16.10.2020

Mrs. Ranjana Singh
Address:- D-1202, Suncity Height,
Sector-54, Gurugram-122002

Complainant

Versus

Parsvnath Developers Limited
Address:- Near Shahdara Metro Station,
Shahdara, New Delhi-110032

Respondent

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

Shri Ajay Chahal
None present

Advocate for the Complainant
Advocate for the Respondent

ORDER

1. The present complaint dated 23.04.2019 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 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	Parsvnath Exotica, Village Wazirabad, Sector-53, Gurugram
2.	Project area	23.815 acres
3.	Nature of the project	Group Housing Scheme
4.	DTCP license no. and validity status	69 to 74 of 1996 dated 03.05.1996 valid upto 02.05.2019, 52 to 57 of 1997 dated 14.11.1997 valid upto 13.11.2019
5.	Name of licensee	M/s Puri Construction Ltd. M/s Florentine Estate India Ltd., Mad Entertainment Network Ltd., Sunil Manchanda, Arjun Puri, Mohinder Puri
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	D4-404, 4 th floor, Tower- D4
8.	Unit measuring	2810 sq. ft.

	possession of the said unit was to be (offered by 18.05.2011 however, the possession was taken over by the complainants	(revised by 18.05.2011 ft.)
9.	Increase area vide letter dated 08.10.2017. Hence there is no delay on the part of the respondent to offer the possession of the unit in question to the complainant.	85 sq. ft. (as per final statement of account, page 33 of the complaint)
10. 14.	Date of execution of Flat Buyers Agreement stands disposed of.	21.05.2005 (page 11 of the complaint)
15.	File be consigned to registry.	
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration (Samir Kumar) Member	Rs. 80,08,500/- (Basic sale price) (page 13 of the complaint) (Subhash Chander Kush) Member
13.	Total amount payable by the complainant Haryana Real Estate Regulatory Authority, Gurugram Dated: 05.11.2020	Rs. 79,65,706/- (as per final statement of account, page 33 of the complaint)
14.	Due date of delivery of possession as per clause 10(a) 36 months from the date of commencement of construction of the block in which the flat is located plus 6 months grace period	21.11.2008 (the date of construction is not available, so the due date has been calculated from the date of execution of agreement i.e. 21.05.2005)
15.	Delay in handing over possession till offer of possession	11 years 10 months 25 days
16.	Occupation Certificate	Not received

3. As per clause 10(a) of the Flat Buyers Agreement dated 21.05.2005 the possession was to be delivered within a period of 36 months of commencement of construction of the particular block in which flat is located plus 6 months grace period. The date of commencement of construction is not



available in the file, so the due date of possession is calculated from the date of execution of agreement which comes out to be 21.11.2008. Clause 10(a) of the Buyers Agreement is reproduced below:

"10 (a) construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular block in which the flat is located, with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service dept., civil aviation dept. Traffic dept. Pollution control dept. As may be required for commencing and carrying on construction subject to force majeure, restraints or restriction from any court/authorities, non-availability of building materials dispute with contractor force etc. and circumstances beyond the control of the developers and subject to timely payments by the flat buyers in the scheme....."

4. The complainant submitted that unit no. D4/404 on 4th floor in Parsvnath Exotica was initially booked by Shri Anil Grover, transferor of A-179, Deraval Nagar Delhi, and entered into buyer builder agreement dated 21st May 2005, Subsequently the unit was transferred the unit in name of Mrs. Ranjana Singh, transferee on 11.10.2006. That the said unit has been



handed over by the builder to Mrs. Ranjana Singh on 03.04.2018.

5. The complainant submitted that the builder is not coming forward for executing the conveyance deed for transferring the title of unit no. D4/404, by duly registering it in the records of registrar of its relevant jurisdiction. That the builder has applied for issuance of completion certificate to the competent authority and the same is awaited till now. Hence, this complaint inter-alia for the following reliefs:
 - i. Parsvnath Developers Limited may be directed to hand over copies of completion and OC to Mrs. Ranjana Singh the allottee of unit no. D4/404 on 4th floor in Parsvnath Exotica;
 - ii. Direct the respondent to present themselves along with thee required documents in the office of registrar of appropriate jurisdiction for the completion of process of conveyance deed/ registration and transferring of title of the property in favour of Mrs. Ranjana Singh and Ranjan Kumar.
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. It is submitted that the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complainant deserves to be dismissed.
- ii. It is submitted that the respondent company under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. That out of the said 18 towers, 11 towers were duly developed and completed, and the Occupancy Certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. It is further stated that the Occupancy Certificate with respect to remaining 03 towers i.e. D4, D5 (in which the Complainant's flat is located) and D6 has already been applied for on 01.11.2011 for which the review was also filed by the Respondent Company on 21.11.2017 & it is submitted that the part Occupancy Certificate (OC) application with respect to 02 (Two) towers no. B1 & C4 was also filed before DTCP, Chandigarh on 13.08.2013. Furthermore, it is

pertinent to place on the records that the review letter for Occupancy Certificate of the abovementioned 5 towers (D4, D5, D6, B1 & C4) again filed on 11.02.2019 before the competent authority, DTCP, Chandigarh. It is further submitted that appropriate and relevant reports from the Office of DTP, STP, PHE, and External Services have been forwarded to Department of Town & Country Planning, (HQ), Chandigarh, Haryana.

- iii. It is submitted that occupancy certificate is not being granted by DTCP for want of beneficiary interest/right in favour of the Developer under the policy dated 18th February 2015. It is pertinent to state that in principle DTCP has accorded his approval on the transfer of the beneficiary interest in favour of the Developer. However, the formal approval is in process.
- iv. It is submitted that tower no. D4 in which the flat of the complainant is located has been completed. The respondent has duly completed all the construction work in the part of the project and tower D4. The respondent company had offered the possession of the same for fit-outs purpose to the other allottees including the complainant herein in the instant tower



and substantial allottees have already occupied their respective flats for carrying out the fit-outs work in their respective flats. That the approval of the OC/CC has been pending before the concerned authority since 2011 and the review applications have also been submitted for the same on 17.11.2017 and 19.02.2019 respectively.

- v. It is submitted that the complainant has already taken the physical possession of the flat after her entire satisfaction and approval with respect to the construction and development of the project as well as flat and since 2018, now the complainant has been in occupation of the same and has also getting the rent or financial benefits from the said flat by leasing out the same to third party. Complainant was well aware about the status of the construction at the time of purchasing the said flat from the Open Market or Secondary Market. In view of the above-mentioned facts and circumstances and the reasons beyond the control of the Respondent Company, the Complaint is liable to be dismissed.
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 complainant and the respondent, 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 the Authority is satisfied that the respondent is in contravention of the provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act.
12. By virtue of Flat Buyer Agreement executed between the parties on 21.05.2005, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the start date of commencement of construction of the block in which the flat is located. In the present case, the due date of handing over of possession is calculated from the date of execution of agreement because the date start of construction is not given so the due date of handing over possession comes out to be 21.11.2008.
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 respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f 20.11.2008 till actual 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.

14. 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 interest i.e. @ 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 21.11.2008 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 and subsequent interest to be paid on or before 10th of every 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 agreement.

15. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that

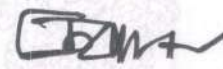


separate proceeding will be initiated against the respondent.
A copy of this order be endorsed to registration branch for
further action in the matter.

16. Complaint stands disposed of.
17. File be consigned to registry.

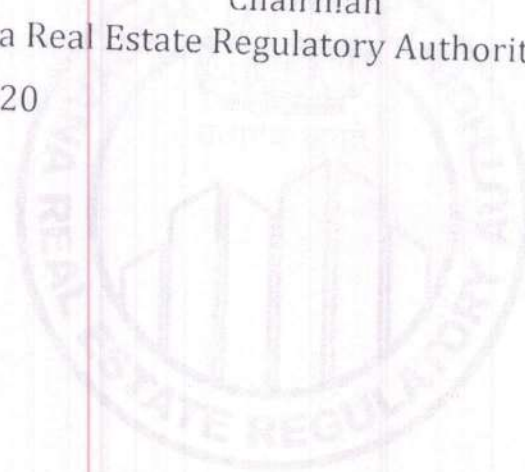

(Samir Kumar)
Member


(Subhash Chander Kush)
Member


Dr. K.K. Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.10.2020



HARERA
GURUGRAM