

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

Complaint no. : 778 of 2020
First date of hearing : 11.03.2020
Date of decision : 16.10.2020

1. Anand K Seth
2. Savita Seth

**Both R/o -B3/39, Safdarjung Enclave,
New Delhi**

Complainants

Versus

Parsvnath Developers Limited

**Address:- 6th Floor Arunachal Building 19,
Barakhamba Road, New Delhi-110001**

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Ishwar Singh Sangwan
None present

Advocate for the Complainants
Advocate for the Respondent

ORDER

1. The present complaint dated 14.02.2020 has been filed by the complainants/allottees 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 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	Parsvnath Exotica, Village Wazirabad, Sector-53, Gurugram
2.	Project area	26.905 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, 1079 of 2006, 1080 of 2006
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.	D5-1301 PH, 13 th floor, Tower D5



8.	Unit measuring	3425 sq. ft.
9.	Date of execution of Flat Buyers Agreement	05.06.2006 (page 37 of the complaint)
10.	Payment plan	Construction linked payment plan
11.	Total Sale consideration	Rs. 1,58,23,500/- (Basic Cost) (as per customer ledger dated 30.04.2015, page 27-28 of the complaint)
12.	Total amount paid by the complainants	Rs. 1,52,32,325/- (as per customer ledger dated 30.04.2015, page 27-28 of the complaint)
13.	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	06.04.2010 [due date calculated from the date of 2 nd instalment i.e. 06.10.2006 at page 27 of the customer ledger]
14.	Delay in handing over possession till the date of order	10 years 6 months 16 days
15.	Offer for fit outs	01.05.2015 (page 34 of the reply)
16.	Occupation Certificate	Not received

3. As per clause 10(a) of the Flat Buyers Agreement dated 05.06.2006 the possession was to be delivered within a period of 36 months of commencement of construction of the particular block plus 6 months grace period. The due date of possession is calculated from the date of 2nd instalment i.e. 06.10.2006 which comes out to be 06.04.2010. 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 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 complainants submitted that respondent and complainants have entered into a flat buyer's agreement in respect of unit no. D5-1301, 13th floor, block no. D5, having an approximate area 3425 sq. ft. vide flat buyer's agreement June 2006. Thereafter the complainants continuously were in touch with the respondent and also visited to the site, where the conditions of the unit of the complainants was very pathetic and mostly work was not complete.
5. The complainants submitted that the complainants several times requested the respondent to deliver the possession of the above said unit in perfect condition but the respondent



putting off the matter on one pretext or the other. Despite receiving timely payment, the respondent has intentionally and deliberately not delivered the possession of the flat. That the act of the respondent amounts to deficiency of service and in contravention to the provisions of the Act. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to pay delayed penalty of Rs. 10/- per sq. ft. or Rs. 107.60 per sq. meter of the super area of the flat per month for the delay as per clause no. 10(c) flat buyer agreement.
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 contains the complaint on the following grounds:-
- i. The respondent submitted that the Complaint filed by the Complainants is baseless, vexatious and is not tenable in the eyes of law therefore; the Complaint deserves to be dismissed at the threshold;
 - ii. That in the present Complaint, the Complainants are seeking possession along-with penalty amount for delayed possession and hence, this Authority has no jurisdiction to decide such composite claims;



- iii. It is respectfully submitted that the project construction is already completed and the Competent Authority has already granted Occupancy Certificate (OC) for the part of the project of 11 (Eleven Towers) and for remaining part 05 (Five Towers) has been awaiting for obtaining the Occupancy Certificate (OC) from the competent authority.
- iv. That Tower No. D5, in which the flat of the Complainants is located, almost stands completed and the Respondent Company has already offered Fit-Out to the Complainants for carrying out the Fit-Outs work in their respective Flat. That the Respondent Company had offered the possession of the same for Fit-Outs purposes to the other allottees including the Complainants 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.
- v. That the delay cause was due to the the reasons beyond the control of the Respondent Company, it is sincerely requested to the Hon'ble Authority may pass necessary direction to the DTCP, Haryana for releasing the Occupancy Certificate (OC) of all the towers which are pending before the Authority for approval including tower no. D5. That the delay in handing over the possession of the apartment was caused only due to



the various reasons which are beyond the control of the Respondent Company simultaneously and cannot be attributed to the Respondent Company at all.

- vi. That the Complainants have booked the flat for investment purpose only and hence they cannot be treated as consumers.
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 05.06.2006, 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 2nd Instalment i.e. 06.10.2006 so the due date of handing over of possession comes out to be 06.04.2010. As per the reply the occupation certificate still has not been obtained by the promoter/respondent. In this case fit out possession was offered which is not a valid offer of possession as per law but amounts to only inspection and can be at the best treated as DIKKO in.

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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f 06.04.2010 till offer 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.
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 complainants from due date of possession i.e. 06.04.2010 till the actual 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;


(iv) The respondent shall not charge anything from the complainants 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