

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

**Complaint no.** : 5155 of 2019  
**First date of hearing** : 22.01.2020  
**Date of decision** : 16.10.2020

Vijay Bhatnagar

**Address:-** Flat No. B-153, Westend Heights St.  
Thomas Marg, DLF Phase V, Gurugram

**Complainant**

Versus

M/s Parsvnath Developers Limited

**Address:-** 6<sup>th</sup> 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 Manish Yadav  
None present

Advocate for the Complainant  
Advocate for the Respondent

**ORDER**

1. The present complaint dated 28.11.2019 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	26.905 acres
3.	Nature of the project	Group Housing Colony
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 valid upto 01.09.2019 191 of 2007 dated 20.06.2007 valid upto 18.07.2013
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, Bharat Construction Corporation



		Ltd., Ram Prakash and Rattan Singh
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	B5-1103, Block B5,
8.	Unit measuring	3390 sq. ft. (revised area 3495 sq. ft.)
9.	Increase area	105 sq. ft. (as per final statement of account, page 26 of reply)
10.	Date of execution of Flat Buyers Agreement	08.11.2007 (page 15 of the complaint)
11.	Payment plan	Down payment plan
12.	Total Sale consideration	Rs. 2,18,14,650/- (as per customer ledger, page 32 of the complaint)
13.	Total amount paid by the complainant	Rs. 2,21,37,683/- (as per customer ledger, page 32 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	27.03.2011 [due date calculated from the date of 1 <sup>st</sup> instalment i.e. 27.09.2007 at page 32 of the customer ledger]
15.	Delay in handing over possession till date of this order i.e. 16.10.2020	9 years 6 months 20 days
16.	Occupation Certificate	OC not received



3. As per clause 10(a) of the Agreement dated 08.11.2007 the possession was to be delivered within a period of 36 months from the date of commencement of construction of the particular block plus 6 months grace period. The due date of possession has been calculated from the date of 1<sup>st</sup> instalment i.e. 27.09.2007 which comes out to be 27.03.2011. 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 the complainant had made payment of Rs. 2,21,37,683/- at the time of entering into the agreement. That the complainant has made the payment to the respondent in excess of the dues and as on 10.12.2008 the respondent was having excess payment to the extent of Rs. 10,13,427/- which the respondent has not returned until now. Further the respondent has failed to deliver the apartment as promised and failed to respond to any queries raised by the despite receipt of 100% of the payment. Hence, this complaint inter-alia for the following reliefs:
- i. The complainant has made the payment to the respondent in excess of the dues and as on 10.12.2008 the respondent was having excess payment to the extent of Rs. 10,13,427/- which the respondent has not returned until now.
  - ii. Direct the respondent to pay delay penalty at the prescribed rate of interest w.e.f from March,2014 upto the date of actual delivery of possession of the apartment;
  - iii. To deliver the possession of the apartment complete in all respects.
5. 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.

6. The respondent contains 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 Tower No. B5, in which the flat of the Complainant is located, almost stands completed and the Respondent has offered the same for Fit-Outs purpose to the allottees for carrying out the Fit-Outs work in their respective flats. That all the basic facilities and amenities like electricity, water, club and swimming pool are duly available at the project site which is duly adequate with respect to the current occupancy at the project site. That due to pendency of the beneficiary interest in favour of the Respondent, the delay is being caused in handing over the possession of the flat. It is respectfully submitted that the Respondent have been pursuing the Authority with all its best & possible efforts to get the formal approval. However, the same is still pending with the concerned



Authority. that the Respondent Company shall immediately handover the possession of the flat upon receipt of the part Occupancy Certificate (OC) from the Competent Authority. It is appropriately submitted that the entire project has developed in complete adherence of the building bye laws & norms which has been prevailing in Haryana.

- iii. That the Complainant has purchased the said flat willingly & voluntarily exclusively for investment purpose and hence the same cannot be treated as a real buyer.
- iv. 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. Following important aspects are relevant which are submitted for the kind consideration of this Hon'ble authority
  - a. There was extreme shortage of water in the region which affected the construction works.
  - b. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln.

- c. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the Respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labours.
- d. Recession in economy also resulted in availability of labour and raw materials becoming scarce.
- e. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM).
7. 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.
8. 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.
9. Arguments heard.



10. 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.
11. By virtue of Flat Buyer Agreement executed between the parties on 08.11.2007, 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 has been calculated from the date of 1<sup>st</sup> Instalment i.e. 27.09.2007, hence due date of handing over of possession comes out to be 27.03.2011. As per the reply filed by the respondent company, 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.
12. 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 27.03.2011 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.

13. 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. 27.03.2011 till actual handing over 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 10<sup>th</sup> 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.
14. 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.

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: 16.10.2020