

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

Complaint no. : 2185 of 2019
First date of hearing: 18.09.2019
Date of decision : 16.10.2020

RDP Equipments Pvt. Ltd.
through its Director Sanjeev Parashar
Address:- 307/2, Bhagwati Sadan, Delhi Road,
Gurgaon

Complainant

Versus

1.M/s Parsvnath Hessa Developers Pvt.
Limited
2.M/s Parsvnath Developers Limited
Address:- Parsvnath Metro Tower, Near
Shahdara Metro Station, Shahdra, Delhi
Also at; 6th Floor, Arunachal Building, 19,
Barakhamba Road, New Delhi-110001

Respondents

CORAM:

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

**Chairman
Member
Member**

APPEARANCE:

None present
None present

Advocate for the Complainant
Advocate for the Respondents

ORDER

1. The present complaint dated 14.06.2019 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 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.	B5-503, 5 th floor, Tower B-5
8.	Unit measuring	3390 sq. ft. (revised area 3495 sq. ft.)
9.	Increase area	105 sq. ft. As per final statement of account, page 46 of the complaint
10.	Date of execution of Flat Buyers Agreement	10.01.2007 (page 17 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration as per agreement	Rs. 1,81,78,875/- (Basic Sale Price) (page 19 of the complaint)
13.	Total amount paid by the complainant	Rs. 1,84,55,755.7/- [as per final statement of account, page 46 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	10.07.2010 (the date of construction is not available, so the due date calculated from the date of execution of agreement i.e. 10.01.2007)
15.	Delay in handing over possession till this order	10 years 3 months 4 days
16.	Occupation Certificate	Not received

3. As per clause 10(a) of the Agreement dated 10.01.2007 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 10.07.2010. 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 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 as per the initial booking, allotment and the agreement to sell dated 10.01.2007 the



respondent company were to deliver the actual physical possession of the said unit within 36 months i.e. by 10.01.2010 and if required after availing the grace period of 6 months i.e. by 10.07.2010. That the complainant and the original allottee together till date have paid an amount of Rs. 1,84,55,756/- to the respondent company against the said flat. However the possession still is not forthcoming so far and the respondent company despite passing of more than 11 years from the launch of the project has miserably failed to perform their obligation as per the agreed terms and as on date also the respondent company has not even completed the basic structure of the project.

5. The complainant submitted that the complainant had been repeatedly visiting the site office but to no avail against the economics might and superior position of the respondent company as none from the respondent informs anything about the timelines of the project and his hard earned money. That on the basis of the above it can be concluded that the respondents have miserably failed in completing the construction of the building and in handing over the possession of the unit to the complainant in accordance with the agreed terms and has committed grave unfair practice and breach of the agreed terms between the parties. Hence, this complaint inter-alia for the following reliefs:



- i. That the respondent be directed to pay the complainant as per the statement of accounts towards the purchase of flat the interest @24% per annum compounded from the date of deposit
 - ii. To direct the respondent to give the possession with completion certified within 6 months from the date of passing of order along with monthly interest for delay caused.
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. It is submitted that the Respondent No.2 Company / Parsvnath Developers Ltd are not a necessary party in the present Complaint and hence the Complaint is bad for misjoinder of parties. Respondent No.2 has brought Foreign Direct Investment (FDI) in the project in question "Parsvnath Exotica" Project at Gurgaon, so as to ensure fast completion and delivery of the project. As such an agreement has been executed between the Respondent No.2 and Respondent No.1/ Parsvnath Hessa Developers Pvt. Ltd. a joint venture Company of

Respondent No.2. Under the terms of the said agreement, development, construction and marketing of built up areas in towers B1, B2, B3, B5, B6 and C4 have been transferred to Respondent No.1 Company. In this regard an intimation letter was sent to all the allottees of the project by the Respondent No.2 and in the said letter was specifically sent to all the allottees that the Respondent No.2 shall remain only as a confirming party and all other responsibilities were already transferred to Respondent No.1. In view of the above reasons, Respondent No.2 Company is not a necessary party in the present case and hence the name of the Respondent No.2 is liable to be deleted from the party array;

- ii. The Respondent Company has already completed the construction work of the tower in which the flat is located, and all the basic facilities and amenities have been facilitated. Hence in such circumstances if the demanded relief (s) is allowed to the Complainant, it will open a flood gate to the other buyers who has invested their money in order to gain profit;
- iii. It is submitted that the project construction is already completed and the competent authority has already been granted Occupancy Certificate (OC) for the part of the project of 11 (Eleven Towers) and for remaining part

(5 Towers) has been awaiting for getting Occupancy Certificate (OC) from the competent authority.

- iv. That the Complainant is only subsequent purchaser who procured the said flat from the open or secondary market in the year 2012 only. They have purchased the said flat from the original allottee Mr. Jagdeep S. Rikey & Mrs. Rajbans Kaur Rikey in March 2012 and the 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. The Complainant has purchased the said the flat in question for investment purpose only and hence they cannot be treated as real buyer.
- v. That the delay in handing over the possession of the apartment was caused only due to the various reasons which were beyond the control of the Respondent Company.
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 10.01.2007, 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 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 10.07.2010.
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 10.07.2010 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 complainant from due date of possession i.e. 10.07.2010 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 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.

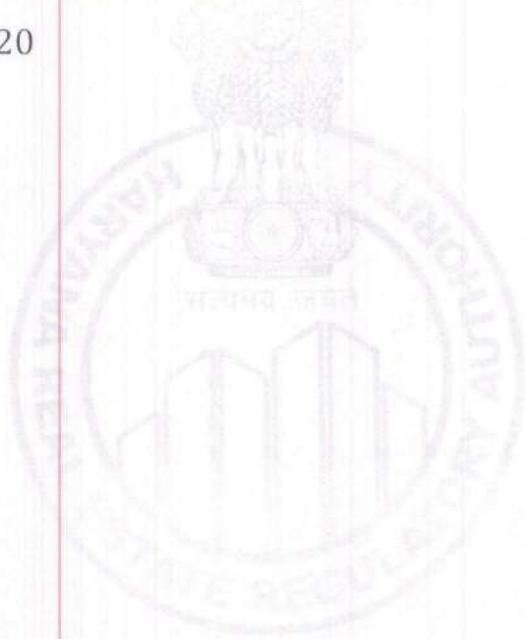

(Samir Kumar)
Member


(Subhash Chander Kush)
Member


Dr. K.K. Khandelwal
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.10.2020



HARERA
GURUGRAM