

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

Complaint no. : 106 of 2020
First date of hearing : 11.03.2020
Date of decision : 16.10.2020

1.Sidharth Sawhnet
2.Parul Sawhney
Both R/o:- 92, Udyog Vihar, Phase-1,
Gurgaon, Haryana-122106

Complainants

Versus

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

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Ms. Rit Arora
None present

Advocate for the Complainants
Advocate for the Respondent

ORDER

1. The present complaint dated 16.01.2020 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 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.	B5-8032, 8 th floor, Tower-B
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	20.11.2006 (page 29 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration	Rs. 1,82,72,100/- (excluding tax) (as per customer ledger, page 50-52 of the complaint)
13.	Total amount paid by the complainant	Rs. 1,80,74,060.62/- (as per customer ledger, page 50-52 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	14.05.2010 [due date calculated from the date of 2 nd instalment i.e. 14.11.2006 at page 50 of the customer ledger]
15.	Offer for fit outs	23.03.2018 (page 47 of the complaint)
16.	Delay in handing over possession till the date of this order	10 years 5 months 8 days
17.	Occupation Certificate	Not received

3. As per clause 10(a) of the Agreement dated 20.11.2006 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 which comes out to be 14.05.2010. The due date of possession is calculated



from the date of 2nd instalment i.e. 14.11.2006. Clause 10(a) of the Buyers Agreement is reproduced hereinafter.

"10 (a) construction of the flat is likely to be completed within a period of Thirty Six (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 complainants submitted that unit booked was in the name of Mr. Sidharth Sawhney and Ms. Parul Sawhney and allotment letter/flat buyer agreement dated 20.11.2006 was also issued in the name of Mr. Sidharth Sawhney and Ms. Parul Sawhney. that the said apartment was allotted first to the Original Allottee by way of issuing allotment letter/flat buyer agreement/plot buyer agreement dated 13.12.2006. that at the time of the transfer of the mentioned flat, the respondent

had not disclosed anything regarding the delay in the construction; rather, they had assured the complainants that the respondent will follow the original timeline of the construction and the construction is in full swing and the possession will be delivered by its scheduled date.

5. The complainants submitted that the Complainants and the Respondent entered into Flat Buyer's Agreement and as per the agreement the possession of the said unit was to be handed-over to the Complainants within 36 months from the date of sanction of the building plan or execution of Flat Buyers Agreement. it was only after a delay of around 9 (nine) years, vide Letter dated 22nd March 2018, that the Respondent Company offered possession for fit outs of the plan. That, even after an inordinate delay of nine years, the Respondent Company had not finished the construction of the unit. The Respondent Company tried to evade its responsibility and liability of delivering a flat with promised amenities vide its letter dated 22.03.2018. that the Complainants has, till date, made almost 100% payment of the Amount raised by the Respondent Company. That, out of Rs 1,80,74,060.63/- the Complainant has already paid Rs 1,80,74,060.62/-
6. The complainants submitted that regardless of the stage of construction, the complainants were consistently getting demand letters from the Respondent to make the payments.

That perturbed by the same, the Complainants made various inquiries from the Respondent regarding the stage of construction and the date of delivery of the possession of the unit. That no response was given to the Complainants from the Respondent resulting into increased mental harassment of the Complainants. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to provide the immediate possession of the unit booked by the Complainants along with all the promised amenities and features to the full satisfaction of the Complainants;
 - ii. To direct the respondent to give the possession within 6 months from the date of passing of order along with monthly interest for delay caused. Direct the respondent to make the payment of delay interest for the period of delay at the prescribed rate of interest.
7. 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.
8. The respondent contains the complaint on the following grounds:-
- i. The respondent submitted that the project construction is already completed, and the Competent Authority has

already been granted Occupancy Certificate for the part of the project of 11 and for remaining part has been awaiting for getting Occupancy Certificate from the Competent Authority. The said project with respect to Tower No. B5 in which the Complainants' Apartment is located, B6 and EWS with Haryana RERA Authority, Gurugram. It is further submitted that Tower B5 has been completed as per the applicable building bye laws and prevailing norms & the Respondent Company has been putting its best efforts to complete the remaining final finishing work, if any, in this Tower at the earliest. Tower No. B5 in which the flat of the Complainants is located, almost stand completed and the Respondent has offered the same for Fit-Outs purpose to the allottees for carrying out the Fit-Out work in their respective Flats. It is pertinent to state that the Complainants have also been offered the possession of the flat for Fit-Outs along-with the FSA reflecting the Special Rebate or Delay Compensation from the period September 2013 to December 2017 for a period of 52 months amounting to Rs. 17,62,000/- vide letter reference no. PHDPL/Exotica/B5-803/92 dated 22.03.2018. Apart from, it is important to mention that Rs. 17,00,000/- has been given as rebate on account of final



- finishing cost of the unit which is the optional in nature has also been reflected in the FSA.
- ii. The respondent submitted 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. The Complainants have purchased the said flat willingly & voluntarily exclusively for investment purpose and hence the same cannot be treated as a real buyer. That the global recession hit the economy and is continuing particularly in the real estate sector. That during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the Respondent at the time of launch of the project. That, reduced number of bookings along with the fact that several Allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the Respondent henceforth, causing delay in the construction work of the project.
- iii. The respondent submitted that the Complainants had been chronic defaulters in making payment on time contrary to the agreed terms. In this regard, Respondent

Company has issued many reminders to the Complainants.

9. 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.
10. 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.
11. Arguments heard.
12. 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. By virtue of Flat Buyer Agreement executed between the parties on 20.11.2006, 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. 14.11.2006 so the due date of




handing over of possession comes out to be 14.05.2010. 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 complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f 14.05.2010 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. 14.05.2010 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