

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

Complaint no. : 3013 of 2019
Date of first hearing : 21.11.2019
Date of decision : 16.10.2020

1. Mrs. Ashrita Singh
2. Mr. Sudeep Kumar Singh
Both RR/o: Flat no. 642, Plot no. 06, Sector
9, Ganpati Apartments, Dwarka-110075

Complainants

Versus

M/s Landmark Apartments Pvt. Ltd,
Office at: Landmark House, 65, Sector-44,
Gurgaon, Haryana - 122003
Also at: A-11, Chitranjan Park,
New Delhi 110019

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Suresh Chander Sharma Advocate for the complainants
Shri Amarjeet Kumar Advocate for the respondent

ORDER

1. The present complaint dated 14.08.2019 has been filed by the complainants/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

- 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.	Name and location of the project	Landmark cyber park, Sector 67, Gurugram, Haryana
2.	Project area	8.3125 acres
3.	Nature of the project	Corporate Center
4.	RERA registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019 for 4.48125 acres
5.	RERA registration valid up to	26.12.2018 (Ex post facto approval)
6.	DTCP license no. and validity status	97 of 2008 dated 12.05.2008 valid up to 11.05.2020
7.	Name of the licensee	Landmark Apartments Pvt. Ltd.
8.	Occupation certificate granted on	26.12.2018



9.	Unit no. as per MOU	Executive Suite/ Serviced Office on 4 th & 5 th Floor (Page no. 39 of complaint)
10.	Unit admeasuring	150 sq. ft.
11.	Revised unit admeasuring	165 sq. ft. (Page no. 49 of reply)
12.	Date of execution of MOU	12.05.2010 (Page no. 38 of complaint)
13.	Date of builder buyer's agreement	Not executed
14.	Amount of assured return (As per clause 3 of MOU)	Rs.14,250/- per month (payable quarterly till the physical possession is handed over to buyer)
15.	Total consideration	Rs. 14,25,000/- (As per clause 11 of MOU, page 41 of complaint)
16.	Total amount paid by the Complainants	Rs.14,25,000/- (as per SOA at page 45 of reply) (As per clause 13 of the MOU, page 41 of complaint)
17.	Due date of delivery of possession	26.12.2018 (As per validity of registration certificate)
18.	Date of occupation certificate	26.12.2018

		(as admitted by respondent in para 12 at page 5 of reply)
19.	Date of offer of possession	Reminder for taking over of possession vide letter dated 03.09.2019

3. As, no buyer's agreement has been executed between the parties, the due date of handing over the possession cannot be ascertained.
4. The complainants submitted that the builder buyer's agreement was not executed between the parties and vide MOU dated 12.05.2010 they booked an executive suite/ service office of 150 sq. ft. on 4th and 5th floor of landmark corporate centre for total sale consideration of Rs. 14,25,000/- and paid the same with promise to have assured return of Rs 14,250/month till handing over of the possession of the unit to the buyer according to clause 3 of the MOU.
5. The complainants have submitted that the respondent paid assured return till May'2013 and further no amount was paid and an amount of Rs. 10,26,000/- is due and payable towards assured return to them till May 2019.

6. The complainants have submitted that they contacted the respondent officials on several occasions for the execution of builder buyer's agreement but till date no builder buyer's agreement had been signed.
7. The complainants have submitted that the respondent issued intimation of possession letter dated 22.06.2015 however, complainants on visiting the site in 2018 were shocked to see that the work was still not complete.
8. The Complainants have filed this complaint inter alia praying the authority to direct the respondent to pay interest on the amount paid by them at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules and direct the respondent to execute the sale deed.
9. 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.
10. The respondent contested the complaint on the following grounds:

- i. The respondent submitted that the complainant entered into an MOU on 12.05.2010.
 - ii. That as per terms of MOU the complainant paid an amount of Rs14,25,000/- towards basic sale price however an amount of Rs 10,75,261/- is still due and payable as raised vide the demand letter dated 03.09.2019.
 - iii. That the complainants are entitled to assured return till intimation of possession i.e. 22.06.2015 and they have already been paid assured return till May 2013.
 - iv. That the promoter applied for the occupation certificate on 17.01.2015 and was granted the same by the competent authority on 26.12.2018, hence this complaint is devoid of merits.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
12. The authority, on the basis of information and other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
13. Arguments heard.

14. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act.

Findings and Decision of the Authority:

15. In the present case, no BBA has been executed inter-se parties and the promoter has taken 100% of the cost of the subject unit from the complainants.
16. According to the terms of the MoU wherein it has been stipulated that a payment as “assured returns” will be given to the complainant quarterly till the possession of the office space was handed over. The applicants have paid nearly 100% of the value of the office spaces upon execution of the MoU. The respondent has already received an amount of Rs.14,25,000/- towards assured returns until 2013, however the respondent failed to pay the assured returns to the applicants thereafter.
17. It has been contended by the respondent counsel that the instant complaint shall not fall under the ambit and purview of the RERA Act since assured return is involved and no BBA has been executed between the parties.

The Authority in this regard observes that Section 11 of the ibid Act lays down the functions and duties of the promoter.

Section 11(4)(a) of the Act is relevant and is reproduced below:

“11. Functions and duties of promoter

(1) ...

(2) ...

(3) ...

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act, the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority as the case may be”.

An “agreement for sale” has been defined under section 2(c) of the Act as “*an agreement entered into between the promoter and the allottee*”. Although no BBA has been signed between the parties, clause 6 of the MoU clearly stipulates that the parties have agreed to execute the agreement to sell after completion of entire project. However, no builder buyer’s agreement has been signed between the parties and the MoU has all the elements of an agreement for sale and accordingly MoU is considered as the builder buyer’s agreement being basically a contract *inter se* parties w.r.t. real estate transaction. Therefore, an MoU containing Assured Return Scheme could be considered as an agreement for sale interpreting the definition of agreement for sale under Section 2(c) broadly by taking into consideration the objects of RERA.

Further, the enforceability of MoU depends upon the intention and conduct of the parties as reflected in the document.

The authority herein refers to the judgment passed by the ***Hon'ble Supreme Court of India in Jai Beverages Pvt. Ltd. Vs.***

State of Jammu and Kashmir and Ors. [2006 (4) SC 401]

wherein it was held that if the conditions of the MoU are otherwise acted upon, the parties to that MoU will get benefit arising out of the same. Therefore, it can be inferred that any obligation arising against an individual out of this representation amounts to promise and shall be enforceable ex-contractu by a person who acts upon the promise. Herein, in this matter even though the BBA was not entered into the representation made by the respondent-promoter to execute the agreement to sell after completion of entire project in the MoU squarely falls under the purview of Authority by treating it as a complimentary and supplementary understanding vis-à-vis the allotment letter and equivalent to that of a BBA.

In yet another judgment passed by the ***Hon'ble Supreme Court of India in M/s Motilal Padampat Sugar Mills Vs State of Uttar Pradesh & Ors.,*** it has been observed that the true principle of promissory estoppel is that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a

*legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not. Equity will in given case where justice and fairness demand, prevent a person from insisting on strict legal rights even where they arise, not under any contract, but on his own title deeds or under statute. Further, in **Bikram Kishore Parida v. Benudhar Jena**, the Court held that the test of an intention to create legal relations is an objective one. It may be that the promisor never anticipated that his promise would give rise to any legal obligation but if a reasonable man would consider that he intended to enter into a contract, then he will be bound to make good on his promise. Therefore, the MoU itself qualifies all the elements of an agreement to sell and thus is under the purview of the jurisdiction of this Authority.*

18. Another relevant judgment in this context being **Pioneer Urban Land and Infrastructure Limited & Anr. Versus Union of India & Ors.** wherein the Apex Court has rightly pointed

that RERA is the appropriate forum to approach in case construction was delayed or in case allottees wanted compensation and other reliefs. *It was held that RERA is to be read harmoniously with the Code (i.e. The Insolvency and Bankruptcy Code, 2016). It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.*

There seems to be no conflict in this case since the subject matter in dispute is a real estate property wherein the relief sought by the complainant is delayed possession charges.

Hence, the Authority has complete jurisdiction to entertain and *adjudicate* this complaint.

The government passed the Banning of Unregulated Deposit Schemes Ordinance on 21 February, 2019 prohibiting all deposit schemes (with or without interest) except those with regulatory approval on 31.07.2019 wherein it has been provided that Incentive or assured return schemes of builders will be permitted only if the money is provided against specific immovable property to be transferred to the buyer. If the builder has to return the money with or without interest other than for situations allowed under the ordinance, it may be treated as an unregulated deposit.

19. The authority has observed that the respondent has failed to commit the due date of delivery of possession in the MoU. However, the said project is registered as ex post facto with the authority vide registration no. 61 of 2019 dated 25.11.2019, which was valid till 26.12.2018. Accordingly, the promoter was under an obligation to handover the possession of the subject units to the respective allottees by 26.12.2018. Hence, the due date of handing over the possession will be considered as 26.12.2018 and the respondent shall be made liable to pay delayed possession charges to the allottees w.e.f. 26.12.2018 till the date of offer of possession i.e. 03.09.2019.
20. The counsel for the respondent had submitted that an amount of Rs.10,75,261/- is payable by the complainant. The Authority on perusal of the documents filed on record wherein details of this payment due towards complainant has finds that the same have been charged without any valid explanation or justification. It is also surprising that holding charges have been made payable from July'2015 onwards whereas the building was not only incomplete on that date but also the occupation certificate was not obtained and without occupation certificate being procured, an offer of possession was made to the complainant which is illegal. Also, the area enhancement is shown to increase from 150 to 165 square feet (super area) without giving any justification. The Authority is of the view that if the promoter/respondent is in a position to give justification of the area increased either due to revision of


building plans or otherwise, then only he is at liberty to charge for the same. Otherwise, the demand raised by him towards increase in area shall be treated illegal.

21. The authority further observed that FFC (Fire Fighting Charges) have been shown due from July'2015 however, these charges cannot be levied as the same are part of the complete building as approved by the competent authority and cannot be charged separately being also against the terms and conditions of MoU..
22. As for the holding charges and maintenance charges, they have also been levied from July'2015, the same is also disallowed until actual handing over of the possession or the date on which the allottee was obligated to take possession under section 19 (10) of the Act *ibid*.
23. In view of the facts and circumstances above and the documents submitted by the parties, the non-compliance of the mandate contained in section 11(4)(a) of act on the part of the respondent is established.
24. Hence, the authority hereby passes the following order and issue directions under section 34(f) of the Act:
 - i. The respondent is at liberty to charge area enhancement charges only subject to valid and legal justification being given by the respondents in this regard.

- ii. Fire fighting charges cannot be levied as the same is part of complete building as approved by the competent authority.
 - iii. Holding and maintenance charges can be charged only from the date of actual handing over of the possession or the date on which allottee was obligated to take possession under section 19(10) of the Act *ibid*.
 - iv. The allottee is directed to take possession within 15 days from the date of this order.
 - v. The allottee is directed to clear all the dues, if any, to be settled between the parties as detailed in this order.
25. Complaint stands disposed of.
26. 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

Judgement uploaded on 24.11.2020