

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

Complaint no. : 1839 of 2019  
First date of hearing : 18.09.2019  
Date of decision : 21.10.2020

1. Mrs. Anju Jindal  
2. Mr. Rajesh Jindal  
**Both R/o** CCY-042, DLF Capital Greens,  
Phase-3, Shivaji Marg, Karampura, Delhi

**Complainants**

Versus

Pioneer Urban Land and Infrastructure Limited  
**Registered Office:-** Paras Down tower  
Centre, 7<sup>th</sup> floor, Golf Course Road, Sector-53,  
Gurugram

**Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Kailash Prashad Pandey  
Shri Venket Rao

Advocate for the complainants  
Advocates for the respondent

**ORDER**

1. The present complaint dated 02.05.2019 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.
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	"Araya", Sector-62, Gurugram
2.	Project area	24.606 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	268 of 2007 dated 03.12.20007
	License valid/renewed upto	02.12.2024
	Name of licensee	Pioneer Urban Land Infrastructure and Pioneer Profin Ltd.
5.	HRERA registered/ not registered	<b>Registered vide no. 101 of 2017 dated 24.08.2017 valid upto 31.12.2019</b>
6.	<b>Occupation certificate</b> received on	Not received
7.	Unit no.	2202, 22 <sup>nd</sup> floor, Tower-C
8.	Unit measuring	4279 sq. ft
9.	Date of execution of apartment buyer's agreement	25.06.2012 [page 32 of the complaint]
10.	Payment plan	Construction linked payment



		plan
11.	Total consideration	Rs. 4,73,09,159.19/- [as per memorandum customer ledger dated 01.09.2011-07.10.2020, page 37-39 of reply]
12.	Total amount paid by the complainant as stated by the complainants	Rs. 4,28,76,351.97/- [as per memorandum customer ledger dated 01.09.2011-07.10.2020, page 37-39 of reply]
13.	Due date of delivery of possession as per clause 11.2 of the said agreement 39 months from the date of excavation including grace period of 180 days	14.02.2016 [due date of possession is calculated from the date of excavation; the date of excavation is 14.05.2012 as stated by complainant at page 7 of his complaint]
14.	Possession offered on	17.06.2019 [page 30 of the complaint]
15.	Delay in handing over possession till date of offer of possession	3 years 4 months 3 days

3. As per clause 11.2 of the said agreement dated 25.06.2012 the possession of the unit in question was to be handed over within a period of 39 months from the date of excavation (14.05.2012) plus 180 days grace period which comes out to be 14.02.2016. Clause 11.2 of the buyer's agreement is reproduced below:

*11.2 The developer shall make all efforts to apply for the occupation certificate of the proposed residential project within 39 months from the date of excavation subject to such limitation*

*including but not limited to obtaining the requisite govt. approvals, sanctions, permits etc. from various department or appropriate authorities as be proved in this Agreement and the timely compliance of the provisions of the agreement by the Intending Allottee. That the developer shall be entitled to a grace period of one hundred and eighty days (180) days after the expiry of 39 months.....*

4. The complainants submitted that an apartment buyers agreement was executed between the parties on 25.06.2012 vide which the respondent was to deliver possession of the booked apartment in 39 months from the date of excavation of the project and 180 days grace period was also agreed after expiry of 39 months for applying and obtaining the Occupancy Certificate in respect of the project. Excavation of the project started on 14.05.2012. The respondent was supposed to hand over possession of the apartment on or before 13.02.2016 but the respondent deliberately and intentionally failed to offer the possession of the booked apartment to the complainants. There is considerable delay in handing over possession of the booked apartment and seeing the project status complainants have no hope to get their dreams house therefore, they served legal notice through their counsel upon the respondent asking to return their



entire deposited amount with interest. But the respondent intentionally neither replied nor refunded the deposited amount with interest to the complainants. During course of pendency of the present complaint vide letter for intimation of possession dated 17.06.2019 the respondent herein intimated the complainants that they have obtained Occupation Certificate from the competent authority and the respondent is in position to hand over possession of the booked apartment. The respondent also intimated the complainants to remit their balance amount and take possession of apartment.

5. The complainants submitted that after receipt of the above letter for intimation of possession dated 17.06.2019 the complainants vide letter dated 01.07.2019 accepted the offer of possession. On 01.07.2019 the complainants informed the respondent about the pendency of present complainant and further requested to the respondent to allow them to see the project and apartment condition. They also requested to the respondent to pay the delay charges on deposited amount as per prescribed rate of interest and handover possession of the apartment without any further delay.

Hence, this complaint inter-alia for the following relief:

- i. Direct the respondent to hand over possession of apartment no. C-2202 in tower C having super area of 4279 sq. ft. and usage rights for 03 car parking space situated in project Araya;
  - ii. Direct the respondent to pay interest as per the provisions of the Act for delay period on the deposited amount;
  - iii. Direct the respondent to complete all pending work and provide all amenities and facilities as per specification and promise made in the apartment buyer agreement;
  - iv. Direct the respondent not to charge any holding charges.
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 contested the complaint on the following grounds:-
- i. that the present complaint filed by the complainant is bundle of lies and hence liable to be dismissed. That the present complaint is a gross abuse of the process of this Authority and is not maintainable. The complainant has





not approached this with clean hands and is trying to suppress material facts relevant to the matter;

- ii. that the respondent has already fulfilled its obligations under the agreement and offered Possession on 17.06.2019. the complainants with malafide intention have utterly failed to fulfil their obligation under the agreement and with the malicious intent of extracting unlawful gains from the respondent have filed the present complaint;
- iii. that owing to the failure on the part of the complainants and other allottees to concede to their obligations under the agreement for making timely payments of the due instalments raised by the respondent from time to time tends to hamper the timelines for the completion of the project causing delay in construction owing to which the respondent had to invest substantial amount of money to expediate the construction and development of the project. The respondent has issued a credit note to the respondent on 17.06.2019 of an amount of Rs. 16,48,467/- as penalty against delay to handover the possession as per the respective agreement;

- iv. the present complaint is not only false and frivolous but also infructuous as the complainant has been already offered possession along with the delay penalty.
8. 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 and submission made by the parties;
9. The Authority, on the basis of information and other submissions made and the documents filed by the complainants, 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 documents and submissions made by the complainant 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. By virtue of clause 11.2 of the apartment buyer's agreement executed between the parties on 25.06.2012, possession of the booked unit was to be delivered within a period of 39 months from the date of excavation plus 180 days grace period i.e. 14.03.2016. Accordingly, it is the failure of the promoter to fulfil his obligations and responsibilities as per the agreement dated





25.06.2012 to hand over the possession within the stipulated period.

12. Accordingly, the 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 rate of the prescribed @ 9.30% p.a. w.e.f. 14.03.2016 till the handing over of physical possession of the allotted unit as per section 18(1) of the Act read with rule 15 of 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 the interest at the prescribed rate i.e. @ 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 14.03.2016 till the handing over of physical possession of the allotted unit;
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order;
- 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 complainant which is not part of the buyer's agreement;
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
14. Complaint stands disposed of.
15. File be consigned to registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**Dr. K.K. Khandelwal**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.10.2020