

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

Complaint no. : 2110 of 2019
Date of first hearing : 18.09.2019
Date of decision : 12.11.2020

1. Shri Afsal Ahmed Khan
2. Smt. Pratibha Khan

R/o: A 602, Prateek Edifice, Sector 107

Complainants

Versus

M/s Imperia Structures Ltd.
Office at: A-25, Mohan Cooperative
Industrial Estate, Mathura Road, New Delhi
110044

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Afsal Ahmed Khan with Complainants in person
Smt. Shalu Sharma Advocate for the complainants
Shri Rajender Kumar AR for the respondent

ORDER

1. The present complaint dated 27.05.2019 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.	Name and location of the project	Mindspace, Sector 62, Gurugram
2.	Project area	8.36 acres
3.	Nature of the project	IT Park/Cyber Park
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid upto 22.10.2020
5.	Name of the Licensee	Baakir Real Estate Pvt Ltd and 2 others
6.	RERA registered/not registered	240 of 2017 dated 25.09.2017 for 2.2 acres
7.	RERA registration valid up to	31.12.2020
8.	Unit no.	Cannot be ascertained
9.	Unit admeasuring [As per page no. 16 of complaint]	500 sq. ft. (Super area)
10.	Date of MoU [As per page no. 14 of complaint]	29.05.2012
11.	Total consideration (As per page no. 16 of complaint)	Rs. 24,69,000/- (Excluding taxes)
12.	Total amount paid by the complainants	Rs. 24,69,000/-

	(As per page no. 16 of complaint)	
13.	Payment plan	Down payment plan
14.	Due date of delivery of possession as per clause 4 of MoU (Within a period of 2 years from the date of approval of the building plans)	04.12.2017
15.	Date of occupation certificate (Submitted by respondent in the court)	02.06.2020
16.	Date of approved building plan (Submitted by respondent in the court)	04.12.2015
17.	Delay in handing over possession till date of decision i.e. 12.11.2020	2 years 11 months 08 days

3. As per clause 4 of the MoU, the possession of the unit in question was to be handed over within a period of 2 years from the date of approval of building plan i.e. from 04.12.2015 which comes out to be 04.12.2017. Clause 4 of the MoU is reproduced herein below:

"4. That the Developer will pay Rs. 65.45/- (Rupees Sixty-Five and Paise Forty-Five Only) per sq. ft. per month on 500 sq. ft. as an assured return to the Allottees (s) from 19.05.2012 till offer for possession of the Space. Thereafter the Developer shall pay Rs. 54.54/- (Rupees Fifty-Four and Paise Fifty-Four Only) per sq. ft. per month on 500 sq. ft. as assured rental till the offered Space is leased out to intended Lessee. The Developer has represented to the Allottees (s)

that the possession of the Said Unit shall be handed over by the Developer to the Allottees (s) but in the event of virtual space the space will be registered in favour of Allottee (s) and handed over to the Lessee within a maximum period of two years after approval of Building plans of the Said Project from competent authorities of the Said Project subject to force majeure. That the Allottees (s) hereby agrees accepts and confirms the authority and power of the Developer for any variation or change in the location or area of the Said Unit allotted to him and that the allotment is provisional.....”

4. The complainants submitted that the developer used the down payment with assured return just to keep their investment parked with them.
5. The complainants submitted that initially the respondent paid assured return on time, later they even did not receive the same after July' 2018 onwards.
6. The complainants submitted that the developer had no valid reason to delay the project owing to any environment clearance and it is wilful delay causing loss of return/opportunity cost to the petitioners.
7. Hence, this complaint for the reliefs mentioned herein below:

- i. Direct the respondent to pay pending instalments of assured amount along with interest be released immediately.
 - ii. Direct the respondent to handover possession of the said property to the petitioners.
 - iii. Direct the respondent to pay compensation charges on Rs. 24,69,000/- from November' 2015 onwards per month being the delayed period.
8. The complainants further filed written arguments wherein reiterating the submissions made in the complaint and during hearing.
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 authority issued notice of the complaint to the respondents by speed post as well as on given email address at care@imperiastructures.com and harpreet@imperiastructures.com, the delivery reports have been placed in the file. The respondent has filed an application for waiver of cost imposed due to non-filing of reply but has preferred not to file the reply to the complaint.
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 and submissions made by the parties.

12. The authority, on the basis of information and other submissions made and the documents filed by the complainants and the respondent, 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 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. By virtue of clause 4 of the MoU executed between the parties on 29.05.2012, possession of the booked unit was to be delivered within a period of 2 years from the date of approval of the building plans i.e. 04.12.2015. Therefore, the due date of handing over of possession comes out to be 04.12.2017. In the present case, the respondent received the occupation certificate on 02.06.2020, as such there is no reason why the respondent should not hand over the possession of the unit to the complainant. It is, therefore, directed that the respondent shall hand over the possession of the unit within 2 months. It has been stated by the complainant that they have received

payment at the rate of Rs. 65/- and Rs. 54/- per sq. feet upto May 2017. Since it is as per the provisions of MoU, as such, no delayed possession charges shall be given to the complainant for such period. However, the complainant is entitled for delayed possession charges w.e.f. 04.12.2017 till actual delivery of possession of the unit. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the MoU dated 29.05.2012 to hand over the possession within the stipulated period.

15. 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 the complainants are entitled to delay possession charges at the prescribed rate of interest @9.30% p.a. w.e.f. 04.12.2017 till the actual delivery of possession of the unit as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
16. Hence, the authority hereby passes 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. 04.12.2017 till the actual delivery of possession of the unit.

- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and subsequent interest to be paid on or before the 10th of each succeeding month.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall handover the possession of unit within 2 months and shall not charge anything from the complainants which is not part of the apartment buyer's agreement.
 - v. Interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainants in case of delayed possession charges.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated: 12.11.2020

JUDGEMENT UPLOADED ON 28.11.2020