

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

**Complaint no. : 2801 of 2019**  
**Date of first hearing : 18.12.2019**  
**Date of decision : 12.11.2020**

1. Shri Shakti Handa  
2. Shri RK Handa  
**R/o:** T-1/404, Bestech Park View  
Residency, Sector 3, Gurugram

**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:**  
Smt. Shalu Sharma Advocate for the complainants  
Shri Rajender Kumar AR for the respondent

**ORDER**

1. The present complaint dated 29.07.2019 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. (As per page 1 of rejoinder)	IMP-B-0070, Tower A
9.	Unit admeasuring [As per page no. 23 of complaint]	250 sq. ft. (Super area)
10.	Date of MoU [As per page no. 22 of complaint]	05.10.2011



11.	Total consideration (As per page no. 23 of complaint)	Rs. 14,55,000/- (Excluding taxes)
12.	Total amount paid by the complainants (As per page no. 23 of complaint)	Rs. 14,55,000/-
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 the respondent in court)	28.11.2019
16.	Date of approval of building plan (submitted by the respondent in court)	04.12.2015
17.	Delay in handing over possession till date of offer of possession i.e. 25.10.2017	2 years 11 months 8 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 date of approval of building plan i.e. from 04.12.2015 thereunder which comes out to be 04.12.2017. Clause 4 of the MoU is reproduced herein below:

*"4. That the Developer will pay 60/- (Rupees Sixty Only) per sq. ft. per month on 250 sq. ft. as an Assured Return to the Allottee from...till offer for possession of the Space. Thereafter the Developer shall pay 50 /- (Rupees Fifty Only) per sq. ft.*

*per month on 250 sq. ft. as assured rental till the Offered Space is Leased out to intended Lessee. The Developer has represented to the Allottee that the possession of the Said Unit shall be handed over by the Developer to the Allottee but in the event of Virtual Space the Space will be registered in favour of Allottee and handed over to the Lessee within a maximum period of 2 (two) years after approval of Building Plans of the Said Project from competent authorities of the Said Project subject to force majeure. That the Allottee hereby agrees accepts and confirms the authority and power of the Developer for any variation 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 April 2018 and till date the possession the abovesaid unit has not been handed over.
6. 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 charges on Rs. 14,55,000/- for delayed period of possession be released immediately.
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. Notice to the promoter/respondent through speed post as well as through E-mail at [care@imperiastructures.com](mailto:care@imperiastructures.com) and [harpreet@imperiastructures.com](mailto:harpreet@imperiastructures.com), [DSGILL@imperiastructures.com](mailto:DSGILL@imperiastructures.com) was sent. The delivery report of the same are placed on record which shows that delivery is complete. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time period. However, the promoter/respondent company's A.R have marked attendance on 12.11.2020. This is a clear evidence that the service was completed.

9. 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.
10. 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.
11. Arguments heard.
12. On consideration of the circumstances, and submissions made by the parties regarding contravention as per provisions of Act, 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 05.10.2011 to hand over the possession within the stipulated period.

13. 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.

14. 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 MoU.
  - 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.
15. Complaint stands disposed of.
16. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Dated: 12.11.2020

JUDGEMENT UPLOADED ON 28.11.2020