

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

Complaint no. : 2340 of 2019
First date of hearing : 24.09.2019
Date of decision : 05.11.2020

Mohinder Kumar Jain
Address:- 360, Udyog Vihar
Phase IV , Gurugram-122001

Complainant

Versus

Pioneer Urban Land and Infrastructure Ltd.
Address:- Registered Office at A-22, Green
Park, 3rd floor, Aurobindo Marg, New Delhi-
110016

Corporate Office:- Paras Downtown Centre,
7th floor, Golf Course Road, Sector-53, Gurgaon,
Haryana-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sukhbir Yadav
Shri Venket Rao

Advocate for the Complainant
Advocate for the Respondent

ORDER

1. The present complaint dated 04.06.2019 has been filed by the complainant/allottee 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	"Pioneer Park (Presidia) Sector-61 and 62, Gurugram
2.	Project area	24.606 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	242 of 2007 dated 25.10.2007 valid upto 24.10.2017 268 of 2007 dated 03.12.2007 valid upto 02.12.2024
5.	Name of licensee	Pioneer Urban Land Infrastructure and Pioneer Profin Ltd.
6.	RERA Registered/ not registered For 4.40 acres (Presidia Tower C,D,E and shops)	Registered no. 69 of 2017 dated 18.08.2017 valid upto 30.12.2019
7.	Unit no.	TE-902, Tower E, 9 th floor
8.	Unit measuring	2279 sq. ft. (super area)



9.	Increase area	2440 sq. ft. (as per intimation of possession, page 60 of the complaint)
10.	Date of execution of Flat Buyers Agreement	05.08.2010 (page 31 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration	Rs. 1,15,80,498/- (excluding tax) (as per schedule of payment, page 54 of the complaint)
13.	Total amount paid by the complainant	Rs. 10,248,288.05/- (as per sales customer ledger dated 31.08.2011, page 76-79 of the complaint)
14.	Due date of delivery of possession (As per clause 9.2 -36 months from the date of signing of the buyer's agreement plus 180 days grace period)	05.02.2014 (due date calculated from the date of signing of the agreement)
15.	Intimation for possession	20.11.2018 (page 60 of the complaint)
16.	Delay in handing over possession till date 20.11.2018	4 years 9 months 15 days
17.	Occupation Certificate received on	20.11.2018 (page 28 of the reply)
18.	Conveyance deed executed on	03.12.2019

3. As per clause 9.2 of the Agreement dated 05.07.2010 the possession was to be delivered within a period of 36 months



from the date of execution of agreement plus 180 days grace period which comes out to be 05.02.2014. Clause 9.2 the Buyers Agreement is reproduced hereinafter.

"9.2 (a) The FIRST PARTY shall make all efforts to apply for the Occupation Certificate of the proposed residential project within thirty six months (36) months from the date of signing of the Buyers Agreement subject to such limitation as be provided in this Buyers Agreement and the timely compliance of the provisions of Buyers Agreement by the SECOND PARTY. The SECOND PARTY agrees and understands that the FIRST PARTY shall be entitled to a grace period of hundreds and eighty days (180) days, after the expiry of thirty six (36) months for applying and obtaining the Occupation Certificate in respect of the said complex."

4. The complainant submitted that on 05.08.2010 a pre-printed arbitrary Flat Buyers Agreement was executed between respondent and complainant. The complainant continued to pay the remaining instalment as per the payment schedule of the flat buyers agreement and has already paid more than 90% amount till 01.04.2014 along with interest.
5. The complainant submitted that on 20.11.2018 the respondent issued an intimation for possession of apartment and asked to pay Rs. 16,32,470/-. That the respondent had



increased super area by 161 sq. ft. without any justification now the super area of flat is 2440 sq. ft. and the respondent demanded Rs. 2,44,000/- as IBMS/IFMS payment but did not disclose the rate of interest on IBMS. As per terms of apartment buyer agreement the security amount was interest bearing maintenance security does not interest free.

6. That on 14.05.2019 the respondent sent an email confirming all the dues are cleared including stamp duty charges for our apartment in Presidia. However even several visits and repeated emails by the complainant the respondent was not ready to provide any information pertaining to super area carpet area/common area nor gave any clarification on rate of interest on IBMS rate of interest on VAT and advance maintenance charges. That the respondent offered the possession of apartment after 58 months from the due date of possession. Therefore, the respondent is liable to pay interest on delay from 05.02.2014 till handing over the possession. Further the Respondents demanded illegal demand of advance maintenance of Rs. 1,17,472/-, VAT of Rs. 2,09,449/- electric substation charges of Rs. 1,43,960/- not clarifying the rate of interest on IBMS of Rs. 2,44,000/-, and electric substation charges were not the part of cost of flat as per FBA.

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



- i. To direct the respondent parties to pay interest at the prescribed rate for every months of delay from due date of possession till the actual handing over the possession on the amount paid by complainant;
 - ii. To direct the respondent to give get interest n IBMS Rs. 2,44,000/- @ 9% p.a.;
 - iii. To direct the respondent refund Rs. 1,17,472/- illegal demand of advance maintenance and refund Rs. 2,09,449/- against VAT or pay interest on VAT.
 - iv. To direct the respondent refund Rs. 1,43,960/- electric substation charges.
 - v. To direct the respondent to provide detailed super area, carpet area, common area, etc.
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 contested the complaint on the following grounds:-
1. that the present complaint is not maintainable in law or on facts. Since the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. As the company has already received the



- occupancy certificate for the tower in question and also offered possession to the complainant;
2. that the application for issuance of occupation certificate in respect of ten tower related with the said unit was made on 13.08.2018. Occupation Certificate for Tower E of Presidia had been received vide memo no. ZP-338-C-Vol-I/SD(BS)/2018/31909 dated 20.11.2018;
 3. that the respondent is not liable to deliver the possession of the allotted unit to the complainant until all the obligations duly imposed under Buyer's Agreement dated 05.08.2010 have been fulfilled by the complainant to the complete satisfaction of the Developer.
 4. That all the demands that have been raised by the Respondent are strictly in accordance with the terms and conditions of the Buyer's Agreement between the parties. There is no default or lapse attributable to the Respondent. It is the Complainant who has consciously refrained from obtaining physical possession of the unit by raising false and frivolous excuses.
 5. that the delay caused as due to acute shortage of labour, water and other raw materials and the delay in issuance of additional permits, licenses, sanctions by different departments, severely affecting the real estate and these



reasons were not in control of the Respondent as well as not at all foreseeable at the time of launching of the project and commencement of construction of the Complex. The Respondent cannot be held liable for things that were/are not in control of the Respondent.

6. Arguments heard.
7. 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.
8. The Authority, on the basis of information and other submission made and the document filed by the complainants and the respondent, is of considered view that there is no need of further hearing in the complaint.
9. 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 as per provisions of rule 28(2)(a), 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 05.08.2010, possession of the booked unit was to be delivered within stipulated time i.e. by 05.02.2014. The respondent offered possession of the subject unit to the



complainant on 20.11.2018. Thereafter, the conveyance deed was also executed between the parties on 03.12.2019.

10. The counsel for the respondent contended that the transaction between the complainant and the respondent stands concluded after the execution of the conveyance deed between the parties, therefore the complainant is estopped from claiming any interest or refund in the facts and circumstances of the case. However, the authority finds no merits in the said contention as the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act. In the case of **Wg. Cdr. Arifur Rahman Khan And vs Dlf Southern Homes Pvt. Ltd.** on 24 August, 2020 The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the



conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation. It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In Narne Construction (P) Ltd. v. Union of India²¹, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of "service" within the meaning of Section 2 (1) (o) of the CP Act 1986. This Court held that:

Having regard to the nature of transaction between the appellant Company and its customers involved much more than a simple transfer of a piece of immovable property it is clear the same constitutes "service" within the meaning of the Act. It was not the case that the appellant Company was selling the given property with all its advantages and/or disadvantages on "as is where is" basis, as was the position in UT Chandigarh Admn v. Amarjeet Singh. It is a case where a clear-cut assurance was made to the purchasers as to the nature and extent of development that would be carried out by the appellant



Company as a part of package under which a sale of fully developed plots with assured facilities was made in favour of the purchasers for valuable consideration. To the extent the transfer of site with developments in the manner and to the extent indicated earlier was a part of the (2012) 5 SCC transaction, the appellant Company has indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent Consumer Forum at the instance of consumers like the respondents." The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats.

11. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 05.07.2010 to hand over the possession within the stipulated period. 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. The respondent has already offered the possession of unit to the complainant on 20.11.2018 and conveyance deed has also




been executed after receipt of occupation certificate. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f 05.02.2014 till offer of possession i.e. 20.11.2018 as per the provision of section 18(1) of the Act read with rules 15 of the Rules.

12. 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 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 05.02.2014 till the offer of possession i.e. 20.11.2018;
- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order;
- (iii) Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges;
- (iv) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (v) The respondent shall not charge anything from the complainant which is not the part of the agreement.

13. File be consigned to registry.

14. Complaint stands disposed of.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.11.2020

Judgement Uploaded on 23.11.2020


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram



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