

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

Complaint no. : 6177 of 2019
First date of hearing : 22.01.2020
Date of decision : 16.10.2020

Sunita Sharma

Address: H.No. K3/104, DLF Phase-2,
Gurugram-122002

Complainant

Versus

1. Parsvnath Hessa Developers Pvt. Limited
Registered Office: Near Shahdara Metro
Station, Shahdara, New Delhi
2. Parsvnath Developers Limited
Address:- Near Shahdara Metro Station,
Shahdara, New Delhi

Respondents

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Yadav
None present

Advocate for the Complainant
Advocate for the Respondent

ORDER

1. The present complaint dated 10.12.2019 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	Parsvnath Exotica, Village Wazirabad, Sector-53, Gurugram
2.	Project area	23.815 acres
3.	Nature of the project	Group Housing Scheme
4.	DTCP license no. and validity status	69 to 74 of 1996 dated 03.05.1996 valid upto 02.05.2019, 52 to 57 of 1997 dated 14.11.1997 valid upto 13.11.2019
5.	Name of licensee	M/s Puri Construction Ltd. M/s Florentine Estate India Ltd., Mad Entertainment Network Ltd., Sunil Manchanda, Arjun Puri, Mohinder Puri
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	D5,-404, 4 th floor, Tower-D5



8.	Super area	2810 sq. ft. (revised area 2895 sq. ft.)
9.	Increase area	85 sq. ft. As per final statement of account, page 51 of the complaint
10.	Date of execution of Flat Buyers Agreement	24.03.2006 (page 21 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total Sale consideration	Rs. 73,76,250/- (Basic cost) (as per customer ledger dated 03.12.2019, page 54 to 60 of the complaint)
13.	Total amount paid by the complainant	Rs. 81,60,613.50/- (including tax) (as per customer ledger dated 03.12.2019, page 54 to 60 of the complaint)
14.	Due date of delivery of possession as per clause 10(a) 36 months from the date of commencement of construction of the block in which the flat is located plus 6 months grace period	15.10.2009 [due date calculated from the date of 2 nd instalment as start of foundation i.e. 15.04.2006 at page 55 of the customer ledger]
15.	Offer for fit outs	12.03.2015 (page 50 of the complaint)
16.	Delay in handing over possession till this order i.e. 16.10.2020	11 years 2 days
17.	Occupation Certificate	Not received

3. As per clause 10(a) of the Agreement dated 24.03.2006 the possession was to be delivered within a period of 36 months of commencement of construction of the particular block in which flat is located plus 6 months grace period which comes



out to be 15.10.2009. The due date of possession is calculated from the date of 2nd instalment i.e. 15.04.2006. Clause 10(a) of the Buyers Agreement is reproduced below:

“10 (a) construction of the flat is likely to be completed within a period of Thirty Six (36) months of commencement of construction of the particular block in which the Flat is located, with a grace period of 6 months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service dept., civil aviation dept. Traffic dept. Pollution control dept. As may be required for commencing and carrying on construction subject to force majeure, restraints or restriction from any court/authorities, non-availability of building materials dispute with contractor force etc. and circumstances beyond the control of the developers and subject to timely payments by the flat buyers in the scheme.....”

4. The complainant submitted that on 24.03.2006 a pre-printed arbitrary unilateral Flat Buyers Agreement was executed between M/s Multi Agro Pvt. Ltd. and Parsvnath Developers Limited. As per clause 10 (a) of the agreement the respondent had to give the possession of flat within a period of 36 months of commencement of construction of block in which the flat is



located with a grace period of 6 months. That construction of said tower started on 15.04.2006, inter alia the due date of possession was 15.10.2009. That on 26.03.2010 the original allottee sold the said flat to Mrs. Uma Bansal, with the permission of the respondent. Further on 30.03.2012 the subsequent allottee Mrs. Uma Bansal sold the said flat to Mrs. Sunita Sharma with the permission of the respondent. That on 20.11.2019 the complainant sent an email to the respondent and alleged for failure to give the possession of the flat and further asked for delayed possession interest from due date of handover as per RERA. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, the respondent are liable to be punished and compensate the complainant. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to give the possession of flat with OC and promised amenities;
- ii. Direct the respondent parties to pay interest at the prescribed rate of interest for every month of delay from due date of possession till the handing over the possession;



- iii. Direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the possession of the flats.
5. 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.
6. The respondent contains the complaint on the following grounds:-
 1. It is submitted that the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complainant deserves to be dismissed.
 2. It is submitted that the respondent company under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. That out of the said 18 towers, 11 towers were duly developed and completed, and the Occupancy Certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011



respectively. It is further stated that the Occupancy Certificate with respect to remaining 03 towers i.e. D4, D5 (in which the Complainant's flat is located) and D6 has already been applied for on 01.11.2011 for which the review was also filed by the Respondent Company on 21.11.2017 & it is submitted that the part Occupancy Certificate (OC) application with respect to 02 (Two) towers no. B1 & C4 was also filed before DTCP, Chandigarh on 13.08.2013. Furthermore, it is pertinent to place on the records that the review letter for Occupancy Certificate of the abovementioned 5 towers (D4, D5, D6, B1 & C4) again filed on 11.02.2019 before the competent authority, DTCP, Chandigarh. It is further submitted that appropriate and relevant reports from the Office of DTP, STP, PHE, and External Services have been forwarded to Department of Town & Country Planning, (HQ), Chandigarh, Haryana.

3. It is submitted that occupancy certificate is not being granted by DTCP for want of beneficiary interest/ right in favour of the Developer under the policy dated 18th February 2015. It is pertinent to state that in principally DTCP has accorded his approval on the transfer of the



beneficiary interest in favour of the Developer. However, the formal approval is in process.

4. It is submitted that tower no. D4 in which the flat of the complainant is located has been completed. The respondent has duly completed all the construction work in the part of the project and tower D4. The respondent company had offered the possession of the same for fit-outs purpose to the other allottees including the complainant herein in the instant tower and substantial allottees have already occupied their respective flats for carrying out the fit-outs work in their respective flats. The respondent submitted that they could not get the occupation certificate on account of the fact that condition of construction of EWS units have not been complied by them. there is no intentionally delay in the construction on the part of the respondent and the delay was due to reasons detailed in the reply which were beyond its control.
7. 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.



8. The Authority, on the basis of information and other submission made and the document filed by the complainant and the respondent, is of considered view that there is no need of further hearing in the complaint.
9. Arguments heard.
10. On consideration of the circumstances, the evidence other record and submissions made by the parties and based on the findings of the authority regarding contravention the Authority is satisfied that the respondent is in contravention of the provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act.
11. By virtue of Flat Buyer Agreement executed between the parties on 24.03.2006, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of commencement of construction of the block in which the flat is located. In the present case, the due date of handing over of possession has been calculated from the date of 2nd Instalment being the date of start of construction as per payment plan i.e. 15.04.2006 which comes out to be 15.10.2009. As per reply the occupation certificate still has not been obtained by the promoter/respondent. In this case fit out possession was offered which is not a valid



offer of possession as per law but amounts to only inspection and can be at the best treated as DIKKO in.

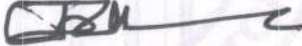
12. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f 15.10.2009 till offer of possession of the booked unit as per the provision of section 18(1) of the Act read with rules 15 of the 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 interest at the prescribed rate of interest i.e. @ 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 15.10.2009 till offer of possession;
 - (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on or before 10th of every month;
 - (iii) The complainant is 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 the part of the BBA.
14. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter.
15. Complaint stands disposed of.
16. 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