

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

Complaint no. : 483 of 2020
Date of first hearing: 27.03.2020
Date of decision : 05.11.2020

Mr. Poduri Venkata Ratnam
R/o: 1401, Tower 20, Orchid Petals,
Gurugram(Haryana)-122002

Complainant

Versus

M/s Haamid Real Estates Pvt. Ltd.
(Through its Managing Director)
Office:- 232 B, Okhla Industrial Estate, Phase-
III, New Delhi-110020
Also at: The Masterpiece, Golf Course Road,
Sector-54, Gurgaon-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri. Sanjeev Sharma
Shri. Vishal (proxy counsel)

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 04.02.2020 has been filed by the complainant/allottee 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 flat buyer's agreement 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: -

1.	Name and location of the project	"The Peaceful Homes" at Sector-70A Gurugram
2.	Nature of the project	Group housing colony
3.	RERA registered/ not registered	Registered vide no. 63 of 2019 dated 22.10.2019
4.	RERA registration valid up to	31.12.2019 (only 8.38 acres registered)
5.	Project area	27.4713 acres
6.	DTCP license no.	16 of 2009 dated 29.5.2019
	License valid/renewed upto	28.5.2024
	Name of licensee	DLF Homes Panchkula
7.	Date of apartment buyer's agreement	25.03.2015
8.	Apartment/unit no.	234, 23 rd Floor, Tower- C
9.	Unit measuring	1565 sq. ft.
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per account statement dated 05.11.2019 as annexure III at page 47 of complaint	Rs. 1,09,75,150.20/-
12.	Total amount paid by the complainant as per account statement dated 05.11.2019 as annexure III at page 47 of complaint	Rs. 1,06,92,698/-



13.	Date of commencement of the excavation work	10.05.2014 (as per account statement dated 05.11.2019 as annexure III at page 47 of complaint)
14.	Due date of delivery of possession as per clause 11(a) of the said agreement- i.e. 36 months + 6 months' grace period from the date of commencement of construction i.e. 10.05.2014	10.11.2017
15.	Occupation Certificate	29.10.2019 [at page-7 of reply]
16.	Offer of Possession	05.11.2019 [at page-10 of reply]

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A flat buyer's agreement dated 25.03.2015 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 10.11.2017 but the respondent offered possession on 05.11.2019. However, the respondent has failed to fulfil its contractual obligation by neither delivering the possession within stipulated period nor paying the compensation as per terms of agreement dated 25.03.2015.
4. The complainant submitted that the flat buyer's agreement dated 25.03.2015 is executed between both the parties i.e. M/s. Haamid Real Estates Pvt. Ltd. and the complainant on



terms and conditions as laid down by the company. Further, as per the flat buyer's agreement the possession of the unit/apartment in question was to be handed over within 3 years from the date of commencement of excavation work with a grace period of 6 months as provided under clause 11(a) of the agreement the possession was to be handed over lastly by November, 2017.

5. Further, in January, 2020 the complainant is still without any signs of offer of possession even after the lapse of good 7 and half years i.e. 11.06.2012 to 25.01.2020. Hence, this complaint for the aforementioned relief:

i. Direct the respondent to handover the possession of the apartment along with prescribed interest per annum from the promised date of delivery of the apartment in question.

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 contests the complaint inter alia on the grounds mentioned below which according to him were beyond his control:



- I. That the respondent has already issued the intimation for possession dated 05.11.2019 to the complainant after the receipt of the occupation certificate dated 29.10.2019. The complainant did not mention this material fact in his complaint and thus complaint needs to be dismissed on the ground of suppressio veri. Moreover the complainant has annexed in the list of documents statement of accounts dated 05.11.2019 which is the date of intimation for possession. The respondent along with intimation for possession has also sent statement of accounts dated 05.11.2019, it is very strange that the complainant has received copy of statement of accounts but not intimation for offer of possession. If the complainant is still denying the receipt of intimation for possession then he must explain before this Authority that how he has received the statement of accounts.
- II. More than 60% of the allottees to the instant project have defaulted in their payments, leading to unrealized amount of more than Rs. 150 Crores as on date in the project. Due to defaults on part of the allottees, including the complainant, the respondent were constrained to



approach financial institutions to raise funds to complete the construction of the project. Further, the said financial institutions have their own internal compliances before such funds are disbursed to entities like the respondent which lead to further delay in procurement of funds. Moreover, during the course of construction, various disputes in relation to quality and delay in work on the project arose with the civil contractors of the respondents viz. Shri Balaji Buildmate private limited. The disputes got further aggravated and the resolution of the disputes took a considerable amount of time (around 6 months). During the said period, Shri Balaji Buildmate private limited did not allow any other contractor to carry on with the construction as was contemplated in the builder buyer's agreement, and the project was put to a complete standstill. Finally, after the dispute was settled amicably, a new contractor viz. RSV Builders private limited was awarded the work. The new contractor thereafter took further time to mobilize its resources and deploy its personnel and carry forward the work from the previous contractor.



- III. Furthermore, there was a major accident at the project site which resulted in the untimely death of two laborers and three laborers were hospitalized. Due to this unforeseen accident, the work at the project site had to be stopped for about a month, since the labor union had started raising various demands etc. after the unfortunate incident. The respondent was accordingly constrained to make payments to the said laborer's as compensation towards the aforesaid incidents and arrive at an amicable settlement, all of which further took considerable time and resulted in delay in completion of the project.
- IV. That the demonetization of currency notes of Rs. 500 and Rs. 1000 announced vide executive order dated November 8, 2016 further affected the pace of the development of the project. Due to the said policy change by the Central Government, the pace of construction of the project was severely affected for a period of approximately six months from November 2016 to April 2017 as the withdrawal of money was restricted by Reserve Bank of India as the availability of new currency was limited and unavailable with the banks. It is well



known that the real estate sector deploys maximum number of construction workers who are paid in cash which wasn't readily available with the respondent. The effect of such demonetization was that the labourers were (on some occasions) not paid within the stipulated time which consequently which consequently resulted in a huge labour crisis in Delhi and NCR region.

V. That beside the aforesaid reasons, on account of various orders passed by the Hon'ble National Green Tribunal, the construction activities had to come to a complete standstill during a considerable time period which further affected the timely completion of the said project. It is pertinent to mention herein that various approach roads to the said project which are to be constructed by the relevant civic authorities have not been completely developed which are seriously affecting the timely completion of the project. The respondents cannot be held liable on account of non-performance by the concerned governmental authorities.

VI. That the aforesaid circumstances fall within the ambit of the definition of the 'force majeure' conditions as stated



in clause 46 of the builder buyer's agreement. The complainant has admitted and acknowledged vide the said clause that respondent shall not be responsible or liable for not performing any obligation if such performance is prevented, delayed or hindered by any act not within the reasonable control of respondent no.1. vide clause 11(b) of the builder buyer's agreement, it was agreed upon that if the possession of the unit is delayed due to force majeure conditions then respondent company shall be entitled to extension of time for delivery of the possession of the unit.

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.
9. The Authority on the basis of information and explanation and other submissions made and the documents filed by both the parties is of considered view that there is no need of further hearing in the complaint.



Arguments heard.

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in **Simmi Sikka v/s M/s EMAAR MGF Land Ltd.** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. On consideration of the circumstances, evidence, other record and submissions made by both the complainant and respondent 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 clause 11(a) of the flat buyer's agreement executed between the parties on 25.03.2015, possession of the booked unit was to be delivered within a period of 36 months with 6 months grace period from the date of commencement of construction i.e. 10.05.2014. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 10.11.2017. The respondent has offered possession of the subject unit to the complainant on 05.11.2019. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's



agreement dated 25.03.2015 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 complainant is entitled to delay possession charges from the due date of possession at prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 10.11.2017 till offer of possession i.e. 05.11.2019 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 complainant from due date of possession i.e. 10.11.2017 till the offer of possession i.e. 05.11.2019.
 - ii. The complainant is directed to take over the possession of the allotted unit within a period of 30 days by making the requisite payments to the respondent.
 - iii. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the



promoter which is the same as is being granted to the complainant in case of delayed possession charges.

- iv. The respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement.

14. Complaint stands disposed off

15. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:05.11.2020

(Subhash Chander Kush)

Member

JUDGEMENT UPLOADED ON 04.12.2020