

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

Complaint no. : 1184 of 2019
First date of hearing : 09.10.2019
Date of decision : 04.11.2020

1.Subash Chand Yadav
2. Rahul Yadav
Both R/o: VPO. Waziarad, Sector-52,
Gurugram, Haryana

Complainants

Versus

M/s Angle Infrastructure Pvt. Ltd.
Regd. Office: 8& 9, Splendor Forum, Plot no. 3,
Jasola District Centre, New Delhi-110025

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav
Shri Sidhartha Dass

Advocate for complainants
Advocate for respondent

ORDER

1. The present complaint dated 18.03.2019 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:

1.	Name and location of the project	"Florence Estate", Sector 70, Village Fazilpur Jharsa Gurugram
2.	Project area	14.468 acres
3.	RERA registered/not registered	Registered
4.	Registration no.	287 of 2017 dated 10.10.2017 231 of 2017 dated 19.09.2017(Phase-2, Tower D & E)
5.	Revised date of RERA registration	31.12.2018 and 31.12.2019 applied for extension (31.12.2021)
6.	DTCP license no.	170 of 2008 dated 22.09.2008
	License valid/renewed upto	21.09.2020
	Name of licensee	Angle Infrastructure Pvt. Ltd.
7.	Nature of real estate project	Group Housing Project
8.	Date of execution of apartment buyer's agreement	22.01.2014
9.	Apartment No.	2304, Tower- B, 22nd floor
10.	Unit Measuring	2125 sq. ft.

3. The details provided above have been checked on the basis of the records available in the case file which have been provided by parties of the complaint. An apartment buyer's agreement dated 22.01.2014 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 22.10.2018. The respondent has failed to fulfil its contractual obligation by neither delivering the possession within the stipulated period nor paying the compensation as per the terms of the agreement dated 22.01.2014.
4. The complainants submitted that the complainants regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant.
5. The complainants further submitted that the construction of the project in which the complainants flat was booked with a promise by the respondent to deliver the flat by 22.10.2018 but was not completed within time for the reasons best known to the respondent, which clearly shows that ulterior motive of the

respondent was to extract money from the innocent people.

Hence, this complaint for the aforementioned relief:

- i. Direct the respondent to handover the possession of the flat along with prescribed rate of delay interest per annum till the date of delivery of possession.
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 contesting the complaint in its reply made to the following submission:-
- i. That in terms of the clause 3.5 of the agreement, the complainants agreed that if the respondent fails to complete the construction of the apartment within the stipulated period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond the control of the respondent; then the complainants agrees that the respondent shall be entitled

to reasonable extension of time for completion of construction of the said project and the delivery of possession of the apartment to the complainants. The clause 3.5 of the agreement is reproduced hereinbelow:

"If the Seller fails to complete the construction of the Apartment within the period as mentioned in this Agreement due to Force Majeure circumstances or for other reasons as stated in the Agreement or some other circumstances beyond the control of the Seller, then the Purchaser(s) agrees that the Seller shall be entitled to reasonable extension of time for completion of construction of the Project and delivery of the possession of Apartment to the Purchaser(s) and in such event no compensation or penalty or Holding Charges of any nature shall be payable by the Seller to the Purchaser"

- ii. That sometime in the year 2013 one Mr. Ballu Ram filed a Writ Petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license No. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties maintain status-quo with regard to transfer and construction in respect to the said project of the respondent.

- iii. That in view of the said order of the Hon'ble High Court of Punjab and Haryana dated 16.08.2013, the respondent was forced to keep on hold all the construction work at the project site. The respondent was unable to do any kind of construction work at the project site for about fifteen (15) months.
- iv. That the respondent is in the process of completing and developing the said project and will deliver the possession of the apartment to the complainants within a short period of time. Further, the respondent submitted that the Authority has also granted registration of the said project under the Real Estate (Regulation and Development) Act, 2016 wherein the respondent has also applied for extension of validity of registration of the project and has deposited the requisite fees;
- v. That in view of the circumstances beyond its control, the respondent was unable to complete the construction and deliver the possession of the apartment to the complainants within the stipulated period of time. In view of the aforementioned facts and force majeure

circumstances, the respondent started that there is no failure on the part of the respondent in completing the construction and delivering the possession of the apartment to the complainants and further there is no deficiency of service on the part of the respondent, as such the present complaint is not maintainable and the respondent is not liable to pay any amounts to the complainants.

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

Arguments have been heard.

10. The authority observes that it 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. Since, no OC/CC has been granted to the said project; such this project is to be treated as on-going project and the provisions of the Act shall be applicable in equally to the builder as well as allottee.
12. On consideration of the circumstances, the documents , 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 clause 3.1 of the apartment buyer agreement executed between the parties on 22.01.2014, possession of the booked unit was to be delivered within a period of 4 years plus 9 months grace period from the execution of apartment buyer agreement or start of construction, whichever is later. Hence, the due date has been calculated from the date of execution of the agreement being subsequent to the start of the construction date. Therefore, the due

date of possession comes out to be 22.10.2018. The grace period of 9 month which has been allowed to the respondent subsequently covers all the exigencies which would have been beyond the control of the respondent. Further, it was alleged by the counsel of the respondent during the hearing that there was a stay by Punjab & Haryana High Court that got vacated on 17.11.2014 and this period should be exempted and the interregnum period should not be counted for the purpose of DPC. However, it was stated by the counsel for the complainant that there is no reason that on account of the title dispute inter-se the partners (licensee) he should not be made to suffer on account of DPC. In this regard the authority is of the view that a matter of fact any title dispute is a sort of fraud perpetrated on the innocent home buyers and as such home buyers should not be crushed such type of irregularities on the part of the licensee/promoter/builder. Hence, this period shall be counted for the purpose of grant of DPC.

13. Accordingly, it is the failure of the promoter to fulfil his obligations as well as responsibilities as per the apartment buyer's agreement dated 22.01.2014 to hand over the possession within the stipulated period. 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. In this case, the respondent has not offered the possession of the unit to the complainants. As such the complainants are entitled to delayed possession charges at rate of the prescribed interest @ 09.30% p.a. w.e.f. 22.10.2018 till the offer of physical possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

14. 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. 09.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 22.10.2018 till the offer of physical possession of the allotted 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 thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the apartment buyer's agreement.
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

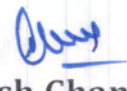
15.Complaint stands disposed of.

16.File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated:04.11.2020

JUDGEMENT UPLOADED ON 04.12.2020