

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

Complaint no. : 330 of 2019
First date of hearing: 16.05.2019
Date of decision : 22.10.2020

1. Amit Talwar
S/o: -Satish Kumar Talwar,
2. Mrs. Nutan Talwar
W/o: - Amit Talwar
Through Special Power of Attorney,
Holder
Mr. Satish Kumar Talwar,
S/o: - Late Sh. Lqbal Chand Talwar
All R/o: - 136, Himvarsha Apartments,
Plot No.103, IP Extension, Delhi-110092

Complainants

Versus

M/s Selene Construction Pvt. Ltd.
Regd. Office: - M-62 & M-63, First
Floor, Connaught Place, New Delhi- 110001

Respondent

CORAM:

Shri K.K Khandelwal
Shri Subhash Chander Kush

**Chairman
Member**

APPEARANCE:

Sh. Varun Kathuria Advocate for the complainants
Sh. Jasdeep Singh Dhillon Advocate for the respondent

ORDER

1. The present complaint dated 08.02.2019 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 as provided 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.

- 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.	Project name and location	"India Bulls Centrum Park" Sector-103, Gurugram.
2.	Project area	17.081 acres
3.	Nature of the project	Residential Complex
4.	DTCP license no. and validity status	252 of 2007 dated 02.11.2007 valid Upto 01.11.2017 50 of 2011 dated 05.06.2011 valid Upto 04.06.2019 63 of 2012 dated 19.06.2012 valid Upto 18.06.2020
5.	Name of licensee	M/s Selene Construction Pvt. Ltd. and Vindhyaachal Land Development
6.	RERA Registered/ not registered	Registered vide no. 10 of 2018 dated 08.01.2018 (phase II) and valid upto 31.10.2018 11 of 2018 dated 08.01.2018 (phase I) valid upto 31.07.2018



7.	Allotment letter	10.03.2011 [Page 58 of complaint]
8.	Date of execution of flat buyer agreement	21.02.2011 [Page 34 of complaint]
9.	Unit no.	102, 10 th floor, tower G2 [Page 38 of complaint]
10.	Unit measuring	2875 sq. ft. (super area)
11.	Payment plan	Construction linked payment plan [Page 54 of complaint]
12.	Total sale consideration of the subject unit (as per applicant ledger dated 20.08.2018)	Rs.99,61,875/- [Page 59 of complainant]
13.	Total amount paid by the complainants (as per applicant ledger dated 20.08.2018)	Rs. 95,79,954/- [page 60 of complaint]
14.	Due date of delivery of possession as per clause 10.1 of flay buyer agreement Three years, with a six months grace period from the date of execution of the flat buyer agreement dated 21.02.2011 [page 43 of complaint]	21.08.2014
15.	Offer of possession	04.06.2019 [page no 14 of written argument in complaint]
16.	Delay in handing over possession till the offer of possession i.e. 04.06.2019	4 years 9 months and 14 days
17.	Date of execution of conveyance deed	06.09.2019
18.	Occupation certificate received	01.01.2019

3. As per clause 10.1 of the flat buyer agreement dated i.e. 21.02.2011, the possession was to be handed over within a period of three years along with a six months grace period thereon from the date of execution of flat buyer agreement. Accordingly, the due date of possession has been calculated from date of execution of apartment buyer agreement 21.02.2011 which comes out to be 21.08.2014. Clause 10.1 of the apartment buyer agreement is reproduced below:

“10.1 The Developer shall endeavour to complete the construction of the said building/Unit within a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyer’s Agreement subject to timely payment by the Buyer(s) of total sale price payable according to the Payment Plan applicable to him or as demanded by the Developer.....”

4. The complainants submitted that the parties executed the buyer developer agreement on 21.02.2011. The respondent has failed to handover the possession of the unit to the complainant in the promised date of possession i.e. 21.08.2014 including grace period as per the flat buyer agreement.
5. The complainants further submitted that when the Installment due from the complainants with 30 days of booking of their



unit was delayed by approximately 10 days as the cheque issued by the complainants for the said Installment was dishonoured for the reason "Signature Mismatch " even though there were adequate funds in the concerned bank accounts. The complainants had raised this issue with their bank but unfortunately the cheque was dishonoured. Thereafter, replacement of cheque was immediately issued by the complainants when this fact came to their knowledge, but the respondent/developer still charged interest @18% p.a. on the delayed service tax payment.

6. The complainants submitted that the unit of the complainants located, originally consisted of a total of 18 floors which have unilaterally been increased to 26 floors by the respondent/developer without obtaining the prior consent or approvals of the complainants.
7. The complainants submitted that they are entitle to compensation on account of delay which has been caused by the respondent/developer in handing over of the possession of their unit.

Hence, this complaint for the inter alia reliefs, detailed herein below: -

- (i) to direct the respondents to handover the actual physical possession of the unit booked by the complainants to them, complete and ready in all respects;

- (ii) to direct the respondent to pay interest to the complainants calculated @18% per annum or as per the prescribed rate as per the Act on the payments already received from the complainants, each month to the complainants, for the delay in handing over of possession from the scheduled date of delivery i.e. 42 months from the date of the execution of the flat buyer agreements dated 21.02.2011 till the time the actual physical possession of the unit of the complainants is handed over;
- (iii) to direct the respondent to refund the excess interest charged from the complainants on the VAT and/or service charge paid by them on the delayed instalments;
- (iv) to direct the respondent to provide audited and certified measurements and calculation of the covered area and super area of the apartments of the complainants.
8. 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.
9. The respondent contests the complaint on the following grounds:

- i. The respondent submitted that the instant complainant is not maintainable in law and is liable to be dismissed at the threshold being beyond the preview and scope of the Authority.
 - ii. The respondent submitted that it is only after being satisfied with the project in totality that the complainants expressed their willingness to book a unit in the project looking into the financial viability of the project and its further monetary benefits got the said unit booked with the respondent.
 - iii. The respondent submitted that the respondent has already completed the construction of "Tower-G2" and has already obtained occupation certificate for the said tower and is in process of issuing possession letter to respective buyers.
 - iv. The respondent submitted that the delay caused in completion of the project was due to reason detail in the reply being beyond the control of the respondent.
10. The respondent submitted on the date of hearing dated 12.03.2020 that both the parties have executed a conveyance deed dated 06.09.2019 vide document no. 6399 and a possession letter dated 06.09.2019 was also issued. Therefore, the payment for delay payment charges cannot be allowed.



11. Thereafter, written argument dated 18.09.2020 has been filled by the complainants wherein they have made the following submission: -

- i) That complainants should not be penalized for taking the possession of their unit as clearly, they had no option but to do the same and furthermore as their flat was ready and was likely to deteriorate. Also, since they faced the threat of penal interest and holding charges there was no other option but to take possession. Furthermore, the Complainants have bona-fide in exercise their remedy under law by filing the present complainant on 8/02/2019 which is much prior to the offer of possession made by the Respondent and in-fact is also prior to the grant of the occupation certificate to the project where his flat is located and therefore, should not be penalized since no effective hearing had taken place in the matter till January, 2020.
- ii) That the Hon'ble Apex Court has in a catena of judgements and more recently in "Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan 2019 and Pioneer Urban Land & Infrastructure Ltd. Vs. Geetu Gidwani Verma & Anr." being Civil Appeal No. 12238/2013 and 1677/2019 respectively, held that one sided and unfair contractual terms in an Agreement are invalid and unenforceable and a builder cannot seek to bind a buyer with one-sided and

unfair contractual terms of an Apartment Buyer's Agreement ('Agreement'). In view of the same the complainants should not be penalized for executing documents under duress at the time of execution of the conveyance deed as has been mentioned hereinabove. The above position has been reiterated and reaffirmed by the Hon'ble NCDRC in CC. No. 351/2015 titled as "Capital Green Flat Buyers Association Vs. DLF Universal Ltd. & Anr." wherein it is specified that buyers don't have any option but to sign at the dotted line at the time of entering into such agreements. It is pertinent to mention here that in the present case as well the flat buyers agreement and the possession letter amongst other documents which the complainants were told to execute and the said documents contained completely one side terms which solely favoured the respondent and the complainants were not given the option to alter, amend or modify the terms of such documents.

12. 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.
13. The Authority on the basis of information, explanation, other submissions made, the documents filed by the parties is of



considered view that there is no need of further hearing in the complaint.

14. Arguments were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time.
15. The Authority is of the view that the Act is to protect the of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
16. On consideration of the circumstances, the evidence and other records, 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 10.1 of the flat buyer's agreement executed between the parties on 21.02.2011, possession of the booked unit was to be delivered within a period of three years from the date of execution of agreement plus 6 months grace period. Accordingly, the due date of possession comes out to be 21.08.2014. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's



agreement dated 21.02.2011 to hand over the possession within the stipulated period as possession has been offered approximate 5 years from the due date of possession i.e. 21.08.2014 and the respondent offer of possession i.e. 04.06.2019 in the allotted unit. Therefore, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @9.30% p.a. w.e.f. 21.08.2014 till the offer of possession i.e. 04.06.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

17. Hence, the Authority hereby passes this order and issues the following 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 from the due date of possession i.e. 21.08.2014 till the offer of possession i.e. 04.06.2019
18. Complaint stands disposed of.
19. File be consigned to registry.

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:22.10.2020

Judgement Uploaded on 07.12.2020

(Dr. K.K. Khandelwal)

Chairman