

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

**Complaint no. : 461 of 2020**  
**First date of hearing : 12.03.2020**  
**Date of decision : 21.10.2020**

1. Jyoti Sharma  
2. Rakesh Kumar Sharma  
Both R/o: - House No. 1959, Sector-23,  
Gurugram, Haryana

**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 Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Anand Dabas  
Sh. Rahul Yadav

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 27.01.2020 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", Village Daultabad, 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 Vindhyachal Land Development
6.	RERA Registered/ not registered	<b>Registered vide no. 10 of 2018 dated 08.01.2018 (phase II) Valid upto 31.10.2018</b>



		<b>11 of 2018 dated 08.01.2018 (phase I) valid upto 31.07.2018</b>
7.	Allotment letter with previous allottee	22.03.2013 [page no 26 of complaint]
8.	Date of execution of flat buyer agreement with previous allottee	07.04.2012 [Page 29 of complaint]
9.	Unit no.	K2073, 07 <sup>th</sup> floor, tower K2 [Page 33 of complaint]
10.	Unit measuring	2000 sq. ft. (super area)
11.	Payment plan	Construction linked payment plan [Page 48 of complaint]
12.	Date of execution of agreement to sell in favour of complainant	20.12.2012 [Page 56 of complaint]
13.	Transfer of titled documents	16.03.2013 [Page 27 of complaint]
14.	Total sale consideration of the subject unit (as per applicant ledger dated 20.08.2019)	Rs. 48,66,000/- (excluding tax) [ Page 54 of complainant]
15.	Total amount paid by the complainants (as per applicant ledger dated 20.08.2019)	Rs. 51,50,705/- (including tax) [page 55 of complaint]
16.	Due date of delivery of possession as per clause 21 of flay buyer agreement  Three years, with a six months' grace period from the date of execution of the flat buyer agreement dated 07.04.2012	07.10.2015 [page no 38 of complaint]
17.	Offer of possession of the flat	12.09.2018

		[Page 38 of reply]
18.	Delay in handing over possession till actual offer of possession 12.09.2018	2 years 11 months and 5 days
19.	Status of the project	Complete
20.	Occupation certificate	23.07.2018 (taken from the DTCP site)

3. As per clause 21 of the flat buyer agreement dated i.e. 07.04.2012, the possession was to be handed over within a period of three years, along with a six months grace period from the date of execution of flat buyer's agreement. Accordingly, the due date of possession comes out to be 07.10.2015. Clause 21 of the flat buyer agreement is reproduced below:

"21 Possession

*The Developer shall endeavor to complete the construction of the said building/unit within a period of three years, within an six months grace period thereon from on the date of execution of the Flat Buyer 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 respondent/promoter company had executed a flat buyer's agreement dated 07.04.2012 in favour of Mr. Pramod Kumar Rai for unit no. K2073, 7<sup>th</sup> floor, Tower K2, Sector-103, Gurugram in this project. Subsequently first allottee sold the said unit in favour of Mrs. Jyoti Sharma and Mr. Rakesh Kumar Sharma, vide Agreement to Sell dated 20.12.2012 (annexure-C/3, page no 56 to 59 of this complaint) The promoter/respondent company thereafter issued a transfer confirmation/endorsement letter dated 22.03.2013 on the flat buyer agreement dated 07.04.2012 in question.
5. The complainants submitted that the parties executed the buyer developer agreement on 07.04.2012 but the respondent till date has failed to handover the possession of the unit to the complainant as per the promised date of possession i.e. 07.10.2015 including grace period as per the terms of the flat buyer agreement. The respondent has offered possession of the said flat on 12.09.2018. However, the respondent has failed to provide delay possession charges to the complainant.  
Hence, this complaint for the inter alia reliefs, herein above: -

- (i) to direct the respondents to pay the interest at the applicable rate on account of delay in offering possession on Rs.51,50,705/- paid by the complainants as sale consideration for the said flat from the date of payment till 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 contested the complaint on the following grounds:
- i. that the instant complainant is not maintainable in law and is liable to be dismissed at the threshold for being filed under wrong provisions.
  - ii. that the complainants are the subsequent allottees of the subject unit i.e. K2073, on 07<sup>th</sup> floor, building block no. K. That the subject unit was initially booked in name of one Mr. Parmod kumar Rai who had executed a flat buyer agreement dated 07.04.2012 with the respondent and the Complainants voluntarily got the subject unit transferred in their name through endorsement dated



- 16.03.2013 followed by Application Form dated 22.03.2013 signed by Complainants for the subject Unit.
- iii. that seeing the financial viability of the Project the Complainants expressed their willingness to book a Unit in the Project looking subsequently got the said unit transferred from its actual owner on their own name against which an allotment letter dated 22.03.2013 was issued by the respondent.
- iv. The respondent submitted that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months starting from February'2015 and for said

reasons the Project of the Respondent was severely affected which were beyond the control of the Respondent, and because of the reasons the progress and construction activities, sale of various flats and spaces did not happen as envisaged.

v. that the Respondent has already completed the construction of the "Tower K" where the subject unit was provisionally booked by the Complainant and further the Respondent has also already obtained Occupational Certificate for the said Tower. It is submitted that the Respondent vide its letters dated 12.09.2019 & 11.10.2018 already offered the possession of the subject unit to the Complainants, however it is the Complainants who have till date not taken the physical possession of the same and instead filed the instant complaint based on frivolous and concocted facts

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, explanation, other submissions made, and the documents filed by the parties is of considered view that there is no need of further hearing in the complaint.
10. Arguments heard.
11. 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.
12. On consideration of the documents, and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 21 of the flat buyer agreement executed between the parties on 07.04.2012, possession of the booked unit was to be delivered within a period of three years the date of execution of agreement plus 6 months grace period. Accordingly, the due date of possession comes out to be 07.10.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated

07.04.2012 to hand over the possession within the stipulated period as possession has been offered approximate 3 years from the due date of possession i.e. 07.10.2015 and the respondent offer the possession i.e. 12.09.2018 of 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. 07.10.2015 till the offer of possession i.e. 12.09.2018 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

13. 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 the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 07.10.2015 till the offer of possession i.e. 12.09.2018. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
14. Complaint stands disposed of.
15. File be consigned to registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**Dr. K.K. Khandelwal**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.10.2020

Judgement Uploaded on 07.12.2020