

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

**Complaint no. : 2030 of 2019**  
**First date of hearing : 11.09.2019**  
**Date of decision : 21.10.2020**

Ashok Garg  
R/o: - Flat No. 902, Building -A,  
Gayatri Heritage, Plot No. 37, Sector-20,  
Kharghar, Navi Mumbai- 410210  
Through his Special Power of Attorney  
Holder Mr. Amogh Bansal  
R/o: - 425, Washington Blvd, Apt-3802,  
Jersey City, New Jersey- 07310, USA

**Complainant**

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. Saurabh Kumar

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 21.05.2019 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.

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:

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 11 of 2018 dated 08.01.2018 (phase I) valid upto 31.07.2018</b>
7.	Date of execution of flat buyer agreement	15.11.2011 [Page 42 of complaint]
8.	Unit no.	K3132, 13 <sup>th</sup> floor, tower K3 [Page 47 of complaint]
9.	Unit measuring (super area)	2000 sq. ft.
10.	Payment plan	Construction linked payment plan [Page 62 of complaint]
11.	Total sale consideration of the subject unit (as per applicant ledger dated 12.09.2018)	Rs. 64,32,625/- [ Page 70 of complainant]
12.	Total amount paid by the complainants (as per applicant ledger dated 12.09.2018)	Rs. 70,28,292/- [page 71 of complaint]
13.	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	15.05.2015 [page no 51 of complaint]

	execution of the flat buyer agreement dated 15.11.2011	
14.	Offer of possession	12.09.2018 [page 39 of reply]
15.	Delay in handing over possession till offer of possession i.e. 12.09.2018	3 years 3 months and 28 days
16.	Date of execution of Conveyance deed	04.02.2019 [page no 43 to 61 of reply]
17.	Occupation certificate received	23.07.2018 (taken from the DTCP)

3. As per clause 21 of the flat buyer agreement dated i.e. 15.11.2011, 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 15.05.2015. 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 complainant submitted that the respondent through its marketing executives and advertisement via various mediums and means approached the complainants relation, with an offer to invest and buy flat in the proposed real estate project of respondent namely “Indiabulls centrum Park” in Sector-103, Gurugram.
5. The complainant submitted that the parties executed the buyer developer agreement on 15.11.2011, wherein the provided date of possession was 15.05.2015. However, the respondent till date has failed to handover the possession of the unit to the complainant within the promised date of possession.
6. That the complainants have paid all the demands raised by the respondent within the stipulated time period without any default.
7. The respondent has failed to fulfil its obligation to handover the possession in time nor has paid any delay possession charges to the complainant despite the fact that the



respondent had offered the possession of the said flat to the complainants with a delay of more than 40 months vide letter dated 12.09.2018.

Hence, this complaint has been filed *inter alia* praying for the following reliefs: -

- (i) to direct the respondents to pay the interest at the rate of 18% on the total sale consideration amounting to Rs. 70,28,292/- paid by the complainants for the said flat on account of delay in delivering possession from the date of payment till delivery of physical and vacant possession;
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 contested the complainant on the following grounds: -
  - I. that offer of possession has been offered on 12.09.2018, also an amount of Rs.3,38,676/- have been credited as DPC and also an amount of Rs.4,08,375/- has been given as discount. Hence, the



complainant is estopped from teasing any grievance qua delay in delivery of possession.

- II. that the Deed of Conveyance was executed between the parties on 04.02.2019 and with the execution of the aforesaid Conveyance Deed the agreement stands discharged through accord and satisfaction.
- III. that the conveyance deed is an extremely material document for the purposes of a proper adjudication of the present complaint. Suppressing the same would result in subverting the course of justice. This fact is well within the knowledge of the complainants and it is for this reason that they have deliberately and malafide suppressed the factum of execution of the conveyance deed.
- IV. that the apartment in question is in the name of joint allottees, i.e. Mr. Ashok Garg (complainants no.1) and Mr. Amogh Bansal (complainants no.2). Mr. Amogh Bansal does not reside in the country and is, in fact, a resident of USA. Therefore, for the present complaint to be filed validly, it has to be filed on behalf of both complainants with proper affidavits and authorizations.



- V. that special power of attorney placed on record by the complainants, which allegedly authorizes Mr. Ashok Garg to represent and conduct Mr. Amogh Bansal's case before any quasi-judicial forum, is not apostilled. As such, they said SPA has no validity in the eyes of law. further the delay caused was for reasons detailed in the reply which were beyond the control of the respondent.
10. 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.
11. 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.
12. Arguments heard.
13. 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.

14. 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's agreement executed between the parties on 15.11.2011, possession of the booked unit was to be delivered within a period of three years the date of execution of agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later plus 6 months grace period. Accordingly, the due date of possession comes out to be 15.05.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 15.11.2011 to hand over the possession within the stipulated period as possession has been offered approximate 3.5 years from the due date of possession i.e. 15.05.2015 and the respondent offer the possession i.e. 12.09.2018. 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. 15.05.2015 till the actual 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.

15. 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. 15.05.2015 till the offer of possession i.e. 12.09.2018.

16. Complaint stands disposed of.

17. 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