

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

Complaint no. : 727 of 2018
First date of hearing: 15.01.2019
Date of decision : 03.11.2020

1.Sh. Balraj Singh Bhullar
2.Smt. Simmi Bhullar
Both R/o:- No. 57, Bhanu Enclave Yapral,
Hyderabad- 500087

Complainants

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 7th floor, Sushant
Lok-I, Block A, MG Road, Gurugram-122002

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Arindham Ghos

Advocate for the complainants

Shri Mukul Sanwariya

Advocate for the respondent

ORDER

1. The present complaint 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 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.	Name and location of the project	"Sovereign Next", Vatika India Next, Sector 82, Gurugram
2.	Nature of the project	Residential Colony
3.	Project Area	7.50 acres
4.	DTCP Licence	62 of 2011 dated 02.07.2011, 71 of 2010 dated 15.09.2010 and 113 of 2008 dated 01.06.2008
5.	RERA registered/ not registered	280 of 2017 dated 09.10.2017
6.	Valid up to	31.03.2021
7.	Payment plan	Construction linked payment plan
8.	Date of execution of builder buyer's agreement	30.11.2012
9.	Unit no.	902, 9 th floor, Tower-E
10.	Plot admeasuring	3270 sq. ft.
11.	Total consideration	Rs. 2,04,08,080/- (As per SOA dated 14.09.2018 annexed at page 43 of the reply)



12.	Total amount paid by the complainants	Rs. 1,98,49,278/- (As per SOA dated 14.09.2018 annexed at page 43 of the reply)
13.	Due date of delivery of possession (as per clause 14 of the agreement: 3 years from the date of execution of agreement)	30.11.2015
14.	Specific reliefs sought	Direct the respondent to handover the possession along with interest for delay in delivery.

3. As per clause 14 of the builder buyer's agreement the possession was to be handed over to the complainants within 3 years from the date of execution of the agreement, which comes out to be 30.11.2015. Clause 14 has been reproduced below:-

"10.1 Schedule for Possession of the said Apartment

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Residential Unit within a period of 3 years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 17, 18 & 42 or due to failure of Allottee(s) to pay In time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments

given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement."

4. The possession of the subject apartment has not been offered by the respondent to the complainants till now. The complainants seeks delay interest as per section 18 of the Act. The complainants reserves their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs as stated above.
5. 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.
6. The respondent contended on the following grounds:-
 - i. The respondent submitted that the complaint is liable to be dismissed as it barred by principle of delay and laches. The complainants had booked unit on 25.01.2012 with the respondent. It is also pertinent to mention that the complainants had carried out inspection of the documents in respect of the said project and were duly informed about the completion date of the said apartment and other

obligations of the complainants at the time of making application for booking the said apartment. The complainants now in early 2018 after passage of 6 years from the date of booking of application form cannot be allowed to raise the flimsy and frivolous objections at such juncture where the project is completed.

- ii. The respondent submitted that the 'agreement for sale' for the purposes of 2016 Act as well as 2017 Haryana rules, is the one as laid down in Annexure-A, which is required to be executed inter-se the promoter and the allottee. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed by & between the complainants and the respondent company. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without the jurisdiction, is the builder buyer's agreement, executed much prior to coming in force of 2016 act.
- iii. The respondent submitted that the said unit is being constructed in the full swing and the possession can only be handed over to the complainants once they make the payment of the interest amount of Rs. 24,14,939.28/- (excluding GST) to the respondent towards the said unit. Further, it is pertinent to mention that there was no delay in giving the possession of the unit and due to the non-

payment of the due amounts on the instalment by the complainants, the possession has not been handed over. The complainants have always escaped from their liability of the payment of the outstanding interest amount.

- iv. The respondent submitted that if the complainants had any issues with the payment plan or even otherwise, they ought to have approached for cancellation of the unit at any given time, however, the complainants never showed any disinterest or approached the respondent for cancellation of the unit or for any other issues relating to the said unit. Rather the complainants have made payment in 2017 to the respondent.
 - v. The respondent further submitted that the tripartite agreement was executed between the parties on 19.02.2013 and the respondent had sent the letter for permission to mortgage to HDFC Bank vide letter dated 05.03.2013, so the letter was received to the bank within 13 days from the date of the execution of the tripartite agreement. The complainants herein are making bald allegation, moreover such averments are made without any valid, factual or legal basis.
7. 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.


8. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the 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 14 of the builder buyer's agreement executed between the parties on 30.11.2012, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 30.11.2015. Since, the respondent has not offered the possession of the subject unit to the complainants till now, accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the builder buyer's agreement dated 30.11.2012 to hand over the possession within the stipulated period.
10. Accordingly, 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. due date of possession i.e. 30.11.2015 till the date of actual offer of possession, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

11. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent shall 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. 30.11.2015 till the date of actual offer of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every 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 builder buyer's agreement.

- v. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
12. Complaint stands disposed of.
13. File be consigned to registry.


(Samir Kumar)
Member
Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.11.2020

Judgement Uploaded on 02.12.2020