

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

Complaint no. : 1495 of 2019
First date of hearing: 17.09.2019
Date of decision : 03.11.2020

1.Sh. Niranjan Singh Manohar
2.Smt. Shalini Deora
3.Sh. Tej Singh Manohar
All R/o:- 13, Lajpat Nagar, Khatipura Road,
Jhotwara-Jaipur, Rajasthan-302012

Complainants

Versus

M/s Vatika Limited
(through its Managing Director)
Regd. office: Level-1, Vatika Limited, Vatika
Triangle, Sushant Lok, Phase-1,
Gurugram-122009

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sh. Niranjan Singh Manohar
Col. R.V. Rohania
Ms. Ankur Berry

Complainant in person
Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 29.04.2019 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 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	"The seven lamps", Sector 82, Gurugram.
2.	Nature of the project	Group Housing Colony
3.	Project Area	11.925 acres
4.	DTCP Licence	23 of 2011
5.	RERA registered/ not registered	Not registered
6.	Payment plan	Construction linked payment plan
7.	Date of execution of apartment buyer's agreement	26.10.2012
8.	Unit no.	1502, 15 th floor, Tower-Obedience
9.	Plot admeasuring	1428.08 sq. ft
10.	Total consideration	Rs. 90,09,020/- (As per SOA dated 06.05.2019 annexed at page 101 of the reply)
11.	Total amount paid by the	Rs. 94,05,851/-

	complainants	(As per SOA dated 06.05.2019 annexed at page 101 of the reply)
12.	Due date of delivery of possession (as per clause 14 of the agreement: 3 years from the date of execution of agreement)	26.10.2015
13.	Offer of possession	12.07.2017 (annexed at page 76 of the complaint)
14.	Certificate of possession	28.08.2017 (annexed at page 156 of the reply)
15.	Specific reliefs sought	Direct the respondent to pay interest for delay in delivery.

3. As per clause 14 of the apartment 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 26.10.2015. 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 been offered by the respondent to the complainants on 12.07.2017, and the same has been accepted by the complainants on 28.08.2017 vide a certificate of possession. 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. The complainants submitted that, after having gone through the agreement, they found that it is heavily dominated by the respondent and is against the principle of natural justice. They specifically drew attention of the respondent to following clauses, which he found were un-reasonable to them:-

- i. They found clause G of the agreement superfluous and incorrect as they were not provided with any document which they wanted to scrutinize.
- ii. They also found clause H & I of agreement to be one sided as onus was on them only to abide by the agreement whereas, there was none for the respondent.
- iii. Objection was also raised on clause 11 & 19 of agreement wherein it is mentioned in clause 11 that complainants would pay an interest @18% per annum in case of his default, while for respondent it is only @ Rs. 5/- per sq. ft. in case he delays the project, which amounts to only 0.9% of interest per annum. It was suggested that defaults from any party should have equal penalty. This objection was not agreed to as respondent stated that this is common practice in housing sector.
- iv. Explanation of clause 42 of agreement (force majeure) was sought to seek clarification as to how complainants would know that any of the factors mentioned in this clause have come into play impacting schedule of project construction. It was clarified that, as and when, any of the factors of this clause come into play, complainants would be informed accordingly.
- v. Explanation was also sought on payment plan which is combination of time and stage of construction. It was clarified that demand would only be raised as and when a

particular stage of construction has been achieved. From this explanation, it was understood by complainants that in case of delay in construction - no demand would be raised.

6. The complainants submitted that they suggested that the agreement should be modified on all of the above counts so that rights and duties accruing out of this agreement are fair and equally distributed on both parties.
7. The complainants submitted that, this suggestion was vehemently turned down on the grounds that the agreement has been designed by the company and no additions/ subtractions/ modifications/ overwriting are allowed to that, as it would nullify this agreement. It was further clarified that, this agreement is common to all buyers and everyone signs it in same form as presented.
8. The complainants submitted that, by scheduled date of taking possession of this apartment i.e. 25.10.2015, the respondent has demanded 100% payments and same were paid out as given in statement of accounts.
9. 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.

10. The respondent contended on the following grounds:-

- i. The respondent submitted that the present complaint seems to have been triggered as a result to buy some time by the complainants who are attempting to buy some time so as to be able to sell the apartment to someone else and evade stamp duty thereon. That the respondent vide email dated 19.04.2019 had issued to the complainants the amount to be deposited to execute the conveyance deed however the present complaint was a result of the said email sent by the respondent. The complainants are simply trying to prolong conveyance and such act of the complainants ought to be punished and strict action be taken by this Hon'ble Authority against such frivolous litigators.
- ii. The respondent submitted that the complaint has been made after two years of taking possession of the apartment without any grievance and protest with the sole motive of building pressure upon the respondent. There is no truth in the complaint and the same deserves to be dismissed immediately in view of the present reply being filed by the respondent.
- iii. The respondent submitted that the developer has sent the first intimation of possession to the complainants dated 14.10.2016 followed by the reminder for offer of possession dated 20.12.2016.

11. The complainants have filed rejoinder and contended on following grounds:-
- i. It is submitted that the complaint filed by them before this Ld. Authority, is the reason which forced the respondent to plead for registration of conveyance deed.
 - ii. It is submitted that the respondent is seeking to hide behind the clause of 'force majeure'. Despite, even repeated mails and personal visits to the office of respondent and also at the project site, they never communicated anything pertaining to any of the event of 'force majeure' coming into play.
 - iii. It is submitted that statement of respondent as laid out in Para 10 (a) of his reply that GAIL pipe line alignment was 'passing through' the project is outright lie which is being perpetuated deliberately to mislead this learned authority. The study of sanctioned plans as given in official web site of TCP, indicates that it is outside the project and not through the project. Its existence was known to respondent ab-initio.
 - iv. It is submitted that interpretation of various clauses, which are not based on equity and fair play have been resisted from the very beginning but were not agreed to by the respondent.
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.

13. 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.
14. 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 apartment buyer's agreement executed between the parties on 26.10.2012, 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 26.10.2015. Since, the respondent has offered the possession of the subject unit to the complainants on 12.07.2017. Thereafter, the certificate of possession has been issued by the respondent in the name of complainants on 28.08.2017, after a delay period of 1 year 9 months and 28 days, accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 26.10.2012 to hand over the possession within the stipulated period.

15. 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. 26.10.2015 till the date of offer of possession i.e. 28.08.2017, as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
16. 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. 26.10.2015 till the date of offer of possession i.e. 28.08.2017.
 - ii. The arrears of interest accrued till offer of possession shall be paid to the complainants within a period of 90 days from the date of this order.
 - iii. The respondent shall not charge anything from the complainants which is not part of the apartment buyer's agreement.
17. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in

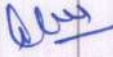
this regard against the respondent. A copy of this order be endorsed to the registration branch.

18. Complaint stands disposed of.
19. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 03.11.2020

Judgement Uploaded on 02.12.2020