

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

Complaint no. : 2350 of 2019
First date of hearing: 24.09.2019
Date of decision : 03.11.2020

1. Sh. Rajiv Patkar
2. Smt. Niloufer Patkar

Both R/o:- Flat 29, Atlantis, West Avenue,
Kalyani Nagar, Pune-411006

Complainants

Versus

1. M/s Vatika Limited
2. Sh. Gautam Bhalla
3. Smt. Anjali Aggarwal

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

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Kuldeep Kohli

Advocate for the complainants

Ms. Ankur Berry

Advocate for the respondents

ORDER

1. The present complaint dated 24.06.2019 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.

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.	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	05.12.2012
9.	Unit no.	601, 6 th floor, Tower-E
10.	Plot admeasuring	3270 sq. ft.
11.	Total consideration	Rs. 2,04,08,080/-

		(As per SOA dated 16.03.2018 annexed at page 182 of the complaint)
12.	Total amount paid by the complainants	Rs. 2,01,78,298/- (As per SOA dated 16.03.2018 annexed at page 182 of the complaint)
13.	Due date of delivery of possession (as per clause 14 of the agreement: 3 years from the date of execution of agreement)	05.12.2015
14.	Specific reliefs sought	Direct the respondents to handover the possession along with interest for delay in delivery and also to execute the conveyance deed.

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 05.12.2015. 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 respondents to the complainants till now. The complainants seek delay interest as per section 18 of the Act. The complainants reserve 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 the broker/agent offered various options to complainants and collected a cheque for Rs. 8,00,000/- favouring respondents no.1 for booking an apartment in one of the project at pre-launch stage. The

broker/agent forwarded the cheque for the project "The Sovereign Next " to respondents, who issued the receipt.

6. The complainants submitted that the respondents raised a demand note for "instalment no.2" in continuation to the pre-launch offer for Rs. 14,56,650/- including applicable taxes which the complainants duly paid.
7. The complainants submitted that a demand for excavation milestone for Rs. 15,10,000/- was raised by respondents which the complainants paid but didn't receive the receipt from the respondents.
8. The complainants submitted that the CRM sent reminder for payment and charged penal interest for Rs. 85,346/-.The complainants requested CRM to re-look into payments made by the complainants in past and issue the much awaited receipt against the amount paid earlier by them on 26.11.2012.
9. On the date of hearing, the Authority explained to the respondents/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 respondents contended on the following grounds:-
 - i. It is submitted that the complainants have failed to bring to light the fact that the said apartment was booked by the

complainants not through the respondents directly but rather the complainants had booked the apartment in the project through brokers/agents. It is also important to bring to light that the project was at its very beginning and the complainants wanted to take the advantage of the initial stage booking price benefits.

- ii. It is submitted that the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 05.12.2012, as shall be evident from the submissions made in the following paras of the present reply.
- iii. It is submitted that since the hurdles faced by the respondents company were beyond the control of the respondents, there was unintentional delay in completion of the project. It is further submitted that, it was never the intention of the respondents company to not complete the project, and the only effect of all the obstructions was that the timelines as proposed initially could not be fulfilled.
- iv. It is submitted that the main relief of the complainants involves refund of VAT and restriction upon the respondents on imposing escalation in construction cost. It is submitted that the present Authority cannot

adjudicate upon the question of VAT since the same comes within the purview of the Joint Excise Taxation Commissioner before the Haryana Tax Tribunal under the Haryana Value Added Tax 2003 (as amended). That further escalation in construction cost cannot be questioned upon since the same is on the basis of actual alteration of cost and cannot be accounted for by the respondents.

11. 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.
12. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondents is of considered view that there is no need of further hearing in the complaint.
13. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondents and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the authority is satisfied that the respondents 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


05.12.2012, 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 05.12.2015. Since, the respondents 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 05.12.2012 to hand over the possession within the stipulated period.

14. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondents 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. 05.12.2015 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.
15. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:
 - i. The respondents 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. 05.12.2015 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 on or before 10th of each subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondents 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.


16. Complaint stands disposed of.

17. 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