

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

Complaint no. : 2411 of 2019  
First date of hearing : 25.09.2019  
Date of decision : 21.10.2020

1. Amarendra Nath Verma
2. Mrs. Arpita Verma  
Both R/o: Sector 3, Block No.101,  
Reliance Greens, Jamnagar,  
Gujrat-361142

**Complainants**

Versus

1. M/s Selene Construction Pvt. Ltd.  
**Regd. Office:** - M-62 & M-63, First  
Floor, Connaught Place, New Delhi- 110001
2. India bulls Real Estate Limited,  
**Through its authorized representative**  
Office at: - India Bulls House,  
448-451, Ground Floor, Udyog Vihar,  
Phase-V, Gurugram- 122001

**Respondents**

**CORAM:**

Shri K. K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

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

**APPEARANCE:**

Sh. Garv Malhotra  
Sh. Rahul Yadav

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 10.06.2019 has been filed by the complainants/allottees 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" Sector-103, Gurugram.
2.	Project area	17.081 acres
3.	Nature of the project	<b>Group Housing Colony</b>
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	Registered vide no. 10 of 2018 dated 08.01.2018 (phase II) Valid and renewed upto 31.10.2018 11 of 2018 dated 08.01.2018 (phase I) Valid and renewed upto 31.07.2021
7.	Date of execution of builder buyer agreement	16.02.2011 [Page 42 of complaint]
8.	Unit no.	061, 6 <sup>th</sup> floor, Tower G1 [Page 46 of complaint]
9.	Unit measuring	2875 sq. ft. (super area)
10.	Payment plan	Construction linked payment plan [Page 62 of complaint]
11.	Agreement to sell in favour of complainants	20.06.2016 [Page 67 of complaint]
12.	Transfer of titled documents (as alleged by complaint)	08.07.2016 [Page 7 of complaint]
13.	Total sale consideration of the subject unit (as per applicant ledger dated 07.05.2019)	Rs.1,01,91,875/- (excluding tax) [ Page 98 of complainant]
14.	Total amount paid by the complainants (as per applicant ledger dated 07.05.2019)	Rs. 1,09,57,282/- (including tax) [page 99 of complaint]
15.	Due date of delivery of possession as per clause 10.1 of flay buyer agreement Three years along with a six	16.08.2014

	months' grace period from the date of execution of the flat buyer's agreement subject to timely payment [page no 51 of complaint]	
16.	Offer of possession	07.05.2019 [page no 96 of complaint]
17.	Delay in handing over of possession till offer of possession i.e. 07.05.2019	4 years 8 months and 21 days
18.	Date of execution of Conveyance deed	04.06.2019 [annexed yellow file]

3. As per clause 10.1 of the flat buyer agreement dated i.e. 16.02.2011, the possession was to be handed over within a period of three years along with a six months grace period thereon from the date of execution of flat buyer agreement. Accordingly, the due date of possession comes out to be 16.08.2014. Clause 10.1 of the apartment buyer agreement is reproduced below:

*"10.1 The developer shall endeavour to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of these Flat Buyer' Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to his or as demanded by the Developer....."*

4. The complainants submitted that the respondent/promoter company executed a flat buyer's agreement dated 16.02.2011



in favour of Mrs. Neelanjana Singh for unit no. 061, 6<sup>th</sup> floor, Tower G1, Sector-103, Gurugram in this project. Thereafter; the erstwhile allottee sold this unit in favour of Mr. Amarendra Nath Verma and Mrs. Arpita Verma as per Agreement to Sell dated 20.06.2016. The promoter/respondent company issued a transfer confirmation letter regarding executing of the flat buyer agreement dated 16.02.2011 in favour of the complainant. (An endorsement sheet dated 01.08.2016 confirming the transfer was sent to the complainant.)

5. The complainants submitted that the parties had executed the buyer developer agreement on 16.02.2011. Whereby, the respondent was under obligation to handover the possession of the unit within the stipulated time period as mention in the agreement i.e. 16.08.2014. However, the possession of the unit has not been handed over so far.
6. The complainants submitted that on 08.06.2016 an offer letter for housing loan along with the terms and conditions with the sanction letter agreement was made between the complainants and ICICI bank for availing loan against the unit booked.



7. The complainants submitted that on 01.08.2016 an endorsement sheet confirming the transfer was sent to the complainants by the respondents and accordingly the complainants stepped into the shoes of the original buyers. The complainants further submitted that the possession of the subject apartment has been offered by the respondent to the complainants on 07.05.2019. However, the respondent has failed to give delayed possession charges for not handing over the unit within due date of possession despite timely payment of immediately dues by the complainants.
8. Hence, this complaint for the inter alia reliefs, detailed herein below.
- I. to direct the respondents being jointly and severally liable to pay the complainants as they are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 16.08.2014 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession failing which the complainants are entitled to seek refund of the amount;
  - II. to direct the respondent to give delayed possession interest pro rata on a monthly basis before the 10th of every month till the possession is handed over;

- III. to direct the respondent to refund the VAT amount along with interest as applicable;
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 no. 1 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;
  - ii. that the complainants are the subsequent allottees of the subject unit which was initially booked in the name of one Mrs. Neelanjana Singh who had executed a flat buyer agreement dated 16.11.2011 with the respondent no. 1 and the subject unit was subsequently transferred in the names of complainants vide endorsement dated 01.08.2016.
  - iii. that the complainants have already been offered possession of the subject unit vide letter dated 07.05.2019 which was before filling of the instant complaint;

- iv. That the delay in completion of the project was due to reason beyond the control of the respondent and same should be consider the time stipulated in the agreement for handing over possession is tentative and subject to force majeure.

11. The respondent no. 2 contests the complaint on the following grounds:

- I. that there is no privity of contract between the Complainants and the Respondent no.2, hence the contentions taken in the instant complaint by the Complainants against the Respondent no.2 are false, baseless and without any veracity;
- II. that in the absence of any relationship between the complainants and the answering respondents, the complainants are not entitled for any claim/relief from the respondent no. 2 as contended in the instant complaint by the complainant. It is further submitted that the complainants have not made any payment in the name and account of the respondent no.2 with respect to his alleged booked unit.



- III. that the relationship that forms the basis of the instant complaint arises out of the documents executed by and between the complainants and the developer. And there is no contractual relationship between the complainants and the answering respondent since documents were never signed /executed by and between the complainant and respondent no. 2.
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 and made by the parties.
13. The Authority, on the basis of information and other submissions made and the documents filed by the parties and the respondent, is of considered view that there is no need of further hearing in the complaint.
14. The complainants thereafter filed written argument wherein reiterating the submission made by the complaint.
15. Arguments were heard. However, the respondent could not submit any cogent reasoning for not handing over the flat or unit within stipulated time

16. On consideration of the circumstances, the evidence and other records, submissions made by the parties 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 10.1 of the flat buyer agreement executed between the parties on 16.02.2011, possession of the booked unit was to be delivered within a period of three years from the date of execution of agreement plus 6 months grace period Accordingly, the due date of possession comes out to be 16.08.2014. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 16.02.2011 to hand over the possession within the stipulated period as possession has been offered approximately 5 years from the due date of possession i.e. 16.08.2014 and the respondent offered of possession on 07.05.2019 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. 16.08.2014 till the actual offer of

possession i.e. 07.05.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

17. 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. 16.08.2014 till the offer of possession i.e. 07.05.2019 of the allotted unit;

18. Complaint stands disposed of.

19. 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 19.12.2020