

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

Complaint no. : 1965 of 2019
First date of hearing : 11.09.2019
Date of decision : 21.10.2020

1. Ashok Kumar
S/o: - Late Rajeshwar Parsad,
2. Mrs. Neena Kumar
Both R/o: - House No. 669,
Sector-23, Gurugram

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 08.05.2019 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", 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 Vindhyaachal Land Development
6.	RERA Registered/ not registered	Registered vide no. 10 of 2018 dated 08.01.2018 (phase II) valid upto 08.10.2018 11 of 2018 dated 08.01.2018 (phase I) valid upto 31.07.2018
7.	Allotment letter with previous allottee	02.12.2010 [page no 66 of complaint]
8.	Date of execution of flat buyer agreement with previous allottee	02.12.2010 [Page 20 of complaint]
9.	Unit no.	022, 2 nd floor, tower G1 [Page 24 of complaint]
10.	Unit measuring	2875 sq. ft. (super area)
11.	Payment plan	Construction linked payment plan [Page 42 of complaint]
12.	Date of execution of agreement to sell in favour of complainant	20.05.2016 [Page 48 of complaint]
13.	Transfer of titled documents	08.07.2016 [Page 55 of complaint]
14.	Date of execution of Tripartite agreement	27.10.2016 [page no 61 of complaint]
15.	Total sale consideration of the subject unit (as per applicant ledger dated 01.08.2016)	Rs.98,90,000/- [Page 90 of complainant]

16.	Total amount paid by the complainants (as per applicant ledger dated 01.08.2016)	Rs. 99,63,873/- [page 91 of complaint]
17.	Due date of delivery of possession as per clause 10.1 of flay buyer agreement Three years, with a six months grace period from the date of execution of the flat buyer agreement dated 02.12.2010 [page no 31 of complaint]	02.06.2014
18.	Offer of possession	13.09.2019
19.	Delay in handing over possession till offer of possession i.e. 13.09.2019	5 years 3 months and 11 months
20.	Occupation certificate received	01.01.2019 (taken from the DTCP)

3. As per clause 10.1 of the flat buyer agreement dated i.e. 02.12.2010, 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 agreement. Accordingly, the due date of possession comes out to be 02.06.2014. Clause 10.1 of the flat 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 the Flat Buyer's 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 complainants submitted that the respondent/promoter company has executed a flat buyer's agreement dated 02.12.2010 in favour of Mr. Vikas Baliyan S/o Sh. Mahabir Singh and Mrs. Manju Baliyan W/o Mr. Vikas Baliyan for unit no. 022, 2nd floor, Tower G1, Sector-103, Gurugram in this project. Thereafter, the first allottee sold this unit in favour of Mr. Ashok Kumar S/o: - Late Rajeshwar Parsad, and Mrs. Neena Kumar W/o Sh. Ashok Kumar as per Agreement to Sell dated 20.05.2016 in favour of the complainant. The promoter/respondent company have issued a transfer confirmation letter dated 08.07.2016 and executed the flat buyer agreement dated 02.12.2010 in question.
5. The complainants submitted that the parties executed the buyer developer agreement on 02.12.2010, however the respondent till date have failed to handover the possession of the unit to the complainant within the promised date of

possession i.e. 02.06.2014 including grace period as per the flat buyer agreement.

6. That the respondent till date have not paid any DPC deposited timely payment made by the complainant.
7. That the respondents have also collected Vat @ 4% amounting to Rs.3,97,282/- but have not refunded the amount despite the Vat being reduced to 1% subsequently.

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 02.06.2014 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 respondents to give delayed possession interest pro rata monthly basis before

the 10th of every month till the possession is handed over;

- iii. To direct the respondents to make good all the breakages/damages by replacing and putting new fixtures before final handover of possession and to make good the losses made to the complainants or handover a new unit in the alternative.

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 respondents no. 1,3 and 4 contests the complaint on the following grounds: -

- i. The respondents submitted that the instant complaint is not maintainable in law and is liable to be dismissed at the threshold.
- ii. That the instant Complaint has been preferred under section 11(4) (a) R/w Section 31, 34& 37 of Real Estate (Regulation & Development) Act, 2016 which are mandatorily required to be adjudicated by the Ld. Adjudicating Officer and does not fall within the purview

of this Hon'ble Regulatory Authority to decide, hence the complaint of the Complainants is liable to be dismissed on this ground alone;

- iii. That it was specifically agreed between the parties that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the Complainants, the same shall be adjudicated through Arbitration mechanism as detailed in the Agreement;
- iv. That it was specifically agreed between the parties that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the Complainants, the same shall be adjudicated through Arbitration mechanism as detailed in the Agreement;
- v. That it was specifically agreed between the parties that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the Complainants, the same shall be adjudicated through Arbitration mechanism as detailed in the Agreement;
- vi. that the Complainants are contractually and statutorily barred from invoking the jurisdiction of this Hon'ble Authority;

- vii. that the Complainants have been willful defaulter by not paying their due installments on time as per the schedule payment plan of the subject Unit in terms of flat buyer agreement and have filed this instant complaint with malafide intension;
- viii. that the basis of the present Complaint is that there is a delay in delivery of possession of the unit in question, and therefore, interest on the deposited amount has been claimed by virtue of the present Complaint. It is further submitted that the Flat Buyer's Agreement itself envisages the scenario of delay and the compensations thereof. Therefore, the contention that the possession was to be delivered within 3 years and 6 months of execution of the Flat Buyer's Agreement is based on a complete misreading of the agreement.
- ix. that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between; delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were

stopped, non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above-mentioned reasons, the Project of the Respondent was severely affected which were beyond the control of the respondent because of which the progress and construction activities, sale of various flats and spaces have not taken place as envisaged.

10. 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 respondent, 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. It is pertinent to note that there is no contractual relationship between the complainants and the answering respondent since documents were ever signed /executed by and between the complainant and respondent no. 2, there is no legal relationship or privity of contract between the complainants and respondent no.2.

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 and submission made by the parties.

12. 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.
13. Arguments heard.
14. 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.
15. 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 10.1 of the flat buyer's agreement executed between the parties on 02.12.2010, 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 subject to timely payment. Accordingly, the due date of possession comes out to be 02.06.2014. Accordingly, it is the failure of the

promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 02.12.2010 to hand over the possession within the stipulated period as possession has been offered approximate 5 years from the due date of possession i.e. 02.06.2014 and the respondent offer the possession on 13.09.2019 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. 02.06.2014 till the actual offer of possession i.e. 13.09.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.


16. 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 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. 02.06.2014 till the offer of possession i.e. 13.09.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.

- II. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - III. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
 - IV. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
17. Complaint stands disposed of.
 18. 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