

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

Complaint no. : 6696 of 2019
First date of hearing: 20.02.2020
Date of decision : 18.11.2020

Abhinandan Kohli

(Attorney holder Jitender Kohli and Suman Kohli) **Complainant**

R/o: L-49D, 1st Floor, Block-L, Saket, New Delhi

Versus

Cosmos Infra Engineering (India) Pvt Ltd

Office At : A-5, C-5, D-5 Vandhna Building, Tolstoy Marg, New Delhi- 110001 **Respondent**

Shivanandan Buildtech Pvt. Ltd.

Office At : A-5, C-5, D-5 Vandhna Building, Tolstoy Marg, New Delhi- 110001

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Ms. Shivali

Advocate for the complainant

None for the respondent

Advocate for the respondent

ORDER

1. The present complaint dated 30.12.2019 has been filed by the complainant/allottee 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	
1.	Project name and location	"Cosmos Express 99" in Village Dhankot, Sector 99, Gurugram.
2.	Project area	12.031 acres
3.	Nature of project	Group housing complex
4.	RERA registered/not registered	62 of 2019
5.	RERA registration valid upto	30.09.2021
6.	License no. & validity status	70 of 2011 dated 22.07.2011 valid up to 21.07.2015
7.	Promoter 1 / Name of the licensees Promoter2/Developer (change of developer)	M/s Shivnandan Buildtech Pvt. Ltd. M/s Cosmos Infra Engineering India Pvt. Ltd.
8.	Unit no., tower no.	308, type 'Bronze', tower D

9.	Area	1550 sq. ft.
10.	Date of execution of flat buyer agreement	27.12.2012
11.	Payment plan	Construction linked plan
12.	Total sale consideration	Rs. 76,13,125/- (As per pg. 51 of the complaint, Annx. A2)
13.	Total amount paid by the complainant	Rs. 67,96,953/- (As per pg. 51 of the complaint, Annx. A2)
14.	Due date of delivery of possession as per flat buyer's agreement Clause 3.1 read with 5.1- construction shall be completed in 4 years from the start of construction or execution of this agreement (27.12.2012), whichever is later + 6 months grace period.	27.06.2017 (Date has been calculated from the agreement as date of start of construction could not be ascertained)
15.	Delay in handing over possession till 18.11.2020	3 years 4 months and 22 days
16.	Specific relief sought	1. Delayed possession interest 2. To restrain the Respondent from charging GST on further



		instalments as may be charged from the complainants
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3. As per clause 3.1 read with 5.1 of the flat buyer's agreement, the construction shall be completed in 4 years from the start of construction or execution of this agreement (04.08.2013), whichever is later plus 6 months grace period. Relevant portions of clause 3.1 and 5.1 of the agreement is reproduced below:

"3.1. That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located, in 04 years from the start of construction or execution of this agreement whichever is later..."

"5.1 In case within a period as provided hereinabove, further extended by a period of 6 months if so required by the developer, the developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement, then the flat allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- per sq. ft. per month of the super area till the date

of notice of possession as provided hereinabove in this agreement.

4. The complainant submitted that on 15.04.2013, The unit was transferred in the name of complainants wherein due endorsement in the FBA was made by the respondent company in accordance with Clause 10 and Clause 12 of the FBA
5. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainants seek delay interest as per section 18(1) of the Act.
6. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at Customersupport@cosmosinfra.com the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint exparte against the respondent.
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, explanation, 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 complainant 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 3.1 read with 5.1 of the flat buyer's agreement executed between the parties on 27.12.2012, the construction was to be completed in 4 years from the start of construction or execution of this agreement (27.12.2012), whichever is later plus 6 months grace period. The respondent has failed to file reply despite service of notice and date of construction could not be ascertained, as such the due date of delivery of possession has been calculated from the date of execution of the agreement i.e 27.12.2012. Thus, the due date of possession comes out to be 27.06.2017. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer's agreement dated 27.12.2012 to hand over the possession within the stipulated period. 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 complainant is entitled for delayed possession charges @9.30% p.a. w.e.f. 27.06.2017 till actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.


10. Hence, the Authority hereby pass the following order and issue 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 complainant from due date of possession i.e. 27.06.2017 till the offer of possession. The arrears of interest accrued till date of decision shall be paid to the complainant 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.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainant which is not part of the agreement.
- iv. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

11. Complaint stands disposed of.
12. File be consigned to registry.


(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)
Member

Dated: 18.11.2020

Judgement uploaded on 15.12.2020

