

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

Complaint no. : 108 of 2020
Date of first hearing: 11.03.2020
Date of decision : 24.11.2020

1. Shri Raj Singh Dalal
2. Smt. Arti Dalal
3. Smt. Ankita Dalal
4. Shri Abhishekh Dalal
All R/o: House no. 310, Sector 15-A,
Hissar, Haryana 125001

Complainants

Versus

1. M/s Tashee Land Developers Pvt. Ltd.
2. M/s KNS Infracon Pvt. Ltd.
Regd. Office at: 517-A, Narain Manzil, 23
Barakhamba Road, Connaught Place,
New Delhi-110001

Respondents

CORAM:
Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:
Shri Shashi Kant Sharma Advocate for the complainants
Shri Gaurav Srivastava Advocate for the respondents

ORDER

1. The present complaint dated 13.01.2020 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 promoters shall be responsible for all obligations, responsibilities and functions to the allottees 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	Capital Gateway, Sector 111, Gurugram
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	RERA registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018
5.	RERA registration valid up to	31.12.2020
6.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid up to 15.04.2024
7.	Name of the Licensee	KNS Infracon Pvt. Ltd. and 3 others
8.	Unit no.	102, 1 st Floor, Tower E
9.	Unit admeasuring	1695 sq. ft.
10.	Date of flat buyer's agreement	23.04.2016

11.	Total consideration (as per payment plan at page 60 of complaint)	Rs. 62,96,481 /-
12.	Total amount paid by the complainants (as per receipt information from page 71 to 86 of complaint)	Rs. 68,31,567/-
13.	Payment plan	Construction linked payment plan (Page no. 60 of complaint)
14.	Allotment letter	21.04.2016 (Page no. 21 of complaint)
15.	Building plan approval	07.06.2012
16.	Due date of delivery of possession as per clause 2.1 within 48 months + 180 days grace period from sanction of building plan i.e. 07.06.2012	07.12.2016
17.	Delay in handing over possession till date of decision	3 years 11 months 17 days

3. As per clause 2.1 of the flat buyer's agreement, the possession of the unit in question was to be handed over within a period of 48 months from the date of sanction of the building plans and other necessary government approvals plus grace period of 180 days which comes out to be 07.12.2016. Clause 2.1 of the flat buyer's agreement is reproduced below:

"2. POSSESSION

2.1 Subject to Clause 9 herein or any other circumstances not anticipated and beyond control of the First Party / Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the First Party/Confirming Party, whether under this Agreement or otherwise, from time to time, the First Party/Confirming Party proposes to hand over the possession of the Flat to the Purchaser within approximate period of 48 months from the date of sanction of the building plans and other necessary Government approvals thereon, of the said Colony. The Purchaser agrees and understands that the First Party/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority. The First Party/Confirming Party shall give Notice of Possession to the Purchaser with regard to the handing over of possession, and in the event the Purchaser fails to accept and take the possession of the said Flat within 30 days of, the Purchaser shall be deemed to be custodian of the said Flat from the date indicated in the notice of possession and the said Flat shall remain at the risk and cost of the Purchaser."

4. The possession of the subject apartment has not been offered by the respondent to the complainants till now. The complainants seek delay interest as per section 18 of the Act.

5. The complainants submitted that the wife of the complainant no. 1, Smt. Veena Dalal expired on 13.07.2016 and the copy of death certificate has been submitted by them on records and further, the LR of Smt. Veena Dalal filed a succession petition before the court of Sh. Manpreet Singh, Civil Judge(Sr. Division) and the applicants were declared as successor/LR's on 03.01.2017.
5. The complainants submitted that till December 2018 they have already paid more than 90% approx. payment against the said flat. It is also specifically submitted that till today applicants/complainants have already made the total sum of Rs. 68,31,567/-.
6. The complainants submitted that they booked unit no. 102, 1st floor, tower E. admeasuring 1874 sq. ft. in project "capital gateway" and respondent issued allotment letter dated 21.02.2016 and flat buyer's agreement was executed on 23.04.2016. They have paid an amount of Rs 68,31, 567/- till date. Complainants filed this complaint for the aforementioned relief:

- i. Direct the respondents to pay interest on the amount paid by him at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.
7. On the date of hearing, the authority explained to the respondents/promoters 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.
8. The authority issued notice of the complaint to the respondents by speed post and also on given email address at info@tashee.in, the delivery reports have been placed in the file. Despite service of notice, the respondents have preferred not to file the reply to the complaint within the stipulated period. But, the respondents appeared through their counsel on the fixed dates for hearing.
9. 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.
10. The authority, on the basis of information 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.

11. Arguments heard.
12. 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 Complainants at a later stage.
13. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 2.1 of the flat buyer's agreement dated 23.04.2016, possession of the booked unit was to be delivered within a period of 48 months plus 180 days grace period from the date of approval of the building plans and other necessary government approvals. In the present case, the due date of handing over of possession is calculated from approval of sanctioned building plan i.e. 07.06.2012. The grace period of 180 days is allowed to the promoter due to exigencies beyond the control of the developer. Therefore, the due date of handing over possession comes out to be 07.12.2016. Since, the promoters have failed to hand over the possession of the

subject apartment to the allottees, so far. Accordingly, it is the failure of the promoters to fulfil their obligations, responsibilities as per the flat buyer's agreement dated 23.04.2016 to hand over the possession within the stipulated period.

14. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such the complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession i.e. 07.12.2016 till the 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 are 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. 07.12.2016 till the offer of possession
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order. Thereafter, monthly payment of interest shall be made to


the complainants on or before 10th of each subsequent month.

- iii. The respondents shall not charge anything from the complainants which is not part of the flat buyer's agreement.

16. Complaint stands disposed of.

17. File be consigned to registry.


Samir Kumar
(Member)


Dr. K.K. Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.11.2020

Judgement uploaded on 15.01.2021

HARERA
GURUGRAM