

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

Complaint no. : 2969 of 2019
First date of hearing : 09.10.2019
Date of decision : 21.12.2020

1. Sh. Atul Chandra Aggarwal
2. Smt. Kaveri Aggarwal
Both R/o: H-608, Lane-W,10E/8, Western Avenue, Sainik Farms, New Delhi-110062 **Complainants**

Versus

M/s Adani M2k Projects LLP
Regd. Office at: 10th Floor, Shikhar, Nr. Adani House, Mithakhali Six Roads, Navrangpura, Ahmedabad, Gujrat-380009 **Respondent**

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Shyam Agarwal
Shri Narender Kumar proxy
counsel for Shri Ashwani Rao

Advocate for the complainants

Advocate for the respondent

ORDER

1. The present complaint dated 19.07.2019 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 to the allottees as per the apartment buyer's agreement 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	"Oyster Grande" Sector-102/102A, Gurugram
2.	Project area	19.238 acres [at page 87 of reply]
3.	Nature of the project	Group Housing Complex
4.	DTCP license no. and validity status	29 of 2012 dated 10.04.2012 valid upto 09.04.2020 30 of 2012 dated 10.04.2012 valid upto 09.04.2020
5.	Name of licensee	Aakarshan Estates Pvt. Ltd.
6.	HRERA registered/ not registered	Registered [Tower-"G" (37 of 2017 dated 10.08.2017)] valid upto 30.09.2024 [Tower-"J" (170 of 2017 dated 29.08.2017)] valid upto 30.09.2019 [Tower-"H" (171 of 2017 dated 29.08.2017)] valid upto 30.09.2019

7.	Unit no.	J-1204, 12 th Floor, Tower-], Type-A [as per annexure A at page 125 of complaint]
8.	Unit measuring	3198 sq. ft. [as per annexure A at page 125 of complaint]
9.	Date of execution of apartment buyer's agreement	21.09.2013 [at page 24 of reply]
10.	Payment plan	Construction Linked Plan
11.	Total consideration as per payment plan (page 126 of complaint)	Rs. 2,21,44,536/-
12.	Total amount paid by the complainants as per account statement dated 11.12.2018 as annexure C-7 at page 159 of complaint	Rs. 2,12,89,537/-
13.	Date of start of excavation	11.07.2013 [as per demand note dated 11.07.2013 as annexure R5 at page 87 of reply]
14.	Due date of delivery of possession as per article 5(A) of the said agreement i.e. within a period of 48 months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of 6 months. [Page 94 of complaint]	11.01.2018 Note: Calculated from date of start of excavation i.e. 11.07.2013
15.	Occupation Certificate	12.02.2019 [at page 125 as annexure R31 of reply]
16.	Offer Of Possession	16.02.2019 [as annexure C-8 at page 162 of complaint]

3. As per clause 5 of the apartment buyer's agreement dated 21.09.2013, the possession was to be handed over within a period of 48 months plus 6 months grace period from the date of execution of agreement or from the date of commencement of construction, whichever is later. The date of start of excavation is 11.07.2013 as per Annexure R5 at page 87 of reply. Therefore, the due date of possession comes out to be 11.01.2018. Clause 5 of the apartment buyer's agreement is reproduced below:

"A. POSSESSION:

" Subject to the compliance of all terms and conditions of this Agreement by the Allottee(s) including the timely payment of the Sale Consideration and Other Charges and all other applicable taxes/levies/interests/penalties, etc., the Developer based on its present plans and estimates and subject to all just exceptions will endeavor to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this Agreement or from the date of commencement of construction, whichever is later with a grace period of six (5) months, subject to Force Majeure Events (as defined herein) which shall include events/ circumstances or combination thereof which may prevent / obstruct / hinder /delay the construction / development of the Said Project/Complex. For the purpose of this Agreement, the date of making an application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the Said Project/Complex shall be treated as the date of completion of the Apartment. In particular, after filing an application for grant of such certificate(s), the Developer shall not be liable for any delay in grant thereof by the competent authorities."

4. The complainants submitted that on 21.09.2013, the complainants executed an apartment buyers agreement with the respondent. As per clause 5 of the said agreement,

possession of the apartment was to be delivered to the complainants within 48 months from the date of execution of the agreement by 21.09.2017. the agreement further provided for a grace period of 6 additional months for delivery of possession.

5. The complainants submitted that after delaying possession by almost 15 months, the respondent issued letter dated 16.02.2019 to the complainant calling upon the latter to discharge the final instalment of Rs. 29,65,183/- on offer of possession. The respondent issued letter dated 11.04.2019 to the complainants, claiming that the apartment was allegedly "ready for possession" subject to the complainants discharging the alleged outstanding sum.
6. Further, it is submitted that the complainants visited the project premises on 18.05.2019 and were appalled to discover that clubhouse is still under construction, landscaping of gardens and lawns as per the project brochure has not been commenced, and tower-G which is situated at the entrance to the housing society is half-built. The complainants felt cheated in as much as they had paid valuable amounts towards Club Membership Charges, & PLC, however, even after delay of nearly 20 months, the clubhouse

and lawns/landscaped gardens were not ready. Hence, this compliant for the aforementioned relief:

- i. Direct the respondent to hand over the unit alongwith the interest towards delay in handing over of the unit;
7. 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.
8. The respondent contests the complaint on the grounds mentioned in the reply which according to him defaults committed by the complainants in payment of demands raised by the respondent:
- i. That respondent issued several demand letters but the complainants did not paid any heed to the request of the respondent, and eventually the respondent was constrained to issue a demand-cum-cancellation notice dated 12.06.2014, requesting the complainants to make timely payment of the outstanding installments, failing which the provisional allotment of the said apartment No.J-1204 would have to be cancelled. The said demand-cum-cancellation notice was necessitated on account of continuous defaults by the complainants.



- ii. That even after intimation regarding cancellation of his allotment was communicated to the complainants, the complainants never approached the respondent for settlement of his dues, and therefore, the respondent vide its letter dated 10.10.2014 cancelled the allotment of apartment in the said project and called upon the complainant to collect the balance sum due in his favour after forfeiture of applicable charges, in terms of the apartment buyer's agreement.
- iii. That the respondent has suffered considerable losses on account of non-payment of due installments and the subsequent cancellation of the unit in question. That thereafter complainants again approached the respondent whereby he admitted its mistake and requested to reinstate the unit. That upon such request the unit in question was revived. That the tower wherein the unit in question is located in project in question has already been legally completed. That occupation certificate of the tower has already been obtained by the respondent.



9. Further, the respondent submitted that the offer of possession as agreed between the parties in terms of the agreement does not specify is delivery of club, landscaping, swimming pool et cetera. The apartment in question is readily usable by the complainants. However by taking absolutely frivolous grounds such as lack of the club landscaping et cetera the complainants are only trying to evade further payments to be made. It is historical that the complainants have been intentionally avoiding the payment of the due instalments of the apartment in question yet in its bona fide and as a gesture of business goodwill the respondent had revived the allotment of the apartment in question despite of having cancelled the same twice.
10. 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.
11. The Authority, on the basis of information and explanation and other submissions made and the documents filed by the complainants, is of considered view that there is no need of further hearing in the complaint.
Arguments are heard.

12. 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)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5(A) of the apartment buyer's agreement executed between the parties on 21.09.2013, possession of the booked unit was to be delivered within a period of 48 months plus 6 months grace period from the date of execution of agreement or commencement of construction, whichever is later. The grace period of 6 month is allowed to the respondent due to exigencies beyond the control of the respondent. In the present case, date of start of excavation is 11.07.2013 as per Annexure R5 at page 87 of reply. Therefore, the due date of handing over possession comes out to be 11.01.2018. Further, the OC dated 12.02.2019 was received by the respondent and the respondent made offer of possession through demand letter dated 16.02.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the apartment buyer's agreement dated 21.09.2013 executed between the parties.



13. 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 respondent is established. As such the complainants are entitled to delayed possession at rate of the prescribed interest @ 09.30% p.a. w.e.f. 11.01.2018 till the offer of possession i.e. 16.02.2019 plus two months as per provisions of section 18(1) of the Act read with rule 15 of the Rules. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 12.02.2019 and the respondent offered the possession of the unit in question to the complainant on 16.02.2019. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking

possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 11.01.2018 till the expiry of 2 months from the date of offer of possession (16.02.2019) which comes out to be 16.04.2019.

14. 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. 09.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 11.01.2018 till the offer of possession i.e. 16.02.2019 plus 2 months.
 - ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainants which is not part of the apartment buyer's agreement.

- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
15. Complaint stands disposed of.
16. File be consigned to registry.

(Samir Kumar)
Member

(Dr. K.K. Khandelwal)
Chairman

Dated: 21.12.2020