

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

Complaint no. : 3390 of 2019
First date of hearing : 03.12.2019
Date of decision : 21.12.2020

Amit Kumar Sarawangi
R/o: Raju Shah Lane, Ramana, Muazaffarpur,
Bihar-842002

Complainant

Versus

M/s Adani M2k Projects Ltd.
(A Private Ltd. Company, Through its Managing
Director/Chairman)
Office at: Ground Floor, Adani House, Plot No.
83, Sector-32, Institutional Area, Gurugram-
122001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

APPEARANCE:

Shri Vikasdeep Advocate Advocate for the complainant
Shri Narender Kumar Proxy
counsel for Shri Ashwani Rao Advocate for the respondent

ORDER

1. The present complaint dated 03.09.2019 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 apartment buyer's agreement executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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.	Date of allotment letter	09.01.2013
8.	Unit no.	H-1202, 12 th Floor, Tower-H, Type-A [as per annexure A at page 138 of reply]
9.	Unit measuring	3198 sq. ft. [as per annexure A at page 138 of reply]
10.	Date of execution of apartment buyer's agreement	02.07.2013 [as annexure R35 at page 85 of reply]
11.	Payment plan	Construction Linked Plan
12.	Total consideration as per payment plan (page 70 of complaint)	Rs. 2,11,69,146/-
13.	Total amount paid by the complainants	Rs. 2,05,14,363/- (as per submissions of complaint at page 8 of complaint)
14.	Date of start of construction of lower basement slab	03.02.2014 [as per demand note dated 03.02.2014 as annexure R5 at page 42 of reply]
15.	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 109 of reply]	03.08.2018 Note: Calculated from date of start of construction of lower basement slab i.e. 03.02.2014

16.	Offer of Possession	16.02.2019 (Annexure R-34, page 83 of reply)
17.	Occupation Certificate	12.02.2019 [at page 40 of reply]

3. As per clause 5 of the apartment buyer's agreement dated 02.07.2013, 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 construction of lower basement slab is 03.02.2014 as per Annexure R5 at page 42 of reply. Therefore, the due date of possession comes out to be 03.08.2018. 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 (6) 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 complainant submitted that the apartment buyer's agreement was heavily loaded in favour of respondent and the agreed period of completion and possession was also changed, which is against the agreed terms of booking and against the statutory period as well as not in consonance to the schedule of payments, as the complainant was required to deposit the 90% payment within 2 years of booking, so the deemed date of possession cannot be 48 months from the signing of agreement but it was 36 months from booking, otherwise there was no justification in accepting the 90% payments within less than 24 months from the date of booking and not from the execution of apartment buyer agreement.
5. Further, the complainant submitted that the respondent had never offered the option of car parking and illegally imposed the car parking charges of Rs. 11,25,000/- which are liable to be removed as the complainant is not willing to purchase the covered parking. Also, the complainant was surprised to know about the allotment only through the letter. Moreover, the respondent also imposed the amount of Rs. 7,19,550/- as PLC, which is not accepted, as the unit is allotted is at worst

located unit, without the consent of complainant. Hence, this complainant for the aforementioned relief:

- i. Direct the respondent to hand over the unit alongwith the interest towards delay in handing over of the unit;
6. 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.
 7. The respondent submitted that the complainant was specifically mentioned that three car parking spaces are mandatory along with 4 BHK apartment PLC applicable on apartment as the apartment was Master plan green & club pool facing. These PLC prices are in the specific notice and knowledge of the complainant.
 8. The respondent contests the complaint on the grounds mentioned in the reply which according to him defaults committed by the complainant in payment of demands raised by the respondent:
 - i. That the complainant kept on intentionally defaulting on payments one after another. It is submitted that on 24.04.2015 the respondent issued another demand note wherein an amount of Rs.69,17,464/- was demanded. It

is submitted that as per the said demand note the complainant was requested to pay the amount demanded on or before 11.05.2015. However, even at this time the complainant failed to pay the amount. Consequently, the respondent issued a notice for payment on 19.05.2015 whereby the complainant was requested to pay the amount immediately. However, even this time the complainant did not pay any amount to the respondent.

- ii. That since the complainant kept on defaulting in payment against the demand letters issued by the respondent, the respondent was constrained to send a cancellation notice to the complainant on 25.06.2015 whereby an amount of Rs.69,17,462/- was demanded and specifically stated that if the complainant failed to pay the said amount by 07.07.2015 the allotment of the apartment will stand cancelled.
- iii. That even after receiving of said notice, the complainant failed to pay the amount demanded to the respondent. It is submitted that thereafter in the year 2016 the

complainant approached the respondent and requested to restore the cancelled allotment and admitted his fault that he could not pay the due installments as per the agreed payment plan despite of achievement of respective construction stages at the site and issued a cheque no.332217 dated 25.02.2016 of an amount of Rs.1,14,95,232/- as a security since he stated that he shall soon obtain a loan from the bank. That he also requested the respondent to help him in getting a loan sanctioned in his favour. That at that point of time, complainant even issued another cheque of Rs. 6 lac against interest.

- iv. That ultimately on 17.02.2016 a tripartite agreement was executed between the complainant, respondent, and the Union Bank of India. It is submitted that the said cheque was issued by the father of complainant i.e. Sh. Pawan Kumar Sarawagi. It is submitted that since the said cheque was only a security, the same was never encashed with a hope that soon after the approval of

loan, the complainant shall pay the outstanding amount as on today.

- v. It is submitted that the complainants had availed a loan from the aforementioned bank for making the payment of the consideration of the unit in question. The respondent had duly assisted the complainants in obtaining the loan, at the request of the complainants. Thereafter substantial amounts were received by the respondent from the bank in terms of the loan towards the sale consideration of the unit in question. In terms of these tripartite agreement the complainants cannot seek the refund of any amount whatsoever from the respondent. The entire matter relating to refund is in fact governed by the said tripartite agreement and the said finance company holds exclusive rights with regard to the refund matters.
- vi. It is submitted that on 12.02.2019 the respondent had received the occupation certificate of the tower in which the apartment in question is situated and thereafter on 16.02.2019, respondent issued another demand letter,

whereby the payment was demanded against the stage of offer of possession and other charges amounting to Rs.28,23,668/-. It is submitted that as till today the complainant has not paid the said amount. Thus, the delay is still continuing and for the same reason, the complainant cannot claim possession without paying the amount demanded by the respondent alongwith interest on the delayed payment.

9. The respondent submitted that as per the agreement the allottee shall only be entitled for possession only after payment of all the stages in timely manner as mentioned in the payment plan annexed with the apartment buyer agreement. However, in the present case complainant miserably failed to pay the installments on time and even the last installment against offer of possession was never paid by the complainant. It is submitted that without complete payment the complainant is not entitled for possession.
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 complainant, is of considered view that there is no need of further hearing in the complaint.
12. Arguments are heard.
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)(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 02.07.2013, 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 construction of lower basement slab is 03.02.2014 as per Annexure R5 at page 42 of reply. Therefore, the due date of handing over possession comes out to be 03.08.2018. Further, the OC dated 12.02.2019 was received by the respondent and the respondent offered possession of the said

unit on 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 complainant as per the terms and conditions of the apartment buyer's agreement dated 02.07.2013 executed between the parties.


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 respondent is established. As such the complainant is entitled to delayed possession at rate of the prescribed interest @ 09.30% p.a. w.e.f. 03.08.2018 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. 03.08.2018 till the expiry of 2 months from the date of offer of possession (16.02.2019) which comes out to be 16.04.2019.

15. 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 complainant from due date of possession i.e. 03.08.2018 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 complainant within 90 days from the date of this order.
 - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
 - v. Interest on the due payments from the complainant shall be charged at the prescribed rate @09.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
 - vi. The complainant is directed to take possession within a period of two months from the date of issuance of this order.
16. Complaint stands disposed of.
 17. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Dated: 21.12.2020