

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

Complaint no. : 433 OF 2019
First date of hearing : 28.08.2019
Date of decision : 03.02.2021

Hardip Singh Wirk
Address:- House No. 2, Andheria Morh,
Mehrauli, Delhi-110030

Complainant

Versus

Neo Developers Pvt. Ltd.
Corporate Office:- 1507, Tower D, Global
Business Park MG Road, Gurgaon-122002
Registered Office:- 32-B, Pusa Road,
New Delhi-110005

Respondent

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

**Chairman
Member**

APPEARANCE:
Shri Akhil Aggarwal
Shri Venket Rao

Advocate for the Complainant
Advocate for the Respondent

BRIEF

1. The present complaint dated 22.02.2019 has been filed by the complainant/allottee 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 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 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	Neo Square, Sector-109 Gurugram
2.	Project area	2.71 acres (8.237 acres)
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	102 of 2008 dated 15.05.2008 valid upto 14.05.2020
5.	Name of licensee	Shri Maya Buildcon Pvt. Ltd. and 5 others
6.	RERA Registered/ not registered	Registered No. 109 of 2017 dated 24.08.2012 valid upto 23.08.2021 (registered for 3.089 area out of 8.237 acres)
7.	Unit no.	612, 6 th floor, Tower- A
8.	Unit measuring	1558 sq. ft.
9.	Date of execution of Flat Buyers Agreement	25.10.2012
10.	Payment plan	Construction linked payment plan



11.	Total Sale consideration	Rs. 1,06,10,436/- (as per the applicant ledger, page 24 of the reply, annexure R-2)
12.	Total amount paid by the complainant	Rs. 69,16,409/- (as per the applicant file dated 09.04.2019, page 24 of the reply, annexure R2)
13.	Date of construction	04.02.2013 (a copy of email submitted by the council for the complainant at the time of proceeding dated 03.02.2021)
14.	Due date of delivery of possession (due date of possession is calculated from the date of start of construction i.e 04.02.2013)	04.08.2016 <i>(As per clause 5.2 and 5.4- 36 months plus 6 months grace period from the date of buyer's agreement or starting of construction whichever is later)</i>
15.	Offer of possession	Not offered
16.	Delay in handing over possession till date 03.02.2021	4 years 5 months 30 days as on date
17.	OC details	OC not received

3. As per clause 5.2 and 5.4 of the Agreement dated 25.10.2012 the possession was to be delivered within a period of 36 months from the date of execution of agreement or from the start of construction, whichever is later plus 6 months grace period which comes out to be 04.08.2016. The date of start of construction is later than the date of execution of agreement.

So, the due date of possession is calculated from the date of start of construction. Clause 5.2 and 5.4 of the Buyers Agreement is reproduced below:

"5.2 That the company shall complete the construction of the said building/complex, within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate. The company on grant of occupancy/ completion certificate, shall issue final letters to the allottee (s) who shall within 30 days, thereof remit all dues.....

5.4 That the allottee hereby also grants an additional period of 6 months after the completion date as grace period to the company after the expiry of the aforesaid period.

4. The complainant submitted that he had booked the plot in on payment of Rs. 2,00,000/- vide cheque no. 469066 dated 08.08.2011. He was allotted office space no. 612, measuring 144.70 sq. meters on interest free instalment plan receipt of which was issued to the complainant by the respondent on 08.09.2011. BBA was executed with regard to office in question for total consideration of Rs. 81,01,600/- with instant complainant vide agreement dated 25.10.2012 wherein general terms and conditions of allotment were prescribed and in clause 5.6, it is specifically mentioned that the project would be completed within 36 months from the



date of signing the agreement. The complainant further paid Rs. 2,50,558/- towards basic sale price to the respondents at the time of execution of buyers agreement.

5. It is submitted that the complainant has thus paid about 90% amount and rest of the payment is to be made on registration of the commercial property in the name of the complainant by the respondent. He visited the office of the respondents on 25.10.2016 and asked about handing over the possession of the commercial property, referred above, as he is in dire necessity of office space for his profession. Till date the respondent has not even completed the project so handing over the possession of office space in question.
6. Further submitted that the complainant has never become defaulter in making his payments as per the payments schedule plan rather deposited some time two instalments together in advance. That the complainant had booked the property in aforesaid project to make his office space and deal his client, but he has been cheated by the respondents as they have failed to fulfil their promise of giving the possession of the property on time. Hence, this complaint inter-alia for the following reliefs:
 - i. To impose penalty upon the respondent as per the provisions of section 61 of RERA Act for contravention of section 121, 14 15 and 16 of RERA Act.

- ii. To direct the respondents to pay penalty upto 10% of project cost to the complainant under section 59 of RERA Act, 2016
 - iii. To pay delay possession charges at the prescribed rate of interest.
 - iv. To direct for additional compensation for delay Rs. 10/- per sq. ft. of total super i.e.1558 sq. ft. of the office space in question since April 2016, till date in terms of clause 5.6 of the buyers agreement
 - v. To direct the respondent to deliver the possession of the office space in question to the complainant without charging any additional charges of any kind.
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 contested the complaint on following grounds:-
- i. The respondent submitted that the present complaint filed by the complainant is bundle of lies and hence liable to be dismissed as it is filed without cause of action. The present complaint is an abuse of the process of this Hon'ble authority and is not maintainable.



- ii. It is submitted that the present complaint is premature. There is no cause of action arising in favour of the complainant. that clause 5.2 of the buyers agreement provides that the company shall complete the construction of the said building within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction whichever is later. further a grace period of 6 months is also mentioned in the buyers agreement. That agreement was executed on 25.10.2012 in the construction started in the month of December 2015. Accordingly, the due date i.e. specified date for handing over the possession of the unit has not occurred, either in terms of the buyers agreement nor in terms of RERA registration and hence the complaint should be dismissed.
- iii. It is submitted that mention herein that the said agreement was executed on 25.10.2012 and the construction started in the month of December 2015. From the conjoint reading of the aforementioned provisions, it is crystal clear and evident that the claim for interest and compensation would be only adjudged by the AO as appointed under section 71 of 2016 Act and that too keeping in view the factors mentioned in Section

72 of 2016 Act. No complainant can be entertained much less before this Ld. Authority in respect of the matters to be adjudicated by the AO. Hence the Ld. Authority lacks jurisdiction to deal with the present complaint.

- iv. It is submitted that the complainant is trying to shift it's onus of failure on the respondent as it is the complainant who failed to comply his part of obligation and miserably failed to pay the instalment in time despite repeated payment reminders being sent by the respondent from time to time.
 - v. That the project is ongoing and the date of possession has not yet been completed. Hence the complaint is liable to be dismissed.
9. Arguments heard.
 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, explanation, other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
 12. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is




satisfied that the respondent is in contravention of the provisions of the Act. By virtue of Flat Buyer Agreement executed between the parties on 25.10.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of buyer's agreement or starting of construction whichever is later. The date of start of construction is 04.02.2013, therefore the due date of delivery of possession comes out to be 04.08.2016. Accordingly, 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 complainant is 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. 04.08.2016 till handing over of possession as per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules.

13. 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 interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 04.08.2016 till the handing over of possession . The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.



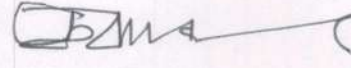
- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (iii) The respondent shall not charge anything from the complainant which is not the part of the BBA.
- (iv) Interest on the due payment from the complainant shall be adjusted at the prescribed rate of interest i.e. @ 9.30% by the promoter where is the same as is delay granted to the complainant in case of delayed possession charges.
14. Complaint stands disposed of.
15. File be consigned to registry.


(Sanjit Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.02.2021


(Dr. K.K. Khandelwal)

Chairman