

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

Complaint no. : 3409 of 2020
Date of first hearing : 24.11.2020
Date of decision : 24.11.2020

Smt. Ishita Bansal
House no: 568, Sector-16 D,
Chandigarh-160015

Complainant

Versus

M/s Lotus Realtech Pvt. Ltd.
Address: 501, Block C, Nirvana Courtyard,
Nirvana Country, Sector 50,
Gurugram-122018

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Anubhav Bansal
Shri J.S. Dahiya

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 13.10.2020 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 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.	Name and location of the project	"Lotus Homz", Sector 111, Gurugram
2.	Project Area	5.09375 acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP license no. and validity status	47 of 2014 dated 18.06.2014 valid up to 17.06.2019
5.	Name of the Licensee	Shri Ashok Kumar and Smt. Jaishree
6.	Registered/ Not registered	214 of 2017 dated 18.09.2017
7.	RERA registration valid up to	30.06.2020
8.	Unit no. (As per page no. 26 of complaint)	1003, 10 th Floor, Tower I
9.	Unit admeasuring (As per page no. 26 of complaint)	605.55 sq. ft. (Carpet area)

		90.35 sq. ft. (Balcony area)
10.	Date of Provisional Allotment (As alleged by complainant at page no. 8 of complaint)	10.12.2015 (No document has been filed by either party)
11.	Date of Buyer's Agreement	Not executed
12.	Total consideration (As per page no. 40 of reply)	Rs. 25,52,315/- (Excluding taxes)
13.	Total amount paid by the complainant (As per page no. 40 of reply)	Rs. 20,05,532/-
14.	Payment plan (As per page no. 17 of reply)	As per Affordable Group Housing Policy
15.	Date of approvals of Building Plans (As per page no. 18 of reply)	22.10.2014
16.	Date of Environment Clearance (As per page no. 24 of reply)	01.07.2016
17.	Due date of delivery of possession (As per clause 6.1 of the terms and conditions of allotment letter i.e. within a period of 4 (four) years from the date of grant of sanction of building plans for the project or the date of receipt of all the Environmental Clearances necessary for the completion of the construction and development of the project, whichever is later i.e. 01.07.2016 + 6 months grace period on amount of force majeure	01.01.2021

18.	Delay in handing over possession	Possession has not been handed over
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3. As per clause 6.1 of the terms and conditions of the allotment letter, the possession of the unit in question was to be handed over within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the Environmental Clearances necessary for the completion of the construction and development of the project, whichever is later. Building plans were approved on 22.10.2014 and the Environment Clearance was obtained on 01.07.2016. Therefore, the due date of possession has been calculated from the date of Environment Clearance which comes out to be 01.01.2021. Clause 6.1 of the terms and conditions of allotment letter are reproduced below:

“6. POSSESSION

6.1) *Subject to the grant of occupation certificate by the competent governmental authority and other situations beyond the reasonable control of the Company and subject to the Applicant performing all of his/her obligations under the terms of this Application or the Apartment Buyer's Agreement, the Company shall offer to handover the possession of the Apartment within a period of 4 (four) years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later.”*

4. The complainant submitted that vide allotment letter dated 10.12.2015 under Affordable Housing Policy 2013, the

instalments were to be raised in a phased manner and could be not deferred or joined at the end of the respondents causing loss to the complainant. Further, the delay in construction was causing delay in delivery of the possession which was to be delivered within Dec' 2019. The possession of the said apartment has not been delivered to the complainant so far. The construction of the project has been grossly delayed by more than one year and till now the construction of the said project is incomplete.

5. The complainant submitted that she is ready and willing to make the payment of balance instalments but the same need to be demanded in a phased manner.
6. Hence, this complaint inter alia praying the Authority to:
 - i. Direct the respondent to deliver the possession of the unit along with interest from the date of payments till the date of possession of the flat.
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 the following grounds:

- i. That the complainant is not entitled to claim the interest, damages and compensation etc. as claimed by her , That even the stipulated time for completion of the project and delivery of possession of the allotted flat to the complainant/allottee was June 30, 2020 as per the registration of the project with this Authority, but now the time limit for construction and completion of the project had been extended by 6 (six) months by the competent authority i.e. RERA Gurgaon vide its order dated 26/05/2020 due to the outbreak of Covid2019 and thus the possession is to be delivered on December 31, 2020 and thus the complainant had no cause of action to file this complaint before the expiry of the extended time limit of December 31, 2020 for completion of the project. Further, the complainant has no cause of action and locus standi to file this complaint before this forum, which is not maintainable in the present form.

- ii. That the present complaint is an abuse of the process of law and had been filed with the sole object of harassing and pressurizing the respondent to submit to the unreasonable greedy demands of the complainant.
- iii. That the complainant had not performed her obligations to pay the timely instalments on time as per the terms and conditions of allotment, which is clear from the fact that she has not paid the full sale price of Rs 25,52,315/- plus interest of Rs 3,18,336 @ 15% with effect from the due dates from 2015 till date as shown in the interest calculation sheet till final payment being the cost of the allotted flat and thus she cannot allege default in respect of the allotted flat in not completing the construction of the project.
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 and submissions made by the parties.
10. The Authority, on the basis of information and other submissions made and the documents filed by the complainant and the respondent, 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 complainant at a later stage.

13. On consideration of the documents placed on record and submissions made by both the parties and based on the findings of the Authority, it has been concluded that by virtue of clause 6.1 of the terms and conditions of the allotment letter, possession of the booked unit was to be delivered within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later. Building plans were approved on 22.10.2014 and the environment clearance was obtained on 01.07.2016. Therefore, the due date of possession has been calculated from the date of environment clearance which comes out to be 01.07.2020. However, keeping in view the spread of COVID-19 pandemic and other exigencies beyond the control of the




respondent, six months grace period is being granted to the respondent. Therefore, the due date of possession comes out to be 01.01.2021. But here in this complaint the relief sought by the complainant is handing over of possession along with delay possession charges which is not maintainable at this point of time. However, the respondent is directed to obtain occupation certificate and thereafter offer the possession of the unit to the complainant.

14. On consideration of the fact that the due date of possession is approaching, 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 i.e. 9.30 % per annum for every month of delay on amount paid by the complainant after due date of possession i.e. 01.01.2021 till handing over the possession of the unit be paid to the complainant.
- ii. The interest for delay possession charges shall be paid on or before 10th of each subsequent months.
- iii. Interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainant in case of delayed possession charges.

- iv. The respondent shall not charge anything from the complainant which is not a part of Buyer Agreement.
15. Complaint stands disposed of.
16. File be consigned to registry.


(Samir Kumar)
Member


Dr. K.K. Khandelwal
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.11.2020



HARERA
GURUGRAM