

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

Complaint no. : 378 of 2020
First date of hearing : 03.04.2020
Date of decision : 23.02.2021

Amit Chugh
H.no. 1804
sector 13 Huda

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
14A/36, W.E.A, Karol Bagh, New Delhi -110005
Also at :-Plot No. 25-B, Sector -32, Institutional
Area, NH-8, Tehsil and District Gurugram.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Karan Govel

Advocate for the complainant

Shri Sandeep Chaudhary

Advocates for the respondent

ORDER

1. The present complaint dated 11.02.2020 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 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 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	"Our Homes", Sector 37-C, Gurugram.
2.	Project area	10.144 acres
3.	Nature of the project	Low Cost /Affordable group housing colony
4.	DTCP license no.	13 of 2012 dated 22.02.2012
	License valid/renewed upto	01.12.2019
	Name of licensee	Prime IT Solution & PHONIX DATATECH SERVICE
5.	HRERA registered/ not registered	Registered vide 40 of 2019 dated 08.07.2019
	Rera Registration valid upto	01.12.2019
6.	Unit no.	993, 9 th floor, Tower IRIS [Page 24 of complaint]
7.	Unit measuring	48 sq. mtrs.
8.	Date of allotment letter	23.10.2012 [page 16 of complaint]
9.	Date of execution of apartment buyer's agreement	12.04.2013 [Page 19 of complaint]
10.	Payment plan	Time linked payment plan [Page 47 of complaint]

11.	Basic sale price	Rs.16,00,000/-
12.	Total amount paid by the complainant as per demand letter dated 16.09.2020 at page 15 of reply	Rs.15,50,903/-
13.	Consent to establish granted by the HSPCB on	02.12.2013 (Note: Time for computation of due date of delivery of possession)
14.	Due date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals) [Page 29 of complaint]	02.06.2017
15.	Occupation certificate	19.5.2017 29.11.2019 Type-1 (5 Nos. Towers), Type-1 (3 Nos. Towers), Type-2 (2 Nos. Towers) & Still 24.02.2020 type-1 (16 Nos. Towers), Commercial
16.	Date of offer of possession to the complainant	11.03.2020 [page 14 of reply as annexure R4 of reply received on 24.09.2020]

3. As per clause 3(a) of the said agreement dated 12.04.2013, the possession of the flat was to be handed over within 36 months plus 6 months grace period from the date of commencement of construction upon receipt of all project related approvals. In the present case, the consent to

establish was granted to the respondent on 2.12.2013 and the due date of possession comes out to be 02.06.2017. Clause 3(a) of the apartment buyer's agreement is reproduced below:

"3(a) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."

4. The complainant submitted that the complainant several times requested the respondents telephonically as well as personal visits at the office for the delivering the possession of the Apartment and met with the officials of respondents in this regard and completed all the requisite formalities as required by the respondents but despite that the officials of Respondent's Company did not give any satisfactory reply to the complainant and lingered on one pretext or the other and refused to deliver the possession of the above said flat.
5. The complainant submitted that the respondent is very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in india, especially in

NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed timeline and that is the prime factor which a consumer would see while purchasing his/her dream home. respondent, therefore used this tool, which is directly connected to the emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along with the instalments of loan in the case of others builders in the market.

6. The respondent submitted that the relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under govt. of Haryana affordable housing scheme and thus allotted apartment no. 993, 9th floor, jasmine having a carpet area of approximately 48 sq meters (where the carpet area means the area enclosed under the exterior walls of the said apartment) with an exclusive right to use of on village gadoli-khurd, sector 37-C, tehsil and district, gurugram together with the proportionate undivided, unidentified, impartible interest in the land underneath, the said housing complex with the right to use

the common areas and facilities in the said housing complex vide apartments buyers agreement.

7. The complainant submitted that some buyer of this projects have filed a complaint about this delay in CM Window & one of the complaint has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15/01/2018 and at that point we came to know that Builder license has been expired and not renewed. We all requested Mr. R.S. Batt to please take some action & help us to get this project complete as early as possible and I came to know that our request to Mr. R. S. Batt (DTP) helped a lot in the process of getting his license renewed. The reason to mention it here is that we should not be sufferer on account of any license expiration as our complaint helped him in this matter and moreover we paid all the demands on time even in time of license expiry. This is respondent's responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.
8. The complainant further submitted that, the basic sale price of the apartment was of Rs.16,00,00/-, payable by the

apartment complainant as per payment plan and consequently the complainant has paid the amount of Rs. 15,50,903/- till date. Hence, this complaint for the following reliefs:

- i. Direct the respondent to handover the possession of the said apartment with the best amenities and specifications as promised in all completeness without any further delay.
 - ii. Direct the respondent to pay interest on the amount paid by the complainants at prescribed rate towards delay in handing over the possession of property in question as per the provisions of the Act and the Rules.
9. 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.
10. The respondent contests the complaint on the following grounds:
- i. That on grant of license bearing no. 13/2012 dated 22.02.2012 the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 7.05.2013 and the Consent to Establish by the Office of Haryana State Pollution Control Board,

Panchkula was only granted on **2.12.2013**. Since then the respondent is continuing the construction of the project, but to the misery the License so granted expired on **21.02.2016** i.e. prior to the permissible period of construction of 36 months and since **11.02.2016** the respondent had been seeking the renewal of the License from the Office of Director General Town & Country Planning, Haryana and finally the same has now been received on **26.04.2019** and the respondent is duty bound manner has completed the entire completion of the construction and development of the project and obtained the first OC on 29.11.2019 and the second OC on 24.02.2020.

- ii. That further the provisions of Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license No. 13/2012 the same got dismissed vide Orders dated 19.01.2018 and finally after regular follow ups and initial rejections the project has been registered vide Registration No. **40 of 2019** dated **8.07.2019** and the said fact even lead to further operational obstacles & restrictions of funds in completion of the project and leading to delay in completion of the project which had been beyond

the control of the respondents and was extendable as per the agreed terms.

- iii. That the respondent company had been hard trying to avail all the approvals, permissions and sanctions from the relevant Authorities and discharging the additional costs of renewal of license, plans and sanctions. And had the approvals & license be granted in time the respondent, would have duly completed the project within the permissible time period. More so the bans to construction activity imposed by the NGT from time to time and lastly in the months of October - November, 2019 have further lead to delay in completion of the project which are per se beyond the control of the respondent.
- iv. That thereby, the delay being occasioned is beyond the control of the respondent i.e. firstly due to the grant of Consent to Establish and thereafter due to the lapse of License and the same is excusable as contemplated and agreed by the parties vide para 3(b)(i) & (ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months plus 6 months grace period is extendable and the complainant is estopped from filing the present complaint. Further it is stated that it is the respondent who is suffering due to the delay that is being occasioned and has to face extra



charges and costs and expenses in getting all the above permissions renewed and in particular the renewal of license and the costs of registration under RERA. Pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date is much more advanced than the amount received. Hence the reliefs claimed, except to the direction for delivery of the flat to the complainant for which the respondent is duty bound, cannot be granted.

11. 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.
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 circumstances, the documents and submissions made by the parties regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By



virtue of clause 3(a) of the apartment buyer's agreement executed between the parties on 12.04.2013, possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of commencement of construction upon receipt of all project related approvals. The grace period of 6 months is allowed to the respondent due to exigencies beyond the control of the respondent. In the present case, the consent to establish was granted to the respondent on 2.12.2013. Therefore, the due date of handing over possession will be computed from 2.12.2013 and the due date of possession comes out to be 02.06.2017. Further, the occupation certificate received on 29.11.2019 and 24.02.2020 respectively and offered the possession on 11.03.2020.

14. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the agreement dated 12.04.2013 to hand over the possession within the stipulated period. 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 complainant is entitled to delayed possession charges at prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 02.06.2017

till offer of possession i.e. 11.03.2020 as per section 18(1) of the Act read with rule 15 of Rules.

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. 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 02.06.2017 till the offer of possession i.e. 11.03.2020.
- 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 apartment buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

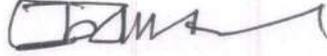
16. Complaint stands disposed of.
17. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021


(Dr. K.K. Khandelwal)

Chairman

Judgement uploaded on 08-06-2021



HARERA
GURUGRAM