

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

**Complaint no. : 574 of 2020**  
**First date of hearing : 03.04.2020**  
**Date of decision : 23.02.2021**

Mr. Lalit Adlaka  
R/o: 502/21, Street No. 8, Madan Puri, Gurgaon-  
122001, Haryana

**Complainant**

Versus

M/s Apex Buildwell Pvt. Ltd.  
Address at: 14A/36, W.E.A, Karol Bagh, New  
Delhi -110005

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar

**Chairman  
Member**

**APPEARANCE:**

Shri Lalit Adlaka

Complainant in person

Shri Sandeep Chaudhary

Advocates for the respondent

**HARERA**  
**ORDER**  
**GURUGRAM**

1. The present complaint dated 24.02.2020 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 and PHONIX DATATECH SERVICE
5.	HRERA registered/ not registered	<b>Registered vide 40 of 2019 dated 08.07.2019</b>
	RERA registration validity	<b>1.12.2019</b>
6.	Unit no.	548, 9 <sup>th</sup> floor, Tower IRIS [Page 51 of complaint]
7.	Unit measuring	48 sq. mtrs.
8.	Date of allotment letter	23.10.2012 [page 18 of complaint]
9.	Date of execution of apartment buyer's agreement	21.05.2013 [Page 48 of complaint]
10.	Payment plan	Time linked payment plan [Page 76 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.15,12,360/-
13.	Consent to establish granted by the HSPCB on	<b>02.12.2013</b> <b>(Note: Time for computation of due date of delivery of possession )</b>
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 57 of complaint]	02.06.2017
15.	Occupation certificate	<b>19.5.2017</b> <b>29.11.2019</b> Type-1 (5 Nos. Towers), Type-1 (3 Nos. Towers), Type-2 (2 Nos. Towers) & Still <b>24.02.2020</b> type-1 (16 Nos. Towers), Commercial
16.	Date of offer of possession to the complainant	<b>01.03.2020</b> [page 14 of reply as annexure R4 of reply received on 24.09.2020]

3. As per clause 3(a) of the said agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. 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. 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 respondent executed apartment buyer agreement on 21.05.2013. The apartment buyer's agreement includes stipulation of time being essence of the agreement and in para 3(a) proposes to hand over the possession of the apartment within a period of 36 months, with a grace period of 6 months from the date of construction of the complex as by the documents which is submitted by the respondent in RERA is 12.12.2013 so the possession date of the apartment cannot be beyond 12.06.2017. Also, the respondent mentioned date of completion of the project is 02.06.2017 and then again revise the date to 01.12.2019





which is way beyond the agreed period as by the said agreement.

5. The complainant submitted that the apartment buyer agreement is subject to various approvals from the concerned departments like sanction of building plan is prima facie illegal. As per 3(a) the promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee.
6. The complainant further submitted that the respondent has intentionally delayed handing over possession and as such is guilty of deficiency in service. Further, the respondent has failed to handover the possession of the residential apartment allotted to the complainant 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.

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 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 in 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.

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.
10. 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.
11. 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 21.05.2013, possession of the booked unit was to be delivered within a period of 36 months from the date of commencement of construction (with a grace period of 6 months) 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 01.03.2020.

12. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the agreement dated 21.05.2013 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. 01.03.2020 as per section 18(1) of the Act read with rule 15 of 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 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. 01.03.2020.

- 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.
14. Complaint stands disposed of.
15. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2021

(Dr. K.K. Khandelwal)

Chairman