

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

Complaint no. : 692 of 2020
First date of hearing : 03.04.2020
Date of decision : 23.02.2021

Mr. Gyan Singh
R/o: VPO Molahera, Opposite High School,
Gurugram, Haryana

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
(through its Authorised Signatory Shri Rahul
Anand)14A/36,
Also at :-202, DLF City Centre, M.G. Road, Tehsil
and District Gurugram

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Narender Kumar Proxy Advocate for the complainant
Counsel for Shri Vikas Yadav

Shri Sandeep Chaudhary Advocates for the respondent

ORDER

1. The present complaint dated 13.02.2020 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
5.	HRERA registered/ not registered	Registered vide 40 of 2019 dated 08.07.2019
	Rera registration valid upto	01.12.2019
6.	Unit no.	1101, 11 th floor, Tower Jasmin [Page 32 of complaint]
7.	Unit measuring	48 sq. mtrs.
8.	Date of allotment letter	23.10.2012 [page 27 of complaint]
9.	Date of execution of apartment buyer's agreement	09.02.2013 [Page 19 of complaint]
10.	Payment plan	Time linked payment plan

		[Page 58 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 16 of reply	Rs.18,47,820/-
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 38 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)
16.	Date of offer of possession to the complainant	01.12.2019 [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 complainant has approached the respondent personally and wanted to know as on what date they are delivering the possession of the said apartment to the complainant. However, the respondent did not pay any heed to the request of the complainant and evading the complainant on lame excuses.
5. The complainant submitted that somewhere in the month of february 2012, the respondent through its marketing executives and advertisement through various medium and means approached the complainant, who is common friends with an offer to invest and buy a low cost /afordable house in



the proposed project of respondent, which the respondent was going to launch the project namely "**OUR HOMES**" in the sector-37-C, village garauli-khurd, tehsil & district gurugram (hereinafter referred to as "said project").

6. The complainant submitted that respondent arranged the visit of its representatives to the complainant and they also assured the same as assured by respondent to the complainant, wherein it was categorically promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential apartment in the name of complainant immediately upon the booking. Relying upon those assurances and believing them to be true, complainant booked a residential apartment bearing No. Nil on 3rd Floor, tentatively admeasuring 48 sq. meters (carpet area) in the project called "OUR HOMES" situated at village gadoli khurd, sector-37C, gurugram, tehsil & district gurugram in the township to be developed by respondent under the name ad style of our homes, situated at sector-37c, village garauli-khurd, District Gurugram. It was assured and represented to the complainant by the respondent that it had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the respondent. accordingly the complainant have paid Rs.1,64,944/-



(rupees one lakh sixty four thousand nine hundred forty four only) through cheque/DD bearing No.415161 dated 08.09.2012 amounting to Rs.1,64,944/- drawn on ICICI Bank Ltd., gurugram as booking amount in wake of application of dated 08.09.2012, which the respondent has not given to the complainant so far, and respondent issued receipt thereof of dated 08.09.2012 for the same.

7. The complainant submitted that in continuation of the receipt of dated 08.09.2012, on 23.10.2012, the respondent has issued a provisional allotment letter to the complainant vide provisional allotment no. ourhomes/allotment/356 dated 23.10.2012, vide which the respondent has again acknowledged the payment of rs.1,64,944/- being paid by the complainant as the initial payment for obtaining provisional allotment /registration of the residential apartment. in the aforesaid letter, the respondent itself admitted that the cost of the said affordable low cost residential unit is of rs.16,00,000/-, which is inclusive of edc/idc payable by the company as on date.
8. The complainant submitted that the respondent assured the complainant that it would issue the allotment letter at earliest and maximum within one week, the complainant will get the apartment buyer's agreement as a confirmation of the allotment of said residential apartment in their name. however, the respondent did not fulfill its promise and assurance and has



issued only the apartment buyer's agreement of dated 09.02.2013, despite repeated requests and reminders of the complainant to issue the allotment letter and apartment buyer's agreement.

9. The complainant submitted that in the said apartment buyer's agreement, the basic sale price of the said apartment was agreed at the rate of rs.16,00,000/- (rupees sixteen lakhs only), which includes external development charges (edc), infrastructure development charges (idc) as levied by dtcp till the date of issue of the licence along-with reserved car parking along-with other charges as mentioned in the said apartment buyer's agreement. at the time of execution of the said apartment buyer's agreement, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said apartment from the area or the price committed by the respondent in the said application form or agreed otherwise.
10. The complainant submitted that the respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainant as per agreed timelines and along-with the making of payments, complainant time and again requested the respondent to execute the apartment buyer's agreement as per its promise



and assurance but the respondent acting arbitrarily and negligently have refused and ignored the requests and demands of the complainant on lame excuses and deliberately and intentionally delayed the execution of the apartment buyer's agreement and ultimately it was executed on 09.02.2013.

11. The complainant submitted that at the time of execution of the said agreement, the respondent misusing its dominant position had coerced and pressurized the complainant to sign the arbitrary, illegal and unilateral terms of the said apartment buyer agreement and when the complainant had objected to those arbitrary terms and conditions of the said agreement and refused to sign the same, the respondent threatened to forfeit the amount already paid by the complainant as sale consideration in respect of the said apartment and also to cancel their booking. the complainant having no other option and to found himself helpless and being cheated had under duress and coercion had signed the said apartment buyer's agreement.

12. The complainant submitted that from the date of booking and till today, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said apartment and the complainant have



duly paid and satisfied all those demands as per the apartment buyer's agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the apartment buyers agreement. the complainant was and has always been ready and willing to fulfill their part of agreement, if any pending.

13. The complainant submitted that the complainant solely has paid the entire sale consideration to the Respondent for the said apartment. As per the statement issued by the Respondent, upon the request of the complainant, the complainant have already paid Rs.16,14,496/- (Rupees Sixteen Lakh Fourteen Thousand Four Hundred Ninty Six only) towards total sale consideration as on today to the Respondent as demanded time to time and now nothing major is pending to be paid on the part of complainant.
14. The complainant submitted that on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the apartment buyer's agreement, the complainant had approached the respondent and its officers inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said apartment. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not

succeed as the construction of the said apartment and said project was nowhere near to completion and still has not been completed. 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.
15. 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.
16. 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 BR III 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.

17. 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.
18. 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.
19. 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 09.02.2013, 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 01.12.2019.

20. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the agreement dated 09.02.2013 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. 01.12.2019 as per section 18(1) of the Act read with rule 15 of Rules.

21. 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. 01.12.2019.
- 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.

22. Complaint stands disposed of.

23. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 23.02.2021