

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

Complaint no. : 3284 of 2020
First date of hearing : 11.11.2020
Date of decision : 23.02.2021

1. Ms. Meghna Manchanda
2. Mr. V.K. Manchanda
Both R/o: 62, Awaas Apartment, East Boring
Canal Road, Patna-800001
Also at: Flat No. 201, Tower No.9, Paras Tierea
Society, Sector-137, Noida-201305

Complainants

Versus

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

Ms. Shruti Manchanda Advocate for the complainant

Shri Sandeep Chaudhary Advocates for the respondent

ORDER

1. The present complaint dated 09.10.2020 has been filed by the complainants/allottees
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 complainants, 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
	License valid/renewed upto	31.12.2019
6.	Unit no.	270, 2 nd floor, Tower DAISY [Page 26 of complaint]
7.	Unit measuring	48 sq. mtrs.
8.	Date of allotment letter	22.11.2013 [page 22 of complaint]
9.	Date of execution of apartment buyer's agreement	22.11.2013 [Page 23 of complaint]

10.	Payment plan	Construction linked payment plan [as per demand letter dated 19.03.2020 at page 81 of complaint]
11.	Basic sale price	Rs.16,00,000/-
12.	Total amount paid by the complainant as per demand letter dated 19.03.2020 at page 81 of complaint	Rs.13,01,267/-
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 32 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	19.03.2020 [page 77 of complaint]
17.	Date of receipt of offer of possession (by post Tracking Report)	10.06.2020 [page 84 of complaint]

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 **यमेव जयते**
...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 respondents had undertaken and assured that at the time of executing of apartment buyer's agreement various amenities and possession of the apartment would be handed over within 36 months of the starting of the said project. However, the complainants had visited the project site on multiple occasions observed that the development work at the project

site was being carried out at a very slow pace and accordingly there is no possibility of delivery of possession of the said apartment in the nearest times.

5. The complainant submitted that Despite service of the said Legal Notice dated 06.09.2019, the Respondent have failed to respond to the same and also has not delivered the possession of the said Apartment till date.
6. The complainant further submitted that on 19.03.2020, the respondent issued a letter to the complainant, however, the malafide on the part of the respondent is clear from the fact that the said letter has been dispatched on 05.06.2020. **The same has been served upon the complainant on 10.06.2020.** By way of said letter, the respondent for the first time offered possession of the subject property. Due to COVID-19 pandemic, the complainants (who are now residing at Patna) are unable to visit the subject property for inspection and take possession. The complainants are still willing to pay the remaining installment and take possession of the property subject to outcome of this present complaint. 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 led 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. Arguments heard.

11. 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.

12. 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 22.11.2013, 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 19.03.2020 but during the arguments the counsel for the complainant stated that as per the tracking report submitted by the complainant at page 84, the date of receipt of offer of possession is 10.06.2020, Accordingly the same be treated as offer of possession. Thus, the 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. 10.06.2020 as per section 18(1) of the Act read with rule 15 of Rules

13. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the agreement dated 22.11.2013 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. 10.06.2020 as per section 18(1) of the Act read with rule 15 of Rules.

14. 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 complainants from due date of possession i.e. 02.06.2017 till the offer of possession i.e. 10.06.2020.
- 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 complainants are 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.

15. Complaint stands disposed of.

16. 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 09.06.2021.



HARERA
GURUGRAM