BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3259 of 2020
First date of hearing: 12.11.2020
Date of decision : 04.03.2021

1.Vijay Bajaj
2. Jyoti Bajaj
Both RR/o: 131, Ashoka Enclave Part II,
Sector 37, Faridabad, Haryana. **Complainants**

Versus

M/s Imperia Structures Ltd.
Address: A-25, Mohan Cooperative Industrial
Estate, Mathura Road, New Delhi-110044. **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**

APPEARANCE:
Shri Nishant Jain Advocate for the complainants
None None present for the respondent

ORDER

1. The present complaint dated 13.10.2020 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.

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	Esfera Phase II, Sector 37 C, Gurugram.
2.	Project area	17 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	64 of 2011 dated 16.07.2011. Valid/renewed up to 15.07.2017
5.	Name of licensee	M/s Prime Infoways Pvt. Ltd. and 2 others.
6.	HRERA registered/ not registered	**'Esfera Phase II' registered vide no. 352 of 2017 dated 17.11.2017 for 60460 sq. mtrs.**
7.	HRERA registration valid up to	**30.06.2021** (31.12.2020 + 6 months extension in validity due to pandemic)
8.	Allotment letter	05.02.2014 [Page no. 78 of reply]
9.	Unit no.	B-1603, 16th floor, Block B [Page no. 19 of complaint]
10.	Unit measuring	2400 sq. ft.

11.	Date of execution of buyer's agreement	23.04.2014 [Page 17 of complaint]
12.	Payment plan	Possession linked payment plan. [Page no. 58 of complaint]
13.	Total consideration as per statement of account dated 23.11.2020. (Page no. 75 of reply)	Rs. 1,32,70,580/-
14.	Total amount paid by the complainants as per statement of account dated 23.11.2020. (Page no. 75 of reply)	Rs. 47,62,917/-
15.	Due date of delivery of possession as per clause 10.1 of the said agreement i.e., three and a half years from the date of execution of this agreement. [Page no. 34 of complaint]	**23.10.2017**
16.	**Date of offer of possession to the complainants**	**Not offered**
17.	Delay in handing over possession till date of decision i.e., 04.03.2021	3 years 4 month 09 days
18.	Relief sought	1.Possession along with delay possession charges.

3. As per clause 10.1 of the agreement, the possession was to be handed over within a period of three and a half years from the date of execution of this agreement which comes out to be 23.10.2017. Clause 10.1 of the buyer's agreement is reproduced below:

"10.1. POSSESSION

(a) Time of handing over the possession

The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of three and half years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the Intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement."

4. The complainants submitted that the officials of the respondent company approached the complainants and impressed upon them about their upcoming project situated at Sector 37-C, Gurugram, Haryana by the name of "The ESFERA". The officials of the respondent with malafide intention and to induce the complainants to purchase the flat promised that the construction of the said project will be completed within a period of three and half years as detailed in the apartment buyer's agreement dated 23.04.2014. Being lured by the false commitments of the respondent company, the complainants paid advance amount to the respondent to get the booking confirmed in the project of the respondent. It is further submitted that between the period of December 2013 to January 2014 the officials of the respondent company taking the advantage of limited knowledge of the complainants about the law took 40% of the cost of the unit as advance i.e., Rs.

47,62,917/- out of total cost and that too without signing of any agreement which is against the prescribed law laid down by the statute and is in violation of the provisions of the Real Estate (Regulation and Development) Act, 2017. However, it is pertinent to mention here that the payment for the said apartment was to be made by the complainants according to the plan they had opted. The plan that was opted by the complainants was possession linked plan, where in the complainants had to pay 10% of basic amount of the said apartment at the time of the booking, 30% of basic amount within 90 days of booking and the rest of the due amount, i.e., 60% at the time of offer of the possession of the said apartment. Furthermore, despite taking the payment of 40% of basic amount of the said apartment, the respondent delayed in executing the apartment buyer's agreement. The complainants after making the payment to the respondent company kept on requesting the respondent company to execute a written agreement with the complainants but it was only after a long delay an apartment buyer's agreement was executed between the complainants and the respondent on 23.04.2014.

5. The complainants submitted that the terms of the agreement are one sided and are totally favouring the respondent company. It is evident from the penalties that are imposed on the complainants in case of delayed payments, the respondent

charges 18% (As per clause 8 of the agreement) interest from the complainants and in return if there is any fault on the part of the respondent, the respondent only offers compensation @ Rs. 5/- per sq. ft. (As per clause 11.4 of the agreement). It is further submitted by the complainants that the complainants have not been given possession of the said unit till today. It is pertinent to mention here that the respondent has delayed the construction of the said project and caused un-due hardships for the complainants. At present the respondent has completely stopped the construction work. There is no chance of completion of construction in near future. The construction is delayed about 2 ½ years till date. It is evident that the respondent be put to pay delayed possession charges to the complainants @ 18 % per annum from 22.10.2017, i.e., due date of possession as per the apartment buyers agreement executed between the parties.

6. The complainants submitted that they have made all the payments due to the respondent on time and have abided by the terms of the agreement whereas the respondent is in gross violation of the terms of the agreement and has not fulfilled its obligations as a "Promoter of the said project" and is liable to be penalised as per law with heavy penalties. The delivery of possession of the flat allotted to the complainants has been delayed due to non-completion of the said project by the respondent on time. The construction of the project has been

delayed due to illegal misappropriation of the funds taken by the respondent from the complainants and other purchasers. It is submitted that the complainants have on several occasion, telephonically and personally by visiting the office of the respondent, had made request to complete the construction work and to hand over the possession of the unit allotted to the complainants along with delayed construction charges but to no affect. The respondent has failed to justify its actions and has been delaying the matter on one pretext or another and avoiding to pay its legally due compensation to the complainants.

7. Further the complainants submitted that the respondent company has utilized the deposited amount, of complainants for sufficient time and now the respondent company is liable to pay delayed possession charges @ 18% per annum from 22.10.2017 till delivery of possession of the flat to the complainants. The complainants submitted that the cause of action for filing of the present complaint arose when the respondent illegally took 40% of the cost of the unit as advance from the complainants. The cause of action subsequently arose on multiple occasions when the complainants made requests to the respondent to complete the construction on time. The cause of action arose when the respondent failed to deliver possession of the flat and failed to pay delayed possession

charges to the complainants. The cause of action is still subsisting.

8. 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.

9. The respondent contested the complaint on the following grounds:

   i. It is submitted that the complainants are investors and approached the respondent company seeking good returns on his investment in any of the projects of the respondent company. Further, the complainants after being fully satisfied with the plans, sanctions and approvals of the project namely and applied for a residential unit in one of the esteemed project namely "Esfera" located at Sector 37C, Gurugram and consequently signed an application form dated 24.12.2013 for a total sale consideration of Rs. 1,32,70,580/- including taxes. Thereafter the respondent company allotted a residential unit admeasuring 2400 sq. ft. super area on the sixteenth floor (hereinafter referred to as the "said unit") in the project namely "Esfera" located at Sector 37C, Gurugram vide apartment buyer's agreement dated 23.04.2014. It is pertinent to note that post execution of the agreement

the respondent company and the complainants bound themselves to the terms and conditions enumerated in the application form dated 24.12.2013. It is further submitted that the complainants had only paid an amount of Rs.47,62,917/- and an amount of Rs. 85,07,664/- is still due on the complainants against the said residential unit.

ii. The respondent submitted that the last payment as per schedule payment plan by the complainants was made on was made way back in 2014 and thereafter, the complainants has not paid any single penny. The complainants with the evil intention to extort money from the respondent company has filed the present complaint before the hon'ble authority with false allegation and misleading facts with ulterior motive to earn wrongful gain from the respondent company. It is important to mention here that the project in which the present unit of the complainants is booked is at the stage of completion completed and possession of the respective unit will be delivered to the complainants tentatively in the month of May 2021. The respondent further stated that the complainants had intentionally filed the present complaint just to extort money from the complainants in the stage when the possession of the residential unit space has been offered to the

complainants and huge amount of assured return already been received by the complaint.

10. 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.

11. The authority on the basis of information, explanation, other submissions made, and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.

12. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the buyer's agreement executed between the parties on 23.04.2014, possession of the booked unit was to be delivered within a period of three and a half years from the date of execution of buyer's agreement. Therefore, the due date of handing over possession comes out to be 23.10.2017. In the present case, the respondent has not offered the possession of the unit to the complainants.

13. Accordingly, it is the failure on the part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.04.2014 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 the complainants are entitled to delay possession charges at prescribed rate of interest i.e. 9.30 % p.a. w.e.f. 23.10.2017 till the date of handing over of the possession plus two months as per provisions of section 19(10) of the Real Estate (Regulation and Development) Act, 2016 of the booked unit as per the provisions of section 18(1) of the Act read with rule 15 of the 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., 23.10.2017 till the date of handing over of the possession plus two months as per the provisions of Section 19 (10) of the Real Estate (Regulation and Development) Act 2016.

ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter monthly payment of interest till handing over of possession shall be paid on or before 10th of each subsequent month.

iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.

iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. Interest on the delayed payments from the complainants shall be charged at the prescribed rate @ 9.30% by the respondent which is same as is being granted to the complainants in case of delayed possession charges.

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: 04.03.2021

Judgement uploaded on 14.06.2021