

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

Complaint no. : 2390 of 2019
First date of hearing: 15.10.2019
Date of decision : 21.12.2020

1. Shri Anil Madnani
2. Smt. Monika Madnani
Both R/o: - Kothi no. 6, 2nd Floor, B- Block,
Prashant Vihar, Delhi- 110085

Complainants

Versus

1. M/s Bestech India Pvt. Ltd.
2. Sunil Satija
3. Dharmendra Bhandari
4. Kamaljit Singh
5. Mukesh Jain
All Office at: Bestech House 51, Bhagwan
Mahaveer Marg, Sector-44, Gurugram,
Haryana-122002

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Sh. Anil Madnani and Mrs. Monika Madnani — Complainants in person
Shri J.K.Dang and Shri Ishaan Dang — Advocate for the respondents

ORDER

1. The present complaint dated 27.06.2019 has been filed by the complainants/allottees 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 as provided under the provision of the Act or the rules and regulations made there under or to the allottee 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	"Park View Sanskruti", Sector-92, Gurugram.
2.	Project area	12.7875 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	13 of 2009 dated 21.05.2009 43 of 2011 dated 12.05.2011 valid upto 20.05.2017 & 12.05.2019
5.	Name of licensee	Bestech India
6.	Unit no.	603, 6 th Floor, Tower A



7.	Unit measuring	1995 sq. ft.
8.	Allotment letter	10.05.2013 [at page 19 as annexure 1 of complaint]
9.	Date of execution of flat buyer agreement	23.10.2013
10.	Total consideration as per payment plan (page 53 of paperbook)	Rs.1,31,45,305 /-
11.	Total amount paid as alleged by the complainants and as per receipts annexed with paperbook	Rs.36,19,048/-
12.	Date of approval of Building plans	04.05.2013
13.	Due date of delivery of possession (Clause 3(a): 36 months from the date of signing of agreement or from the date of approval of building plan by Town and Country planning department, whichever is later plus 6 months grace period) Note: Due Date has been calculated from the date of signing of agreement being a later date	23.04.2017
14.	Cancellation Letter	07.09.2017 (Page 134 of reply)
15.	Date of Occupation Certificate	19.06.2018 (Page 132 of reply)



3. As per clause 3 (a) of the apartment buyer's agreement dated 23.10.2013, the possession was to be handed over within a period of 36 months plus grace period of 6 months, from the date of signing of agreement or from the date of approval of building plan by Town and country Planning department, whichever is later. Therefore, the due date comes out to be 23.04.2017. Clause 3 (a) of the apartment buyer agreement is reproduced below:

"3 (a) Offer of possession

That subject to terms of this clause and subject to the apartment allottee(s) having complied with all the terms and conditions of this agreement and not being in default under any of provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentations, payment of all amount due and payable to the developer by the apartment allottee(S) under this agreement etc., as prescribed by the developer, the Developer proposes to offer of possession of the APARTMENT within period of Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, which ever is later. It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months."

4. The complainants submitted that the respondent no. 2 to 5 at the time of booking the said unit showed a very rosy picture and assuring false promises of giving the possession of flat on or before 36 months from the date of start of project. After visiting site of the project site

they found that there is no construction work done in any manner as per buyer's agreement of the respondents. After that complainants decided to cancel the unit and get refund along with the all payment receipts.

5. The complainants further submitted that they have applied for the cancellation and refund vide his letter dated 11.06.2018 even after passing of 4 months the respondents have not given any reply regarding the refund of the amount paid by the complainants in good faith.
6. The complainants submitted that the respondent no. 2 to no. 5 on behalf of the respondent no. 1 after getting money from them started forcing complainants to sign the agreement. When the complainants objected to sign the agreement, the respondents replied that the agreement is nothing but just a formality.
7. The complainants submitted that the respondents after taking a consideration amount of Rs. 36,19,048/- in respect of the said residential flat, has not paid any heed on the requests of the complainants in respect of the sale deed in favour of the complainants and failed to hand

over the possession of the said residential flat to the complainants, till date. Hence, this complaint for the following reliefs:

- i. Direct the respondent to pay interest for the alleged delayed possession to the complainants.
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) of the Act to plead guilty or not to plead guilty.
9. The respondent contests the complaint on the following grounds:
 - (a) The present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. The application for issuance of Occupation Certificate in respect of the apartment in question was made on 30.06.2017, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). Subsequently occupation certificate has also

been issued by the competent authority on 19.06.2018. Thus, the project in question is not an 'Ongoing Project" under Rule 2(1)(0) of the Rules. This Hon'ble Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.

(b) It is submitted that it shall not be out of place to mention that most of the demand notices and reminders mentioned above were sent to the complainants were requested to make payments. Various emails were sent to the complainants by respondent no 1.

(c) That on account of the failure of the complainants to pay the instalments as per the schedule of payment appended with the Allotment Letter , respondent No. 1 was compelled to address notices/reminders dated

01.06.2013,	20.08.2014,	10.11.2014,
15.01.2015,	02.04.2015,	16.04.2015,
04.07.2015,	24.07.2015,	09.10.2015,
21.10.2015,	04.01.2016,	19.03.2016,
04.06.2016,	23.06.2016,	06.09.2016,

18.08.2017, 06.05.2017, 22.04.2017,
17.02.2017, 11.10.2014, 27.10.2014,
03.03.2015, 18.03.2015, 04.06.2015,
19.06.2015, 09.09.2015, 25.09.2015,
05.12.2015, 21.12.2015, 05.05.2016,
20.05.2016, 08.08.2016, 23.08.2016,
24.07.2017, 06.06.2017, 06.04.2017 and
21.04.2017 (Annexure R6 to R42) to the
complainants for making payments. It is
pertinent to mention that respondent no. 1 was
under no obligation to send letters of demand
referred to above but the same was done by
respondent no. 1 as gesture of good will. That is
shall not be out of place to mention that most of
the demand notices and reminder mentioned
above were sent to the complainants were
requested to make payments. E-mails dated
02.04.2016, 11.06.2016, 28.06.2016,
19.08.2016, 30.08.2016, 17.09.2016, 11.03.2017,
14.04.2017, 03.05.2017, 18.05.2017, 26.05.2017,
16.06.2017, 05.08.2017 and 30.08.2017 were
sent to the complainants by respondent no. 1.

- (d) That it has been repeatedly conveyed to the complainants that in accordance with the terms and conditions of allotment/buyer's agreement, in the event of cancellation of allotment, respondent no. 1 was/ is entitled to forfeit the earnest money equivalent to 20% of the sale price, deduct delayed payment charges, brokerage and other amounts as specified in the buyer's agreement and the balance, if any was to be refunded to the complainants
- (e) It is submitted that in the meanwhile, the construction of the project was duly completed by respondent No. 1 and application for issuance of occupation certificate in respect of the apartment in question was submitted by respondent no. 1 with Directorate of Town and Country planning, Haryana, Chandigarh on 30.06.2017. Occupation certificate had been issued by the competent authority on 19.06.2018.
- (f) That the persistent defaults committed by the complainants, were not rectified despite repeated opportunities made available to the

complainants by respondent No. 1. Since, the complainants had failed to pay outstanding instalments towards sale consideration and interest and the breaches committed by the complainants had not been remedied despite repeated requests and demands, the respondent no. 1 was left with no option but to terminate/cancel the allotment vide letter dated 07.09.2017 and to forfeit the amount paid by the complainants as per terms of agreement. Pursuant to the same the complainants are not left with any right, title, interest or claim in respect of the aforesaid apartment or the amount paid by them which stands forfeited by respondent no. 1 as agreed terms.

- (g) That although, the termination/cancellation of allotment of the apartment in question had been validly and legally made by respondent number 1 and the same was also in conformity with terms and conditions of apartment buyers agreement dated 23.10.2013, yet as a special case and in order to obviate unwarranted controversy, the allotment of the residential

apartment had been restored/reinstated by respondent number 1. Letter dated 15th of February 2019 had been sent by respondent number 1 to the complainants whereby it had been specifically communicated to the complainants that physical possession of the apartment would be delivered to the complainants within the period of 4 weeks from the date of dispatch of the letter provided the outstanding payments in respect of the apartment were cleared/paid off by the complainants.

- (h) That the complainants have duly received the letter dated 15.02.2019 but they have deliberately concealed the receipt of the same in the compliant filed by them. It is pertinent to mention that even after receiving the aforesaid letter and affording of opportunity to them by respondent number 1 to make payment of the outstanding amounts, the complainants have failed to make payment of the outstanding sale consideration amount. Thus, there is absolutely no equity in favour of the complainants.

- (i) That no default has been committed by the respondent no. 1. The allegations made by the complainants in the complaint are false, fabricated and merely an afterthought. The institution of the complaint is an attempt on the part of the complainants to unduly harass and pressurize respondent no.1 so as to compel respondent no.1 to succumb to the complainants unjust, illegal and baseless demands.
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 and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the

authority regarding contravention as per provisions of rule 28(2)(a), 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 agreement executed between the parties on 23.10.2013, possession of the booked unit was to be delivered within 36 months plus 6 months grace period from the date of signing of agreement or from the date of approval of building plan by Town and country planning department, whichever is later. The date of sanction of building plans by the town and country planning department is 04.05.2013. As such the due date of delivery of has been calculated from the date of signing of agreement being the later date and due date of possession comes out to be 23.04.2017. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 23.10.2013 to hand over the possession within the stipulated period. However, the complainants failed to pay the instalments as per schedule of payment appended with the allotment letter. Numerous notices/ reminders were addressed to the complainants via letter as well as email for making outstanding dues. Thus,

respondent cancelled the allotment of the said flat vide letter dated 07.09.2017 after giving various opportunities to the complainants on account of non-payment of outstanding dues. But the respondent cannot be justified in retaining the refund amount after forfeiting the amount as per the terms and conditions of the agreement on cancellation.

13. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are given an option to pay the balance amount due towards the respondent and the respondent shall withdraw the cancellation letter dated 07.09.2017 and offer the possession without charging any interest on delay payment to be made by the complainants during the period of cancellation of unit.


14. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- I. The complainants are given an option to pay the balance amount due towards the respondent and the respondent shall withdraw the cancellation letter dated 07.09.2017 and offer the possession

without charging any interest on delay payment to be made by the complainants during the period of cancellation of unit.

- II. Alternatively, option is given to the complainants in case they wishes to withdraw from the project, the deposited amount will be refunded and respondent shall be allowed to retain 10% of the total sales consideration as earnest money, along with applicable taxes paid to the government. The balance amount remained, after deducting the above-mentioned amount, be refunded to the complainants.

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


(Samir Kumar)

Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2020


(DR. K.K. Khandelwal)

Chairman

Judgement uploaded on 06.07.2021