

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

Complaint no. : 1302 of 2019
First date of hearing: 20.08.2019
Date of decision : 21.12.2020

1. Shri Ramesh Kumar Kathuria
2. Lalita Rani
Both R/o: H. No.: 631, Ward no. 07, Gharaunda, **Complainants**
Distt. Karnal, Haryana - 122018

Versus

M/s Bestech India Pvt. Ltd.
Bestech House 124, Sector-44,
Gurugram, Haryana - 122002

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Ramesh Kumar Kathuria
and Lalita Rani

Complainant in Person

Shri J.K Dang and Shri Ishaan
Dang

Advocate for the respondent

ORDER

1. The present complaint dated 11.04.2019 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 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	Bestech India Private Limited "Park View Sanskruti" at Sector - 92, Gurugram
2.	Project area	12.7875 Acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no. and validity status	43 of 2011 dated 13.05.2011 & Valid up to 12.05.2024
5.	Name of licensee	Smt. Inderjit Kaur
6.	RERA Registered/ not registered	Not registered
7.	HRERA registration valid up to	NA
8.	Unit no.	1103, 11th floor, tower H
9.	Unit measuring (super area)	1995 sq. ft.
10.	Date of execution of buyer's apartment agreement	11.10.2013
11.	Total consideration as per applicant ledger dated 08.04.2019 (on page 65 of reply of the paper book)	Rs. 1,22,92,935/-
12.	Total amount paid as per applicant ledger dated 08.04.2019 (on page 65 of reply of the paper book)	Rs. 1,02,72,950/-

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)	11.04.2017
14.	Date of approval of Building plans (page 124 of reply)	04.05.2013
15.	Offer of possession to the complainants	09.07.2018 Page 69 of complaint
16.	Date of OC (pg. 134 of reply)	19.06.2018
17.	Delay in handing over possession till offer of possession	1 year 2 months and 28 days
18.	Relief sought	Delayed possession charges

3. As per clause 3 (a) of the Apartment buyer agreement, the possession was to be handed over within a period of 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 which comes out to be 11.04.2017. Clause 3(a) of the apartment buyer agreement is reproduced below:

"3 Possession

(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 the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation., 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 the possession of the apartment within a period of 36 months from the date of signing of this agreement or from the date of approval of building plans by the Town and Country Planning Department, whichever is later. It is clearly understood and agreed by the Apartment Allottee(s) that the developer shall be entitled for grace period (beyond period of 36 months) of Six (6) months.

4. The complainants vide letter dated 09.07.2018 from the respondent, received offer of possession and was requested to remit the dues and complete the documentation and formalities for successful handing over of possession. Reminder- I for the same was received vide letter dated 14.11.2018 and Reminder-II vide letter dated 12.12.2018.
5. It is submitted that the complainants through various phone calls, personal visits to the office of the respondent and email dated 05.01.2019, requested the respondent to calculate and adjust, the amount of interest on delay in handing over possession by the respondent, against the final demand raised by the respondent, but respondent paid no heed to the requests of the complainants.
6. It is submitted that the respondent has utterly failed to fulfil his obligation to deliver the possession in time and has caused huge losses to the complainant. It is submitted that respondent

has not provided the complainants with the interest on delay in handing over the possession.

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:
 1. 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 19.6.2018. Thus, the project in question is not an 'Ongoing Project' under Rule 2(1)(o) 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.

2. That upon receipt of Occupation certificate dated 19.06.2018 the respondent informed the complainants vide letter dated 20.06.2018 that project has been granted the occupation certificate and offered possession of apartment vide offer of possession letter dated 09.07.2018 wherein complainants were asked to take clear dues and take over the possession of the apartment.
3. That the complainants failed to take possession. Thereafter, the respondent vide letters dated 14.11.2018, 12.11.2018 and 12.01.2019 again requested the complainants to take possession.
4. It is submitted that the following circumstances (which were beyond the reasonable control of respondent) will comprehensively establish that no lapse can be attributed to the respondent insofar implementation of aforesaid project by the respondent is concerned.
 - After issuance of the licences bearing No 13 of 2009 dated 21.5.2009 and Licence no 43 of 2011 dated 13.5.2011 for setting up of a Group Housing Complex on land measuring approximately 12.78

acres, the Town & Country Planning Department approved the combined Zoning Plan of the complex vide letter dated 3rd of September 2011 (and the combined Zoning Plan dated 3rd of September 2011 was also approved by the Department.

- It shall not be out of place to mention that at that stage the respondent was unaware of the existence of Gas Pipeline running across the project. Even said combined Zoning Plan dated 3rd September 2011 the Town & Country planning Department failed to earmark the Gas Pipeline running through the land forming part of the complex. Based on said zoning plan the respondent prepared the building plans for the complex and subsequently applied for sanction of the building plans vide letters dated 22nd of November 2012 and 29th of January 2013. Building Plans with respect to the complex were sanctioned by the Town & Country planning Department vide memo bearing number ZP-577/JD(BS)/2013/38657 dated 4th of May 2013.
- That it is pertinent to mention that even till this stage the gas pipeline running through the complex was not earmarked by the Town & Country

planning Department in the said site plan forming part of the Building Plans approved by the Town and country Planning Department Haryana.

- That It is only when the Respondent started excavations of the site for the purpose of carrying out the construction of the complex, somewhere in the month of April/May 2013, the officers of GAIL approached the site and raised objections and apprised the Respondent with regard to existence of the Gas Pipeline running through the Complex. The Respondent made enquiries from GAIL as well as Town and Country Planning Department and explored options for possibility of shifting of the said Gas Pipeline. It was conveyed by GAIL that the shifting of Gas pipeline was not possible. It is pertinent to mention that at this stage the Respondent once again approached the Town and Country Planning Department for revision of site plan of the Complex. The Town and Country Planning Department advised the Respondent that since location of only one Tower was to be realigned, the Respondent could safely commence construction of the complex in its entirety after

shifting the location of Tower H so as to build it beyond the prohibited distance from the Gas Pipeline. The Respondent was further intimated by Town and country Planning Department Haryana, that after completing the construction of the Complex the Respondent could apply for occupation certificate and at that stage necessary modifications shall be incorporated in the competition drawings of the complex. With this assurance the Respondent commenced the construction of the complex.

- That the process of planning for changing/revising/modifying the building plans/soil testing and shifting of the location of Tower H and services/ basement entry etc. of the Complex took several months due to which the construction could not be carried. Despite this, the Respondent was able to complete the construction and applied for occupation certificate on 30th of June 2017.
- That after approaching the Town & Country Planning Department, the Department, for issuance of Occupation Certificate, contrary to the assurance

given in the beginning, directed the Respondent to get the plans revised with respect to the Complex. Thus, the Respondent first applied for revision of the building plans. That the sanction of the said revised plans was granted by Town & Country planning Department vide memo bearing number ZP-577/Vol-1/SD(BS)/2017/17366 site plan of the complex post revision of the building plans is annexed herewith as. That though the building plans with respect to the complex were revised in July 2017, considerable time was taken by Town & Country Planning Department to issue Occupation Certificate with respect to the Complex.

- That it shall not be out of place to mention that vide order 08.11.2016 (Annexure R24) Haryana State Pollution Control Board, in compliance of order dated 08.11.2016 of Hon'ble National Green Tribunal, directed all construction activity in Delhi NCR to be stopped due to rise in pollution levels. The construction activity was stalled for almost 7 to 10 days which led to demobilisation of the labour force at site due to which the construction activities

almost came to stand still for a period of almost 1 month.

5. It is submitted that the complainants have failed to take possession of the apartment till date and are liable to pay holding charges as per the buyer's agreement. The present application is nothing but an abuse of the process of law. The present application deserves to be dismissed at the very threshold. The complainants have failed to take possession of the apartment.
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. The Act is to protect the rights of the stakeholders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where

the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.

13. On consideration of the circumstances, the evidence and other record and submissions made by the complainant 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 12 of the apartment buyer agreement executed between the parties on 11.10.2013, possession of the booked unit was to be delivered within a period of 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. 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 and date of possession on calculation comes out to be 11.04.2017. Further, during the proceedings dated 29.01.2018, the counsel for the respondent placed certain papers w.r.t. the passing of the gas pipeline underneath the project site on account of which delay has ben occurred. This process took about an year and since the process of re-approval of zonal plans and building plans

was beyond their control, thus time period has been considered as zero period. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 11.10.2013 to hand over the possession within the stipulated period. However, the possession was offered vide offer of possession letter dated 09.07.2018. 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 entitled for delayed possession charges at the prevalent prescribed rate of interest i.e. 9.30% from due date of delivery of possession 11.04.2018(1 year added to the due date, i.e. 11.04.2017) till the a offer of possession i.e. 9.07.2018 as per 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. As such the complainants are entitled for delayed possession charges @9.30 % p.a. w.e.f. 11.04.2018 till offer of possession i.e. 09.07.2018 as per provisions of section 18(1) of the Real estate (Regulation and Development) act,2016. The arrears of interest accrued

so far shall be paid to the complainants within 90 days from the date of this order.

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainants which is not part of the BBA.
 - iv. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @9.30% by the promoter which is the 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.


Dr. K.K. Khandelwal
(Member)

Haryana Real Estate Regulatory Authority, Gurugram


(Samir Kumar)
Member

Date: 21.12.2020

Judgement uploaded on 29.10.2021