

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

Complaint no. : 5157 of 2019
Date of filing complaint : 08.11.2019
First date of hearing : 03.12.2019
Date of decision : 17.11.2021

1.	Shri Sandeep Gupta	Complainants
2.	Smt. Anita Gupta R/o: C -13A, First Floor, Tulip Garden, Ardee City, Sector 52, Gurugram, Haryana- 122003	
Versus		
1.	Creative Buildwell Private Limited R/o: 201/6, Kaushalya Park, Hauz Khas, New Delhi- 110016	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant in person alongwith Ms. Virdhi Sharma, proxy counsel for Shri Pradeep Kumar Bhatia (Advocate)	Complainants
Sh. Gaurav Madan (Advocate)	Respondent

ORDER
GURUGRAM

1. The present complaint 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 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.

A. Unit and project related details

2. The particulars of unit details, 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	Tulip Garden, Ardee City, C Block, sector -52, Gurugram
2.	RERA registered/not registered	Not registered
3.	Unit no.	C-13A, 1st floor (annexure-4 on page no. 25 of complaint)
4.	Size of unit	1530 sq. ft.
5.	Date of execution of buyer's agreement	20.10.2001 (annexure-4 on page no. 24 of complaint)
6.	Payment plan	Construction linked payment plan (annexure-4 on page no. 35 of complaint)
7.	Date of commencement of construction	Cannot be ascertained
8.	Due date of delivery of possession as per clause 12(a) of buyer's agreement, within years (15 months) from the date of commencement of the construction of the Unit or signing of the Agreement or whichever is later subject to force majeure	20.01.2003 (Calculated from the date of signing of agreement)

[Page no. 28 of complaint]		
9.	Total sale consideration	Rs. 14,00,000/- (annexure-4 on page no. 35 of complaint)
10.	Total amount paid by the complainants	Rs. 14,90,000/- (As alleged by the complainant)
11.	Offer of Possession (Permissive possession)	03.06.2003 (annexure-10 on page no. 46 of complaint)
12.	Occupation Certificate	02.02.2016 (annexure-12 on page no. 50 complaint)

B. Facts of the complaint

- That the respondent is a private limited company and is in the business of real estate development. The respondent has bought six residential plots bearing nos. 9A, 10A, 11A, 12A, 13A, 14A all situated in block-C, Ardee City, sector-52, Gurugram from Ardee Infrastructure Private Limited to develop/construct and sell eighteen dwelling units of independent floors thereon. On each plot three dwelling units have been constructed comprising ground floor, first floor and second floor. Thus, the project in the name of "Tulip Garden" was launched by the respondent having eighteen dwelling units of independent floors to be constructed therein. This clarifies the provisions of Act of 2016, are very well applies on this project, while completion certificate of this project has not been obtained by the respondent till date.
- That in September 2010, the complainants have applied for the allotment of first floor having super built up area of 1530 sq. ft. planned to be constructed on plot no. C - 13A situated in block-C, Ardee City, sector 52, Gurugram vide application dated 17.10.2001 and paid the booking amount of Rs. 1,50,000/-, total sale

consideration was Rs. 14,00,000/- along with applicable taxes. As per payment plan 95% of sale consideration was payable within 45 days of booking and balance 5% of sale consideration was payable on possession in following manner: -

Sl. No.	Payment Milestones	Amount (INR)
1.	At the time of booking	10%
2.	Within 45 days of booking	75%
3.	On Possession (15-18 months)	5%

5. That the floor buyer's agreement dated 20.11.2001 (hereinafter referred as the 'FBA') was executed between parties detailing the terms of sale of said unit. The complainants applied for home loan and for that purpose, no objection certificate with regard to permission to mortgage the said unit was issued by the respondent to ICICI home finance company limited on 09.11.2001. On behalf of the complainants, ICICI bank paid a sum of Rs. 11,86,430/- to the respondent as home loan disbursement.
6. That the possession of said unit was supposed to be delivered by 21.02.2003 i.e., within 15 months from the date of execution of the FBA. The respondent delayed the delivery and insisted the complainants to furnish the indemnity-cum-undertaking to get the possession of the said unit. That having no other option, on 03.06.2003, the complainants furnished the indemnity-cum-undertaking to the respondent in the format provided by it to take the possession of the said unit. The complainants paid the balance sale consideration amounting to Rs. 1,13,570/- to the respondent and it delivered the possession of the said unit to the complainants.

7. That the complainants followed up with the respondent for the registration of sale deed the said unit in their favour, but of no avail. On 22.01.2015, an intimation letter was issued by the respondent to the complainants stating that execution of sale deed of independent floor has been permitted by the concerned Govt. department under its policy dated 27.03.2009 and asked the complainants to fill the application for sale deed performa attached therein. The occupation certificate was not obtained by the respondent till that date.
8. That on 02.02.2016 the occupation certificate for the said unit was granted to the respondent by the Senior Town Planner, Gurugram. On 26.07.2016 the respondent issued a letter to the complainants stating that during the relevant time execution of sale deed was not in operation because of Haryana Govt. policy and therefore the sale deed of the said unit was not executed. In response, the complainants wrote a letter to the respondent and expressed their readiness to get the sale deed registered.
9. That on 15.07.2017, the respondent issued another letter to the complainants having same contents of its earlier communication dated 28.06.2016. In response, the complainants wrote a letter, again expressing their readiness to get the sale deed registered and shared the duly filled registration form for registration of sale deed.
10. That on 13.07.2018, the respondent issued two letters dated 13.07.2018 and 03.12.2018 to the complainants having the same contents of its earlier communication dated 28.06.2016. The respondent also issued threatening letter dated 10.12.2018 to the complainants stating that allotment of the said unit will stand cancelled without any further notice in case non-settling the

- outstanding dues. However, no outstanding dues were ever communicated to the complainants. On 16.12.2018, in response the complainants again wrote a letter to the respondent requesting again to register the sale deed of the said unit.
11. That on 20.12.2018, the respondent again issued a letter to the complainants stating that a final opportunity was being granted to settle the outstanding dues otherwise allotment of the said unit would stand cancelled. However, there were no outstanding dues communicated to the complainants till date.
12. That till date, the sale deed/registration for transfer of title of the said unit in favour of complainants is pending. The said project is not registered with The Real Estate Regulatory Authority. As per section 11(4)(f) & section 17 of the Real Estate (Regulation and Development) Act, 2016, the respondent has to execute and register the conveyance/sale deed of the said unit in favour of complainants within 3 months from the date of grant of occupation certificate. The total sale consideration has already been paid, and possession of the unit was taken over by the complainant's way back in June 2003 i.e., 16 years ago. The respondent has failed to register the sale deed of said unit in favour of the complainants on the pretext of holding charges and other charges while possession has already taken by them on 03.06.2003 after making full payment of sale consideration.

C. Relief sought by the complainants:

13. The complainants have sought following relief(s):
- Direct the respondent to execute and register the conveyance deed of the said unit in favour of the complainants.

- ii. Direct the respondent to pay interest at prescribed rate for the delay committed by it to deliver the possession of the said unit from the schedule date 21.01.2003 committed in the FBA till the date of grant of occupation certificate i.e., 02.02.2016.

D. Reply by the respondent

14. The respondent has contested the complaint on the following grounds:

- i. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this authority. The complainants have filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this authority. The present complaint is liable to be dismissed on this ground alone. The present complaint is nothing but a bundle of lies basis on the whims and fancies of the complainants and thus, deserves dismissal summarily.
- ii. That the complainants are not entitled to have any relief from this authority in terms of the Act of 2016, as the relief sought by the complainants has already been satisfied by the respondent. The complainants are seeking the relief of



execution and registration of conveyance deed, while the respondent has not left any stone unturned to call the complainants to get the sale deed registered in their favour, which is evident from the correspondence done by it not limited up-to written letters dated 15.07.2017, 13.07.2018, 03.12.2018, 10.12.2018 and 20.12.2018, emails or other means of communication.

- iii. That the respondent had already given the permissive possession to the complainants about more than one and half decade back i.e., on 03.06.2003. But after getting possession, the complainants raised unauthorised construction without intimating the respondent as well as the concerned authorities. So, on the basis of said construction, the concerned authority refused to give occupation certificate. It is pertinent to mention here that so far, the complainants miserably failed in getting registered the sale deed in their favour after clearing the outstanding amount, which is to be paid by them towards sale consideration as agreed upon by them while executing the agreement with the respondent.
- iv. That the complainants further claimed that the respondent be directed to pay the interest to the complainants, while there is no fault on the part of the respondent, thus, paying the interest to them does not arise at all.
- v. That the complainants have no locus-standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act, as well as an incorrect understanding of the terms and



conditions of the buyer's agreement, as shall be evident from the submissions made hereinabove.

- vi. That as far as the Act of 2016, is concerned, the respondent does not come in the purview of the Act of 2016, as the respondent herein has obtained the occupation certificate on 02.02.2016 from the competent authorities, which is much earlier before commencement of the Act of 2016 & the rules of 2017. Thus, the present complaint is liable to be dismissed threshold.
- vii. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainants, have approached the authority with unclean hands and has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arised in view of the case law titled as '**S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC**' in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party but also upon the authority and subsequently the same view was taken by the National Commission in case titled as '**Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012**' decided on 25.09.2013.
- viii. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of the respondent, it is

respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act of 2016. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively.

15. The respondent has also submitted written submissions which is stated beolw:

1. That on 03.06.2003, the respondent has offered the permissive possession of the unit booked by the complainants as agreed and undertake by the complainants but so far, they have miserably failed in getting registered the sale deed in their favour despite many requests made by the respondent on this behalf not limited up-to written correspondence and telephonic calls /emails.
2. That in 'Sultana Dalal Vs. Asia Group', Maharashtra Real Estate Regulatory Authority has held that that mere non-procurement of an occupancy certificate by a developer does not make the developer liable to register the real estate project under section 3 of the Real Estate (Regulation and Development) Act, 2016, thus, the respondent herein has no need to register itself as a builder, as the respondent has handed over

the dwelling unit to the complainant before commencement of this Act.

3. That this authority has no jurisdiction to entertain the present complaint as the complainants has not come to this authority with clean hands and has wilfully concealed the fact of his actual status as complainants and have presented fabricated story before the authority to unsuccessfully convince the authority to believe on his false and derogator/ baseless allegations, which is not legally tenable under the eyes of law because in case the authority pass any order in favour of complainants, the entire project shall stand hampered.

F. Jurisdiction of the authority

16. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the

present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings of the authority on the relief(s) sought by the complainants:-

(i) Direct the respondent to execute and register the conveyance deed of the said unit in favour of complainants.

17. The complainants were allotted a unit bearing no. C-13A on 1st floor in the project mentioned above. A builder buyer agreement was executed between the parties on 20.10.2001. As per the clause 12(a) of buyer agreement, the due date of possession was calculated within 15 months from the date of signing of the agreement which comes out to be 20.01.2003. The respondent offered the permissive possession to the complainants on 03.06.2003 without obtaining the occupation certificate and the same was taken by them.
18. It is observed that section 21 of builder buyer agreement dated 20.10.2001 provides execution of sale/conveyance deed in favour of allottee within reasonable time. The relevant clause of the buyer's agreement reads under:

21. *"THAT the Purchaser shall pay, as and when demanded by the Seller, the Stamp Duty, Registration Charges and all other incidental and legal expenses for execution and registration of Sale/Conveyance Deed in favour of the Purchaser, in respect of the said premises which shall be executed and got registered after receipt of the full price, other dues and the said charges and expenses from the Purchaser. The Sale/Conveyance Deed shall contain terms and conditions contained herein and such additional terms and conditions as are considered proper by the Seller. The Purchaser shall not object to any such terms. The Purchaser undertakes to execute the sale deed within thirty (30) days from the date of Seller intimating in writing the receipt of the certificate for use an*

occupation of the said building from the competent authority."

19. Also, proviso of section 17 of the Act of 2016 provides as under:

"Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate."

20. The respondent was granted occupation certificate on 02.02.2016.

Therefore, it was obligatory for it to execute conveyance deed of the allotted unit in favour of the complainants. But that was not done due to various reasons. Hence, it shall execute conveyance deed within 2 months of this order upon payment of requisite stamp duty and other charges by the complainants as per the norms of state government.

21. Both the parties have agreed that necessary co-operation will be extended to each other for execution of conveyance deed. The charges which are payable by the allottee as per allotment/BBA shall be paid by them and subject to making payment of the charges, the conveyance deed shall be executed. The promoter shall not demand any extra charge which are not part of BBA or otherwise legally payable by the allottee. No holding charges shall be payable.

(ii) Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

22. The builder buyer agreement was executed between the parties on 20.10.2001 and complainants have received permissive possession

of the flat on 03.06.2003 i.e., much before the Act of 2016 came into force. Therefore, they are not entitled for delay possession charges.

23. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not executing conveyance deed. As per the clause 12(a) of buyer agreement, the due date of possession was calculated within 15 months from the date of signing of the agreement which comes out to be 20.01.2003. The respondent offered the permissive possession to the complainants on 03.06.2003 without obtaining the occupation certificate. The respondent was granted occupation certificate on 02.02.2016. Thus, it is in contravention of the section 11(4)(f) read with proviso of section 17 of the Act. Therefore, it is obligatory on the part of respondent to execute conveyance deed of the allotted unit in favour of the complainants

H. Directions of the authority

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under section 34(f):


- i. The respondent shall execute conveyance deed of the allotted unit within 2 months of this order upon payment

of requisite stamp duty and other charges by the complainants as per the norms of state government.

- ii. The promoter shall not demand any extra charge which are not part of BBA or otherwise legally not payable by the allottees. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

25. Complaint stands disposed of.

26. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.11.2021

JUDGEMENT UPLOADED ON 16.12.2021