

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

Complaint no. : 2227 of 2019  
First date of hearing : 12.91.2019  
Date of decision : 03.03.2020

Mr. Suraj Prakash Gupta  
Address: B-303, Sarve Satyam Apartment,  
Plot no. 12, Sector 4, Dwarka,  
New Delhi-110078.

**Complainant**

Versus

M/s Sidhartha Buildhome Pvt. Ltd.  
Office: Plot no.6, 5<sup>th</sup> Floor,  
Sector 44, Gurugram-122003.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Dhruv Dutt Sharma  
Shri Prateek Gupta

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 22.05.2019 has been filed by the complainant/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 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 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	"Estella", Sector 95, Gurugram, Haryana
2.	Project area	15.743 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	RERA Registered/ not registered	<b>Not registered</b>
6.	Unit no.	908, 9 <sup>th</sup> floor, tower H [Page 31 of complaint]
7.	Unit measuring (super area)	1322 sq. ft.
8.	Date of execution of apartment buyer agreement	03.05.2012 [Page 30 of complaint]
9.	Payment plan	Construction linked payment plan [Page 59 of complaint]
10.	Total consideration as alleged by the complainant in its complaint	Rs.45,63,729/- (as per page 59 of complaint) Annexure -B
11.	Total amount paid by the complainant	Rs.45,02,722/- (as per SOA dated 21.12.2017 page 75 of complaint)

12.	Due date of delivery of possession as per <b>(Clause 12.1- 36 months plus 6 months grace period from the date of receipt of all statutory approvals)</b> <b>Note:</b> due date of possession has been calculated from the date of grant of EC i.e. 20.02.2015	20.08.2018
13.	<b>Offer of possession to the complainant</b>	<b>Not offered</b>
14.	Delay in handing over possession till date of decision i.e. 03.03.2020	1 year 6 months and 12 days
15.	Status of the project	OC not received till date
16.	Specific reliefs sought	<ul style="list-style-type: none"> <li>i. Direct the respondent to pay interest for every month of delay at prescribed rate of interest.</li> <li>ii. Direct the respondent to handover the possession of the apartment.</li> </ul>

3. As per clause 12.1 of the apartment buyer agreement dated i.e. 03.05.2012, the possession was to be handed over within a period of 36 months plus 6 months grace period from the date of receipt of all statutory approvals (20.02.2015) which comes out to be 20.08.2018. Clause 12.1 of the allotment letter is reproduced below:

***"12. Completion of construction:***

*12.1 The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete*

*construction of the said Building/ said Apartment within the period of 36 months plus grace period of 6 months, which shall be intimated to the Buyer(s) from the date of receipt of all statutory approvals, unless there shall be delay or there shall be failure due to reasons mentioned in the Clauses mentioned herein this Agreement or due to failure of Buyer(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments given In Annexure -B or as per the demands raised by the Developer from time to time or any failure on the part of the Buyer(s) to abide by any terms or conditions of this Apartment /buyer Agreement.....*

4. The complainant submitted that even after deposited a substantial amount of money, the complainant till date has not been offered possession of the said apartment. It is further submitted that the last payment was made by him on 02.12.2016 and thereafter he has made numerous calls and visits to the respondent asking them to give the possession of the apartment, but the respondent has been avoiding him on one pretext to the other.
5. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves their right to file a separate application for seeking cost of litigation from the Adjudicating Officer. Hence, this complaint for the reliefs as stated above.
6. 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.

7. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-
- i. The respondent submitted that it has been continuously developing the project in question. However, there being various instances of non-payments of the timely instalments by various allottees in the project which has affected the pace of the construction works. The complainant himself has defaulted in payment of timely instalments on more than one occasion. The complainant has not even paid the interest amount accrued on delay in making payment of instalments. The cumulative effect of delay in making payment by the allottee, especially in construction linked plan, is that the developer is burdened with extra liability to complete the construction i.e. raising the fund through other resources and as a result of which the construction could not be completed in time.
  - ii. The respondent submitted that it is clear from the photographs that most of the construction work is complete and only finishing work is left. The respondent after completing the due construction work, will hand-over the possession of the booked apartment to the complainant subject to payment of the due amount along with other charges as applicable in terms of the buyer's agreement.

8. 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.
9. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.
10. 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 12.1 of the apartment buyer agreement executed between the parties on 03.05.2012, possession of the booked unit was to be delivered within a period of 36 months plus 6 months' grace period from the date of receipt of all statutory approvals. As such the due date of delivery of possession comes out to be 20.08.2018. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated 03.05.2012 to hand over the possession

within the stipulated period. 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 complainant is entitled for delayed possession charges @10.15% p.a. w.e.f. 03.05.2012 till the date of offer of physical possession of the allotted unit after receipt of occupation certificate as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

11. Arguments heard at length. The authority is of the considered view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant. As per terms and conditions of BBA executed between the parties, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.15% per annum on the amount deposited by the complainant with the respondent from the due date of possession till the offer of physical possession of the allotted unit after receipt of occupation certificate.
12. 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. 10.15% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 20.08.2018 till the actual offer of physical possession of the allotted unit after receipt of occupation certificate.
  - ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10<sup>th</sup> of every subsequent month.
  - iii. The complainant is 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 agreement.
  - v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @10.15% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
13. Since the project is not registered, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent



**HARERA**  
**GURUGRAM**

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which will be decided separately. A copy of this order be sent to the registration branch for taking necessary action.

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

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Subhash Chander Kush)**

Member

Dated: 03.03.2020

Judgment uploaded on 02.06.2020

**HARERA**  
**GURUGRAM**