

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

Complaint no. : 1988 of 2018
First date of hearing : 14.03.2019
Date of decision : 02.05.2019

Mr. Shakun Chawla
Mrs. Shefali Grover
R/o R-601, Sispal Vihar, Block FLR, Sohna road, **Complainants**
Sector 49, gurugram

Versus

M/s SS Group Pvt. Ltd.
(formerly known as M/s North Star
Apartment Pvt. Ltd.)
Regd. Office: 77, SS House, Sector 44,
Gurugram-122003, Haryana. **Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Rajan Gupta with **Advocate for the complainants**
complainant in person
Ms. Richa Tuteja **AR on behalf of respondent**
company
Shri Aashish Chopra **Advocate for the respondent**

ORDER

1. A complaint dated 04.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. Shakun Chawla and Mrs. Shefali Grover, against the promoter M/s SS

Group Pvt. Ltd., (formerly known as M/s North star Apartment Pvt. Ltd.) on account of violation of clause 8.1 of flat buyer's agreement executed on 11.11.2011 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 11.11.2011 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"The Coralwood", Sector 84, Gurugram, Haryana.
2.	Nature of the project	Group housing complex
3.	Project area	15.275 acres
4.	Registered/not registered	Registered
5.	HRERA registration number	381 of 2017
6.	HRERA registration certificate valid up to	31.12.2019
7.	DTCP license no.	59 of 2008 dated 19.03.2008
8.	Date of execution of flat buyer's agreement	11.11.2011
9.	Date of booking	18.11.2010

10.	Flat/unit no.	1101, type D, Tower I, 11 th floor
11.	Flat measuring	1570 sq. ft.
12.	Payment plan	Construction linked payment plan
13.	Total consideration amount as per applicant ledger dated 15.11.2017	Rs. 57,61,750/- [Page 34 of complaint]
14.	Total amount paid by the complainants till date as per applicant ledger dated 15.11.2017	Rs.53,84,495/- [Page 34 of complaint]
15.	Due date of delivery of possession as per clause 8.1 of flat buyer's agreement i.e. 36 months from the date of signing of this agreement + grace period of 90 days)	11.02.2015
16.	Delay in handing over possession till 02.05.2019	4 years 2 months 21 days
17.	Penalty clause as per flat buyer's agreement	Clause 8.3 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for a period of 12 months or till the handing over of the possession, whichever is earlier.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer's agreement dated 11.11.2011 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 11.02.2015. Neither the respondent has delivered the possession of the said unit till date to the

complainants nor he has paid any compensation @ Rs.5/- per sq. ft. per month of the super area for a period of 12 months or till the handing over of the possession, whichever is earlier as per clause 8.3 of flat buyer's agreement dated 11.11.2011. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 14.03.2019, 26.03.2019 and 02.05.2019. The reply filed on behalf of the respondent has been perused.

Brief facts of the complaint

6. The complainants submitted that respondent i.e. M/s North Star Apartments Pvt. Ltd. had proposed to develop a group housing project in Sector-84, Gurugram known as "The Coralwood" in the year 2010.
7. The complainants submitted that the respondent company had spent a huge amount of money for the launch of the above project and assured the interested buyers that it will be a dream project for investors. That complainant, being a simple person, believed the promise of the respondent company and became inclined towards the project and invested all his hard-earned savings in the above project.

8. The complainants submitted that they booked a residential unit in above mentioned project and accordingly respondent company allotted one unit bearing no. I-1101, type-D, tower-1, having a super area of 1570 sq. ft. (145.86) in their above project . The sale price of the said unit was Rs. 51,99,970 and till today complainant had made a total payment of Rs. 53,84,495/- i.e. even more than sale price.
9. The complainant submitted that he even though the complainant had made first payment of Rs. 4,89,997 on 20th November 2010 and further payment of Rs. 5,12,757 in January 2011, however the respondent had entered into builder buyer's agreement with the complainant only on 11th November 2011 i.e. after expiry of almost one year from the date of first payment made to the respondent company.
10. The complainants submitted that the intention of the respondent company from the very beginning was to cheat the complainant as the above act was nothing but to illegally gain additional time for handing over possession by delaying the signing of the builder buyer agreement.
11. The complainants submitted that as per clause 8.1 of the builder buyer's agreement the respondent company assured the complainant that possession of the said unit would be

handed over to the complainant within 36 months i.e. by 10th November 2014 and in case of delay respondent will pay late possession charges.

12. The complainant submitted that they always paid instalments in time but when the complainant visited the said property, the complainant was shocked to see that the project was much delayed as promised by the respondent.
13. The complainant submitted that they already made a payment of Rs. 53,84,495/- i.e. more than the sale price but there is no work carried out at site as per the terms of the agreement.
14. The complainants submitted that they having gone through immense mental agony, stress and harassment has constantly raising the issue of huge delay with respondent officers but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay has come forth from respondent's end.
15. The complainants submitted that they also received letter from respondent company asking instalment due on account of revised super area. That the complainant vide its email dated 6/11/2018 raised objection regarding increase of said area and stated that without intimation to the complainant no such demand can be raised. That the complainant further

came to know that in actual no such area has been increased and it is only further cheating and fraud practiced by the respondent company to earn more money.

16. The complainant submitted that till today there is no parking space, club facility as promised by the respondent and lot of work is still pending on the said project.
17. The complainant submitted that due to above act and conduct and further since the respondent failed to fulfil its promise to deliver the possession by 10.11.2014 the complainants are no more interested in the project and wants refund of their money invested in the above project along with interest @ 24 % per annum from the date of payment till realization from respondent/opposite party. The respondent is also liable to compensate the complainant for the cheating and harassment done by them.

Issue to be decided

18. The issue to be decided are as follows:
 - i. Whether the complainants are entitled for refund the amount of Rs. 53,84,495/- along with interest @ 24% per annum from the date of payment till realization from respondent?

Reliefs sought

19. The complainants are seeking the following reliefs:

- i. Respondent be directed to refund the amount of Rs. 53,84,495/- along with interest @ 24% per annum from the date of payment till realization from respondent

Respondent's reply:

20. The respondent submitted that at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.

21. The respondent submitted that North Star Apartment Pvt. Ltd. has amalgamated into SS Group Pvt. Ltd., (hereinafter referred to as 'ss group' or 'respondent') through a scheme of amalgamation approved by the Hon'ble Punjab and Haryana High Court, through its orders dated September 30, 2014 and November 10, 2014, passed in company petition nos.155 of 2003 and 203 of 2013, w.e.f. March 7, 2015.

22. The respondent submitted that the complaint filed by the complainants before the Id. authority, besides being misconceived and erroneous, is untenable in the eyes of law.

The complainants have misdirected themselves in filing the

above captioned complaint before this Id. authority as the reliefs being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Id. authority.

It would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '**2016 Act**') and the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as '**2017 Haryana Rules**'), made by the Government of Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section 84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this Id. authority or the adjudicating officer. sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be. Sub section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017

Haryana Rules provides for filing of complaint with this Ld. Authority, in reference to Section 31 of 2016 Act. Sub-clause (1) *inter alia*, provides that any aggrieved person may file a complaint with the authority for any violation of the provisions of 2016 Act or the rules and regulations made thereunder, *save as those provided to be adjudicated by the adjudicating officer*, in form 'CRA'. Significantly, reference to the "authority", which is this Ld. authority in the present case and to the "adjudicating officer", is separate and distinct. "adjudicating officer" has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of section 71, whereas the "authority" has been defined under section 2(i) to mean the Real Estate Regulatory Authority, established under Sub-Section (1) of Section 20.

Apparently, under section 71, the adjudicating officer is appointed by the authority in consultation with the appropriate government for the purpose of adjudging compensation under sections 12, 14, 18 and 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to Section 72, which provides for

factors to be taken into account by the Adjudicating Officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. The domain of the adjudicating officer cannot be said to be restricted to adjudging only compensation in the matters which are covered under sections 12, 14, 18 and 19 of the 2016 Act. The inquiry, as regards the compliance with the provisions of Sections 12, 14, 18 and 19, is to be made by the adjudicating officer. This submission find support from reading of Section 71(3) which *inter alia*, provides that the adjudicating officer, while holding inquiry, shall have power to summon and enforce the attendance of any person and if on such inquiry he is satisfied that the person had failed to comply with the provisions of any of the sections specified in sub-section (1) he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Suffice it is to mention that the sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19. Thus, this Id. authority cannot assume the powers of the Id. adjudicating officer, especially keeping in view the nature of reliefs sought by the

complainants, as such, on this ground alone the complaint is liable to be rejected.

23. The respondent submitted that further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

24. The respondent submitted that complainants appear to be on misconceived and erroneous basis have misdirected themselves in stating that the increase in the super area was not intimated to the complainants. It is vide a letter dated 15.06.2013 the complainants were intimated of the said revision of the super area along with the said demand. However, responding to the said intimated the complainants had paid the demanded amount without any objection, protest or demur. Concededly, the complainants had never raised any objection to the same.

Further, the super area as defined in the buyer's agreement was tentative and was subject to change till the construction of the 'group housing complex' is complete. It provides that the super area of the premises shall be the sum

of specific area of the said premises and its non-exclusive pro-rata share of common areas in the said complex and its periphery. The common area would mean all such parts/areas in the complex, which the allottee(s) of the said premises shall use by sharing with other occupants of the said complex including corridors land passage, atrium, common toilet, lift and lift lobby, escalators, area of cooling towers, ah u rooms, security/fire control rooms, staircases, munties, lift machine rooms and water tanks. in addition, entire services area in the basement including but not limited to electric substation, transformers, d.g. set rooms, underground water and other storage tanks, ac plant room pump rooms, maintenance and services rooms, fan rooms and circulation areas etc., shall be counted towards common areas.

Thus, now after the occupation certificate had been obtained by the respondent, the complainants have made a u-turn and belatedly started raising doubts and had concealed this material aspect and is even estopped from raising the pleas,

as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.

25. The respondent submitted that they have also misdirected in claiming payment of interest much less on the rate as claimed, on the amount collected by the respondent, on account of alleged delayed offer for possession. Besides the fact that this Id. authority cannot be said to have any jurisdiction to award/grant such relief to the complainants, it is submitted that there cannot be said to be any alleged delay in offering of the possession.

It had been categorically agreed between the parties that subject to the complainants having complied with all the terms and conditions of the flat buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer proposed to handover the possession of the unit in question within a period of 36 months from the date of signing of the agreement, which period would automatically stand extended for the time taken in getting the building plan sanctioned. It had been agreed that the respondent would

also be entitled to a further grace period of 90 days after expiry of 36 months or such extended period for want of building sanction plans. Reference may be made to Clause 8.1(a) of the flat buyer's agreement.

Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure 1 to the flat buyer's agreement, the date of handing over of the possession shall be extended accordingly. Reference may be made to clause 8.1(b)(iii) of the flat buyer's agreement.

Furthermore, even in the affidavit filed by the complainants along with the endorsement form as annexure 2, the complainants had stated that they undertake to pay balance sale consideration (outstanding amount payable by the nominee/joint nominee to the company) as per buyer's agreement/ allotment letter directly to the company.

In the present case, it is a matter of record that the complainants have not fulfilled their obligation and have not even paid the instalments that had fallen due. Accordingly, no

relief for alleged delayed offer for possession can be said to be maintainable.

26. The respondent submitted that the aforementioned submission is without prejudice to the submission that from perusal of the provisions of 2016 Act and/or the 2017 Haryana Rules and conjoint reading of the same, it is evident that the 'agreement for sale' that has been referred to under the provisions of 2016 act and 2017 Haryana rules, is the 'agreement for sale', as prescribed in annexure 'a' of 2017 Haryana rules. Apparently, in terms of Section 4(1), a promoter is required to file an application to the 'authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.

27. The term 'prescribed' has been defined under Section 2(z)(i) to mean prescribed by rules made under the Act. Further, Section 4(2)(g) of 2016 Act provides that a promoter shall enclose, along with the application referred to in sub-section 1 of section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act *inter alia*, provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an

advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. sub-section 2 of section 13, *inter alia*, provides that the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said sub-section. Rule 8 of 2017 Haryana rules categorically lays down that the agreement for sale shall be as per annexure 'a'. suffice it is to mention that annexure 'a' forms part of the 2017 haryana rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

Besides the aforementioned Sections, a reference may be made to rule 5 of 2017 Haryana Rules, which *inter alia*, provides that the authority shall issue a registration certificate with a registration number in form 'REP-III' to the promoter. Clause 2(i) of Form 'REP-III' provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the government.

From the conjoint reading of the aforementioned sections/ rules, form and annexure 'a', it is evident that the

‘agreement for sale’, for the purposes of 2016 act as well as 2017 Haryana rules, is the one as laid down in annexure ‘a’, which is required to be executed *inter se* the promoter and the allottee.

It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the flat buyer’s agreement, executed much prior to coming into force of 2016 Act.

The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions.

Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainants. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this Id. authority.

28. The respondent submitted that without prejudice to the aforementioned submissions, it is submitted that even otherwise, the complainants cannot invoke the jurisdiction of this Id. authority in respect of the unit allotted to the complainants, especially when there is an arbitration clause provided in the flat buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicably failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an alternative dispute redressal forum, invoking the jurisdiction of this Id. authority, is misconceived, erroneous and misplaced.
29. The respondent submitted that the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed.

30. The respondent submitted that the complainants themselves are not entitled to be granted any relief from this ld. authority since the reciprocal obligations casted upon the complainants have not been fulfilled by them and they have failed to make due payments towards the consideration of the flat allotted to them.

31. The respondent submitted that after having applied for grant of occupation certificate in respect of the project, which had thereafter been even issued through memo dated October 17, 2018 had offered possession to the complainants. The complaint filed by the complainants, being in any case belated, is even subsequent to the date of grant of occupation certificate. No indulgence much less as claimed by the complainants is liable to be shown to them.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

32. With respect to the **first issue** raised by the complainants, the respondent has already registered the project in question with the authority vide registration no. 381 of 2017 dated 12.12.2017 and the said registration is valid till 31.12.2019 and occupation certificate is granted on 17.10.2018. At this

stage refund cannot be granted as to protect the interest of other allottees who wish to continue with the project.

33. As per clause 8.1 of flat buyer's agreement dated 11.11.2011, the possession of the flat was to be handed over within 36 months from the date of signing of this agreement plus grace period of 90 days. Accordingly, the due date of possession was 11.02.2015 and the possession has been delayed by 4 years till the date of decision. As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to pay interest to the complainant at prescribed rate i.e. 10.75% per annum for every month of delay from the due date i.e. 11.02.2015 till the handing over of possession to the complainant.

Findings of the authority

34. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating

officer if pursued by the complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

35. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
36. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration

even if the agreement between the parties had an arbitration clause.

37. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court - in **civil appeal no.23512-23513 of 2017**.

38. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has observed that in continuation of earlier proceedings dated 26.03.2019, it has been alleged by the counsel for the complainant that they have not received any actual offer of possession after the grant of occupation certificate to the respondent. Respondent is directed to send them a copy of OC through courier/registered post within a period of 15 days. However, counsel for the respondent has stated on instructions that after receipt of OC they had sent intimation of possession through email dated 22.10.2018. A copy of email may be placed on record along with test report.

39. An affidavit under section 65-B of Indian Evidence Act shall be filed by the respondent along with delivery of email within 2 weeks. Since the counsel for respondent has stated that so

far, they have not prepared and filed the declaration under Apartment Ownership Act, 1983 in DTCP office as asked by the complainant. Therefore, the same shall be submitted in this authority. A penalty of Rs.5,000/- is imposed upon the respondent which is to be deposited with the authority for non-compliance of previous order dated 26.03.2019 passed by the authority. The counsel for the complainant may get the requisite declaration from the respondent at his own end.

Directions of the authority

40. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:
- i. The respondent is directed to deliver the possession of unit within a period of one month after adjusting due payments on account of delay payments by the complainant along with prescribed interest at the rate of 10.70% per annum
 - ii. The respondent shall not charge any parking charges beyond the terms of the agreement

41. The order is pronounced.
42. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated: 02.05.2019

Judgement Uploaded on 28.05.2019



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