

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

Complaint no. : 1544 of 2021
Date of filing complaint : 15.03.2021
Date of decision : 08.08.2022

Mr. Prem Prakash Gupta R/O: - House no. 441, sector-14, Gurugram, Haryana	Complainant
Versus	
1. M/s S.S. Group Pvt. Ltd. Regd. Office at: - Ss Group, Plot No. 77, Sector-44, Gurugram-122003 2. M/s Shiva Profins Pvt. Ltd. Regd. Office at: B-4/43, 2 nd floor, Sadarjung Enclave	Respondents

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Atul Rustogi	Advocate for the complainant
Sh. Dhruv Dutt	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottees 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.N.	Particulars	Details
1.	Name of the project	"The Leaf", Sector 85, Gurugram
2.	Nature of project	Group Housing Complex
3.	Licensed area	11.9 acres
4.	DTPC License no.	81 of 2011 dated 16.09.2011 and valid up to 15.09.2024
	Name of licensee	M/s Shiva Profins Private Limited
5.	HARERA Registration no.	Registered 23 of 2019 dated 01.05.2019 and valid up to
6.	Unit no.	7A, 7 th floor, Building No. 4 [Page no. 56 of complaint]
7.	Super area	2600 Sq. Ft. (Page no. 56 of complaint)
8.	Date of allotment	10.09.2012 (Page no. 52 of complaint)



9.	Date of buyer's agreement	12.09.2013. (Page no. 55 of complaint)
12.	Possession Clause	8. Possession 8.1 Time of handing over the possession 8.1 (a) subject to terms of this clause and subject to the flat buyer(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 complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex. (emphasis supplied)
13.	Due date of possession	12.09.2016 (Calculated from the date of signing of buyer agreement) Grace period not allowed

14.	Total sale consideration	Rs. 1,46,19,000/- (Page no. 82 of complaint)
15.	Amount paid by the complainant	Rs. 42,73,809/- [As per applicant ledger dated 10.12.2020 at page no 90 of the reply]
16.	Occupation certificate	24.08.2021 (Page no. 123 of reply)
17.	Offer of possession	Not offered
18.	Cancellation letter	10.12.2020 [Page 104 of the reply]

B. Facts of the complaint

3. That the complainant booked a unit in the said project on 08.08.2012 details of which being such unit no.7A admeasuring super area 2,600 sq.ft. for the total sale consideration of Rs. 1,44,89,000/-/-and accordingly paid an amount of Rs. 42,73,809/- till date.
4. That the respondents started raising demands for payment of money on the complainant. He made the payments to the respondents under a bonafide belief that all the monies paid by him will be utilized by the respondent no.1 for the construction of the project and the completion of his dream house. The details of the demand raised by the respondent no.1 and payments made by the complainant are as below:-

S. No	Installment Name	Date of Payment	Amount Paid	Cheque No.	Bank Name	Receipt no.
1.	Booking Amount	08/08/2012	12,00,000	463280	Punjab And Sind	SSG /85 / R00 367
2.	At Time Of Allotment	18/10/2012	2,11,203	834662	Punjab And Sind	SSG /85 / R00 972
3.	On or before 45 days Of Allotment	29/10/2012	14,38,006	834689	Punjab And Sind	SSG /85 / R00 972
4.	On Commencement of Construction work	20/3/2013	14,24,600	175543	Punjab And Sind	SSG /85 / R01 341
	Total Amount Paid		42,73,809			

5. That the complainant received the letter of payment demand at the time of possession on 25.08.2017 with total amount Rs. 29,30,406/- instead of 24,80,800/- as given in the agreement. To check the actual status of the project, the complainant visited the site, on visiting the site, he became stunned and was utterly shocked when it came to his notice that the construction was not complete. The design which was shown to the complainant at the time of booking at office was not at all there. No finishing work was completed.

6. That according to the flat buyer's agreement signed on 12th September 2013 between the complainant and the respondent no.1, the assured/committed date for possession was on 10/12/2016 after encapsulating the grace period of 90 days mentioned in the clause 8 of the flat buyer Agreement.
7. That the complainant received a communication dated 7/10/2020 from the respondent no.1 intimating that it has approached SWAMIH INVESTMENT FUND-I to complete the project. That shows that the respondent(s) have misappropriated all the funds received from the innocent investors.
8. That after two months of the receipt of the abovementioned letter, the respondent no.1 sent a communication dated 10/12/20 to the complainant intimating about the cancellation of allotment of the said allotment and forfeiture of the entire amount paid by him.
9. That the delay in construction of the said project can be established from the photographs clicked by the complainant on 14/02/2021. These photographs clearly establish the delay in possession by the respondent-builder.
10. That the complainant was left with no other option but to approach this Hon'ble Authority for protection of his rights as a homebuyer to seek refund of the paidup amount.

B. Relief sought by the complainant:

The complainant has sought following relief(s):

- To direct the respondent to refund the amount of Rs. 42,73,809/- along with prescribed rate of interest.

C. Reply by the respondents



11. That the complaint filed by the complainant is liable to be dismissed as the project does not fall within the purview of RERA and there are having no privity of contract with the respondent-builders as the unit already stands cancelled on account of the non-payment of the overdue payments.
12. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the allotment/ flat buyer's agreement. It is submitted that till date, the total delay in rendering the payment towards due installments by the complainant is approx. **12,378 days** on various occasions under different installments. It is further submitted that the complainant has defaulted in making timely payments of due installments right from the inception. It is pertinent to mention here that as per the records maintained by the respondent, he has not fulfilled his obligation and has not paid the installments on time that had fallen due, despite receipt of repeated demand letters. The following payment sheet clearly shows the delay in number of days in making payments by the complainant:

<u>Event</u>	<u>Due Date</u>	<u>Due Amount</u>	<u>Payment Date</u>	<u>Taxes</u>	<u>Actual Amount Paid</u>	<u>Amount Unpaid (Including Taxes)</u>	<u>Days Delay</u>
At the time of booking	11.08.2012	1200000	23.08.2012	35969	1200000	0	12
At the time of Allotment	14.09.2012	224605	19.10.2012	6736	211203	13402	35
On or Before 45 th Day of the Allotment	29.10.2012	1424604	01.11.2012	42704	1438006	0	3
On Commencement of Construction Work	31.03.2013	1433144	21.03.2013	51244	1424,600	8544	0
On Completion of Lower Basement Slab	19.12.2015	1442012	Not Paid	60112	NIL	1450556	1889
On Completion of	01.07.201	773868	Not Paid	82918	NIL	222442	1329



Ground Floor Slab	7					4	
On Completion of 2 nd Floor Slab	01.07.2017	773868	Not Paid	82918	NIL	2998292	1329
On Completion of 5 th Floor Slab	01.07.2017	773868	Not Paid	82918	NIL	3772160	1329
On Completion of 8 th Floor Slab	01.07.2017	773868	Not Paid	82918	NIL	4546028	1329
On Completion of 10 th Floor Slab	01.07.2017	773868	Not Paid	82918	NIL	5319896	1329
On Completion of Brick Work in within the Apartment	22.08.2017	773868	Not Paid	82918	NIL	6093764	1277
On Completion of Final Floor Slab	02.02.2018	773868	Not Paid	82918	NIL	6867632	1113
On Completion of Internal Plumbing, Electricity Conduiting & Internal Plaster within the Apartment	25.12.2018	773868	Not Paid	82918	NIL	7641500	787
On Completion of External Plaster in Superstructure	13.06.2019	731094	Not Paid	40144	NIL	8372594	617
TOTAL DEMANDED AS ON 10.12.2020 WITHOUT INTEREST	---	---	---	900253	4273809	8372594	12378

13. It is submitted that the complainant has frustrated the terms and conditions of the flat buyer's agreement, which were the essence of the arrangement between the parties and therefore, he now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming refund on account of alleged delayed offer for possession.

14. That the Municipal Corporation of Gurugram vide direction dated 14.10.2019 bearing Memo No.MCG/ADMC/2019 imposed a complete ban from 11.10.2019 to 31.12.2019 on the construction activities in Gurugram. Further, Environment Pollution (Prevention and Control) Authority for NCR vide direction dated 01.11.2019 bearing EPCA-R/2019/L-53 imposed a complete ban from 01.11.2019 to 05.11.2019. Further, Hon'ble Supreme Court vide its order dated 04.11.2019 in the matter bearing W.P (C) No. 13029/1985 also banned the

construction activities in Delhi NCR till further orders keeping in mind the damage caused to the environment due to construction and demolition activities. It is pertinent to mention here that the Hon'ble Supreme Court has only on 09.12.2019 partially uplifted the ban on construction activities in Delhi NCR between 6am to 6pm. Thereafter despite facing practical issues in arranging manpower, the respondent had managed to maintain the minimum labour force constantly in the labour camps at the project site to complete the pending work at the earliest. That clearly shows bonafide intention of the respondents to complete the project on time. Even in the year 2018, vide Notification No. EPCA- R/2018/L-91 and EPCA- R/2018/L-100, periodic bans on constructions were imposed. Such bans that have been imposed from time to time in the past years, not only had enormous adverse impact on the construction of infrastructure projects. The adverse effects of banning the construction activity disrupts the arrangement of plant & machinery, supply of raw material and manpower resources as it takes a long time to reorganize the labour force once the ban is lifted. Another factor to be considered is that most of the labour force in NCR hails from Eastern UP/Bihar so during such period wherein the ban remains in effect, the labour force usually heads back to their hometowns, since it becomes difficult for them to sustain here without any source of income. It is an admitted fact, consequently, on an average the construction ban of 1 day culminates into roughly a 10 days of delay in overall construction activity. It is also not disputed that due to the outbreak of Covid 19, the entire world went into

lockdown and all the construction activities were halted and no labourers were available. Infact all the developers are still facing hardship because of acute shortage of labourers and even the HRERA, Gurugram has vide order dated 26.05.2020 declared the Covid 19 as a calamity under the Force Majeure clause and therefore there cannot be said to be any delay in delivering the possession by the respondent.

15. That there is a huge outstanding amount to be paid by the allottees, which has resulted in alleged delay in handing over of possession to the allottees. It is further submitted that due to the money crunch created by the allottee by not making timely payments and in order to meet the gap for cost of completion of the project arisen on account of non-payment/default in payment of installments by the allottee, the company approached SWAMIH INVESTMENT FUND - I (Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects) which has been formed to complete construction of stalled, RERA registered residential developments that are in the affordable housing / mid-income category, are network positive and requires last mile funding to complete construction. It has a target corpus of Rs. 12,500 crores with a greenshoe option of Rs. 12,500 crores. The SWAMIH INVESTMENT FUND - I, vide their letter dated 23.07.2020 has sanctioned an initial amount of Rs. 110 Crores to complete the project. The first trench had already been disbursed to the respondent company and the same is being infused into the project for speedy construction. As per the condition of the fund sanctioned the entire amount of the fund

shall be utilised only in completion of the project under the observation and monitoring of the agency deployed by the SWAMIH FUND in the project. The primary objective of establishment of SWAMIH FUND is to help the Home Buyers in getting their homes and is sponsored by the Department of Economic Affairs, Ministry of Finance, Government of India. If any adverse relief is allowed by this Hon'ble Court, then the basic objective of the intervention of the Government of India shall be defeated.

16. That on 10.09.2012, the complainant was allotted Unit No. 7A, 4 BHK + PR + SR having an approximate super area of 2,600sq.ft. in the building-4 of the project "The Leaf" at the basic rate of Rs. 4,700/- per sq.ft. and preferential location charges (PLC) of Rs. 225/- per sq.ft. external development charges (EDC) of Rs. 355/- per sq.ft., infrastructure development charges (IDC) of Rs. 35/- per sq.ft. to be payable as per the payment plan. It is submitted that the total sale consideration of the flat booked by the complainant was Rs. 1,46,19,000/-. However, it is submitted that the total sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which are to be paid by the complainant at the applicable stage. It is submitted that he agreed that the payment would be made as per the payment plan (Construction Linked Payment Plan) annexed with the allotment letter and the copy of same was read over to the complainant.
17. That it is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the Flat from the very inception. It is submitted that he made payments

on 08.08.2012 of Rs. 12,00,000/-, on 18.10.2012 of Rs. 2,11,203/-, on 29.10.2012 of Rs. 14,38,006/- and on 20.03.2013 of Rs. 14,24,600/-. That a demand letter dated 07.12.2015 for Rs. 14,58,655/- was issued to the complainant however, he failed to make any payment. It is submitted that another demand letter dated 08.04.2016 for Rs. 22,67,232/- was also issued to the complainant however no payment was made by him. That another demand letter dated 14.03.2017 for Rs. 41,21,174/- and Rs. 48,46,290/- was issued to the complainant, however again no payment was made by him. Then again another demand letters for Rs. 57,28,635/- ,Rs. 66,38,926. ,Rs. 79,05,636/- and Rs11,53,601/-, were issued to the complainant, however again no payment was made by him. It is submitted that the complainant has grossly failed to adhere to the payment plan and as such has severely defaulted in payment of installments qua the purchase of the said flat. It is submitted that the last payment was made by him on 20.03.2013 and after that no payment has been made by the complainant. It is submitted that under such facts and circumstances ,he is not entitled to any relief as prayed for by the complainant in the present complaint.

- 18.** That upon failure of the complainant to make the payment of outstanding installments despite several demand letters and reminders, the respondent was constrained to cancel the allotment/booking of the unit of the complainant vide Letter dated 10.12.2020 (annexed as Annexure-H with the Complaint). Thus as per clause 1.2(f) of the flat buyer's agreement; the respondent is entitled to forfeit the earnest

money, brokerage amount, taxes paid by the respondent and other amount of non-refundable nature.

19. It is submitted that status of the construction of the building in which the unit allotted to the complainant is located is complete and the respondent has already obtained the occupation certificate vide Memo No. 21036 dated 24.08.2021.
20. Copies of all the relevant do 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 and submission made by the parties.

E. Jurisdiction of the authority

21. The respondents have raised an 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.

E. I Territorial jurisdiction

22. 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.

E. II Subject-matter jurisdiction

23. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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 promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the relief sought by the complainant.

E.I Direct the respondents to refund the amount of Rs. 42,73,809/- along with prescribed rate of interest.

24. The complainant has deposited several amounts against the allotted unit and paid a sum of Rs. 42,73,809/- as per applicant ledger dated 10.12.2020 at page no 90 of the reply. It is to be noted that demands were raised against /for instalments due towards consideration of allotted unit. Rather, the demands vide letters dated 07.12.2015, 20.01.2016, 08.04.2016, 02.11.2016, 14.03.2017, 13.12.2018 were raised in respect of

outstanding payments and that led to cancellation of the unit vide letter dated 10.12.2020.

25. There is nothing on record to show that after cancellation of the allotted unit vide letter dated 10.12.2020, the respondent builder returned the remaining paid up amount to the complainant after deducting 10% of total price of the said unit as per clause 1.2 (f) of the buyer's agreement dated 12.09.2013. Even otherwise the cancellation of the allotted unit by the respondent builder is not as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately. But that was also not done. The complainant has paid 29.23% payment of the unit and due to delay in construction of the project, the complainant has not paid the outstanding amount. The counsel for the respondent submitted that demands were raised based on construction stage as per buyer's agreement and till cancellation of unit, allottee never intended to withdraw from the project and failed to pay the due instalments and which led to cancellation of the unit. The cancellation letter was issued on 10.12.2020 whereas the complaint was filed on 15.03.2021. The unit has been cancelled by the promoter as per buyer's agreement on failure to pay due instalments and the same is

held to be valid .There is no denial of the fact that project was delayed but even after coming into force the Act, 2016, the allottee never exercised the request to seek refund on failure of the promoter to give possession of the unit on the due date as per buyer's agreement. Later-on after cancellation of the unit, the allottee made a complaint to the authority for refund of amount.

26. The promoter also failed to return the amount after deducting 10% of the earnest money on cancellation of the unit. Accordingly, the respondents are directed to return the amount paid by the allottee after deducting 10% of the sale consideration i.e. Rs.1,46,19,000/- from the date of cancellation i.e. 10.12.2020 to the date of payment alongwith interest at the prescribed rate @ 9.80% p.a.


E.II Compensation

27. The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules

F. Directions of the Authority:

28. 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) of the Act of 2016:
- i) The respondent /promoters are directed to refund the amount after retaining 10% of the sale consideration i.e. Rs. 1,46,19,000/- as earnest money and return the balance amount to the allottee along with interest @9.8% from the date of cancellation i.e. 10.12.2020 till its realization.
 - ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
29. Complaint stands disposed of.
30. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.08.2022

