

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

Complaint no. :	1414 of 2018
Date of filing complaint:	23.10.2018
First date of hearing:	29.01.2019
Date of decision :	10.05.2022

Shri Neeraj Gupta and Smt. Kajal Gupta Both R/O: House No.1634, Sector 10A. Opp. Meenakshi Public School Gurugram-122001		Complainants
Versus		
1.	M/s SS Group Private Ltd. R/o: 4th floor, The Plaza, MG Road, Gurugram-122002	Respondents
2.	M/s Shiv Profins Pvt Limited R/o: B-4/43, 2nd Floor, Safdarjung Enclave New Delhi-110029	

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Abhay Jain (Advocate)	Complainants
Sh. C. K. Sharma (Advocate)	Respondents

ORDER

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 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"The Leaf", Sec 83, Gurugram
2.	Project area	11.093 acres
3.	Nature of the project	Group housing complex
4.	DTCP License	81 of 2011 dated 16.09.2011 and valid up to 15.09.2024
5.	Name of the licensee	M/s Shiva Profins Pvt. Ltd.
6.	RERA Registered/ not registered	Registered 23 of 2019 dated 01.05.2019 GGM/329/61/2019/23
7.	Unit no.	Flat no. 11D, 11th floor, T-3 [Annexure 3 at page no. 34 of the complaint]
8.	Unit measuring (super area)	1575 sq. ft. [Annexure 3 at page no. 34 of the complaint]



9.	Date of allotment	10.09.2012 [Annexure R/3 at page 45 of the reply]
10.	Date of execution of builder buyer agreement	04.10.2013 [Annexure 3 at page no. 32 of the complaint]
11.	Possession clause	8.1(a) Possession Subject to terms of this clause and subject to 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 hand over the possession of the flat within a period of thirty six (36) 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 (36) months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex."(emphasis supplied)
12.	Due date of possession	04.10.2016 Calculated from the date of signing of the agreement
13.	Total sale consideration	Rs.89,39,250/- [Annexure 3 at page no. 34 of the complaint]
14.	Total amount paid by the complainant	Rs.34,92,148/- [As per applicant ledger dated 18.09.2019 at page 70 of the reply]
15.	Payment plan	Construction linked payment plan

		[Page 53 of the complaint]
16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered

B. Brief facts of the case can be detailed as under

3. A project by the name of 'The Leaf' situated in Sector 83, Gurugram was being developed by the respondents-builders. The complainants coming to know about that project booked a residential unit in it and were allotted the unit in question on 10.09.2012 for a total sum of Rs. 89,39,250/-. A builder buyer agreement in this regard dated 04.10.2013 was executed between the parties. It is the case of the complainants that possession of the allotted unit was to be delivered to them within a period of 36 months with a grace period of 90 days by the respondents. In pursuant to execution of various documents, the complainants started depositing various payments with the respondents and paid a total sum of Rs.34,92,148/- vide different receipts upto February,2015. It is the case of complainants that the respondents started raising demands against the allotted unit without following the schedule of payment plan viz-a-viz construction plan of the project.
4. They requested the respondents a number of times to deliver possession of the allotted unit. But no response in this regard was received despite personal visits/sending of emails as well as telephonic calls. The respondents in an unfair manner siphoned off the funds meant for the project and utilised the same for their own personal benefits. Moreover, the due date for delivery of

possession of allotted unit has already expired and the complainants do not want to remain in the project and seek withdrawal of deposited amount besides interest and compensation by invoking section 18(1) of Real Estate(Regulation and Development) Act, 2016 which obligates the respondent to refund the amount received if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein. So, on these broad averments, the complainants filed this complaint seeking refund of the amount besides interest detailed above.

5. But the case of respondents, as set up in the written reply dated 28.11.2018 is that though the complainants are allottees of subject unit and paid different amounts but were not regular in paying the same. A Flat-Buyer's Agreement dated 04.10.2013 was executed between the parties and the allottees are bound by the terms and conditions embodied in the same. No doubt, there is delay in completion of said project but that is due to non-payment of due instalments by the various allottees including the complainants in time. A number of reminders in this regard were issued requesting the complainants to make payment of amount due but with no positive results. It was denied that the payments received against the project were utilised for some other project(s). Moreover, the complainants are investors and who booked the subject unit in order to earn profit and not to continue with the same. Further with the slow-down in the real estate market, the

prices have come down and which resulted in the allottees not coming forward for deposit of amount(s) due. It was denied that project is not going to be completed soon and the complainants are entitled for refund of amount in any manner on withdrawal from the project.

It was also pleaded that the complaint is not maintainable in the present form and the jurisdiction of the Authority is barred to entertain and proceed with the complaint.

C. Relief sought by the complainants:

6. The complainants have sought following relief(s):
 - i. Direct the respondents to refund full amount deposited by the complainants amounting Rs.34,92,148/- alongwith interest at the rate prescribed by the act of 2016.
 - ii. Direct the respondents to pay legal expenses of Rs.1 lakh incurred by the complainants.

D. Jurisdiction of the authority:

7. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of

Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

D. 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;

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.

E. Findings on the objections raised by the respondent:

E.1 Objection regarding default in making payments due by the complainants:

8. It is pleaded on behalf of respondents that while executing flat buyer's agreement on 04.,10.2013, the complainants agreed to pay against the subject unit in a time bound manner and as per schedule of payment (Annexure I). But except paying a sum of Rs.34,92,148/- till Feb 2015, the allottees failed to pay the remaining amount due. Though a number of reminders in this regard were issued as detailed in Annexure R-4 to Annexure R-7 but the same did not produce the desired results and rather moved for surrender of flat on 17.11.2016 vide Annexure R-8. Due to continuous default, the project could not be completed leading to delay. But again, the plea raised in this regard is devoid of merit. Clause 15 of the agreement provides for events of defaults and consequences. No doubt the complainants did not deposit any amount with the respondents after Feb 2015 despite issuance of a number of reminders but the latter also failed to invoke the provisions of clause 15 and cancel the allotment of unit by issuance of 15 days' notice. Moreover, the respondents have not placed on file any certificate from its engineering wing to show about the exact status of project in Feb 2015 when the claimants stopped making payments of the amount due. It is well settled that a person cannot be given benefit of his own wrongs. So, the plea of respondents with regard to non-payment of amount due against the subject unit after Feb. 2015 stands rejected.

E.2 Objection regarding force majeure conditions:

The respondent-promoters raised the contention that the construction of the project was delayed due to force majeure conditions such as commonwealth games held in Delhi, shortage of labour due to implementation of various social schemes by Government of India, slow pace of construction due to a dispute with the contractor, demonetisation, lockdown due to covid-19 various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 04.10.2013 and the events taking place such as holding of commonwealth games, dispute with the contractor, implementation of various schemes by central govt. etc. do not have any impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F. Entitlement of the complainants for refund:

F.1 Direct the respondents to refund full amount i.e., Rs.34,92,148/- deposited by the complainants along with interest at the rates prescribed by the Act of 2016.

9. Vide letter dated 10.09.2012(Annexure R/3), the complainants were allotted the subject unit by the respondents for a total sale consideration of Rs.89,39,250/-. A flat buyer's agreement dated 04.10.2013 was executed between the parties. The due date of possession of the subject unit was fixed as 36 months from the date of signing of agreement which comes to 04.10.2016. After signing of flat buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs.34,92,148/- up to Feb.2015 as is evident from ledger dated 18.09.2019. It is the case of complainants that since the construction of project was not as per schedule of payment, so they stopped making remaining amount due and which ultimately led to their withdrawal from the project on 03.08.2016 by sending an email (Annexure A/4), followed by reminders dated 16.08.2016, 17.10.2016, 09.11.2016, 13.05.20217, 17.08.2017, 31.08.2017,05.09.2017, 06.10.2017, 23.11.2017, 24.11.2017, 29.11.2017, 15.01.2018, 24.03.2018, 26.03.2018 and 02.05.2018 respectively.
10. Even, it has also been admitted by the respondents that they received a letter of surrender of the subject unit from the complainants on 17.11.2016. So, keeping in view the fact that the allottee-complainants wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the

date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is **04.10.2016** and there is delay of more than 2 years on the date of filing of the complaint on 26.10.2018.

11. Though the occupation certificate of the project where the unit is situated has been obtained by the respondent-promoter on 09.05.2022 after a gap of about three and half years from the date of filling of the complaint but the authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

“” The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

12. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** and followed by the Hon'ble High Court of Punjab & Haryana in case ***Ramprashtha Promoters and Developers Pvt Ltd Vs Union of India and Ors. in CWP No.6688 of 2021*** decided on 04.03.2022, and wherein it was observed as under:



25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

13. The promoters are responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoters have failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoters are liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoters to return to the complainants the amount received by them i.e., Rs. 34,92,148/- with interest at the rate of 9.40% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.2 Legal expenses:

14. The complainants are 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 complainants 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.

G. Directions of the Authority:

15. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:



- i) The respondents /promoters are directed to refund the amount i.e. Rs.34,92,148/-received by them from the complainants along with interest at the rate of 9.40% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- 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.

16. Complaint stands disposed of.
17. File be consigned to the Registry.

V.I - 3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.05.2022