

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

**Complaint no.** : 4937 of 2019  
**Date of filing complaint** : 14.11.2019  
**First date of hearing** : 15.01.2020  
**Date of decision** : 29.08.2022

1. Mrs. Kamini Misra Chaudhury W/o G Chaudhary 2. Mr. G. Chaudhury S/o Shailesh Kumar Chaudhury <b>Both R/O:</b> -D-7,7169, Vasant Kunj, New Delhi-110070.	<b>Complainants</b>
Versus	
M/s SS Group Pvt. Limited <b>Regd. Office at:</b> - SS House, Plot no.77, Sector-44, Gurugram, Haryana,122003	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Anuj Chauhan	Advocate for the complainants
Sh. CK Sharma and Dhruv Dutt	Advocates for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
	Name of the project	The Coralwood and Almeria , Sector -84, Gurugram
1	Unit no.	101, 1 <sup>st</sup> Floor, Tower-10 (BBA on page no. 21 of complaint)
2	Unit admeasuring	1750 sq. ft. (BBA on page no. 271 of complaint)
3	Date of execution of builder buyer agreement	18.10.2013 (on page no. 20 of complaint)
4	Possession clause	<b>8. Possession</b> <b>8.1: Time of handing over the</b>



		<p><b>possession</b></p> <p>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, <b>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.</b> However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. 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.</p> <p><b>(Emphasis supplied).</b></p>
5.	MOU	10.08.2017 (page no 62 of reply)

6	Due date of delivery of possession	18.10.2016 <b>(calculated from the date of signing of builder buyer agreement)</b> 10.08.2019 <b>(as per clause 5 of the MoU)</b>
7	Total sale consideration	Rs. 1,25,23,953/- (vide applicant ledger dated 29.11.2019 on page no. 33 of the reply)
8	Total amount paid by the complainants	Rs. 89,99,289/- (vide applicant ledger dated 29.11.2019 on page no. 33 of the reply)
9	Occupation Certificate	17.10.2018 (page no. 55 of complaint)
10	Offer of possession	09.08.2018 (fit outs offer of possession page no. 57 of complaint) <b>Since the offer is made without obtaining O.C. hence cannot be treated as valid offer of possession.</b> 17.11.2018 (offered after obtaining of O.C.)
11	Grace period utilization	As per the clause for possession , the developer shall be entitled to

	<p>a grace period of 90 days, after the expiry of thirty six month(36) months or such extended period (for want of building plan) for applying and obtaining the occupation certificate in respect of the Group Housing Complex. The promoter has not applied for occupation certificate within the time limit prescribed In the builder buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore , the grace period Is not allowed</p>
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**B. Facts of the complaint**

3. That the complainants booked a unit on 16.01.2013 in the project of the respondent namely, "The coralwood" located at Sector 84, Gurgaon. The complainants paid an amount of Rs 14,62,925 towards the sale price at the time of the application, in accordance to the payment schedule represented by the developer.
4. Thereafter the complainants and the respondent executed an flat buyer's agreement (hereinafter referred to as the agreement) on 18.10.2013 for purchase of the said flat for a total sale consideration of Rs. 98,10,500/-. The complainants were allotted Flat no. 101 Type D (1 floor) in tower -H, having super area of approx. 1750 sq. ft.

5. That a MOU was signed between the complainants and the respondent on 19.08.2017, which in clause 4 says that; the developer has waived the interest on delayed payments made by the complainants towards the sale consideration of the flat. That, clause 5 of the said MOU further stated that the respondent is entitled to a further grace period of 2 year to offer the possession of the flat. That, the new possession date of the said flat, as per the amended MOU was 19.08.2019.
6. That the complainants have paid a total of Rs. 89,99,289 till date towards the sale consideration of the flat which is duly received by the respondent. It pertinent to mention that complainants have duly paid the installment as per the schedule of payments, described in the Annexure 1 of the agreement, but the respondent has failed to complete the project on time and the period of delivery of flat is already over.
7. That the occupancy certificate of the project (tower H along with other towers) was issued to the respondent by DTCP, Haryana on 17.10.2018 and the respondent taking advantage of the old age and helplessness of the applicants did not offer the possession letter and kept the flat as the showcase flat for the purpose of advertisement. The respondent only offered the possession letter dated 09.08.2018 after being served the legal notice. It is pertinent to mention here that the respondent had ill intention beforehand and drafted the possession letter before actually getting the occupancy certificate.
8. That the complainants have at all times made payments against the demands of the respondent and as per payment schedule of the

agreement pertaining to has flat, therefore the fraudulent act and conduct of the respondent needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter being referred as "the act"),

**C. Relief sought by the complainants.**

9. The complainants have sought following relief:

(i) Direct the respondent to return sale consideration sum of Rs. 89,99,289/- received by it from the complainants till date along with prescribed interest.

(ii) Pass an order for payment of penalty for delay as per agreement at the rate of Rs. 5 per sq.ft. per month for the period of delay in favor of the complainants.

(iii) Award Rs. 1,00,000/- as the cost of the complaint in favour of the complainants..

**D. Reply by the respondent.**

10. That the complaint filed by the complainants is misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainants.

11. That the complainants have 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 the complainants have frustrated the terms and conditions of the flat buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainants now cannot invoke a particular clause,

and therefore, the complaint is not maintainable and should be rejected at the threshold.

12. That the complainants have failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter and flat buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the total consideration of Rs. 98,10,500/- of the flat, the amount actually paid by the complainants is Rs. 79,61,137/-. There is an outstanding amount of Rs. 41,44,015/- including interest payable by the complainants as on 01.03.2021, as per the Construction Linked Plan opted by the complainants. The complainants deliberately concealed the fact that on 05.02.2019, the complainants wrote an e-mail to the respondent that due to financial crises they are incapable to pay further installment for said unit and want to shift their unit to 2BHK.
13. The complainants are real estate investors who have made the booking with the respondent only with an intention to make profit in a short span of time. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants are now raising several untenable pleas on highly flimsy and baseless grounds.
14. That it is pertinent to mention here that the respondent, after having applied for grant of occupation certificate in respect of the Project, which had thereafter been even issued through memo dated 17.10.2018 had offered possession to the complainants vide letter dated 09.08.2018.



15. 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**

The respondent has 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**

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**

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.*

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.

**F. Findings on the relief sought by the complainants.**

**F.I Direct the respondent to return sale consideration sum of Rs. Rs. 89,99,289/-received by it from the complainants.**

16. The complainants were allotted unit no. 101, type-D, Tower-H in the project "The Coralwood" sector 84, Gurugram. The complainants entered into an agreement with the respondent on 18.10.2013 for a total sale of consideration of Rs. 1,25,23,953/- in lieu of which the complainants paid the total amount to the tune of Rs. 89,99,289/-.
17. The offer of possession of unit was made on 17.11.2018 after obtaining OC on 17.10.2018. The complaint was filed on 14.11.2019 after the demand for outstanding dues were made to the allottee to take possession. The due date of delivery of possession is 10.08.2019 which has been taken from the MoU which was signed on 10.08.2017 which was on the request of allottee due to inability of the complainants to make payment of instalments at that point of time and requested for revised schedule. The OC for the unit was obtained on 17.10.2018 and earlier offer of possession for fitouts dated 09.08.2018 is invalid but the offer dated 17.11.2018 is valid

one as it is specially mentioned that you make the due payments on offer of possession and occupation has been received for the unit.

18. The counsel for the complainants also acknowledges the email but has reservations whether the same email can be treated as offer of possession. Accordingly, no case for refund is made out as the offer of possession is made before the due date of possession. Similarly no case for delay possession charge is made out as unit has been offered before the due date of possession. Now the counsel for the complainants submits that the complainant no. 2 is 76 years old and as on now he is not in need of this unit and would like to surrender the same.
19. The authority allowed surrender of unit making 10% deduction of the total sale consideration as the same was only intimated at the time of builder buyer agreement (i.e. Rs.98,10,500/- at page No. 22 of the complaint clause 1.2 of the BBA) and brokerage charges if paid but subject to ceiling of half percent and non-refundable taxes, if any.

**F.II Pass an order for payment of penalty for delay as per agreement at the rate of rupees 5 per sq. ft. per month for the period of delay in favour of the complainants and against the respondent.**

**F.III That this Hon'ble Authority may direct the respondent to pay mental agony and harassment @Rs. 10,00,000/. to the complainants.**

20. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled

as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation

#### **G. Directions of the authority**

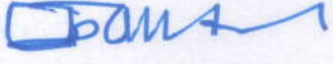
21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent-promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10% p.a. on the refundable amount, from the date of filing of the complaint which shall be treated as the date of surrender i.e. 14.11.2019.

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow

22. Complaint stands disposed of.
23. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2022

