

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

Complaint no. : 951 of 2020
Date of filing complaint : 05.03.2020
First date of hearing : 22.04.2020
Date of decision : 25.08.2022

1. Parveen Khurana 2. Mrs. Reeta Khurana R/O: -2/59, 3 rd floor, Subhash Nagar, Delhi-110027.	Complainants
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Sanjeev Sharma	Advocate for the complainants
Sh. Dhruv Dutt Sharma	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:

S.N.	Particulars	Details
1.	Name of the project	"The Leaf", Sector 85, Gurugram
2.	Nature of project	Group Housing Complex
3.	RERA Registered/ Not Registered	Registered 23 of 2019 dated 01.05.2019
4.	DTPC License no.	81 of 2011 dated 16.09.2011
	Validity upto	15.09.2024
	Name of licensee	M/S SHIVA PROFINS PVT LTD
	Licensed area	11.9 Acre
7.	Unit no.	3C, 3 rd floor, Tower-3 [page no. 19 of complaint]
8.	Unit measuring	1575 Sq. Ft. [page no. 19 of complaint]

9	Date of execution of floor agreement	26.08.2013. (page no. 19 of complaint)
11.	Possession clause	<p>8. Possession</p> <p>8.1 Time of handing over the possession</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, 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.</p>
12.	Due date of possession	26.08.2016 (calculated from the date of signing of buyer agreement) Grace period not allowed
13.	Basic Sale Price	Rs. 84,02,625/- (page no. 20 of complaint)
14.	Total amount paid by	Rs. 28,99,246/-

	the complainants	(page no. 5 of complaint)
15	Cancellation Notice	11.04.2014 (page no. 102 of reply) (But the unit was restored later as per page no. 10 of reply)
15.	Occupation certificate dated	09.05.2022
16.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainants purchased/booked a flat/ unit No. 3C, tower - 3 on third floor, admeasuring a super area of 1575 sq. ft. at the rate of Rs. 5335/- per sq. ft. amounting total to Rs. 84,02,625/- alongwith other charges like EDC, IDC etc. total amounting to Rs. 98,60,625/- on the assurance that construction shall be completed in time and possession would be handed over in time. At the time of booking Rs. 7,50,000/- paid to promoter/developer on 29.12.2012.
4. That the respondent company issued the allotment letter to complainants on 28.01.2013 in respect of the above said unit and acknowledged having received the booking amount of Rs. 7,50,000/- by this letter.
5. That the flat buyer's agreement dated 26.08.2013 is signed between both the parties i.e. M/s. S.S. Group Pvt. Limited and the complainants on terms and conditions as laid down by the company. It is must to mention here that as per the flat buyer's agreement the possession of the unit in question was to be

handed over within 36 months from the date of the said agreement with a grace period of 90 days i.e. 3 months as provided under Clause 8.1 (a) of the Agreement. That as per possession clause, the possession was to be handed over lastly by November 2016. that further while entering into the above said agreement the respondent further sold one car parking space to the complainants for a consideration of Rs. 3,50,000/-

6. That as per the buyer's agreement the possession of the unit in question was to be handed over lastly by 26th November 2016, however at that time the construction of the project was far from completion.
7. 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 respondents 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.

8. The complainants have sought following relief:
 - (i) Direct the respondent to provide declaration including that of common area u/s 19(5) of the act along with declaration on affidavit to be submitted with Director Town and Country Planning or the declaration with Real Estate Regulatory Authority at the time of registration.

(ii) Direct the respondent to refund the investment amount along with interest from the date of actual payments made to the promoters till the date of such payments are made.

(iii) The promoter be directed to recalculate the interest on equitable basis the beginning and reimburse, if charge extra than MCLR.

(iv) The parking if charged extra without providing garage and on common areas or basements that it is illegal shall be refunded back to the allottee.

(v) The promoter be directed to get the conveyance deed made in the name of associate of allottees for common areas etc and handover the complex to them in three months' time.

(vi) The VAT charged @ 1% of the total amount is against the government policy and notification issued in this regard. The promoter be asked to reimburse the amount

D. Reply by the respondent.

9. That on 28.01.2013, the complainants were allotted Unit No. 3C, 2BHK having an approximate super area of 1575 sq.ft. in the Tower-3 of the project "The Leaf" at the basic rate of Rs. 5335/- per sq.ft. and preferential location charges (PLC) of Rs. 250/- 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 complainants was Rs. 98,60,625/- exclusive of the registration charges, stamp duty charges, service tax and other charges which are to be paid by the complainants at the applicable stage

10. That the complainants have miserably and wilfully failed to make payments in time or in accordance with the terms of the allotment/ flat buyer's agreement. It is submitted that until 27.05.2022, the total delay in rendering the payment towards due installments by the complainants was approx. 19,818 days on various occasions under different installments.
11. 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 6a.m. to 6p.m. Thereafter, despite facing practical issues in arranging manpower, the respondent had managed to maintain the minimum labour force constantly in the labour camp at the project site to complete the pending work at the earliest. This clearly shows bonafide intention of the respondent to complete the project on time. Even in the year 2018, vide Notification No. EPCA- R/2018/L-91 and EPCA-

R/2018/100 periodic ban 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.

12. 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 allottees 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 allottees, the company approached SWAMIH INVESTMENT FUND - I which has been formed to complete construction of stalled, brownfield, RERA registered residential developments that are in the affordable housing / mid-income category, are net worth positive and requires last mile funding to complete construction. 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 had been infused into the project and the project is now complete and ready for possession, as the respondent company had already obtained the Occupation Certificate dated 09.05.2022 for the said tower. 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.

13. 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.

14. It is pertinent to mention here that the respondent has already completed the construction and also received the occupation certificate dated 09.05.2022 of the tower in which the unit allotted to the complainants is located. As the complainants failed to make timely payments and the respondent cannot be compelled to wait indefinitely for such a long time, hence the said unit was cancelled on pursuant to the final notice dated 06.12.2013 and cancellation Notice dated 11.04.2014.
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 objections raised by the respondent.

F.1 Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

16. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the

view that the act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the floor purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

17. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed as under-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

18. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottees to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions,

directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to provide declaration including that of common area u/s 19(5) of the act along with declaration on affidavit to be submitted with Director Town and Country Planning or the declaration with Real Estate Regulatory Authority at the time of registration.

19. It is a settled principle of law that the allottee-complainants are entitled to have necessary document and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter. However, in the instant case, the complainant-allottees wishes to withdraw from the project and thus, this relief becomes redundant.

G.II Direct the respondent to refund the investment amount along with interest from the date of actual payments made to the promoters till the date of such payments are made.

20. That on 28.01.2013, the complainants were allotted unit no. 3C, 2BHK, Tower-3 of the project of "The Leaf", having an approximately super area of 1575 sq.ft. as per the construction linked payment plan. The respondent had issued various reminders letters dated 07.10.2013, 06.12.2013, 11.04.2014, 20.01.2016 and 03.03.2017 to clear the outstanding dues. It is pertinent to mention here that the complainants only paid less than 30% out of the total consideration.

21. It has been held that the complainants were in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of allotment. Now, the issue for consideration arises as to whether the complainants are entitled for refund of the illegal deduction of amount paid by the complainants from the respondent.
22. The counsel for the respondent stated at bar that block T-3 is actually Tower 3 where the unit of the complainants are situated for which OC has been obtained on 09.05.2022 whereas the due date of possession was 26.08.2016. Although unit was cancelled by the promoter on 11.04.2014 and later on even after getting the loan sanctioned did not pay any amount, hence there will not be any effect on the cancellation.
23. The cancellation was done even before the due date of possession, accordingly promoter is directed to return the balance amount after deducting 10% of the basic sale price with interest at the rate of 10% (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 cancellation till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.III. The promoter be directed to recalculate the interest on equitable basis the beginning and reimburse, if charge extra than MCLR.

G.IV. The parking if charged extra without providing garage and on common areas or basements that it is illegal shall be refunded back to the allottee.

G.V. The promoter be directed to get the conveyance deed made in the name of associate of allottees for common areas etc and handover the complex to them in three months' time.

G.VI. The VAT charged @ 1% of the total amount is against the government policy and notification issued in this regard. The promoter be asked to reimburse the amount

24. The above four issues being interconnected are taken up together. Thus, in view of the above findings, these reliefs become reductant.

H. Directions of the authority

25. 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):

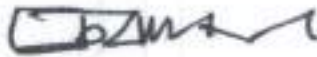
- I. The respondent is directed to refund the balance amount after deducting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance amount to the complainants. The refund should have been made on the date of cancellation i.e., 11.04.2014. Accordingly, the interest at the prescribed rate i.e., 10% is allowed on the

balance amount from the date of cancellation to date of actual refund.

- 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

26. Complaint stands disposed of.
27. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2022


HARERA
GURUGRAM