

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

**Complaint no. : 1770 of 2019**  
**Date of filing complaint : 26.04.2019**  
**First date of hearing : 10.09.2019**  
**Date of decision : 29.08.2022**

1. Arpit Ajmera 2. Swati Sharma <b>R/O: - Flat No. B-201, Nautilus , Gujrat-390007.</b>	<b>Complainants</b>
Versus	
<b>M/s SS Group private Limited</b> <b>Regd. Office at: - SS House, Plot No. 77,</b> <b>Sector-44, Gurgaon, Haryana-122003</b>	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Sidharth Sapra	Advocate for the complainant
Sh. CK Sharma and Dhruv Dutt	Advocate for the respondent

**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 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 complainant, 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 (Group Housing Complex)
	License No.	59 of 2008 dated 19.03.2008 Valid upto 18.03.2025
1	Unit no.	1101, 11 <sup>th</sup> Floor, Tower-A (BBA on page no. 27 of complaint)
2	Unit admeasuring	1890 sq. ft. (BBA on page no. 27 of complaint)
3	Date of execution of builder buyer agreement	03.11.2012 (on page no. 26 of complaint)
4	Possession clause	<b>8. Possession</b>



		<p><b>8.1: Time of handing over the 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	Due date of delivery of possession	03.11.2015 <b>(calculated from the date of</b>

		<b>signing of builder buyer agreement i.e. 03.11.2012)</b>
6	Total sale consideration	Rs. 1,06,14,772/- (vide applicant ledger dated 12.10.2020 on page no. 24 of the reply)
7	Total amount paid by the complainant	Rs. 89,25,256/- (vide applicant ledger dated 12.10.2020 on page no. 24 of the reply)
8	Occupation Certificate	17.10.2018 (page no. 25 of reply)
9	Offer of possession	13.08.2018 (fit outs offer of possession page no. 27 of reply) <b>Since the offer is made without obtaining O.C. hence cannot be treated as valid offer of possession.</b> 24.10.2018 (offered after obtaining of O.C.) As per annexure R-4, page no. 29 of reply
10	Grace period utilization	As per the clause for possession , the developer shall be entitled to 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



		<p>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 in the project of the respondent namely, "The Coralwood" located at Sector-84, Gurgaon, Haryana. An apartment buyer agreement dated November 3, 2012 was entered and executed between the complainants and the respondent. In terms of the agreement, the complainants were allotted apartment bearing No.1101, 11<sup>th</sup> floor, admeasuring super area of 1,890 sq. ft. of Type B, located in Tower No. A along with exclusive open car parking space.
4. That it is to be noted that from inception itself, the respondent had the intention to cheat and deceive the complainants and other allottees of the project, of their hard-earned money. As per the brochures issued by the respondent and as marked in Annexure C-1, there was mis representation regarding the fact that the project is directly connected to Dwarka - Gurgaon state highway. It is categorically mentioned in the said brochure that the project is "located in Sector 84 of New Gurgaon, just two kilometers away



from National Highway 8. It affords direct access to the Dwarka Gurgaon state highway. It is to be however noted that the statement made by the respondent in its brochure is incorrect and is a blatant misrepresentation of facts.

5. That from the bare perusal of the agreement, it is clear that the car parking space is being sold along with the apartment, separately and does not form part of the common areas of the project as against the sound principals of law and the approvals obtained by the respondent. the same is evident from the definition of the super area provided in annexure-ii of the agreement. As per the said definition, car parking in the basement is not included in the definition of super area of the apartment. Further, again as per the definition, the inclusion of common areas in the calculation of the super area does not give any right, title and interest to the complainants over the common areas of the project and the same shall be used by the complainants with the other allottees of the project. Thus, the natural corollary follows that since basement car parking is not included in the common areas, the respondent has separately sold the same to the complainants and thereby cheated the complainant. Further, as per the judgement of the Hon'ble Supreme Court, no builder can sell an open parking space as the same is a common parking space available to members of the project.
6. That it is imperative to mention here that the said apartment was purchased for a sale consideration of Rs. 93,86,090/- and the complainants had opted for construction linked payment plan under the agreement. The complainants paid the instalments



towards the sale consideration of the apartment as per the respondent demands, as and when raised in order to secure continuous progress of construction work and for its timely completion and timely delivery of peaceful vacant possession of the apartment. In this regard, the complainants approached HDFC Bank for home loan assistance in order to pay the instalments of the said apartment. The HDFC Bank sanctioned a home loan of Rs. 55,00,000/-. Consequently, HDFC Bank in pursuance to the demand made by the respondent, disbursed the payments to the respondent from time to time, the receipt whereof is issued by the respondent.

7. That as such a total amount of Rs. 89,25,250/- i.e. approximately 95% of the total sale consideration stands paid for and on behalf of the complainants as per the payment plan agreed under the agreement, without any default, and the receipts whereof has been duly accepted and acknowledged by the respondent on numerous occasions. However, even after specific agreement in this regard, the respondent miserably failed to fulfil the assurances made under the agreement and deliver the possession of the said apartment even after almost 52 months from the due date under the agreement thereby causing serious financial and personal loss and injury to the complainants.
8. That vide letter / email dated June 30, 2018, the respondent informed the complainants that the construction and development of the project is completed and the complainant, upon payment of balance dues can take over the possession of the apartment for "carrying out the fit outs" in the apartment.

9. Because of the deliberate defaults of the respondent, the complainants are forced to suffer severe harm and huge financial loss. complainants are continuously paying monthly interest on the loan availed from hdfc, without actual enjoyment of the home booked by them is causing immense financial hardship and mental distress to the complainant. It is relevant to mention herein that till the date of filing of the captioned complaint, the complainants have already paid a total interest amounting Rs. 8,48,328/- to SBI and 12,10,168/- to HDFC on home loan disbursals.
10. 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.**

11. The complainants have sought following relief:

- (i) Direct the respondent to refund sum of Rs. 89,25,256/- along with prescribed rate of interest.
- (ii) That this Hon'ble Authority may direct the respondent to pay litigation cost @Rs. 2,00,000/- to the complainants.
- (iii) That this Hon'ble Authority may direct the respondent to pay mental agony and harassment @Rs. 10,00,000/- to the complainants.

**D. Reply by the respondent.**

12. It is submitted that the complainants have approached this Authority for redressal of the alleged grievances with unclear



hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- That the complainants falsely stated that the timely payments were made by him as and when demanded by respondent, however, as detailed in the reply to list of dates, it is submitted that the complainants made several defaults in making timely payments as a result thereof, respondent had to issue reminder letters for payment of the outstanding amounts.
  - 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 pertinent to mention herein that till date the total number of delay in rendering the payment towards due installments is approx. 1064 days at various occasions under different installments
13. 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 13.08.2018.

14. That the respondent through email dated 24.10.2018 informed the complainants that the respondent has received the occupation certificate and offered the possession to the complainants and also asked them to make the payment of the last demand.
15. That the respondent has already completed the construction of the tower in which the unit allotted to the complainants is located and the photographs of the same are filed herewith as annexure R/5(colly). It is submitted that the said flat is complete in all regards as agreed. The respondent shall hand over the possession of the unit to the complainants upon the payment of the remaining dues by the complainants. It is pertinent to mention here that large numbers of families, i.e. about 350, have already shifted after having taken possession in the said project. It is submitted that the complainants are deliberately dragging and avoiding taking over the possession of the said unit for the reasons best known to them.
16. Copies of all the relevant documents 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**

17. 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 complainant.**

18. In the present complaint, the offer of possession of unit was made on 24.10.2018 after obtaining occupation certificate on 17.10.2018. The complaint was filed on 26.04.2019 after the demand for

outstanding dues were made to the allottee to take possession. Accordingly the allottee from the due date of delivery of possession i.e. 03.11.2015 till date of offer of possession never intended to withdraw from the project, accordingly entitled for delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,*

*.....*  
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

19. Clause 8.1 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"Clause 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. 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. .."*



20. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builders have misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
21. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date signing of flat buyer's agreement, whichever is later, the flat buyer's agreement was executed on 03.11.2012. So, the due date is calculated from the date of execution of flat buyer's agreement i.e. 03.11.2015. Further it was provided in the flat buyer's agreement that promoters would be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondent is claiming this grace period of 180 days for making offer of possession of the said unit. There is no material evidence



on record that the respondent-promoter had completed the said project within this span of 36 months and had started the process of issuing offer of possession after obtaining the occupation certificate. As a matter of fact, the promoter has not obtained the occupation certificate and offered the possession within the time limit prescribed by them in the flat buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*



23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. — For the purpose of this clause— the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the

respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

**F.II That this Hon'ble Authority may direct the respondent to pay litigation cost @Rs. 2,00,000/- to the complainants.**

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

27. 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

#### **H. 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 function entrusted to the authority under section 34(f):

- I. The respondent is directed to pay interest at the prescribed rate of 10% p.a. for every month of delay



from the due date of possession i.e. 03.11.2015 till the offer of possession i.e. 24.10.2018 plus two months i.e. 24.12.2018 to the complainant(s) as per section 19(10) of the Act.

- II. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- V. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme

Court in civil appeal no. 3864-3889/2020 dated  
14.12.2020.

29. Complaint stands disposed of.
30. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 29.08.2022



**HARERA**  
**GURUGRAM**