

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

Complaint no. : 161 of 2019
Date of filing complaint : 14.01.2019
Date of decision : 24.02.2023

Gurjeet Kalsi R/O: - E-77, Oriental Homes, Sushant Lok Phase-3, Sector - 57, Gurugram	Complainant
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana-122003	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sanjeev Sharma	Advocate for the complainant
Sh. CK Sharma and Dhruv Dutt sharma	Advocates 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 Leaf', Sector -84-85, Gurugram
1.	Unit no.	12B, 12 th Floor, Tower-2 (BBA on page no. 24 of complaint)
2.	Unit admeasuring	1620 sq. ft. (BBA on page no. 24 of complaint)
3.	Allotment letter	10.09.2012 (Page no. 22 of the complaint)
4.	Date of execution of builder buyer agreement	08.08.2013 (On page no. 23 of complaint)



5.	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. 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</p>
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		occupation certificate in respect of the Group Housing Complex. (Emphasis supplied).
6.	Due date of delivery of possession	08.08.2016 (Calculated from the date of signing of buyer agreement)
7.	Total sale consideration	Rs. 89,38,800/- (As per BBA on page no. 24 of complaint)
8.	Total amount paid by the complainant	Rs. 73,36,115/- (As pleaded by the complainant on page no. 8 of the complainant)
9.	Occupation Certificate	09.05.2022
10.	Offer of possession	13.05.2022
11	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 applying and obtaining the occupation certificate in respect of the Group Housing Complex. The promoter has not applied for an 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
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B. Facts of the complaint

3. That the complainant on 09.07.2012 booked a residential flat No unit no- 12B on 12th floor in Tower-2 in the project of the respondent namely, "The Leaf" located at Sector 84-85, Gurgaon, Haryana under the construction linked plan for a total sale consideration of Rs. 89,38,800/-.
4. That a flat buyer agreement (FBA) should have been signed by the respondent immediately after the receipt of booking amount of Rs 7,50,000/- on 09.7.2012. But in spite of repeated reminders, the same was signed by the respondent on 08.08.2013 i.e., after a delay of more than one year of receipt of booking amount without assigning any reason. The term and conditions of FBA were one sided and heavily loaded towards the respondent. The complainant raised objections but the same were not accepted by the respondent. The complainant had no option but to sign the FBA which was executed more than one year after the booking of flat that too after repeated reminders.
5. As per agreement dated 8th August 2013, the basic sales price of the apartment was Rs. 75,33,000/- along with EDC of Rs. 355/- per sq ft. amounting to Rs. 5,75,100/- and IDC of Rs. 35/- per sq. ft amounting to Rs. 56,700/-, right to exclusive one car park in the common area of Rs.

3,50,000/-, PLC of Rs. 2,43,000/- @ Rs. 150 per sqft., additional PLC of Rs. 81,000/- Rs. 50 per sq. ft. and club membership charges of Rs. 1,00,000/- total amounting to Rs. 89,38,800/-.

6. That it is pertinent to mention here that as per the buyer 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., possession of the unit in question was to be handed over lastly by August 2016. However, at that time, the construction of the project was far from completion.
7. At the time of booking the apartment, it was assured by the seller M/s SS Group Pvt. Ltd. that project shall be delivered to the buyers within stipulated time but even after 5 long years, the respondent has not offered possession of the said unit.
8. That the complainant made regular payments as demanded by the promoter and paid the interest on any delays in paying the instalment. As per the statement of accounts issued by the promoter dated 04-10-2018, Rs. 73,36,115/- were paid till 04-10-2018.
9. That the preferential location charges (for brevity PLC) of Rs 2, 43,000/- @ 150 per sq. ft. and Additional PLC of Rs. 81,000/- @ 50 per sq. ft. are illegal. PLC charges are an additional burden put upon the complainant even though there is nothing unique about the location and natural justice requires that the same be reversed.
10. That the respondent has wrongly and illegally claimed reserve car parking slot charges amounting to an exorbitant amount of Rs.

3,50,000/-. The reserve car parking charge is part of common area for which the builder cannot seek any cost from the complainant.

11. That the club membership charges amounting to Rs. 1,00,000/- were charged by way of undue influence with the respondent being in dominant position and misusing the position to coerce the complainant to pay the same. Generally, such charges are optional in nature as such luxurious amenities cannot be forced upon the buyer.
12. That the respondent has illegally demanded interest on delayed payments amounting to Rs. 17,364 - @ 18% p.a. The payment was construction linked and the respondent company was itself in default as it did not raise construction as per the schedule . Thus, the demand was unjustified taking into consideration the fact that the complainant has made all payments of installments as and when demanded and no notice of default of payment was received by him.
13. That the complainant has suffered a loss and damage in as much as he had deposited the money in the hope of getting the said unit for residential purposes. He has not only been deprived of the said unit but also the benefit of escalation of its price and the prospective return he could have got had they not invested in the project of the respondent. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.
14. That the complainant has at all times made payments against the demands of the respondent and as per payment schedule of the agreement pertaining to the 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.

C. Relief sought by the complainant.

15. The complainant has sought following relief:

(i) Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

(ii) Direct the respondent to pay litigation cost @Rs. 50,000/- to the complainant.

D. Reply by the respondent.

16. That the complainant has filed a false and frivolous complaint against the respondent for refund of the amount of Rs. 73,38,115/- paid against the booking of the Unit No. 12B, 2BHK having an approximate super area of 1620 sq.ft. in the Tower-2 of the project "The Leaf", Sector-85, Gurgaon.

17. That the complainant has not paid the installments on time. The agreement clearly states that the time period of handing over possession as proposed by the respondent, is subject to the complainant making timely payments and not being in default. In case of any default/delay in payment by the buyer(s), the date of handing over of the possession shall be extended accordingly. The complainant having not performed part of obligation himself and being in default is estopped from claiming timely delivery of possession or refund. Therefore, the complainant is not entitled for the relief sought. it is pertinent to mention herein that as on 02.09.2021, total number of delays by the complainant in rendering the payment towards due

installments is approx. 2389 days at various occasions under different installments. The following payment sheet clearly shows the number of delays in payment 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	09.07.2012	750000	12.07.2012	22481	750000		3
At the time of Allotment	14.09.2012	125114	13.10.2012	3753	125114		0
On or Before 45 th Day of the Allotment	29.10.2012	875113	18.01.2013	26233	875113		81
On Commencement of Construction Work	15.07.2013	875113	06.11.2013	26233	875113		114
On Completion of Lower Basement Slab	21.07.2014	875113	17.09.2014	26233	875113		58
On Completion of 1 st Floor Slab	31.08.2015	439298	04.09.2015	14858	439298		4
Interest	12.09.2015	70976	12.09.2015		70976		0
On Completion of 3 rd Floor Slab	20.11.2015	439298	19.11.2015	14858	439298		0
On Completion of 6 th Floor Slab	27.02.2016	439828	10.03.2016	15388	439828		12
On Completion of 10 th Floor Slab	05.07.2016	445739	22.09.2016	21296	447737		79
On Completion of 15 th Floor Slab	05.12.2016	442182	10.12.2016	17742	447737	5556	5
On Completion of Brick Work in within the Apartment	22.11.2017	475384	25.11.2017	50944	475384	5556	3
On Completion of Internal Plumbing, Electricity Conduiting & Internal Plaster within the Apartment	05.02.2018	475384	19.04.2018	50944	487192	469828	73

On Completion of Final Floor Slab	28.02.2018	475384	19.04.2018	50944	475384	17364	50
HVAT Book 31.03.2013 - 31.03.2014	09.10.2018	8913	Not Paid		NIL	8451	1059
HVAT Booked to 01.04.2014 - 31.03.2015	04.07.2019	25914	Not Paid		NIL	17463	791
On Completion of External Plaster in Superstructure	07.07.2021	446994	Not Paid	22554	NIL	464457	57
TOTAL DEMANDED AS ON 02.09.2021 WITHOUT INTEREST	---	---	---	364,461	72,23,287	4,64,457	2389

18. That it is pertinent to mention here that the respondent has already completed the construction and has also obtained the occupation certificate of the tower in which the unit allotted to the complainant is located vide Memo No. ZP-836/SD(DK)/2022/12515 dated 09.05.2022. That since the OC was obtained after the filing of the reply by the respondent, the said fact could not be incorporated in the reply. Therefore, the respondent respectfully craves leave of this Hon'ble Authority to bring the occupation certificate dated 09.05.2022 on record as the same is very necessary for the just decision of this case.
19. That as on 02.08.2022, there is an outstanding amount of Rs. 19,95,318/- excluding interest to be payable by the complainant as per the construction linked plan opted by him. It is submitted that the respondent is ready to handover the possession of the unit to the complainant after his payment of outstanding installments.
20. That the preamble of the RERA Act, 2016 and Haryana Rules 2017 are to regulate and promote the real estate sector and maintain the balance between the allottees and the promoters. Hence, passing an order for

refund will be harshest punishment to the respondent specifically when the project is completed, and OC has been received.

21. All other averments made in the complaint were denied in toto.
22. 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

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 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.

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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.1 Direct the respondent to refund to refund the entire amount paid by the complainant along with prescribed rate of interest.

23. Keeping in view the fact that the allottee complainant wishes 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 08.08.2016 and there is delay of 2 years 5 months 06 days on the date of filing of the complaint.

24. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on its failure to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

25. 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)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022, 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

26. The promoter is 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 allottee as per agreement for sale under section 11(4)(a). The promoter has 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 promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
27. The authority hereby directs the promoter to return the amount received by him i.e., Rs. Rs. 73,36,115/- with interest at the rate of 10.70% (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.II That this Hon'ble Authority may direct the respondent to pay litigation cost @Rs. 50,000/- to the complainant.

28. The complainant 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.*, 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation

G. Directions of the authority

29. 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 entire amount of Rs. 73,36,115/- paid by the complainant along with prescribed rate of interest @ 10.70% p.a. from the date of each payment till the actual date of refund of the deposited amount within 90 days from the date of this order as per





provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

- 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.
- III. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

30. Complaint stands disposed of.

31. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.02.2023