

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

Complaint no. : 171 of 2019
First date of hearing : 17.07.2019
Date of decision : 21.08.2019

Colonel Mahabir Singh Sehrawat
R/o: E-703, AWHO, Sisphal Vihar,
Gurugram-122018

Complainant

Versus

M/s SS Group Pvt. Ltd.
(formerly known as M/s North Star
Apartment Pvt. Ltd.)
Regd. Office: 77, SS House, Sector 44,
Gurugram-122003, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Complainant in person with
Col. M.S.Raghav Advocate Advocate for the complainant
Ms. Richa Tuteja AR on behalf
of respondent with S/Shri
C.K.Sharma and Dhruv
Sharma, Advocates Advocate for the respondent

ORDER

1. A complaint dated 15.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Colonel Mahabir Singh Sehrawat against the promoter M/s SS Group

Pvt. Ltd., (formerly known as M/s North star Apartment Pvt. Ltd.) on account of violation of clause 8.1 of flat buyer's agreement executed on 10.05.2012 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 10.05.2012 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under:

1.	Name and location of the project	"The Coralwood", Sector 84, Gurugram, Haryana.
2.	Nature of the project	Group housing complex
3.	Project area	15.275 acres
4.	Registered/not registered	Registered
5.	HRERA registration number	381 of 2017
6.	HRERA registration certificate valid up to	31.12.2019
7.	DTCP license no.	59 of 2008 dated 19.03.2008
8.	Allotment letter	04.05.2012



9.	Date of execution of flat buyer's agreement	10.05.2012
10.	Flat/unit no.	1203, type D, Tower H, 13 th floor
11.	Flat measuring	1750 sq. ft.
12.	Payment plan	Construction linked payment plan
13.	Total consideration amount as per applicant ledger dated 20.03.2018	Rs. 73,36,000/-
14.	Total amount paid by the complainants till date as per applicant ledger dated 20.03.2018	Rs.68,96,527/-
15.	Due date of delivery of possession as per clause 8.1 of flat buyer's agreement i.e. 36 months from the date of signing of this agreement + grace period of 90 days)	10.08.2015
16.	Delay in handing over possession till 21.08.2019	4 years 11 days
17.	Offer of possession for fits out	10.08.2018
18.	Penalty clause as per flat buyer's agreement	Clause 8.3 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for a period of 12 months or till the handing over of the possession, whichever is earlier.

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LEGAL ASSISTANT

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer's agreement

dated 10.05.2012 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 10.08.2015. Neither the respondent has delivered the possession of the said unit till date to the complainants nor he has paid any compensation @ Rs.5/- per sq. ft. per month of the super area for a period of 3 years or till the handing over of the possession, whichever is earlier as per clause 8.3 of flat buyer's agreement dated 10.05.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing 17.07.2019 and 21.08.2019. The reply filed on 11.04.2019 behalf of the respondent has been perused.

Brief facts of the complaint

6. The complainant submitted that he is a retired officer of the Indian Army (Colonel). During the year 2012 while he was staying at Secundrabad, he decided to buy a house to himself, as to peacefully enjoy his post retirement life.
7. The complainant submitted that he came to know of project 'The Coralwood' launched by M/S North Star Apartments Pvt Ltd.



Later, complainant met sales team of M/S North Star Apartments Pvt Ltd.

8. The complainant submitted that he made application for allotment of a dwelling unit in 'The Coralwood', on the printed stationary of the respondent, on 03/04/2012 along with a payment of Rs 6,80,000/-, through cheques, which were duly en-cashed by respondent. It was mentioned that complainant shall get allotment letter of the allotted unit within 60 days.

9. The complainant submitted that on 04 May 2012, complainant was provided with allotment letter by the respondent. Broad terms and conditions for allotment of a unit in "The Coralwood" condominium complex sector -84, Gurgaon, Haryana, were also attached along with this allotment letter. Details of the unit which was allotted to complainant are given below:-

Customer Code :NSPL/CW/290

Unit Allotted : Unit No - H - 1203A, Type - D

3 B/R, Super Area - 1750 Sq Ft

Tower - H

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10. The complainants submitted that On 10/05/2012, complainant was called to respondent's office to complete the formalities of agreement. At that stage, respondent, produced a pre - printed agreement duly stamped on 08/05/2012 and same was signed jointly by both parties.
11. The complainants submitted that as per para 8.1 (a) of flat buyer's agreement, time of completion of the project and handing over allotted unit to the complainant was 36 months from the date of signing of agreement with an extended time of 90 days. Converting this generic time line to specific dates in this case, possession of the allotted unit was to be handed over by 09/08/2015. However, this has not been done by the respondents, despite all payments (95.5%, as per accounts statement provided by respondent), have been made by complainant on time, as per construction linked payment schedule.
12. The complainant submitted that since respondent kept raising demand notes at various dates and times, complainant, inter - alia, felt satisfied that construction was progressing as per the listed schedule of payments. In compliances to

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various demand notes, the complainant has already paid out Rs 68,96,527/- amounting to about 95.5% of the total cost.

13. The complainant submitted that he raised an issue to respondents that, regularly asking for payments from him, despite the fact that project was delayed, without any plausible reasons, was unjustified and goes against the timelines agreed to by the respondents. When the time was nearing scheduled completion, complainant approached respondents, seeking date of possession of allotted unit. Unit No - H - 1203A, Type - D. However, no satisfactory reply was forthcoming from the respondents, nor they informed complainant of reasons for this abnormal delay.
14. The complainant submitted that After continuous follow up and repeated mails to respondents to provide possession of allotted flat, they issued a letter on 10 Aug 2018 offering possession even without completing the work on the flat. Not even that, respondent has arbitrarily enhanced cost of allotted flat which is not in line with Buyer's Agreement. Details of same are given in tabular form are mentioned below:-

Arbitrary Enhancement of Cost of Unit			
Expense Heading	Cost At The Time of Booking	Cost At The Time of Offer of Possession	Arbitrary Increase
Gross Sales Consideration	73,36,000.00	81,19,231.00	7,83,231.00
Electricity Charges	Included in basic sale price	1,29,181.00	1,29,181.00
Power Back Up Charges	Included in basic sale price	57,244.00	57,244.00
Grand Total			9,69,656.00

15. The complainant submitted that the offer letter, was perceived by the complainant and rightly so, that it was an attempt on the part of the respondent to create an artificial evidence whereby, they would claim that, "we offered possession but buyer failed to take over the possession."

16. The complainant submitted that in light of the above, it is clear that despite making all due payments on time and discharging his obligations as per the agreement, it is the respondents who have failed to handover the allotted unit ie Unit No - H - 1203A, Type - D, on time i.e. on or before 09/08/2015, to the complainant.

17. The complainant submitted that the respondents have failed to discharge their obligations as per the agreement and have not



handed over the possession of allotted unit even till date, entailing delay of 3 years, 4 months and 22 days as on 31 Dec 2018.

Issue to be decided

The issue to be decided are as follows:

- I. Whether the respondent has deliberately and intentionally, in connivance of his company officials, not handed over the possession of promised Flat within stipulated time of 36 months with grace period of 90 days amounting to conspiring to cheat the complainant?
- II. Whether respondent is required to pay an interest @ 18% to the complainant from the due date till the date of decision of this complaint, on the amount of money which complainant has already deposited with the respondents?
- III. Whether the respondent require to pay a compensation for entire delayed period of handing over possession of flat to complainant?

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Reliefs sought

The complainants are seeking the following reliefs by application for amendment of relief sought :



- i. Respondents are liable to pay interest amounting to Rs. 35,77,674.00/- to complainant from 10/05/2015 i.e. scheduled date of handing over the unit till Dec 2018.
- ii. The respondents are also liable to be penalised for loss/damage suffered by complainant, in terms of section 12 of The Real Estate (Regulation and Development) Act, 2016.
- iii. Respondent demanding additional money to the tune of Rs. 9,69,656.00 in their offer of possession be set aside, that being arbitrary, illegal and unjustified same being violative of Buyer's Agreement.
- iv. The respondent are liable to pay a compensation, as per para 8.3(a) of FBA @ Rs 5/- per square feet per month for the delayed period of 3 years and 4 months ie 40 months amounting to Rs 3,50,000/-.
- v. The authority may be pleased to grant suitable compensation to the complainant for agony and mental harassment caused to him by the respondent.
- vi. Respondents are liable to compensate complainant to the tune of Rs 1,00,000/- towards forced litigation costs.

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Respondent's reply:

18. The respondent submitted that it is submitted that North Star Apartment Pvt. Ltd. has amalgamated into SS Group Pvt. Ltd., through a scheme of amalgamation approved by the Hon'ble Punjab and Haryana High Court, through its orders dated September 30, 2014 and November 10, 2014, passed in Company Petition Nos.155 of 2003 and 203 of 2013, w.e.f. March 7, 2015.
19. The respondent submitted that it had been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the flat buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer proposed to handover the possession of the unit in question within a period of 36 months from the date of signing of the agreement, which period would automatically stand extended for the time taken in getting the building plan sanctioned. It had been agreed that the respondent would also be entitled to a further grace period of 90 days after expiry of 36 months or such extended period for want of building sanction plans.

ANAMIKA AHALAWAT
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20. The respondent submitted that it is submitted that even otherwise, the complainant cannot invoke the jurisdiction of this Ld. Authority in respect of the unit allotted to the complainant, especially when there is an arbitration clause provided in the flat buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicably failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an alternative dispute redressal forum, invoking the jurisdiction of this Ld. Authority, is misconceived, erroneous and misplaced.

21. The respondent submitted that it is stated that at the time of application for allotment, the complainant was duly informed about the payment plan as well as the event of forfeiture of the booking amount deposited by the applicant. It is further submitted that as per para 8 of broad terms and conditions of allotment the earnest money shall be 10% of the sale price.

22. The respondent submitted 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 October 17, 2018 had offered possession to the complainants.

23. The respondent submitted that however, it is submitted that the letter dated 10.08.2018 was issued by the respondent was as per the buyer's agreement and the due amount against the sale consideration mentioned in that letter was also calculated as the payment plan attached with the said buyer's agreement. It is stated that the electricity and power back charges was also charged as per agreed terms of the flat buyer's agreement by the respondent. It is further submitted that the respondent did not enhanced the cost of Unit as alleged by the complainant. The complainant is put to strict proof thereof.

24. The respondent submitted that without prejudice to the submissions made hereinabove, it is submitted that the complainant himself is not entitled to be granted any relief from this Ld. Authority since the reciprocal obligations casted upon the complainant has not been fulfilled by him and he has failed to make due payments towards the consideration of the flat allotted to them.

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25. The respondent submitted that further, it is worthwhile to note that the complainant was time and again informed about the receipt of the occupation certificate. However, the complainant deliberately avoided to take over the physical possession on one pretext and other. Admittedly, the complainant was duly offered for taking over of possession on 22.10.2018, 17.11.2018 and 27.11.2018 in addition to various telephonic calls exchanged between the parties.

**REJOINDER ON BEHALF OF THE COMPLAINANTS TO THE
REPLY:**

The complainant has filed rejoinder to the reply of the respondent denying each and every contention raised by the respondent in the reply.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

I. With respect to the **all issues** raised by the complainants, the respondent has already registered the project in question with the authority vide registration no. 381 of 2017 dated

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12.12.2017 and the said registration is valid till 31.12.2019 and occupation certificate had been received by the respondent as annexed by the complainant and admitted by the respondent.

As per clause 8.1 of flat buyer's agreement dated 10.05.2012, the possession of the flat was to be handed over within 36 months from the date of signing of this agreement plus grace period of 90 days. Accordingly, the due date of possession was 10.08.2015 and the possession has been delayed by 4 years 11 days till the date of decision. As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules *ibid*, to pay interest to the complainant at prescribed rate i.e. 10.45% per annum for every month of delay from the due date i.e. 10.08.2015 till the offer of possession to the complainant.

Findings of the authority

25. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-



compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

26. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Arguments heard.

As per clause 8.1 of the Builder Buyer Agreement dated 10.5.2012 for unit No.1203, Type D, Tower H in project "The

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Coralwood" Sector 84, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of the agreement i.e. 10.05.2012 + 90 days grace period which comes out to be 10.08.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.68,96,527/- to the respondent against a total sale consideration of Rs. 73,36,000/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 10.8.2015 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till actual date of offer of possession.

Contention raised by the respondent that fit out offer of possession has already been made to the complainant but the same is non-est in the eyes of law as only actual offer of possession on receipt of occupation certificate is valid.

DECISION AND DIRECTIONS OF THE AUTHORITY: -

27. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate

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(Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. from due date of possession i.e. 10.08.2015 till the offer of the possession on account of delay in handing over of possession to the complainants.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not a part of the flat buyer's agreement.

- v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

28. The order is pronounced.

29. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.08.2019

Judgement uploaded on 04.09.2019


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AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER

ANAMIKA AHADWAT
LEGAL ASSISTANT