

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

Complaint no. : 1419 of 2019
Date of First hearing : 05.09.2019
Date of decision : 05.09.2019

Joginder Singh
R/o:- H. No. 2095, Sector-14P, Hisar,
Haryana

Complainant

M/s North Star Apartments Pvt. Ltd.,
(now SS Group Pvt. Ltd.)
Regd. Office:- 4th Floor, The Plaza, M.G.
Road, Gurugram-122002, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Sh. Joginder Singh Complainant in person
Sh. Satish Tanwar Advocate for the complainant
Sh. C.K. Sharma along with Sh. Dhruv Sharma Advocates for respondent
Ms. Richa Tuteja AR on behalf of the respondent

ORDER

1. A complaint dated 29.03.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

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with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Joginder Singh, against the promoters M/s. North Star Apartments and others, in respect of unit described below in the project "SS Omnia" on account of non-fulfilment of obligations of the promoters under section 11(4)(a) of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 20.07.2015, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, 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 obligations on the part of the promoters/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"SS Omnia", Sector-86, Gurugram
2.	Project area	2.91875 acres
3.	Nature of real estate project	Commercial Complex
4.	Unit no.	GF-170, Ground Floor
5.	super area of the unit	338 sq. ft.
6.	DTCP License No.	113 of 2013 dated 30.12.2013
7.	RERA registered/ not registered.	Registered
8.	Registration certificate	94 of 2017 dated 28.082017

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9.	Validity of registration upto	27.08.2020
10.	Date of execution of buyer's agreement	20.07.2015
11.	Payment plan	Construction linked plan
12.	Total sale consideration As per the applicant ledger dated 29.05.2019 annexed as annexure-R/1 on pg. 19 of the reply	Rs. 46,04,406/-
13.	Total amount paid by the complainant As per the applicant ledger dated 29.05.2019 annexed as Annexure-R/1 on pg. 19 of the reply	Rs. 22,00,182/-
14.	Due date of delivery of possession as per para (a) of clause 8.1 of the buyer's agreement - 36 months+180 days grace period from the date of execution of buyer's agreement i.e. 20.07.2015	20.01.2019
15.	Delay in delivering possession till date of decision	7 months 16 days
16.	Penalty clause As per para (a) of clause 8.3 of the buyer's agreement	Rs. 7/- per sq. ft. per month of super area for the period of 12 months or till handing over the possession, whichever is earlier.

3. The details provided above have been checked on the basis of the record available in the case file provided by the complainant and respondent. A buyer's agreement dated 20.07.2015 is made available according to which the possession of the unit was to be delivered by 20.01.2019. The respondent has failed to deliver possession of the subject unit

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by the due date, thus the promoter has not fulfilled its committed liability.

4. Taking cognizance of the complaint, the authority issued notice on 30.03.2019 to the respondent for filing reply and for appearance. The case came up for hearing on 05.09.2019. The reply has been filed by the respondent on 31.05.2019 which has been perused by the authority. The complainant has filed replication to reply on 05.09.2019 wherein the complainant has re-asserted the facts of the complaint and has denied all the allegations of the respondent.

FACTS OF THE COMPLAINT

5. The complainant submitted that after going through the advertisement published by the respondent in the newspapers and as per the broacher/prospectus provided by them, he had provisionally booked a commercial space/unit of approx. 304 sq. ft. in the project "SS Omnia" of the respondent situated at sector-86, Gurugram, Haryana for a basic sale price of Rs. 11,865/- per sq. ft. and paid an amount of Rs. 3,00,000/- vide cheque dated 27-08-2013.
6. The complainant submitted that, the respondent had confirmed the unit of him as GF No. 170, measuring 338 sq. ft,

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on ground floor, in the project "SS Omnia" situated at Sector-86, Gurugram, Haryana. The complainant submitted that on 20.07.2015, buyer's agreement was executed between him and the respondent in respect of the above said unit.

7. The complainant submitted that, he was lured by the respondent to invest in the project on the pretext that delivery of the apartment will be done within 36 months. As per clause no. 8.1 of the buyer's agreement, the possession of the unit will be handed over to him within 36 months from the signing of agreement.
8. The complainant submitted that as per clause no. 8.3 of the agreement, if the developer is not able to handover the possession within 36 months + 180 days, in that case, the allottee/complainant shall be entitled to receive compensation for delay at the rate of Rs. 7/- per sq. ft. per month of the super area from the developer.
9. The complainant submitted that he visited the site where the project to be developed by the respondent and shocked to see that the construction work was not going on in progress by the respondent and from physical verification at the project site, the complainant was/is sure that the respondent will not be

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able to deliver the possession of apartment/unit in near future.

10. The complainant submitted that he has paid a substantial amount of Rs. 22,00,182/- towards the consideration of the unit/flat which amounts to the entire demand raised by the respondent till date. The respondent, on the other hand, are enjoying the money collected by the buyers by putting it for their own use.
11. The complainant submitted that the respondent had sent a demand letter dated 13.11.2018 to him, wherein the respondent have demanded a sum of Rs. 10,81,246/- including interest of Rs. 1,86,759/- of due payment, but he is not bound to pay the interest as the respondent have delayed the possession as per agreement.
12. The complainant submitted that on 21.01.2019, he sent a legal notice through his counsel "Satish Tanwar", Advocate through registered/speed post whereby the respondent were advised to compensate him but not in vain.

ISSUES TO BE DECIDED

13. The relevant issues raised by the complainant are as follows:

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- I. Whether the respondent company has violated the terms and conditions of the buyer's agreement dated 20.07.2015?
- II. Whether the respondent company had offered the actual physical possession of the unit to the complainant within time from the buyer's agreement?
- III. Whether the respondent company is liable to pay the interest to the complainant from 19.07.2018 to till date and liable to be prosecuted for the violation of RERA provisions?

RELIEF SOUGHT

14. The following relief is sought by the complainant:-

- I. Direct the respondent to pay the interest on the amount received from him in respect of unit no. GF-170, measuring 338 sq. ft., on ground floor, in the project SS Omnia situated at Sector-86, Gurugram, Haryana and compensate the complainant as per section 18 and other relevant provisions of HRERA and alongwith litigation charges Rs. 1,00,000/.

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REPLY FILED BY THE RESPONDENT

15. The respondent submitted that M/s North Star Apartment Pvt. Ltd. has amalgamated into M/s SS Group Pvt. Ltd., (hereinafter referred to as '**SS Group**' or '**respondent**') through a scheme of amalgamation approved by the Hon'ble Punjab and Haryana High Court, through its orders dated 30.09.2014 and 10.11.2014, passed in company petition nos.155 of 2003 and 203 of 2013, w.e.f. 07.03.2015.
16. The respondent submitted that under section 71, the adjudicating officer is appointed by the authority in consultation with the appropriate Government for the purpose of adjudicating compensation under sections 12, 14, 18 and 19 of the 2016 Act and for holding an inquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. The domain of the adjudicating officer cannot be said to be restricted to adjudging only compensation in the matters which are covered under sections 12, 14, 18 and 19 of the 2016 Act. It is suffice to mention that the sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19.

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Thus, this Ld. authority cannot assume the powers of the Ld. adjudicating officer, especially keeping in view the nature of reliefs sought by the complainant, as such, on this ground alone the complaint is liable to be rejected.

17. The respondent submitted that the complainant, before this Ld. authority, has given a declaration for supplementing the complaint and also amending the same, as mentioned in the declaration itself. Vide the said declaration, the complainant have shown its intention not to withdraw from the project and rather claimed purported interest for every month of alleged delay, till the handing over of the possession, by alleging that they are entitled to the same as per the proviso of section 18(1). As submitted hereinabove, the adjudication even in respect of the claim of interest and/or the complainant's entitlement thereof, under section 18, is to be carried out by the adjudicating officer. Without prejudice, to the said submission, it is submitted that filing of the declaration and/or supplementing/amending the complaint, is a procedure alien to the provisions of 2016 Act and 2017 Haryana Rules and cannot be allowed to be carried out and as such, the complainant cannot maintain the complaint in present form.

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18. The respondent submitted that the relief sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
19. The respondent submitted that it had been categorically agreed between the parties in terms of clause 8.1(a) of the buyer's agreement that subject to the complainant having complied with all the terms and conditions of the 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 buyer's agreement, which period would automatically stand extended for the time taken in getting the building plan sanctioned. It had been agreed that it would also be entitled to a further grace period of 180 days after expiry of 36 months or such extended period for obtaining the occupation certificate.
20. The respondent submitted that the aforementioned submission is without prejudice to the submission that from perusal of the provisions of 2016 Act and/or the 2017 Haryana

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Rules and conjoint reading of the same, it is evident that the 'buyer's agreement' that has been referred to under the provisions of 2016 Act and 2017 Haryana Rules, is the 'agreement for sale', as prescribed in annexure 'A' of 2017 Haryana Rules, which is required to be executed inter se the promoter and the allottee.

21. The respondent submitted that it is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the buyer's agreement, executed much prior to coming into force of 2016 Act.
22. The respondent submitted that the adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the buyer's agreement executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana Rules, including the aforementioned submissions.

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23. The respondent submitted that in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this Ld. authority.

DETERMINATION OF ISSUES

After considering the facts submitted by the complainant, reply by the respondent, rejoinder filed by the complainant and perusal of record on file, the case is proceeded and the authority decides the issues raised by the parties as under:

24. With respect to the **all issues** raised by the complainant the authority is of the view that, as per para (a) of clause 8.1 of the buyer's agreement dated 20.07.2015, the respondent was liable to handover the possession of the said unit to the complainant within a period of 36 months along with a grace period of 180 days from the date of execution of the buyer's agreement. The buyer's agreement is executed on 20.07.2015. The relevant clause is reproduced under-

"...the developer proposes to handover the possession of the premises within a period of 36 months from the date of signing of this agreement. The allottee(s) agrees and understands that the developer shall be entitled to a

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grace period of 180 days, after the expiry of 36 months for applying and obtaining the occupation certificate in respect of the commercial complex."

Accordingly, the due date of handing over the possession comes out to be 20.01.2019. But, as the respondent has not delivered the possession of the said unit in question till the date of this order. The possession has been delayed by 7 months and 16 days till day. Thus, the promoters have failed to fulfil the obligations under section 11(4)(a) of the Act *ibid*.

25. The respondent is liable to pay the delayed possession charges to the complainant for the period of delay starting from due date i.e. 20.01.2019 till the handing over of possession. The complainant is liable to get the delayed possession charges at the prescribed rate of 10.45% according to the provisions of section 18(1) proviso of the Act *ibid* to be read with rule 15 of the Rules *ibid*.

FINDINGS OF THE AUTHORITY

26. **Jurisdiction of the authority-** The project "SS Omnia" is located in Sector 86, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint.

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27. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoters 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 complainant at a later stage.

As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

28. As per the clause 8.1 of the buyer's agreement dated 20.07.2015 for unit no. GF-170, ground floor in project "SS Omnia", sector-86, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of agreement i.e. 20.07.2015 + 180 days grace period which comes out to be 20.01.2019. The respondent has failed to deliver the possession of the unit in time. Complainant has already paid Rs. 22,00,182/- to the

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respondent against a total sale consideration of Rs. 46,04,406/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of 10.45% per annum w.e.f. 20.01.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the date of actual offer of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY


29. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- i. The complainant is entitled for delayed possession charges at prescribed rate of 10.45% per annum w.e.f. 20.01.2019 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the date of actual offer of possession.
- 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 each subsequent month.

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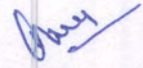
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- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period of possession.
 - iv. The promoters shall not charge any amount/charges from the complainant which is not a part of the buyer's 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.
30. Complaint stands disposed off.
31. The order is pronounced.
32. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 05.09.2019

Judgement uploaded on 19.09.2019

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