



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

Complaint no. : 5907 of 2022
Date of filing complaint : 29.08.2022
Date of decision : 04.08.2023

Pooja Gupta and Dr. Anshul Goyal R/O: - 221, 1st Floor, Deep Plaza Complex, Opp. Civil Court, Gurugram-122001, Haryana.	Complainants
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sanjeev Sharma	Advocate for the complainants
Sh. Rahul Bhardwaj	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
	Nature of the project	Group Housing Complex
	DTCP License No.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
	RERA Registered/ Not Registered	RERA registered 35 of 2021 dated 14.07.2021
1	Unit no.	10A, 10 th floor, Tower-1 (On page no. 21 of complaint)
2	Unit admeasuring	1690 sq. ft. (On page no. 21 of complaint)

4	Date of execution of builder buyer agreement	01.12.2013 (as per page no. 20 of complaint)
5	Possession clause	8. Possession 8.1: Time of handing over the possession 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. (Emphasis supplied).
6	Due date of delivery of possession	01.12.2016 (Calculated from the date of buyers agreement)
7	Total sale consideration	Rs. 93,47,850/- (As per page no. 22 of complaint)
8	Total amount paid by the complainant	Rs. 80,43,616/- (As alleged by the complainant)
9	Agreement to sell between original allottee and subsequent allottee	10.02.2022
10	Transfer letter	11.02.2022 (As per page no. 55 of reply)
11	Occupation Certificate	09.05.2022 (As per page no. 63 of reply)
12	Notice for offer of possession	12.05.2022

13.	Grace period	Grace period is not allowed
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B. Facts of the complaint

3. That the apartment vide booking dated 23-07-2012 purchased an apartment bearing unit no. 10A, 10th Floor, Tower/building T-1, admeasuring 1690 Sq. ft. along with one reserved car parking in the said project floated by the respondent and on the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised. Whereby the allottees had paid booking amount of Rs. 10,00,000/-.
4. That the 1st allottees and the respondent entered into the buyers agreement on 01-12-2013 however, the 1st allottees and as per clause 8.1 of the buyers agreement, the possession of the unit was to be handed over 36 months from the date of signing of the agreement, i.e., September 2016.
5. That the total sale consideration for the unit no. 10A, 10th Floor, Tower/Building T-1, admeasuring 1690 Sq. ft. in the project i.e. "THE LEAF" was fixed at Rs. 93,47,850/-. It is submitted that the allottees never requested the respondent for any particular location or floor and based on the inventory available with the respondent, the unit in question was allotted to the complainants and when the complainants questioned about the difference between the PLC, the response which was received by the complainants was that one PLC is Park or Corner.

6. That is submitted that the possession was to be handed over to the allottees by December 2016 but the same did not happen.
7. That the said flat was transferred in the name of Smt. Pooja Gupta & Dr. Anshul Goyal on the request of the co-owner who are friends with the transferee to fulfil their financial needs.
8. The co- allottee also submitted an affidavit that transferee shall be entitled to claim for all type of compensation for the delay in possession in the form of interest and penalties awarded by RERA. In addition, the transferees shall have the right to approach any court for compensation, possession, interest for delayed possession and penalties. An affidavit in this regard is enclosed. As per Section 44 of the Transfer of Property Act 1882 , the transferee steps into the shoes of his transferor for all rights and liabilities
9. That the buyer visited the respondent's office to know the documents needed at the time of transfer of property. The officer of respondent had submitted a list of documents to sign by both the parties in his office personally. They also told to deposit Rs. 3 Lakhs in cash as transfer fees before submitting the documents. Then, the buyer deposited the amount on the assurance that the respondent will send the receipt of it within 15 days.
10. That the transferee was shocked before submitting the documents as the transferring person demanded some more documents in the shape of affidavit that the transferee will never claim interest/compensation for delayed possession and will not

- file any case against the respondent in any court of law for compensation, interest and penalties for delay possession.
11. That when the buyer refused to sign these illegal documents, the respondent threatened that they will forfeit the transfer fees and transferee won't be able to transfer this flat in his name in case such documents are not signed. Under such circumstances, the transfer had no option but to sign these illegal documents because they had made all payment to seller and paid transfer fees as well.
 12. Thereafter, transferee received the transfer letter on 11-2-2022 without mentioning the offer of possession date. The complainant had given a notice to the respondent after waiting for 3 month to deliver the possession and offer payment of interest for delayed possession as per RERA By-Laws but no heed was given by the respondent to our request.
 13. That the respondent on 12/5/22 sent a notice offering possession of flat with a illegal demand of Rs 22,32,211/-. Through this notice served on complainants they demanded Rs. 4,53,317 for increased area. As per the buyer agreement, the area was 1690 sq feet rather than 1772 sq feet which they now offered. Complainants have sent a notice that no carpet area was increased, no details were provided for increased area and no consent was taken from allottee.
 14. In addition to this, complainant have also noticed that some illegal charges were also levied i.e. Rs 2,53,500/- for PLC , Rs 1,26,750/- for additional locations charges and Rs 3,50,000/- for car parking. The flat is neither preferential location nor separate

car parking was offered by the respondent. As per RERA by-laws, car parking means an area that should be covered by three side with gate. But no such type of premises was provided by the respondent, so demand for car parking of Rs 350000/ should be removed

C. Relief sought by the complainant.

15. The complainant has sought following relief:

- (i) Direct the respondent to pay delay possession charges along with prescribed rate of interest.

D. Reply by the respondent.

16. It is submitted that the apartment in question was allotted to one Mr. Deepak Dahiya and Mr. Sandeep Shokeen, the original allottees vide an allotment letter dated 08.09.2012, a unit bearing no. 10A, Tower No. T-1, 2 BHK having super area 1690 sq. ft. in the residential project developed by the respondent known as "**The LEAF**" situated in Sector 83, Village Sikhi, Tehsil Manesar & District Gurgaon, Haryana.
17. That, it is pertinent to mention that the allotment letter being the preliminary and the initial draft contained the basic and primary understanding between the respondent and original allottee, to be followed by the flat buyer's agreement to be executed between the parties. Thereafter, immediately on 01.12.2013, the flat buyer agreement was executed between the complainants, and the respondent which contained the final understandings between the parties stipulating all the rights and obligations.
18. That the complainants herein are subsequent allottees who have shown their interest in buying an apartment in the respondent's

project. It is submitted that the complainant approached the original allottees and expressed their interest in purchasing the said apartment. Subsequently, the original allottee, agreed to sell the said unit to the complainants herein vide an agreement to sell dated 10.02.2022. Pursuant to the execution of the agreement to sell between the original allottee and the complainant, the respondent herein endorsed the transfer of the unit from the original allottees to the complainants herein vide a transfer letter dated 11.02.2022 the unit was transferred in the name of the complainants.

19. That, the complainants were allotted the apartment bearing no. unit bearing no. 10A, Tower T-1, 10th Floor, having an approximate super area of 1690 sq. ft. of the project "The Leaf" at the basic price of Rs. 4650/- per sq. ft. and preferential location charges (PLC) of 150/-per sq. ft., external development charges (EDC) of Rs. 355 per sq. ft., and infrastructure development charges (IDC) of Rs. 35/-per sq. ft. to be payable as per the payment plan. It is submitted that the sale consideration of the flat booked by the complainants was Rs. 93,47,850/-. However, it is submitted that the sale consideration amount was inclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainant at the applicable stage. It is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the flat from the very inception, i.e., after signing the allotment letter.

20. That it is submitted that at the time of the allotment, the complainants were well aware of the stage of the construction of the project and even willingly opted to enter into an agreement with the respondent. It is submitted that the complainants are habitual defaulters who have never paid their instalments on time and were always served with the reminder notices for the same.
21. That the complainants have no cause of action to file the present complaint as the present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the FBA dated 01.12.2013 of the respondent as well as the complainants. It is further submitted that the complainants are investors and have booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainants have filed the present purported complaint to wriggle out of the agreement.
22. That it is submitted that at the time of the allotment, the complainants were well aware of the stage of the construction of the project and even willingly opted to enter into an agreement with the respondent. It is submitted that the complainants are habitual defaulters who have never paid their instalments on time and were always served with the reminder notices for the same.
23. Vide a Possession Letter dated 12.05.2022 the respondent offered the possession of the apartment to the complainants and invited them to take possession of their apartment as the

respondent had received the occupation certificate and the complainants' apartment was ready for possession. but the respondent's shock the complainants did not come forward to take the said possession for the reasons best known to them. However, it is pertinent to mention here that at the time of applying for transfer letter to the respondent the complainants were well aware of the stage of the construction of the project, but even then, they willingly opted to continue with the project. The acts of the complainants clearly exhibit their mala fide intentions and further establish the fact that the complainants are investors and booked the unit in question to yield gainful returns by selling it in the open market.

24. All other averments made in the complaint are denied in toto.
25. 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 submissions 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 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 complainant at a later stage.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delay possession charges along with prescribed rate of interest.

26. The complainant submits that they are seeking delayed possession charges and it should be from the due date of original allottees whereas the complainants became subsequent allottees on 10.02.2022. They have placed on record an

undertaking given by the original allottees alongwith the sale agreement stating that the original allottees (transferee) are entitled to claim for all type of compensation.

27. The respondent submits that the complainants had purchased the property from the original allottees knowing well that the project is delayed. Further draws attention of the authority towards clause 13 page 61 which is an affidavit of subsequent allottee which states that " I confirm that M/s SS Group Pvt. Ltd. Has settled all claims of the said previous 'Mrs. Aafrin Dahiya w/o Mr. Deepak Dahiya and Mrs. Kamala Devi W/o Mr. Azad Singh both residents of AP-35, Block-D, Pitam Pura, Delhi - 110088 for any loss, compensation or interest for delay in possession of the said unit till date and I undertake not to raise any claim for compensation or interest on account of delay in possession occurred till date". Further draws attention of the authority towards the case titled as Sourabh Sharma Versus Spaze Tower Pvt. Ltd CR No.3576/2021 (which is proceedings of the authority dated 14.10.2021 in this captioned case).
28. The authority is of view that the complaints step into the shoes on 10.02.2022 after due date of possession. So, the complainant is entitled for the delay possession charges from 10/02/2022 till the offer of possession along with prescribed rate of interest.
29. The complainant intends to continue with the project and is seeking 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."

30. Clause 8 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"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

31. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such

conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling 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.

32. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit
33. **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.

34. 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.
35. 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., 04.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
36. The definition of term 'interest' as defined under section 2(z) 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;"

37. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

H. Directions of the authority

38. 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 respondents are directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the date when complainant became subsequent allottee i.e., 10.02.2022 (inadvertently mentioned as from due date of possession in proceeding of day dated

04.08.2023) till offer of possession i.e., 12.05.2022 till plus two months i.e., 12.07.2022 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 rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- IV. The respondents are also directed not to charge anything which is not part of buyer's agreement.

39. Complaint stands disposed of.

40. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.08.2023