

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

Complaint No. : 580 of 2019
Date of First Hearing: 29.08.2019
Date of Decision : 29.08.2019

1.Mr. P.K. Sharma
2.Mrs. Sandhya Sharma
Both R/o: H. No. 1482-P, Sector -15, Part 2, **Complainants**
Gurugram - 122001, Haryana

Versus

1.M/s SS Group Private Limited
Regd. Office: 77, SS House, Sector-44, **Respondent**
Gurugram, Haryana

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush **Member**
Member

APPEARANCE:

Shri Abhay Jain
Mr. P.K. Sharma
Ms. Richa Tuteja
Shri C.K. Sharma along with
Shri Dhruv Sharma

Advocate for the complainants
Complainant no. 2 in person
Authorised representative on
behalf of the respondent
Advocates for the respondent

ORDER

1. A complaint dated 28.02.2019 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 complainants Mr. P.K. Sharma and Mrs. Sandhya Sharma, against the promoter M/s SS Group Private Limited., on account of violation of clause 8.1(a) of flat buyer's agreement executed on 09.11.2011, in respect of flat described as below for not handing over the 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 09.11.2011 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/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	"The Coralwood", Sector-84, Gurugram
2.	Project area	15.275 acres
3.	Offer of possession for fit outs	11.08.2018 (Annexure 2) pg. 59



4.	Occupation certificate granted on	17.10.2018 (no document annexed but alleged by respondent at page 9 of reply)
5.	Flat no.	301, type F, Tower-J, 3 rd floor
6.	Registered/ un registered	Registered
7.	RERA Registration no.	381 of 2017
8.	Revised Registration date	31.12.2019
9.	DTCP No.	59 of 2008 dated 19.03.2008
10.	Nature of real estate project	Group housing complex
11.	Unit/Flat area	1320 sq. ft.
12.	Date of flat buyer agreement	09.11.2011
13.	Total consideration amount as per applicant ledger on page 64 of the complaint	Rs.44,59,575/-
14.	Total amount paid by the complainant as per applicant ledger on page 64 of the complaint	Rs. 43,15,711/-
15.	Due date of delivery of possession as per clause 8.1(a) of flat buyer agreement	09.02.2015 Clause 8.1(a)- 36 months+ 90 days grace period from the date of execution of the agreement.



16.	Delay for number of months/ years till 29.08.2019	4 years 6 months and 21 days
17.	Penalty clause as per flat buyer agreement dated 09.11.2011	Clause 8.3(a) of flat buyer 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.

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A flat buyer's agreement dated 09.11.2011 is available on record for the aforementioned flat according to which the possession of the aforesaid unit was to be delivered on 09.02.2015. The promoter has neither given possession as per the terms of the flat buyer's agreement nor has paid any compensation i.e. @ Rs. 5/- per sq. ft. per month for the period of delay as per the said agreement thereby failing to fulfil his committed liability.



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 on 29.08.2019. The reply has been filed by the respondent on 27.05.2019 and the same has been perused.

Facts of the complaint:

Briefly stated facts relevant for the disposal of the present complaint as per the complainant's version are as follows -

- i. The grievances of the complainants relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent, SS Group Private Limited in regard to the flat no 301, type F, tower J, 3rd floor, measuring 1320 square feet of super area, bought by the complainants paying their hard earned money, in the project called "The Coralwood", spread over the land measuring 15.275 acres situated in Sector 84, Village Sihi, District Gurugram, Haryana.
- ii. The respondent possesses the land measuring 15.275 acres situated at Sector 84, Village Sihi, District Gurugram and the Director, Town and Country Planning, Chandigarh has granted license bearing no. 59 of 2008 granted



permission. The respondent also obtained an approval of zonal plan vide memo no. 8545 dated 28.06.2011 for setting up a group housing complex to be known as "The Coralwood".

- iii. On the basis of the licence and approved zonal plan, the respondent has collected a huge amount, almost all payable amount of the flat from gullible and naïve buyers including the complainants from 2011 to 2017 and promised the complainants to handover the possession of their flat by 09.02.2015 as per the flat buyer's agreement dated 09.11.2011.
- iv. Even after a delay of 4 years, the respondent is neither offering a legitimate possession of the flat to the complainants, nor is paying any interest on his default to the complainants.

6. Issues to be decided:

The relevant issues for the disposal of the complaint are as follow:

- I. Whether the respondent has failed to deliver the possession of the subject flat within the stipulated time as

- promised and also failed to pay the interest on paid amount for the delay in offering possession?
- II. Whether the respondent has unjustly enriched himself by taking more than 100% of the payable amount from the complainant and thereafter utilised the said amount on said project?
- III. Whether the complainant have suffered financial losses due to deficiencies on service on the part of respondent?

Relief sought:

7. The complainants are seeking the following relief:
1. Direct the respondent to complete the construction of the flat along with common area facilities like club, car parking slot, parks, etc. immediately and handover the legal and rightful possession of the flat to the complainants.
 2. Direct the respondent to revoke/waive-off/cancel/withdraw the amount of Rs.1,44,819/- imposed by the respondent illegally, unlawfully and fraudulently such as amount of electric connection

charges and power back-up charges on the flat of the complainants.

3. Direct the respondent to pay interest for every month of delay in offering the possession of the flat since 09.02.2015 to the complainants, on the amount taken from the complainants for the sale consideration amount for the aforesaid flat with interest at the prescribed rate as per the Act, 2016 till the respondent hands over the legal and rightful possession of the flat.

Respondent's reply:

8. The respondent 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 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.
9. The respondent submitted that the complaint filed by the complainants before the ld. authority, besides being misconceived and erroneous, is untenable in the eyes of law.

The complainants have misdirected themselves in filing the above captioned complaint before this Id. authority as the reliefs being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Id. authority.

10. 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 adjudging compensation under sections 12, 14, 18 and 19 of the 2016 Act and for holding an enquiry 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. The inquiry, as regards the compliance with the provisions of sections 12, 14, 18 and 19, is to be made by the adjudicating officer. This submission find support from



reading of section 71(3) which *inter alia*, provides that the adjudicating officer, while holding inquiry, shall have power to summon and enforce the attendance of any person and if on such inquiry he is satisfied that the person had failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Suffice it is to mention that the sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19. Thus, this ld. authority cannot assume the powers of the ld. adjudicating officer, especially keeping in view the nature of reliefs sought by the complainants, as such, on this ground alone the complaint is liable to be rejected.

11. The complainants have also misdirected in claiming payment of interest much less on the rate as claimed, on the amount collected by the respondent, on account of alleged delayed offer for possession. Besides the fact that this ld. authority cannot be said to have any jurisdiction to award/grant such

relief to the complainants, it is submitted that there cannot be said to be any alleged delay in offering of the possession.

12. The respondent submitted that it had been categorically agreed between the parties that subject to the complainants 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. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure 1 to the flat buyer's agreement, the date of handing over of the possession shall be extended accordingly.

13. 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 Rules and conjoint reading of the same, it is evident that the 'agreement for sale' 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.
14. 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 complainants. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the flat buyer's agreement, executed much prior to coming into force of 2016 Act.
15. The respondent submitted that the complainants cannot invoke the jurisdiction of this Id. Authority in respect of the unit allotted to the complainants,, 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 Id. authority, is misconceived, erroneous and misplaced.

16. The respondent submitted that the complainants themselves are not entitled to be granted any relief from this Id. authority since the reciprocal obligations casted upon the complainants have not been fulfilled by them and they have failed to make do payments towards the consideration of the flat allotted to them.
17. 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 17.10.2018 had offered possession to the complainants.



The complaint filed by the complainants, being in any case belated, is even subsequent to the date of grant of occupation certificate.

Determination of issues

18. With respect to the **issues** raised by the complainants, as per clause 8.1 of flat buyer's agreement dated 09.11.2011, the possession of the flat was to be handed over within 36 months from the date of signing of this agreement i.e. 09.11.2011 plus grace period of 90 days. The grace period of 90 days has been allowed to the respondent due to exigencies caused beyond the control of the respondent. The relevant clause is reproduced as under:

"8.1 Time of handing over the possession

Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and condition of this Agreement and not being in default under any if the provisions of this Agreement and complied with all the provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to handover the the possession of the Flat within a period of thirty six (36) months from the date of signing of this Agreement. However this period will be 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 (36) months or such extended period (for want of building sanctioned plans), for applying and obtaining the Occupation Certificate in respect of the group housing complex."

19. Accordingly, the due date of possession was 09.02.2015 and the possession has been delayed by 4 years 6 months and 21 days till the date of decision, thereby violating the aforesaid clause of the agreement dated 09.11.2011. As the respondent has failed to fulfil its 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 complainants at prescribed rate i.e. 10.45% per annum for every month of delay from the due date i.e. 09.02.2015 till the offer of possession to the complainants.

Findings of the authority:

20. **Jurisdiction of the authority:** "The Coralwood" is situated in sector-84, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. 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 Arun Kumar Gupta, 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.

21. The authority has complete jurisdiction to decide the complaint regarding 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.
22. Argument heard. As per clause 8.1(a) of the flat buyer's agreement dated 09.11.2011 for unit no. 301, type-F, tower-1 in project "The 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. 09.11.2011 plus 90 days grace period which comes out to be 09.02.2015. The respondent has not delivered the possession

of the unit to the complainant. Complainant has already paid Rs.43,15,711/- to the respondent against a total sale consideration of Rs. 44,59,575/-.

Decision and directions of the authority:

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

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% per annum w.e.f. due date of possession i.e. 09.02.2015 as per the provisions of section 18(1) of the Real Estate (Regulation and development) Act, 2016 till the offer of physical possession.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and thereafter, the monthly payment of interest till offer

of possession so accrued shall be paid on or 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 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.
23. The complaint is disposed of accordingly.
 24. The order is pronounced.
 25. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.08.2019

Judgement uploaded on 10.10.2019

SANDEEP BHUCKAL
LEGAL ASSISTANT