



**HARERA**  
**GURUGRAM**

**HARYANA REAL ESTATE REGULATORY AUTHORITY**  
**GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**PROCEEDINGS OF THE DAY**

9

Day and Date	Friday and 17.05.2024
Complaint No.	CR/24/2023 Case titled as Shinu Raj and Saritha Shinu VS Mapsko Builders Private Limited
Complainant	Shinu Raj and Saritha Shinu
Represented through	Ms. Saritha Varghese Advocate
Respondent	Mapsko Builders Private Limited
Respondent Represented	Shri Pawan Bhardwaj Advocate
Last date of hearing	12.04.2024
Proceeding Recorded by	Naresh Kumari and HR Mehta

**Proceedings-cum-orders**

Order pronounced.

The present complaint has been received on 09.01.2023 and the reply on behalf of respondent was received on 27.07.2023.

Succinct facts of the case are as under:

S. N.	Particulars	Details
1.	Name of the project	Mapsko Paradise, Sector-83, Gurugram.
2.	Nature of project	Group Housing Complex
3.	Rera Registered	Not registered
4.	Date of allotment	20.09.2010 (As per page no. 17 of complaint)
5.	Date of execution of buyer agreement	15.02.2011 (As per page no. 18 of complaint)
6.	Unit No.	604, 6 <sup>th</sup> floor, Block-E



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		(page no. 19 of complaint)
7.	Area admeasuring	1050 sq. ft. (page no. 19 of complaint)
8.	Possession clause	15(a) That the Promoter shall endeavor to complete the construction of the said Flat within a <b>period of 36 months from the date of signing of this Agreement with the Buyer</b> or within an extended period of six months, subject to force majeure conditions as mentioned in Clause (b) hereunder or subject to any other reasons beyond the control of the Promoter. No claim by way of damages/compensation shall lie against the Promoter in case of delay in handing over the possession beyond 42 months from the date of signing of this Agreement, except Charges Rs. 5 per sq. ft. per month will be payable by the Promoter to the Original Allottee only till the handing over the possession.
9.	Due date of possession	15.08.2014 (Calculated from the date of execution of buyer agreement) (6 months grace period is allowed being unqualified)  *Inadvertently mentioned as 15.02.2014 instead of 15.08.2014.
10.	Total consideration	Rs. 29,42,100/- (as per payment plan on page 25 of the complaint)
11.	Total amount paid by the complainant	Rs. 31,39,129/- (as alleged by complainant on page 11 of the complaint)



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12.	Occupation certificate	07.02.2017 (as per page no. 35 of reply)
13.	Letter of possession	22.03.2017 (as per page no. 10 of reply)
14.	Key handover letter	22.03.2017 (Page no. 12 of reply)
15.	Full and final settlement letter	22.03.2017 (As per page no. 13 of reply)
16.	Conveyance deed executed on	07.09.2018 (As per page no. 14 of reply)

The present matter has been filed by the complainants-allottees seeking the following reliefs:

1. Direct the respondent to pay delay possession charges for the delay period of 31 months at the rate of 21% from the due date of possession i.e., 15.08.2014 till actual handing over of complete and valid physical possession of the unit i.e., 22.03.2017.
2. Direct the respondent to pay an amount of Rs. 50,000/- towards Litigation.

On consideration of the documents available on record and submissions made by the parties, the authority observes that the buyer's agreement w.r.t. unit was executed with the complainant on 15.02.2011. Clause 15 of the buyer's agreement dated 15.02.2011, provides for handover of possession which states that the possession of the apartment shall be handed over within a period of within 36 months from the date of signing of this agreement plus grace period of 6 months over and above 36 months.

The complainant has paid an amount of ₹ 31,39,129/- against the total sale consideration of ₹ 29,42,100/-. The authority calculated due date of possession from the date of agreement i.e., 15.02.2011. The period of 36 months expired on 15.02.2014. As far as grace period is concerned the same is allowed being unqualified. Accordingly the due date of possession turns out to be 15.08.2014.

The respondent-promoter in its reply has contended that the complaint is barred



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by limitation as it is filed on 09.01.2023 which is beyond 3 years from the date of offer of possession i.e., 22.03.2020. Whereas the authority after pursuing the ground of leave period of 90 days, being granted by the Hon'ble Supreme Court in Suo Moto Order no. 03 of 2020 for calculation limitation period, on account of Covid-19 wherein it is mentioned that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

The authority after consideration of the documents placed on record and the arguments advanced by both the parties is of the view that the due date of possession of the subject unit, as per clause 15 of the builder buyer agreement dated 15.02.2011 comes out to be 15.08.2014. The respondent-promoter offered the possession of the said unit on 22.03.2017 after obtaining OC from the competent authority on 07.02.2017. Thereafter, conveyance deed was executed interse parties on 07.09.2018. So, limitation if any for a cause of action would accrue to the complainants with effect from 22.03.2017. The limitation period of 3 years expires on 22.03.2020. Further, the Hon'ble Supreme court in **Miscellaneous Application No. 21 OF 2022 in Suo Motu Writ Petition (Civil) No.3 of 2020** dated 10.01.2022 has mentioned that the cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. Therefore, in the present matter the limitation period of 3 years expires on 22.03.2020 therefore as per the above stated order, limitation period of 90 days shall be computed from 01.03.2022. Accordingly, the limitation expires on 01.06.2022 and the present complaint was filed on 09.01.2023 hence, the same is beyond the limitation period and the contention of the respondent w.r.t. compliant being barred by limitation is hereby upheld by the authority with aforesaid reasons. In view of the above the present complaint is barred by limitation.

In view of the above findings the said complaint stands dismissed and disposed. File be consigned to registry.

Sanjeev Kumar Arora

Member

17.05.2024