

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

**Complaint no.** : 5093 of 2023  
**Date of complaint** : 30.10.2023  
**Date of order** : 25.09.2024

Khursheed Zafar,  
**R/o:** - 17216, Equestrian Trail,  
Odessa, Florida, USA-33556.

**Complainant**

Versus

M/s Mapsko Builders Pvt. Ltd.  
**Regd. Office At:** 52, North Avenue, Punjabi Bagh,  
New Delhi-110026.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Nitin Yadav (Advocate)  
Pawan Bhardwaj (Advocate)

**Complainant  
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 provisions 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
1.	Name of the project	Mapsko Royale Ville, Sector 82, Gurugram, Haryana.
2.	Project area	17.168 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Not Registered
5.	DTPC license no. & validity status	114 of 2008 dated 01.06.2008 Valid upto 31.05.2018
6.	Name of licensee	Shivam Infratech Pvt. Ltd & 1 Ors.
7.	Unit no.	1902, 18 <sup>th</sup> floor, Tower: -Glory (annexure C-2 on page no. 16 of complaint)
8.	Unit admeasuring	1790 sq. ft. (super area) (annexure C-2 on page no. 16 of complaint)
9.	Date of allotment	07.05.2013 (page 18 of complaint)
10.	Date of execution of flat buyer's agreement	Not executed
11.	Possession clause	Not provided
12.	Due date of delivery of possession	07.05.2016 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]

13.	Total sale consideration	Rs. 1,20,30,297/- (as per payment plan on page no. 19 of complaint) (inadvertently mentioned as Rs.1,16,35,350/- on proceedings dated 24.07.2024)
14.	Total amount paid by the complainant	Rs. 21,05,143.06/- (as per applicant ledger on page 23 of reply)
15.	Occupation certificate	20.07.2017 (page no. 13 of reply)
16.	Offer of possession	21.07.2017 (page no. 15 of reply)
17.	Surrender request	10.06.2019 (page 22 of reply)

**A. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- I. That the representatives of the respondent/promoter in March 2013 induced the complainant to book an apartment in their project named "Mapsko Royal Ville" at Sector-82, Gurgaon.
  - II. That on account of the extremely high pricing of apartments, the complainant expressed its disinclination towards going ahead with the booking. In view of the same the representative of the respondent/promoter stated that the project has been approved by SBI bank and thus complainant can go ahead with the booking under subvention scheme.
  - III. That the complainant was forced to pay the booking amount even before any application form was forwarded to him. It is stated that on 22.04.2013, complainant paid an amount of Rs.10,53,857/- towards the booking



amount. Upon payment of said booking amount, the complainant made several inquiries regarding loan and other apartment related documentation, however the respondent kept gaining time on one pretext or the other.

- IV. That the respondent issued an allotment letter dated 07.05.2013 by virtue of which flat bearing no. 1902, in Glory Tower, having super area of 1790 sq. ft. was allotted to him.
- V. That the respondent somewhere in July, 2013 intimated the complainant that the subject project is not approved by SBI Bank and the complainant would need to get the loan sanctioned from some other private bank. The complainant was shocked to hear about the same and felt cheated. The respondent promised to arrange for sanctioning of loan from some other private bank on handing over of certain documents by the complainant and in August, 2013 it promised that loan would be sanctioned and tripartite agreement would be executed in a month's time, however the respondent failed to get the loan sanctioned from any bank under the subvention scheme and kept dilly-dallying the entire process.
- VI. That the respondent pressurized the complainant for making further payment of Rs.10,55,430/-, as the same was being referred as second installment which was in line with the payment schedule. It was claimed by the respondent that the second installment must be paid to qualify for bank subvention scheme and hence the complainant on 06.05.2014 made the payment of the said second installment demanded. Thus, the complainants have made total payment of Rs.21,09,287/- towards the sale consideration and the remaining payment was to be disbursed by the bank in terms with the subvention scheme.

- VII. That the complainant on account of failure of the respondent to get the tripartite agreement executed, requested the respondent by virtue of two separate communications to refund the money deposited by the complainant.
- VIII. That the respondent issued an illegal and totally arbitrary communication dated 26.06.2019 by virtue of which the complainant was threatened that the booking in question would be cancelled on account of non-payment of alleged outstanding dues by the complainant. It is stated that the said communication was totally unjust and unfair as the said communication came to be issued by the respondent despite being aware that the complainant way back in July, 2015 and thereafter repeatedly had requested it to cancel and refund the amount deposited by him. The complainant upon receipt of said notice immediately engaged a counsel and got issued a legal notice dated 19.07.2019 to the respondent seeking forthwith refund of the amount deposited by him i.e. Rs.21,09,287/- along with interest @18% p.a. w.e.f. the date of payment.

**B. Relief sought by the complainant: -**

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**C. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds: -
- i. That the complainant had booked the unit no.1902, Tower- Glory of Mapsko Royale Ville dated 19.04.2013 under the down payment plan in



the subvention scheme without any pressure of the respondent. But despite several reminders, he failed to come up with complete documentation under the subvention scheme, leading to delay and ultimately opting out of that scheme. The respondent then requested Tata Capital for sanction of loan under that scheme but the complainant despite intimating about the same did not come forward to avail that facility and ultimately committing default in payment of the installments due against the allotted unit.

- ii. That respondent had made ample of calls and requested to complainant to clear the dues because according to the payment plan opted by him, he was supposed to make the payment on time and the respondent was facing many problems because of complainant misconduct as many customers were in queue for purchasing the said unit but respondent was helpless due to complainant misconduct.
- iii. That the respondent suffered damages/losses as the said unit was not allotted to any third party and it got stuck for considerable period of time in the name of complainant and therefore the amount given against the booking of unit has been forfeited and therefore the complainant is not entitled for the refund of any alleged amount.
- iv. That the complainant has deliberately and knowingly misstated facts and have misled the Authority by using false and frivolous documents, which were never communicated to the respondent, particularly cancellation requests made by the complainant dated 01.07.2015 and 30.07.2017. The said letters have been appended as Annexure – 4 with the complaint and no proof of service of the same has been appended along with the complaint.



- v. That despite number of reminders and communications, the complainant failed to pay the amount due and so the respondent had to borrow the amount from his sources and with great difficulties had completed the project and possession notice was sent to him of the allotted unit on 21.07.2017 after receipt of occupation certificate on 20.07.2017. But instead of coming forward, the complainant neither paid the amount due to the respondent nor took any further steps for taking possession of the allotted unit. Rather vide letter dated 10.06.2019, the complainant requested for cancellation of the booking and refund of the paid-up amount and also retreating that version vide legal notice dated 19.07.2019. In between the complainant was also informed vide communication dated 26.06.2019 for clearing the amount due for retaining the allotted unit and execution of buyer agreement. But despite that he did not respond and rather sent a legal notice dated 19.07.2019. Moreover, if the complainant had opted for cancellation of the allotment and refund of the paid-up amount as alleged by him in his communication dated 10.06.2019 to the respondent then the alleged communications dated 01.07.2015 and 30.07.2017 would have definitely been mentioned in it. Thus, it shows that after the complainant failed to make payment of the amount due to the respondent and execute the necessary documents and opted to withdraw from the project after receipt of notice of possession dated 21.07.2017 and seeking refund of the paid-up amount vide request dated 10.06.2019.
7. 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 submission made by the parties.



**D. Jurisdiction of the authority**

8. 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**

9. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

*(4) The promoter shall-*

*(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. 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.



**F. Findings on the relief sought by the complainant**

**I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.**

12. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

***“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.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*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.”*

*(Emphasis supplied)*

13. **Due date of possession:** As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:***



*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."*

14. Accordingly, the due date of possession is calculated as 3 years from the date of allotment i.e., 07.05.2013. Therefore, the due date of handing over of the possession for the unit/flat comes out to be 07.05.2016.
15. The complainant has submitted that on account of failure of the respondent to get the loan sanctioned from any bank under the subvention scheme and kept dilly-dallying the entire process, the complainant requested the respondent by virtue of two separate communications dated 01.07.2015 and 30.07.2017 to refund the money deposited by him. Thereafter, the respondent vide communication dated 26.06.2019, illegally and arbitrarily threatened that the booking in question would be cancelled on account of non-payment of alleged outstanding dues by the complainant. The complainant upon receipt of said notice immediately engaged a counsel and got issued a legal notice dated 19.07.2019 to the respondent seeking forthwith refund of the amount deposited by him along-with interest.
16. The respondent has contended that despite several reminders, he failed to come up with complete documentation under the subvention scheme, leading to delay and ultimately opting out of that scheme. The respondent has requested Tata Capital for sanction of loan under that scheme but the complainant despite intimating about the same did not come forward to



avail that facility and ultimately committing default in payment of the installments due against the allotted unit. Further, the complainant deliberately and knowingly misstated facts and has misled the Authority by using false and frivolous documents, which were never communicated to the respondent, particularly cancellation requests made by the complainant dated 01.07.2015 and 30.07.2017. Moreover, the possession notice was sent to him of the allotted unit on 21.07.2017 after receipt of occupation certificate on 20.07.2017. But instead of coming forward, the complainant neither paid the amount due to the respondent nor took any further steps for taking possession of the allotted unit. Rather vide letter dated 10.06.2019, the complainant requested for cancellation of the booking and refund of the paid-up amount.

17. After considering the documents available on record as well as submissions made by the parties, it is determined that the due date of possession was 07.05.2016 and the occupation certificate of the Tower in which the unit of complainant is situated has been obtained by the respondent on 20.07.2017. The complainant has claimed that he has requested the respondent for refund vide letter dated 01.07.2015 and 30.07.2017, but the said claim of the complainant cannot be relied upon as no dispatch or delivery proof of having the same delivered to respondent have been placed on record by him. However, a letter dated 10.06.2019 seeking cancellation of allotment and refund of the paid-up amount was admittedly received by the respondent. Therefore, due to non-availability of any substantial document to support the claim of the complainant, the date of surrender is being taken as 10.06.2019.
18. The Authority observes that right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession



of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him, it impliedly means that the allottee tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottees interest for the money he has paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022; that: -

*25. The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the complainant-allottee failed to exercise his right although it is unqualified one rather tacitly wished to continue with the project and thus made himself entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.
20. In case the allottee wishes to withdraw from the project, the promoter is liable on demand to return the amount received by it with interest at the prescribed rate if it fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words liable on demand need to be understood in the sense that the allottee has to make intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and

unit is ready then he impliedly agreed to continue with the project i.e. he do not intend to withdraw from the project and this proviso to sec 18(1) automatically comes into operation and the allottees shall be paid interest at the prescribed rate for every month of delay by the promoter.

21. In the instant case, the unit was allotted to the complainant vide allotment letter dated 07.05.2013 and the due date for handing over for possession was 07.05.2016. The occupation certificate was received on 20.07.2017 whereas, offer of possession was made on 21.07.2017. However, the complainant has surrendered the unit vide letter dated 10.06.2019 i.e. after receipt of occupation certificate. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under:

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

22. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.21,05,143.06/- after deducting 10% of the sale consideration of Rs.1,20,30,297/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest



marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 10.06.2019 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G. Directions of the authority**

23. 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 respondent/promoter is directed to refund the paid-up amount of Rs.21,05,143.06/- after deducting 10% of the sale consideration of Rs.1,20,30,297/- being earnest money along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 10.06.2019 till its realization.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the refundable along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of complainant/allotee.





**HARERA**  
**GURUGRAM**

Complaint No. 5093 of 2023

24. The complaints stand disposed of.
25. Files be consigned to the registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.09.2024



**HARERA**  
**GURUGRAM**