

Corrected Judgement dtd. 24/01/19



Complaint No. 939 of 2018

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

Complaint No. : 939 of 2018
Date of First : 21.12.2018
Hearing :
Date of Decision : 02.05.2019

Mr. Yatin Kumar Arya
R/o : B-1,543, first Floor, Janak Puri, New Delhi

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sanjeev Sharma
Ms. Richa Tuteja

Advocate for the complainant
Authorised Representative on
behalf of the respondent

Shri Aashish Chopra

Advocate for the respondent

ORDER

1. A complaint dated 25.09.2018 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 complainant Mr. Yatin

Kumar Arya, against the promoter M/s SS Group Private Limited., on account of violation of clause 8.1(a) of flat buyer agreement executed on 31.10.2011, in respect of apartment described as below for not handing over the possession on due date, which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the flat buyer agreement has been executed on 31.10.2011 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 contractual 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.	Flat no.	I-1802, 18 th floor, Type C, Tower I
4.	Registered/ un registered	Registered

5.	RERA Registration no.	381 of 2017
6.	Revised Registration date	31.12.2019
7.	DTCP No.	59 of 2008 dated 19.03.2008
8.	Nature of real estate project	Group housing complex
9.	Total area of the allotted unit no.	1570 sq.ft.(as per the agreement) 1750 sq.ft. (as per letter for offer of possession)
10.	Date of flat buyer agreement	31.10.2011
11.	Total consideration amount as per statement of account dated 2.08.2018, page 45	Rs.56,48,000/-
12.	Total amount paid by the complainant as per statement of account dated 02.08.2018, page 45	Rs. 52,78,199/-
13.	Due date of delivery of possession from the date of execution of flat buyer agreement	31.01.2015 Clause 8.1(a)- 36 months+ 90 days grace period from the date of execution of the agreement.
14.	Delay for number of months/ years	4 years 3 months (approx..)
15.	Penalty clause as per flat buyer agreement dated 31.10.2011	Clause 8.3(a) of FBA 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 later.
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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 complainant and the respondent. A flat buyer's agreement dated 31.10.2011 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 31.01.2015. The promoter neither given possession as per the terms of the flat buyer agreement nor paid any compensation i.e. @ Rs. 5/- per sq. ft. per month for the period of delay as per 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 21.12.2018, 30.01.2019, 06.03.2019, 26.03.2019 and 02.05.2019. The reply has been filed by the respondent and the same has been perused.

Facts of the complaint

6. Briefly stating the facts of the complaint are that the company M/s North Star Apartments Private Limited. advertised for construction of world class group housing complex together with appurtenant space by the name of "*The Coralwood*" in Sector 84, Gurgaon.
7. The complainant submitted that based on above representations he applied for allotment of residential flat.
8. The complainant submitted that flat buyer agreement dated 31.10.2011 was signed between both the parties on the terms and conditions as laid down by the company and flat no. 1802 type C located in tower I on 18th floor, having approximately super area of 1570 sq. ft. was agreed to be allotted to the complainant for a total sale consideration of Rs. 50,97,920/-.
9. The complainant submitted that as per the agreement, the possession of the unit in question was to be handed over by 31.10.2014, however at that time the construction of the project was far from completion.

10. The complainant submitted that on 15.05.2015, he received a letter from the respondent herein i.e. M/s SS Group Private Limited vide which letter the respondent informed that pursuant to the scheme of amalgamation approved by the Hon'ble High Court of Punjab & Haryana, M/s North Star Apartment Limited has amalgamated with the respondent company herein and hence forth all rights and responsibilities of M/s North Star Apartment Limited under the flat buyer agreement in question executed with the complainant have been taken over by the respondent and thus requested the complainant to make all payments henceforth to the complainant.

11. The complainant submitted that thereafter, the respondent in reply dated 25.02.2016 admitted the delay as also entitlement of the complainant for the interest for delayed possession, however the respondent stated that the compensation for the delayed possession will be calculated and adjusted at the time of offer of possession as also assured that the construction is in full swing.

12. The complainant submitted that after an exorbitant delay of almost 4 years, the complainant received letter for offer of possession dated 10.08.2018 from the respondent with respect to the flat in question, however though the respondent offered the possession of the unit in question after a delay of almost 4 years, however no interest for the delayed period was offered by the respondent to the complainant though admitting the same previously and aggrieved of which the complainant visited the office of the respondent with the request to pay interest for the delayed possession but the same were in vain. The respondent issued further demand of Rs. 9,52,026/- from the complainant as for the first time the respondent informed the complainant that the area of the flat in question has been increased to 1750 sq. ft. and without the consent of the complainant.

13. Issues raised by the complainant:

- I. Whether the respondent has caused exorbitant delay in handing over the possession of the units to the complainant and for which the respondent is liable to pay interest at 18% to the complainant on amount

- received by the respondent from the complainant and which interest should be paid on the amount from the date when the respondent received the said amount?
- II. Whether open parking space and parking in common basements be sold to the allottees as separate unit by the promoter which the respondent has sold as separate units in certain cases and if not then the amount so collected be returned back to the allottees from whom charged?
- III. Whether the respondent can sell super area in place of carpet area to the allottees, if no then whether the respondent is liable to return the extra money if charged from allottees on account of selling super area for monetary consideration?

14. Relief sought

- I. Direct the respondent be to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas and which sale of common area is in total contradiction of the Act, for the reason as per the Act

the monetary consideration can only be for the carpet area.

- II. Direct the respondent to make the payment of interest accrued on amount collected by the respondent from the complainant, on account of delayed offer for possession and which interest @18% per annum from the date as and when the amount was received by the respondent from the complainant.

Respondent's reply

15. The respondent submitted that each and every averment and contention, as raised in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.
16. The respondent submitted that the complaint filed by the complainant before the hon'ble authority, besides being misconceived and erroneous, is untenable in the eyes of law.
17. The respondent submitted that the complainant has misdirected himself in filing the above captioned complaint before this authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of

jurisdiction of this authority. It would be pertinent to refer to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017, made by the government of Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section 84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this Ld. Authority or the Adjudicating Officer and the sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent. Apparently, 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, section 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. No complaint can be entertained much

less filed before this authority in respect of the matters to be adjudicated by the adjudicating officer.

18. The respondent submitted that in the present case, apparently the complainant is seeking a claim of refund of the amount along with interest as also the compensation, which, from reading of the provisions of the 2016 Act and 2017 rules, would be liable for adjudication, if at all, by the adjudicating officer and not this authority. Thus, on this ground alone, the complaint is liable to be rejected.
19. The respondent submitted that the complainant, in any event, cannot get his claims, keeping in view the fact that the project in respect whereof the complaint has been made, is not even registered as on date with this authority, even though the respondent has applied for its registration.
20. The respondent submitted that as 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 the respondent company 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 flat buyer's agreement, executed much prior to coming into force of 2016 Act. Thus, 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 authority.

21. The respondent further submitted that 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.

Determination of issues

22. With respect to **first issue** raised by the complainant regarding payment of interest @ 24% that has been charged by the respondent cannot be allowed as the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay

till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed.

23. Regarding **issue no. two**, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the space buyer agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016.

24. With respect to the **third issue** raised by the complainant, as the flat buyer's agreement was executed prior to the commencement of the Act *ibid*, the said agreement is sacrosanct as regards the dealings between parties. As per clause 1.1 provides about sale of the flat having super area of

1570 sq. ft. and the complainant have signed the said agreement with wide open eyes.

25. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
26. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Findings of the authority

27. **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.

28. 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.

29. In continuation of earlier proceedings dated 26.3.2019, it has been alleged by the counsel for the complainant that they have not received any actual offer of possession after the grant of occupation certificate to the respondent. The respondent is directed to send them a copy of OC through courier/registered post within a period of 15 days. However, counsel for the respondent has stated on instructions that after receipt of OC they had sent intimation of possession through email dated 22.10.2018.

30. An affidavit under section 65-B of Indian Evidence Act shall be filed by the respondent along with delivery of email within

2 weeks. The possession of unit shall be delivered by the respondent within a period of one month after adjusting due payments on account of delay payments by the complainant along with prescribed interest. Since the counsel for respondent has stated that so far they have not prepared and filed the declaration in DTCP. Therefore, declaration, as asked for by the complainant shall be submitted. A penalty of Rs.5,000/- is imposed upon the respondent which is to be deposited with the authority for non-compliance of previous order dated 26.3.2019 passed by the authority. The respondent shall not charge any parking charges beyond the terms of the agreement. The counsel for the complainant may get the requisite declaration from the respondent at his own end.

Decision and directions of the authority:

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



- (i) The respondent is directed to deliver the possession to the ^{Complainant} respondent within a period of one month after adjusting due payments on account of delay payments by the complainant along with prescribed interest at the rate of 10.70% per annum.
- (ii) The declaration under Apartment Ownership Act, 1983 in DTCP office, as asked by the complainant be submitted in this Authority.
- (iii) A penalty of Rs. 5,000/- is imposed upon the respondent which is to be deposited with the authority for non-compliance of previous order dated 26.03.2019 passed by the authority.
- (iv) The respondent shall not charge any parking charges beyond the terms of the agreement.

32. The complaint is disposed of accordingly.

33. The order is pronounced.

34. Case file be consigned to the registry.

35. Copy of this order be endorsed to the registration branch


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 02.05.2019

Corrected Judgement uploaded on 25.01.2020



HARERA
GURUGRAM

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2. Since, the flat buyer agreement has been executed on 31.10.2011 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 contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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received by the respondent from the complainant and which interest should be paid on the amount from the date when the respondent received the said amount?

- II. Whether open parking space and parking in common basements be sold to the allottees as separate unit by the promoter which the respondent has sold as separate units in certain cases and if not then the amount so collected be returned back to the allottees from whom charged?
- III. Whether the respondent can sell super area in place of carpet area to the allottees, if no then whether the respondent is liable to return the extra money if charged from allottees on account of selling super area for monetary consideration?

14. Relief sought

- I. Direct the respondent be to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainant which also includes the common areas and which sale of common area is in total contradiction of the Act, for the reason as per the Act

the monetary consideration can only be for the carpet area.

- II. Direct the respondent to make the payment of interest accrued on amount collected by the respondent from the complainant, on account of delayed offer for possession and which interest @18% per annum from the date as and when the amount was received by the respondent from the complainant.

Respondent's reply

15. The respondent submitted that each and every averment and contention, as raised in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.
16. The respondent submitted that the complaint filed by the complainant before the hon'ble authority, besides being misconceived and erroneous, is untenable in the eyes of law.
17. The respondent submitted that the complainant has misdirected himself in filing the above captioned complaint before this authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of

jurisdiction of this authority. It would be pertinent to refer to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017, made by the government of Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section 84 of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this Ld. Authority or the Adjudicating Officer and the sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent. Apparently, 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, section 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. No complaint can be entertained much

less filed before this authority in respect of the matters to be adjudicated by the adjudicating officer.

18. The respondent submitted that in the present case, apparently the complainant is seeking a claim of refund of the amount along with interest as also the compensation, which, from reading of the provisions of the 2016 Act and 2017 rules, would be liable for adjudication, if at all, by the adjudicating officer and not this authority. Thus, on this ground alone, the complaint is liable to be rejected.

19. The respondent submitted that the complainant, in any event, cannot get his claims, keeping in view the fact that the project in respect whereof the complaint has been made, is not even registered as on date with this authority, even though the respondent has applied for its registration.

20. The respondent submitted that as 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 the respondent company 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 flat buyer's agreement, executed much prior to coming into force of 2016 Act. Thus, 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 authority.

21. The respondent further submitted that 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.

Determination of issues

22. With respect to **first issue** raised by the complainant regarding payment of interest @ 24% that has been charged by the respondent cannot be allowed as the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay

till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed.

23. Regarding **issue no. two**, the authority is of the opinion that open parking spaces cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the space buyer agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016.

24. With respect to the **third issue** raised by the complainant, as the flat buyer's agreement was executed prior to the commencement of the Act ibid, the said agreement is sacrosanct as regards the dealings between parties. As per clause 1.1 provides about sale of the flat having super area of

1570 sq. ft. and the complainant have signed the said agreement with wide open eyes.

25. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

26. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Findings of the authority

27. **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

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29. In continuation of earlier proceedings dated 26.3.2019, it has been alleged by the counsel for the complainant that they have not received any actual offer of possession after the grant of occupation certificate to the respondent. The respondent is directed to send them a copy of OC through courier/registered post within a period of 15 days. However, counsel for the respondent has stated on instructions that after receipt of OC they had sent intimation of possession through email dated 22.10.2018.

30. An affidavit under section 65-B of Indian Evidence Act shall be filed by the respondent along with delivery of email within

2 weeks. The possession of unit shall be delivered by the respondent within a period of one month after adjusting due payments on account of delay payments by the complainant along with prescribed interest. Since the counsel for respondent has stated that so far they have not prepared and filed the declaration in DTCP. Therefore, declaration, as asked for by the complainant shall be submitted. A penalty of Rs.5,000/- is imposed upon the respondent which is to be deposited with the authority for non-compliance of previous order dated 26.3.2019 passed by the authority. The respondent shall not charge any parking charges beyond the terms of the agreement. The counsel for the complainant may get the requisite declaration from the respondent at his own end.

Decision and directions of the authority:

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

- (i) The respondent is directed to deliver the possession to the respondent within a period of one month after adjusting due payments on account of delay payments by the complainant along with prescribed interest at the rate of 10.70% per annum.
- (ii) The declaration under Apartment Ownership Act,1983 in DTCP office, as asked by the complainant be submitted in this Authority.
- (iii) A penalty of Rs. 5,000/- is imposed upon the respondent which is to be deposited with the authority for non-compliance of previous order dated 26.03.2019 passed by the authority.
- (iv) The respondent shall not charge any parking charges beyond the terms of the agreement.

32. The complaint is disposed of accordingly.

33. The order is pronounced.

34. Case file be consigned to the registry.

35. Copy of this order be endorsed to the registration branch

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 02.05.2019

Judgement Uploaded on 28.05.2019



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