

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

Complaint no. : 61 of 2019
First date of hearing : 17.05.2019
Date of decision : 21.08.2019

1. Mr. Shyam Bihari Bansal
2. Ms. Beena Bansal
Both R/o D-003, Park View City 1, Sohna **Complainants**
road, Gurugram, Haryana

Versus

M/s SS Group Pvt. Ltd.
Regd. Office: 77, SS House, Sector 44,
Gurugram-122003, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Ms. Priyanka Agarwal Advocate for the complainants
Ms. Richa Tuteja AR on behalf
of respondent with Shri C.K.
Sharma and Dhruv Sharma,
Advocates Advocate for the respondent

ORDER

1. A complaint dated 31.01.2019 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. Shyam Bihari Bansal and Ms. Beena Bansal, against the promoter M/s



SS Group Pvt. Ltd., on account of violation of clause 8.1 of flat buyer's agreement executed on 17.10.2013 in respect of unit described below for not handing over 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 17.10.2013 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"The Coralwood", Sector 84, Gurugram, Haryana.
2.	Nature of the project	Group housing complex
3.	Project area	15.275 acres
4.	Registered/not registered	Registered
5.	HRERA registration number	381 of 2017
6.	HRERA registration certificate valid up to	31.12.2019
7.	DTCP license no.	59 of 2008 dated 19.03.2008
8.	Allotment letter	18.05.2012

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9.	Date of execution of flat buyer's agreement	17.10.2013
10.	Flat/unit no.	803, type B, Tower C, 8 th floor
11.	Flat measuring	1890 sq. ft.
12.	Payment plan	Construction linked payment plan
13.	Total consideration amount as per flat buyer's agreement	Rs. 68,81,840/-
14.	Total amount paid by the complainants till date as per demand letter cum service invoice (page no.59) <i>and receipt dated 11/04/2018.</i>	Rs. 57,74,275/- <i>61,32,842/-</i>
15.	Due date of delivery of possession as per clause 8.1 of flat buyer's agreement i.e. 36 months from the date of signing of this agreement + grace period of 90 days)	17.01.2017
16.	Delay in handing over possession till	1 year 11 months
17.	Offer of Possession	16.12.2018
18.	Penalty clause as per flat buyer's agreement	Clause 8.3 of the 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.

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4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A flat buyer's agreement

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dated 17.10.2013 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 17.01.2017. Neither the respondent has delivered the possession of the said unit till date to the complainants nor he has paid any compensation @ 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 as per clause 8.3(a) of flat buyer's agreement dated 17.10.2013. Therefore, the promoter has not fulfilled his committed liability as on date.

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 17.07.2019 and 21.08.2019. The reply filed on behalf of the respondent has been perused.

Brief facts of the complaint

6. The complainants submitted that the respondent company under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to cheat and defraud the unsuspecting, innocent and gullible public at large. The respondent advertised its projects extensively and not completed the project timely.

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7. The complainants submitted that based on promises and commitment made by the respondent, complainants booked a Flat admeasuring 1890 Sq Ft in the Residential project 'The Coral Wood, situated at Sector 84 District Gurugram. The initial booking amount of Rs 672460/- was paid through cheque dated 4th May, 2012.
8. The complainants submitted that the Complainants were allotted the Apartment No. C-0803 in the project 'The Coral Wood, situated at Sector 84 District Gurugram, having a super area of approx. 1890 sq. ft vide Allotment Letter dated 18.05.2012 in 'The Coral Wood' proposed to be developed at Sector 84, Gurugram, Haryana. In the allotment letter builder mention the date of possession within 36 months from the execution of FBA.
9. The complainant submitted that after extracting Rs 2354974/- (more than 40 % amount of total paid) from complainants before September,2013, the respondent to dupe the complainants in their nefarious net even executed flat buyer's agreement signed between complainants and M/S North Star Apartments Pvt. Ltd. on dated 17.10.2013, builder signed the FBA in May 2012 but hold the FBA, after long



perusal by complainants builder hand over the FBA more than 1.5 year and put the date on FBA 17.10.2013. The complainants booked the flat in May 2012 paid 4 instalments as demanded by builder but builder hold the FBA and put the date as his convenience is illegal arbitrary and unilateral. Complainants had mentioned this issue on E-mail dated 11.11.2018 but builder never replied.

10. The complainants submitted that the respondent raised the 4th instalment on completion of basement slab dated 30th Nov 2012 but the date on FBA 17th October 2013 is illegal and arbitrary.
11. The complainants submitted the total cost of the said flat is Rs. 6881840/- exclusive taxes out of that sum of Rs. 6132842/- was paid by complainant in time bound manner.
12. The complainant submitted that the complainants have paid all the instalments timely and deposited Rs. 6132842/- that respondent in an endeavor to extract money from allottee devised a payment plan under which respondent linked more than 35 % amount of total paid against the land cost and EDC IDC and without doing anything extract huge amount of money, Rest amount linked with the



construction of super structure only) of the total sale consideration to the time lines, which is not depended or co-related to the development of amenities and after taking the same respondent have not bothered to any development and project was delayed

13. The complainant submitted that the respondent sent letter dated 6th May, 2015 to complainants for amalgamation of North star Apartments Private Limited into SS Group private Limited and change the Account detail for further payments.

14. The complainants submitted that respondent was liable to hand over the possession of a developed flat before 17th October, 2016 As per FBA Clause no. 8.1 (Within 36 months from execution of FBA but builder was executed FBA approx 1.5 year later from booking before execution of FBA builder also demanded installment for completion of Basement Slab as according to payment plan builder should liable to handover the possession in 2015. Complainant emailed on dated 11.11.2018 and raised the issue related date the possession.



15. The complainants submitted that complainants visited the site after offer of possession they are shocked builder demanded 2nd last installment in 2017 for completion of finishing work in the flat including wooden flooring & fixing of modular kitchen but all work pending in December 2018 builder raised the illegal demand without doing work is illegal and arbitrary.

16. The complainant submitted that after got offer of possession on dated 16 August, 2018 complainants had to requested for Occupation certificate but builder never supplied. As according to reply of builder on dated 10 Nov, 2018 builder received the OC on October. As per statement builder offered the possession before received the OC is illegal and arbitrary.

17. The complainant submitted that keeping in view the complainants who has spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

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Issue to be decided

18. The issue to be decided are as follows:

- i. Whether the respondent has breached the provisions of the Act as well as the flat buyer's agreement by not completing the construction of the said unit in time bound manner?
- ii. Whether the respondent was liable to hand over the possession on dated May 2015 rather than before 17th October, 2016 As per flat buyer's agreement clause no. 8.1 (within 36 months from execution of flat buyer's agreement) but builder executed flat buyer's agreement approximately 1.5 year later from booking before execution of flat buyer's agreement builder also demanded instalment for completion of basement slab as according to payment plan?
- iii. Whether the respondent is liable to pay interest on the amount paid to them by the complainants at the same rate 15 % which they charged from the complainant in case of delayed payment by the complainants?

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Reliefs sought

19. The complainants are seeking the following reliefs:

- a. Pass an order for delay interest on paid amount of Rs.6132842/- from May, 2015 to along with pendent lite thereon @ 15 %.

Respondent's reply:

20. The respondent submitted that at the outset, respondent humbly submits that each and every averment and contention, as made/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.

21. The respondent submitted that it is 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 September 30, 2014 and November 10, 2014, passed in company petition nos.155 of 2003 and 203 of 2013, w.e.f. March 7, 2015.

22. The respondent submitted that the complaint filed by the complainants before the ld. authority, besides being

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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.

14. The respondent submitted that it would be pertinent to make reference 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 Id. authority or the adjudicating officer. 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, as the case may be. Sub section (2) provides that the form, manner and fees for filing complaint under sub-section (1)



shall be such as may be prescribed. Rule 28 of 2017 Haryana Rules provides for filing of complaint with this Ld. Authority, in reference to Section 31 of 2016 Act. Sub-clause (1) *inter alia*, provides that any aggrieved person may file a complaint with the authority for any violation of the provisions of 2016 Act or the rules and regulations made thereunder, *save as those provided to be adjudicated by the adjudicating officer*, in form 'CRA'. Significantly, reference to the "authority", which is this Ld. authority in the present case and to the "adjudicating officer", is separate and distinct. "adjudicating officer" has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of section 71, whereas the "authority" has been defined under section 2(i) to mean the Real Estate Regulatory Authority, established under Sub-Section (1) of Section 20.

~~24~~ The respondent submitted that 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, 18 and 19 of the 2016 Act and for holding an enquiry in the prescribed

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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 Id. authority cannot assume the powers of the Id. adjudicating officer, especially

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keeping in view the nature of reliefs sought by the complainants, as such, on this ground alone the complaint is liable to be rejected.

26. 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.

27. The respondent submitted that the builder offered the possession before receiving the OC. It is submitted that the letter dated 16.08.2018 was an offer for possession only for fit outs. However, upon grant of OC dated 17.10.2018, the



allottees were formally and personally intimated vide emails dated 22.10.2018, 23.10.2018 and 10.11.2018. Admittedly, the complainants were well aware of the grant of OC.

~~18~~ 18. The respondent submitted that without prejudice to the submissions made hereinabove, it is submitted that the complainants themselves are not entitled to be granted any relief from this Ld. Authority since the reciprocal obligations casted upon the complainants have not been fulfilled by them and they have failed to make due payments towards the consideration of the flat allotted to them.

~~28~~ 28. The respondent submitted that it is pertinent to mention here 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 October 17, 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. No indulgence much less as claimed by the complainants is liable to be shown to them.

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REJOINDER ON BEHALF OF THE COMPLAINANT:

The complainant further submitted that the builder offered the illegal possession of dated 16.08.2018 without OC and without completing the finishing work of flat. Even builder violated the term of agreement, builder demanded 2nd last installment in February, 2018 for completion of finishing work in the flat including wooden flooring and fixing of modular kitchen but all work pending in December 2018 builder raised the illegal demand without doing work. Builder offered the illegal possession to complainants without OC and in completed flat so claim of monthly interest till actual possession is correct and reasserted and reply are wrong and denied being misleading and frivolous.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

- i. With respect to the **all issues** raised by the complainants, the respondent has already registered the project in question with the authority vide registration no. 381 of 2017 dated 12.12.2017 and the said registration is valid till 31.12.2019. As

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per clause 8.1 of flat buyer's agreement dated 17.10.2013, the possession of the flat was to be handed over within 36 months from the date of signing of this agreement plus grace period of 90 days. Clause 8.1(a) is reproduced below;

"...the Developer proposes to hand over the possession of the flat within a period of thirty six months(36) from the date of signing of this agreement.....the developer shall be entitled to a grace period of 90 days..."

Accordingly, the due date of possession was 17.01.2017 and the possession has been delayed by 1 year 11 months till the offer of possession. Further, the respondent has offer the possession letter dated 16.12.2018 and occupation certificate dated 17.10.2018(as alleged by the respondent in reply). As the respondent has failed to fulfil his 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 complainant at prescribed rate i.e. 10.45% per annum for every month of delay from the due date i.e. 17.01.2017 till the offer of possession to the complainant i.e. 16.12.2018.

Findings of the authority

29. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction

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of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

Arguments heard,

As per clause 8.1 of the Builder Buyer Agreement dated 17.10.2013 for unit No. 803, Type B, Tower C, 8th Floor, 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. 17.10.2013 + 90 days grace period which comes out to be

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17.01.2017. The respondent has not delivered the unit in time, however the same was offered on 16.12.2018. Complainant has already paid Rs. ~~57,74,275/-~~ ^{61,32,842/-} to the respondent against a total sale consideration of Rs. 68,81,840/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 17.01.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till 16.12.2018. The complainant is directed to take over the possession of the unit within a period of six months from the date of this order.

Directions of the authority

30 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:

- The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% per annum for every month of delay on the amount paid by the complainant from

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*Corrected vide order
dated 26/02/2020*

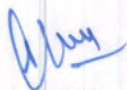
due date of possession i.e. 17.01.2017 till the offer of possession i.e. 16.12.2018.

- ii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
- iii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- iv. The promoter shall not charge anything from the complainant which is not a 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. ~~10.60%~~ ^{10.45%} by the promoter which is the same as is being granted to the complainant in case of delayed possession.

31. The order is pronounced.

32. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.08.2019

Corrected Judgement uploaded on 04.03.2020

