

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

Complaint no. : 5159 of 2019
First date of hearing: 05.12.2019
Date of decision : 05.02.2020

Mr. Amit Khatri
Address: R/o: Q-2/5, DLF City,
Phase-2, Gurugram, Haryana

Complainant

Versus

M/s North Star Apartment Pvt Ltd.
(Now SS Group Pvt. Ltd.)
Office: 77, SS House, Sector-44,
Gurugram-122003

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Sushil Yadav Advocate for the complainant
Shri Sunil Shekhawat AR with Advocate for the respondent
Shri C.K. Sharma

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 to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of 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:

S.No.	Heads	Details
1.	Project name and location	" THE CORALWOOD", Sector-84, Gurgaon
2.	Project area	15.275 acres
3.	Nature of project	Group Housing Complex
4.	RERA registered/ not registered	Registered, Reg. No. 381 of 2017 dated 12.12.2017
5.	RERA registration valid up to	Valid up to 31.12.2019
6.	DTCP License No. & validity status	59 of 2008 dated 19.03.2008 valid up to 18.03.2020
7.	Name of licensee	North Star Apartment Pvt. Ltd.
8.	Unit no., Tower no.	1704, 17 th floor, Tower J
9.	Super area	1425 sq. ft.
10.	Date of execution of flat buyer agreement	30.09.2013
11.	Payment plan	Construction linked payment plan



12.	Total sale consideration	Rs. 82,67,300/- (as per pg. 3 of the Flat Buyers Agreement and applicant ledger copy, Annexure R 4(colly.) at pg. 40 and 41)
13.	Total amount paid by the complainant	Rs. 89,30,423/- (as shown in applicant ledger as on 16.11.2019, Annexure R4(colly.) at pg 40 and 41)
14.	Balance of payment, if any,	-Nil- (as per applicant ledger copy, Annexure R 4(colly.) at pg. 40 and 41)
15.	Due date of delivery of possession as per agreement (clause 8.1 (a):36 months +90 days grace period)	30.12.2016
16.	Date of offer of possession	Offer of possession for fit outs dated 13.08.2018 (Annexure-R/2, pg. 33 of the reply)
17.	Status of project	Ongoing
18.	Details of Occupation Certificate	17.10.2018 (Annexure-R/1 of the reply at pg. 31)
19.	Period of delay in handing over possession till date 05.02.2020	3 Years 1 Months 6 Days
20.	Specific relief sought	• Directions to pay interest at the prescribed rate of interest.

3. As per clause 8.1 of the agreement, the possession was to be delivered within a period of 36 months plus 90 days grace period from the date of agreement i.e. 30.09.2013 which comes out to be 30.12.2016. Clause 8.1 of the flat buyer agreement is reproduced below:

"8. POSSESSION

8.1 Time of handing over the possession

(a) Subject to terms of this clause and subject to Flat Buyer(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the Developer, the Developer proposes to handover 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 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 sanction plans),
for applying and obtaining the Occupation Certificate
in respect of the Group Housing Complex”.*

4. The respondent has utterly failed in fulfilling their obligation of delivery of the unit as per the apartment buyer’s agreement and failed to offer of possession in terms of section 11(4) (a) and 18 of the Act read with Rules. Hence, this complaint for the reliefs detailed above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. It is submitted that the respondent has already completed the construction of the tower in question; That vide letter dated 05.09.2018, the complainant requested the respondent to waive off the interest and an amount of compensation and accordingly the respondent deposited a sum of Rs. 85,500/- as compensation from the amount due from the complainant towards the sale consideration of the said flat. The complainant thereafter accepted the offer of possession and



paid the remaining amount towards sale consideration, but he failed to take over the possession of the flat. It is prayed that the complaint be dismissed.

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.

8. The Authority based on information and explanation and other submissions made and the documents filed by the complainant is of considered view that there is no need of further hearing in the complaint.

Arguments are heard

9. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondents is in contravention of the provisions of the Act. By virtue of clause 11(a) of apartment buyer's agreement executed between the parties on 30.09.2013, possession of the

booked unit was to be delivered within time by 30.12.2016. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer's agreement dated 30.09.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondents is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 10.20% p.a. w.e.f. 30.12.2016 till offer of possession of the booked unit which is 13.08.2018 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the Rules.

10. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act: -

- (a) The respondent is directed to pay interest at the prescribed rate of 10.20% p.a. for delay in handing over the possession from the due date of possession i.e. 13.12.2016 till the offer of actual physical possession of the booked unit i.e. 13.08.2018.

- (b) The complainant is directed to takeover the possession of the allotted unit within a period of 30 days by paying remaining dues if any along with prescribed rate of interest i.e. 10.20% per annum to the respondent falling which the respondent (promoter) shall be entitled to charge maintenance charges.

11. Complaint stands disposed of.

12. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date 05.02.2020

JUDGEMENT UPLOADED ON 16.05.2020

HARERA
GURUGRAM