

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

**Complaint no. : 1032 of 2019**  
**First date of hearing : 17.07.2019**  
**Date of decision : 03.03.2020**

1. Mr. Tarun Khilariwal
2. Mrs. Poonam Khilariwal

Both R/o. Flat no. 38, HCL Tower, Plot No. B-  
B9/16, Sector-62, Noida, Uttar Pradesh-  
201301

**Complainants**

Versus

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

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Ms. Priyanka Agarwal  
Shri C.K. Sharma and  
Shri Dhruv Dutt Sharma

Advocate for complainants  
Advocates for the respondent

**ORDER**

1. The present complaint dated 15.03.2019 has been filed by the complainants/allottees in Form CRA 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"The Coralwood", Sector-84, Gurugram.
2.	Project area	15.275 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	59 of 2008 dated 19.03.2008 valid/renewal upto 18.03.2020
5.	RERA Registered/ not registered	<b>Registered vide no. 381 of 2017 dated 12.12.2017</b>
6.	HRERA registration certificate valid up to	<b>31.12.2019</b>
7.	Occupation certificate granted on	<b>17.10.2018</b>
8.	Unit no.	A-1803, 18 <sup>th</sup> floor, tower A, type B [Page 20 of complaint]
9.	Unit measuring (super area)	1890 sq. ft.
10.	Date of execution of flay buyer agreement	05.03.2013 [Page 18 of complaint]

11.	Payment plan	Construction linked payment plan [Page 44 of complaint]
12.	Total consideration as per flat buyer's agreement	Rs. 1,00,94,840/- [Page 20 of complaint]
13.	Total amount paid by the complainants as alleged by them in its complaint	Rs.97,04,622/-
14.	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 i.e. 05.03.2013 + grace period of 90 days)	05.06.2016
15.	<b>Offer of possession to the complainants via email dated 24.10.2018</b>	<b>24.10.2018</b>
16.	Delay in handing over possession till date of offer of possession i.e. 24.10.2018	2 years 4 months 19 days
17.	Specific reliefs sought	i. Direct the respondent to deliver immediate possession of the unit located at project "the coral wood at Sector-84, Gurugram, Haryana complete in all manner along with interest at prescribed rate of interest on the paid amount from promised due date of possession

3. As per clause 8.1(a) of the flat buyer agreement dated i.e. 05.03.2013, the possession was to be handed over within a period of 36 months from the date of execution of agreement



plus 90 days grace period (05.03.2013) which comes out to be 05.06.2016. Clause 8.1(a) of the flat buyer agreement is reproduced below:

***“8.1(a) Time of handing over the possession:***

*(a) Subject to terms of this clause and subject to the Flat Buyer(s) having complied with all the terms and condition of this Agreement and not being in default under any if the provisions of this Agreement and complied with all the 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 be 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 sanctioned plans), for applying and obtaining the Occupation Certificate in respect of the group housing complex.”*

4. The complainants submitted that the apartment no. A-1803 having super area of approx. 1890 sq. ft. was allotted to the complainants vide allotment letter dated 10.01.2013 in the said project.
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. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-

- i. The respondent 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 30.09.2014 and 10.11.2014, passed in company petition nos.155 of 2003 and 203 of 2013, w.e.f. 07.03.2015.
- ii. The respondent submitted that the complaint filed by the complainants before the Id. authority, besides being 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.
- iii. The respondent submitted that further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in annexure 1 to the flat buyer's agreement, the date of handing over of the possession shall be extended



accordingly. In the present case, it is a matter of record that the complainants have not fulfilled their obligation and have not even paid the installments that had fallen due. Accordingly, no relief for alleged delayed offer for possession can be said to be maintainable.

- iv. The respondent submitted that after having applied for grant of occupation certificate in respect of the project, which had thereafter been even issued through memo dated 17.10.2018 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.
- v. The respondent further submitted that after having obtained for grant of occupation certificate in respect of the project, which had thereafter been issued dated 17.10.2018 and had offered possession to the complainants vide letter dated 14.08.2018. Thereafter, The respondent through email dated 24.10.2018 and

10.11.2018 informed the complainant that they have received the occupation certificate and offered the possession to the complainants.

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 on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8.1(a) of the flat buyer agreement executed between the parties on 05.03.2013, possession of the booked unit was to be delivered within a period of 36 months plus 90 days grace period from the date of execution of this agreement. As such the due date of delivery of possession comes out to be 05.06.2016. Accordingly, it is the



failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 05.03.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @10.15% p.a. w.e.f. 05.06.2016 till date of offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

10. Arguments heard. The respondent has already obtained occupation certificate on 17.10.2018 and offered the possession of the allotted unit to the complainant through email dated 24.10.2018. The authority is of the considered view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant. As per terms and conditions of flat buyer's agreement executed between the parties, the complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 10.15% per annum on the amount deposited by the complainant with the respondent from the due date of



possession till the offer of physical possession of the allotted unit.

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

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.15% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 05.06.2016 till date of offer of possession offered via email dated 24.10.2018.
- ii. The complainant is directed to take over the possession of the allotted unit within a period of 30 days by paying remaining amount, if any.
- vi. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vii. The respondent shall not charge anything from the complainants which is not part of the flat buyer's agreement.
- viii. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @10.15% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.



**HARERA**  
**GURUGRAM**

Complaint No. 1032 of 2019

12. Complaint stands disposed of.  
13. File be consigned to registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:03.03.2020

Judgment uploaded on 02.06.2020

**(Subhash Chander Kush)**

Member



**HARERA**  
**GURUGRAM**