

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

Complaint no. : 122 of 2019
First date of hearing : 29.08.2019
Date of decision : 03.03.2020

1. Mr. Hardip Singh
2. Mr. Rajan Arora
R/o B-4/21, DLF Phase 1,
Gurugram-122002.

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:

Shri Shiva Kapoor
Shri C.K. Sharma and Shri
Dhruv Dutt Sharma

Advocate for the complainants
Advocates for the respondent

ORDER

1. A complaint dated 10.01.2019 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. Hardip Singh and Mr. Rajan Arora, against the promoter M/s SS

Group Pvt. Ltd., on account of violation of the clause 8.1 of the flat buyer's agreement executed on 31.12.2013 in respect of flat 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 31.12.2013 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 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 Leaf", Sector-85, Gurugram.
2.	Nature of the project	Group housing colony
3.	Project area	11.093 acres
4.	DTCP license no.	81 of 2011 dated 16.09.2011 upto 15.09.2019

5.	Registered/ not registered	Registered
6.	HRERA registration no.	23 of 2019 dated 01.05.2019
7.	HRERA registration certificate valid up to	31.12.2019
8.	Unit no.	6B, 6 th floor, tower B-10
9.	Unit measuring	2280 sq. ft.
10.	Date of execution of flat buyer's agreement	31.12.2013
11.	Payment plan	Construction linked plan [Page 53 of complaint]
12.	Total cost of the unit as per the said agreement dated 31.12.2013	Rs.1,22,26,200/- [Page 34 of complaint]
13.	Total amount paid by the complainants as stated in the complaint and not disputed by respondent.	Rs.99,55,087/- [Page 14 of complaint] Note: statement of account is not annexed by either of the parties.
14.	Due date of delivery of possession as per clause 8.1 of flat buyer's agreement i.e. within a period of 36 months from the date of execution of this agreement (31.12.2013) plus grace period of 90 days.	31.03.2017
15.	Delay in handing over possession till date of decision i.e. 03.03.2020	2 year 11 months 03 days
16.	Penalty clause as per clause 8.3 of flat buyer's agreement dated 31.12.2013	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.
17.	Relief claimed	

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 dated 31.12.2013 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 31.03.2017. Neither the respondent has offered the possession of the subject unit till date to the complainants nor has paid any interest for the period it delayed in offer of possession. Therefore, the promoter has not fulfilled its 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 29.08.2019, 09.10.2019, 15.11.2019, 15.01.2019 and 03.03.2020. The respondent through its counsel appeared on 03.03.2020. The reply filed on

behalf of the respondent on 08.05.2019 has been perused by the authority.

Facts of the complaint

6. The complainants submitted that in early 2012, the complainant no. 1 was approached by the officials of the respondent in respect of the project being developed by them. The officials of the respondent induced complainant to advance them the booking amount of Rs.1,00,000/-. A cheque was given by the complainant no. 1 immediately on the same day.
7. The complainants submitted that vide allotment letter dated 10.09.2012 for flat no. 6B in tower B-10 on sixth floor measuring 2280 sq. ft. the respondent stated that the occupation certificate shall be applied within 36 months of signing flat buyer's agreement.
8. The complainants submitted that complainant no.1 finally signed the flat buyer's agreement dated 31.12.2013. While signing the buyer's agreement, the executive on behalf of the respondent assured the complainant no. 1 referring to clause

- 8.1 that the possession will be granted by 31.12.2016, but the respondent miserably failed to do so, even till date.
9. The complainants submitted that in 2013, they mailed several times to the respondent, showing their concern that no construction work was going on the site. The complainant no. 1 also attached several photographs of the construction site.
10. The complainants submitted that on the inquiries made with the office of RERA, the complainant no. 1 was shocked to learn that the project "The Leaf" was not even registered with RERA as well as the complainants were not able to find the building plan and other licences on the Government website. The buyer even tried to contact the builder, but they kept on delaying the matter.
11. The complainants submitted that complainant no. 2 (Sh. Rajan Arora) who is the son of complainant no. 1 was added as a co-owner in flat.
12. The complainants submitted that the cause of action in their favour firstly arose when the respondent failed to deliver the possession of the unit as per the contracted terms/scheduled,

even after paying Rs.99,55,087/- i.e. about 82% of the total amount of the unit. Secondly, cause of action arose again, when the respondent failed to give/provide any information regarding the RERA registration of the project, despite repeated emails.

Respondent's reply

13. The respondent submitted that the complaint filed by the complainants before the 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 authority as the reliefs being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this authority.
14. The respondent submitted that the claim for return of amount with interest and compensation, in the case where the allottee wishes to withdraw from the project, would be adjudged by the adjudicating officer as appointed under section 71 of the said Act and that too keeping in view the factors mentioned in

section 72 of the Act. No complaint can be entertained much less filed before this authority in respect of the matters to be adjudicated by the adjudicating officer. Apparently, in the present case, the complainants are seeking a claim of refund of the amount along with interest and also the compensation, which, from reading of the provisions of the Act and Rules made thereunder, 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.

15. The respondent submitted that complainants, in any event, cannot get their claims adjudicated under the provisions of the Act and Rules framed thereunder, *inter alia*, 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. Till such time the project is registered with this authority, no complaint and/or claim, much less as raised by the complainants can be adjudicated upon.

16. The respondent submitted that the 'agreement for sale' that has been referred to under the provisions of the Act and Rules framed thereunder, is the 'agreement for sale', as prescribed in annexure 'A' of 2017 Haryana Rules. Apparently, in terms of section 4(1), a promoter is required to file an application to the 'authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term 'prescribed' has been defined under section 2(z) (i) to mean prescribed by Rules made under the Act. Further, section 4(2) (g) of the Act provides that a promoter shall enclose, alongwith the application referred to in sub-section 1 of section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act *inter alia*, provides that a promoter shall not accept a sum more than 10% of the cost of the flat, plot or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under

any law for the time being in force. Sub-section 2 of section 13, *inter alia*, provides that the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said sub-section. Rule 8 of 2017 Haryana Rules categorically lays down that the agreement for sale shall be as per annexure 'A'. The 'agreement for sale' for the purposes of the Act as well as Haryana Rules, is the one as laid down in annexure 'A', which is required to be executed *inter se* the promoter and the allottee.

17. The respondent submitted that it is matter of record and rather a conceded position that no such agreement, as referred to under the provisions of the Act and 2017 Haryana Rules, has been executed between the respondent company and the complainants. 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 the said Act. The adjudication of the complaint for interest and compensation,

as provided under sections 12, 14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana Rules and no other agreement.

18. The respondent also submitted that the complainants have also misdirected in claiming payment of interest on the amount collected by the respondent, on account of alleged delay in offer of possession. Besides the fact that this hon'ble authority cannot be said to have any jurisdiction to award/ grant such relief to the complainants, it is submitted that there cannot be said to be any alleged delay in offering the possession.
19. The respondent submitted that it has 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. 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.

20. The respondent submitted that even otherwise, the complainants cannot invoke the jurisdiction of the adjudicating officer in respect of the unit allotted to the complainants, especially when there is an arbitration clause provided in the flat buyer's agreement, 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. Once the parties

have agreed to have adjudication carried out by an alternative dispute redressal forum, invoking the jurisdiction of this authority, is misconceived, erroneous and misplaced.

21. The respondent submitted that the complainants booked the said flat on their own with intent to make quick money and windfall gains as the market at that time was booming. It is denied that the respondent had to handover the possession of the unit on/before 31.12.2016 as per the buyer's agreement and the respondent miserably failed to do so, even till date. It is stated that the respondent has already applied for RERA registration and the building plan and other licenses have been renewed time to time as needed.

Findings of the authority

22. 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 Town & Country Planning Department, 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.

23. Arguments heard at length. The authority is of the 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 agreement executed between the parties, the complainant is entitled for delayed possession charges under section 18(1) of the Real Estate (Regulation and 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 after the receipt of occupation certificate.

Decision and directions of the authority

24. 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 parties in the interest of justice and fair play:

- (i) The respondent is liable to pay delayed possession charges at prescribed rate of interest i.e. 10.15% per annum w.e.f. the due date of possession i.e. 31.03.2017 as per the provisions of section 18 (1) proviso of the said Act read with rule 15 of the Rules *ibid*, till offer of possession.
- (ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order. Thereafter, monthly interest at prescribed rate be paid on 10th of each subsequent month till offer of possession.
- (iii) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

(iv) The promoter shall not charge anything from the complainants which is not part of the buyer's agreement.

25. Complaint is disposed of.
26. The order is pronounced.
27. Case file be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2020

Judgment uploaded on 02.06.2020


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram