

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

Complaint no. : 3099 of 2019
First date of hearing : 29.10.2019
Date of decision : 03.03.2020

1. Ms. Priya Kaushik
R/o East 103/64, Silver Oak Apartment, DLF
Phase-1, Gurugram - 122001

Complainant

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 Y.K. Mangla
Shri C.K. Sharma and
Dhruv Dutt Sharma

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 01.08.2019 has been filed by the complainant/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 complainant, 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 Leaf", Sector-85, Gurugram.
2.	Project area	11.093 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	81 of 2011 dated 16.09.2011 valid upto 15.09.2019
5.	RERA Registered/ not registered	Registered vide no. 23 of 2019 dated 01.05.2019
6.	HRERA registration certificate valid up to	31.12.2019
7.	Unit no.	3B, 3 rd floor, tower/building no. 2 [Page 28 of complaint]
8.	Unit measuring (super area)	2280 sq. ft.
9.	Date of execution of flat buyer agreement	22.10.2013 [Page 27 of complaint]

10.	Payment plan	Construction linked payment plan [Page 48 of complaint]
11.	Total consideration according to the applicant ledger dated 23.04.2019	Rs. 1,22,83,200/- [Annexure III page 54 of the complaint]
12.	Total amount paid by the complainant according to the applicant ledger dated 23.04.2019	Rs.1,05,98,821/- [Annexure III page 54 of complaint]
13.	Due date of delivery of possession as per clause 8.1(a) of flat buyer's agreement i.e. within a period of 36 months from the date of execution of this agreement (22.10.2013) plus grace period of 90 days. [Page 35 of complaint]	22.01.2017
14.	Offer of possession to the complainant	Not offered
15.	Delay in handing over possession till date of order i.e. 03.03.2020	3 years 1 months and 10 days
16.	Status of the project	OC not received till date
17.	Specific reliefs sought	<ul style="list-style-type: none"> i. Direct the respondent to immediately deliver the peaceful vacant physical possession of the flat in question. ii. Direct the respondent to pay delayed possession charges.

3. As per clause 8.1(a) of the flat buyer agreement dated i.e. 22.10.2013, 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 (22.10.2013) which comes out to be 22.01.2017. Clause 8.1(a) of the flat buyer agreement is reproduced below:

"8.1 Time of handing over the possession

...the developer proposes to hand over the possession of the flat within a period of 36 months from the date of signing of this agreement. The flat buyer agrees and understands that the developer shall be entitled to grace period of 90 days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the group housing complex."

4. The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant seeks delay interest as per section 18 of the Act. The complainant reserves her right to file a separate application for seeking cost of litigation before the Adjudicating Officer. Hence, this complaint for the reliefs as stated 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. 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.
7. The respondent contests the complaint and submissions made therein, in brief, as summarized as under:-
 - i. The respondent submitted that the complainant had on few occasions defaulted in making timely payment of the instalments.
 - ii. The respondent submitted that due to non-payment of due instalments by majority of the allottees including the present complainant, the progress of the project was impacted considerably. However, the respondent is doing its level best to complete the project as per its commitments made before RERA.
8. The Authority on the basis of information and explanation and other submission made and the documents filed by the complainant 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 complainant 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 22.10.2013, 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 allotment letter. As such the due date of delivery of possession comes out to be 22.01.2017. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the flat buyer agreement dated 22.10.2013 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 complainant is entitled for delayed possession charges @10.15% p.a. w.e.f. 22.01.2017 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

10. Arguments heard at length. 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 on receipt of occupation certificate.
11. It has been controverted by the counsel for the complainant that discount of Rs.3.42 Lacs had been offered by the respondent which has not been adjusted. It is directed that the contention raised by the complainant suitably be adjusted as per agreement.
12. 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 complainant from due date of possession i.e. 22.01.2017 till the offer of possession.

- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not 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 @10.15% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
- vi. It has been controverted by the counsel for the complainant that discount of Rs.3.42 Lacs had been offered by the respondent which has not been adjusted. It

is directed that the contention raised by the complainant suitably be adjusted as per agreement

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


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated:03.03.2020

Judgment uploaded on 02.06.2020

