

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 31.10.2018
Complaint No.	38/2018 Case titled as Ms. Neera Goyal V/s M/s S.S. Group Pvt. Ltd. & Other
Complainant	Ms. Neera Goyal
Represented through	Shri Sanjay Goel-husband of the complainant in person
Respondent	M/s S.S. Group Pvt. Ltd. & Other
Respondent Represented through	Shri Ashish Chopra, Advocate for the respondent.
Last date of hearing	4.10.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

Arguments heard.

It has been alleged that as per clause 8.1 of the Builder Buyer Agreement dated 28.9.2013 signed inter se both the parties i.e. builder and complainant, unit No.5A, 5<sup>th</sup> floor, Tower No.T-4, possession of the flat was to be handed over within 36 months + 3 months grace period which comes out to be 28.12.2016. However the builder has failed in delivering possession of the unit. In this respect, vide previous order dated 22.5.2018, local commissioner was appointed. He has submitted his report on 9.7.2018. As per report of the local commissioner, the status of the project is that 45% work has been completed. Builder has applied for registration. However, the

project stands un-registered at the moment. The licence of the project is pending for renewal with the competent authority. As such, builder does not possess a valid licence as on date. The respondent has applied for renewal of licence for this project. As per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, complainant is entitled for interest on the amount deposited with the builder at the prescribed rate of interest i.e. 10.45% per annum. Since no possession has been delivered, as such, builder shall give cumulative interest till date. This amount shall be paid from due date of possession i.e. 28.12.2016. The arrears of interest accrued so far shall be made to the complainant within 90 days from the issuance of this order and thereafter monthly payment of interest shall be made before 10<sup>th</sup> of subsequent month till handing over the possession.

As per the commitment made by the builder in his application for registration of the project, the due date is 31.12.2019. If the builder in all probabilities fails to deliver possession on committed date, in that case complainant shall be entitled to seek refund.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

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

**Complaint No. : 38 of 2018**  
**Date of first hearing : 10.04.2018**  
**Date of Decision : 31.10.2018**

Ms. Neera goel,  
R/o 1832, Sector -17/A, Gurugram- 122001,  
Haryana

**...Complainant**

Versus

1.M/s SS Group Pvt. Ltd.  
2. Ms. Dayawati, Director  
3. Mr. Ashok Kumar Jaunapuria, Director,  
77, SS House, Sector-44, Gurugram, Haryana

**...Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sanjay Goel  
Shri Ashish Chopra

Husband of the complainant  
Advocate of respondent

**Order**

1. A complaint dated 08.03.2018 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 complainant Ms. Neera Goel against the promoter M/s SS Group Pvt. Ltd, on account of



violation of clause 8.1 of flat buyer agreement dated 28.09.2013 for flat no. 5A , 5<sup>th</sup> floor building no. 4 in the project 'the leaf ' with a super area of 2600 sq. ft. for not giving possession on the due date i.e. 28.12.2016 which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	The Leaf", Sector 84-85, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	5A, 5 <sup>th</sup> floor, building no. 4
3.	Nature of project	Group housing complex
4.	RERA registered/ not registered.	unregistered
5.	DTCP license no.	81 of 2011
6.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 12,00,000/-
7.	Total consideration amount as per agreement	Rs. 1,53,99,000/-
8.	Total amount paid by the complainants upto date	Rs. 98,94,028/-
9.	Date of flat buyer's agreement	28.09.2013
10.	Date of delivery of possession. (36 months + 90 days grace period from date of execution of agreement) (clause 8.1)	28.12.2016
11.	Delay of number of months/ years upto date	1year 10 months



3. As per the details provided above, which have been checked as per record of the case file, a flat buyer agreement dated

28.09.2013 is available on record for flat no. 5A, 5<sup>th</sup> floor, building no. 4, according to which the possession of the aforesaid unit was to be delivered by 28.12.2016. The promoter has failed to deliver the possession of the said unit to the complainant by the due date nor paid any compensation till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 10.04.2018. The case came up for hearing on 10.04.2018, 02.05.2018, 22.05.2018, 17.07.2018, 30.08.2018, 12.09.2018, 4.10.2018 and 31.10.2018. The reply has been filed by the respondents on 27.04.2018.

### Facts

5. That the complainant had booked a flat unit No. 5A, building no.4, 5<sup>th</sup> floor in the project "The leaf" situated in Sector 84-85 in the revenue estate of village Badha, Tehsil- Manesar, District, Gurgaon developed by M/S SS Group Pvt. Ltd. and paid provisional booking amount of Rs 12,00,000/- dated 08.12.2012.
7. That Complainant paid total amount of Rs. 30,14,692/- to the respondent till January 2013, but despite paying such huge



amounts, she was never apprised about the development status by the respondent company despite repeated requests and the respondents promised the complainant to hand over the possession up to 08.12.2015.

8. That as per the clause 8.1 of flat buyer agreement dated 28.09.2013 executed between Ms. Neera Goel and M/s SS Group Pvt. Ltd, the respondents have to hand over the possession within 36 months and 90 days grace period from date of agreement.
9. The respondents kept on demanding and the complainant has paid the total amount of Rs. 98,94,028/- till 21.05.2017, but the payment was made for the completion of the 10<sup>th</sup> floor.
10. The complainant had also visited the construction site and found that there was no construction activity being carried out on the project site. That the respondents have also demanded the payment dated 15.01.2017.
11. The complainant also submits that the flat buyer agreement mentions that the opposite party has to pay preferential location charges of Rs.3, 90,000/- and additional preferential charges of Rs. 1, 95,000/-, but the respondents have no right to charge the said amount.



12. That the respondents have no right to take money from the complainant on the super area of the flat. In lieu of an application filed under RTI Act, 2005 the director general, DTCP has responded that the builder cannot charge a huge amount towards super area and can charge only of the actual carpet area given.
13. The respondents must give the possession as per the flat buyer agreement within 36 months and 3 months grace period and complainant has already paid the total amount of Rs.98,94,028/- till 21.02.2017 and since the respondents is failed to hand over the possession of the said flat.

**Issue Raised by the Complainant:**

- I. Whether the respondents have defaulted in handing over the possession of a residential flat, within the stipulated time period?
- II. Whether the respondents can charge any amount towards super area, PLC, EDC, IDC, car parking and club membership
- III. Whether the respondents are liable to pay interest at the rate of 18% per annum Rs. 98,94,028/- from the date of payment till the handing over of possession of the flat and the said amount is refunded.





### Relief Sought:

- I. Direct the respondents to hand over possession of the said flat or refund the amount of Rs.98,94,028/- to the complainant along with the interest at the rate of 18% per annum.
- II. Direct the respondents not to charge any amount towards super area, preferential location charges, club membership, car parking, EDC, and IDC on the super area.

### Reply

14. The preliminary objection raised on behalf of the respondent is that the authority does not have the jurisdiction to decide the complaint as the said flat buyer agreement dated 28.09.2013 was executed between the parties much prior to the coming into force of the Act. Moreover, the jurisdiction of this authority cannot be invoked as the said agreement contains an arbitration clause whereby the parties resolve to settle the dispute amicably failing which the same is to be settled way of arbitration.

15. The respondent submitted that the complainant is claiming for the refund of the amount along with interest as also the compensation, which, from reading of the provisions of the Real Estate (Regulation and Development) Act, 2016 and 2017 rules, especially those mentioned herein above, 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 rejected.

16. The respondents submits that the project in respect of which the complaint has been made, is not even registered as on date with this authority, though the respondent no.1 has applied for its registration. Until such time the project is registered with the authority, no complaint, much less as raised by the complainant can be adjudicated upon.
17. From the conjoint reading of the Sections/rules, form and Annexure-A, it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure-A, which is required to be executed inter-se the promoter and the allottee.
18. That it is a matter of record and rather a conceded position that no such agreement as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondents and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complainant, though without jurisdiction, is the flat buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the



complaint of interest and compensation, as provided under sections 12,14,18 and section 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.

19. That the aforementioned submissions are being filed as preliminary objections/submissions only, especially when the said objections/submissions question the maintainability as well as the jurisdiction to adjudicate upon the complaint and respondent no.1 reserves its right to file a detailed reply, raising additional pleas and/or filing documents, if need so arises, at a later stage.

### **Rejoinder on behalf of complainant**

The complainant filed the rejoinder where he reasserted the facts of the complaint.

### **Written Submission by Respondents**

- I. That the authority shall issue a registration certificate with a registration number in form REP-III to the promoter. Clause 2(i) of the form REP-III provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the government.
- II. In humble submission of respondents, the non-submission of valid license could not be a ground for non-registration of



the project with this ld. authority. The provisions of 2016 Act as well as Haryana 2017 Rules, nowhere provides for submission of a valid license. Without prejudice, it is submitted that no fault of respondent no. 1 could have been found non-submission of the said license in as much as, respondent, as part of its obligation, applied for renewal of the said license through letter dated August 12, 2014 (submitted on August 13, 2014) before the competent authority i.e. DTCP. However, no renewal thereof had been granted.

#### Determination of issues

20. In regard to **first issue** raised by the complainant the promoters have failed to handover the possession of the flat as agreed in the agreement dated 28.09.2013. As per clause 8.1 of the agreement the promoters shall deliver the possession within 36 months plus 90 days grace from the date of execution of the agreement. Therefore, the due date of the possession is 28.12.2016. Therefore, there is delay of 1 year and 10 months and interest shall be allowed. The clause reproduced below:

*“.....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 a*



*grace period of 90 days, after the expiry of thirty six months, for applying and obtaining the occupation certificate in respect of the group housing complex.....”*

**21.** In regard to the **second issue** raised by the complainant that the amount charged towards super area, PLC, EDC, IDC, car parking and club membership are as per the terms and condition of the agreement and cost is included in the total consideration as per said agreement.

**22.** In regard to the **third issue** raised by the complainant, as the promoters has failed to fulfil her obligation under section 11, the promoters are liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section **18(1) is reproduced below:**

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*



*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

The complainant reserves his right to seek compensation from the promoters for which he shall make separate application to the adjudicating officer, if required.

23. Accordingly, the due date of possession was 28.12.2016. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said flat as per clause 8.3(a) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

27. As the possession of the flat was to be delivered by 28.12.2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation



under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*

28. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

**34 (f) Function of Authority –**

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.





29. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

**Findings of the authority**

30. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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 complainant at a later stage.

31. Keeping in view the facts and circumstances, the authority is competent to look into the matter on the basis of merits of the case. As the builder has failed in delivering possession of the unit. In this respect, vide previous order dated 22.5.2018,





local commissioner was appointed. He has submitted his report on 09.07.2018. As per report of the local commissioner, the status of the project is that 45% work has been completed. Builder has applied for registration. However, the project stands un-registered at the moment. The licence of the project is pending for renewal with the competent authority. As such, builder does not possess a valid licence as on date.

### **Decision and directions of the authority**

31. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondents are directed to handover possession of the said unit latest by 31.12.2019 as committed by the builder in the application for the registration of the project.
- (ii) The respondents are directed to pay the interest at the prescribe rate i.e. 10.45% for every month of delay from the due date of possession i.e. 28.12.2016 till handing over the possession of the unit.
- (iii) The respondents are directed to pay interest accrued from the due date of possession i.e. 28.12.2016 till the



date of decision, on account of delay in handing over of possession to the complainant within 90 days from the date of decision i.e. 31.10.2018 and subsequent interest to be paid before 10<sup>th</sup> of subsequent month till handing over the possession.

32. If the builder in all probabilities fails to deliver possession by the committed date i.e. 31.12.2019 as committed in the application of registration, in that case the complainant shall be entitled to seek refund.

33. The order is pronounced.

34. The file is consigned to the registry

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated :31.10.2018

