

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

**Complaint No. : 380 of 2018**  
**First date of hearing: 02.08.2018**  
**Date of Decision : 16.11.2018**

1. Satpal Yadav
2. Mohit Yadav
3. Rohit Yadav

R/o. Unit No.1404, Tower AB-2, Mapsko  
Casa Bella, Sector 82-83, Gurugram.

**Complainants**

Versus

M/s Mapsko Builders Pvt. Ltd.

Regd. Office: 52, North Avenue Road,  
Punjabi Bagh West, New Delhi-110026.

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Vinay Kumar Yadav Advocate for the complainant

Shri Sanjeev Dhingra Advocate for the respondent



**ORDER**

1. A complaint dated 05.06.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants, Mr. Satpal Yadav, Mr. Mohit Yadav & Mr. Rohit Yadav, against the promoter, M/s Mapsko Builders Pvt. Ltd on account of violation of clause 17 (a) of flat buyer agreement executed on 02.04.2016 for not giving possession on the due date i.e 02.04.2018 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 | "Mapsko Casa Bella", Sector 82, Gurugram.   |
| 2. | Nature of real estate project    | Residential group housing complex   |
| 3. | Status of project                | Occupation certificate dated 29.06.2016 received and Conveyance deed dated 16.03.2017 of booked unit registered |
| 4. | Flat/Apartment/Unit No.          | 1404, 13 <sup>th</sup> floor, AB-2 Block.   |
| 5. | Flat measuring                   | 1430 sq. ft.  |
| 6. | Date of letter of possession     | 01.09.2016  |
| 7. | RERA Registered/Not registered.  | Not registered  |
| 8. | DTCP license                     | 85 of 2008  |
| 9. | Booking date                     | 27.12.2012  |



|     |   |   |
|-----|---|---|
| 10. | Date of execution of BBA  | 02.04.2016                                  |
| 11. | Total consideration amount  | Rs 71,00,000/-                              |
| 12. | Total amount paid by the complainant till date  | Rs 75,20,500/-<br>(Inclusive of stamp duty) |
| 13. | Payment plan  | Down payment plan                           |
| 14. | Date of delivery of possession (As per clause 17 (a) of FBA i.e 18 months from the date of signing of FBA + 6 months grace period ) | <b>2.04.2018</b>                            |
| 15. | Delay of number of years / months/ days till date   | 7 months 22 days                            |
| 16. | Penalty (As per clause 17 (a) of FBA)   | Rs 5 per sq. ft per month                   |

3. The details provided above have been checked as per record of the case file. A flat buyer agreement dated 02.04.2016 is available on record for Unit no. 1404.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 02.08.2018. The case came up for hearing on 02.08.2018, 05.09.2018, 11.10.2018 and 16.11.2018. The reply has been filed on behalf of the respondent.

#### **Facts of the complaint**

5. The complainant submitted that the respondent is a colonizer and has floated a residential colony by the name and style of "Mapsko Casa Bella" falling within the revenue estate of village Sihi, Tehsil and Distt. Gurugram, situated on sector 82-83, Gurugram, after obtaining due permissions from District Town



and Country Planning department and had got approved lay out plan of said residential colony which include apartments.

6. The complainant submitted that the respondent while allotting the residential properties to various allottee entered into a contractual agreement vide flat buyer agreements on different dates taking legal liability to provide various services/facilities and infrastructure in the colony and maintaining them.
7. The colonizer entered into an flat buyer agreement with the present petitioners on dated 02.04.2016. In the terms and conditions of said contractual liability, it was also termed that in lieu of performance of maintenance for providing infrastructure, facilities and services, the respondent would be entitled to receive maintenance charges from the purchasers. The said terms of contract i.e. flat buyer agreement, be treated as part and parcel of this plaint.
8. That the respondent failed to perform its terms of contract and failed to provide infrastructure, facilities for maintenance and services and other performances as termed in the above said contract to flat purchasers. The said act of the respondent was in utter violation of its contractual obligation as the respondent has not provided facility of swimming pool till date and have already received rupees 50000/- as membership charges from the buyers and also claiming maintenance charges of club and Swimming Pool.
9. That the colonizer has received 4% of the total sale consideration in shape of VAT forcefully and illegally from the



present petitioners/allottee of which it has no right to claim. The colonizer has illegally retained a huge amount of allottee/purchaser in the shape of VAT and there is no provision of 4% VAT as per any rules of the government. As and when the allottee/purchaser asked about the government notification regarding the VAT the colonizer never provides the same and threatens the petitioner with dire consequences.

10. The colonizer is enjoying the money of the allottee/petitioner/purchaser illegally and unlawfully of which he has no right title and interest to do so. That the respondent has not even deposited the said VAT in the government treasury or in concerned department and using it illegally and unlawfully for its own use and has gained it illegally.
11. That the respondent is receiving GST on the maintenance charges upon the amount below 5000/- rupees rather as per the government the GST is exempted on maintenance amount which is less than 5000/- rupees per month. The present colonizer/respondent is demanding and receiving GST on the maintenance bills which are below 5000/- rupees per month and the said act of the respondent is illegal and unlawful and in utter violation of the government rules. The respondent is also defaulter of non-making and depositing of government taxes and illegally receiving the same from the allottee/purchasers.
12. That the infrastructure for internal development as approved electric sub -station, fire-fighting system and measures,



cabling and approved sewerage system etc. and the external development like drainage and other facilities as prescribed by the competent authorities and covered under the relevant act are not provided by the colonizer i.e. Mapsko Builders Private Limited and this act of the colonizer is in utter violation of the license granted to the colonizer.

13. That the petitioners repeatedly drew attention of the colonizer i.e. Mapsko Builders Private Limited towards the previously mentioned deficiencies but no cognizance was taken by the colonizer i.e. Mapsko Builders Private Limited.
14. That in due time, the respondent claimed maintenance from buyer/petitioner, which was duly paid by the petitioner. However, it is pertinent to mention here that the respondent is bound by the rules of the government and with terms of license to complete the facilities, common areas and providing of all the services and infrastructure as termed in the license and as claimed by District Town & Country Planner. However, the respondent failed to perform its part of contract and liabilities and complete the entire facilities and infrastructure as prescribed by the competent authorities, so that the purchasers can use the same for the common purposes.
15. The complainant also submitted that the act of the colonizer is in gross breach of license conditions and offence of prevalent act needs immediate intervention by exercising judicial powers by regulatory authority in the interest of justice, and also peaceful and dignified life of the residents of township "Mapsko Casa Bella".



### Issues raised by the complainants

16. The issues raised by the complainants are as follows :-
- i. Whether the respondent is entitled to receive 4% of total sale consideration as VAT ?
  - ii. Whether the respondent is liable to refund the VAT amount received by them illegally?
  - iii. Whether the respondent is entitled to receive GST below the 5000/- rupees maintenance charges.
  - iv. Whether the respondent is liable to refund the GST illegally received by them?

### Relief Sought

17. The reliefs sought by the complainants are as follows :-
- i. To refrain the respondent from demanding GST on maintenance charges on amount below Rs 5000/- rupees per month.
  - ii. To direct the respondent to implement the provisions of clause of license precisely, along with the other relevant conditions be got implemented strictly and management of facilities for community uses including club and swimming Pool etc.
  - iii. To direct the respondent to refund the amount received in shape of GST over the maintenance charges below 5000/- per month.
  - iv. To direct the respondent to refund the 4% amount of total sale consideration illegally received by the colonizer in shape of VAT.



### Reply by the Respondent

18. The respondent denied that respondent failed to perform its terms of contract and failed to provide infrastructure and facilities for maintenance and services and other performances as termed in the said contract to flat purchasers.
19. The respondent submitted that the complainant paid the amount of Rs 50,000/- towards one time club membership with free will and own consent. The said charges are different from maintenance charges.
20. The respondent also submitted that the maintenance charges were paid by the complainant against the various services which are clearly mentioned in Annexure-A of maintenance agreement dated 01.09.2016 and not only for maintenance of club and swimming pool and the swimming pool is already constructed and ready for use.
21. The respondent also submitted that as per clause 9 of flat buyer agreement dated 02.04.2016 the complainant agreed to pay all government charges, levies, property tax, value added tax, wealth tax, service tax or any other tax, duties charges ,cess etc levied or leviable at any time on the said flat. The respondent further submitted that the complainant is liable to pay VAT to the respondent. The said liability is clearly explained in clause 3(a) of the conveyance deed bearing no 3783 dated 20.03.2017.





22. The respondent also denied that the respondent is receiving GST on the maintenance charges upon amount below Rs 5000/- per month and admitted that the said amount is exempted from GST .
23. The respondent also submitted that the subject matter of the complaint does not fall within the jurisdiction of this authority as the respondent had already obtained the occupation certificate vide no ZP-488/SD(BS)2016/2959 dated 29.06.2016. Therefore the present complaint is liable to be dismissed.

**Determination on issues**

24. After considering the facts submitted by the complainants and the respondent and perusal of record on file, the authority decides the issues raised by the complainants as under :

- i. **Issue 1 & Issue 2** :. With respect to first and second issue, the authority is of the view that it is a peculiar case and is not covered under the provisions of Real Estate (Regulation and Development) Act in any manner. But the complainant is at liberty pursue the matter with the VAT authority for all intents and purposes.
- ii. **Issue 3 & Issue 4** : With respect to third and fourth issue the authority is of the view that as the complainant has failed to produce any documentary evidence in support of his claim, therefore this issue cannot be decided.



## Findings of the authority

### 25. Jurisdiction of the authority-

#### Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding 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.

#### Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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 complainants.

#### Decision and directions of the authority

23. 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 respondents:

(i) The Complainant is directed to pursue the matter with the VAT authority for all intents and purposes.



24. The order is pronounced.

25. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 16.11.2018



HARERA  
GURUGRAM

