

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

Complaint no. : 84 of 2020  
First date of hearing : 03.03.2020  
Date of decision : 08.10.2020

1. Shri. Suresh Verma  
2. Smt. Mamta Verma  
Both R/o: RZ-D3-71, Gali No.9,  
Mahavir Enclave, New Delhi

**Complainants**

Versus

M/s S.S. Group Pvt. Ltd.  
Address:77, S.S. House, Sector-44,  
Gurugram, Haryana-122003

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

None  
Shri Dhruv Dutt Sharma

Advocate for the complainants

Advocates for the respondent

**ORDER**

1. The present complaint dated 20.01.2020 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

inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees 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 Leaf, Sector 84-85, Gurugram.
2.	Project area	11.093 acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no.	81 of 2011 dated 16.09.2011
	License valid/renewed upto	15.09.2019
	Name of licensee	Shiva Profins Private Limited
5.	HRERA registered/ not registered	<b>Registered vide no. 23 of 2019 dated 01.05.2019</b>
	License valid/renewed upto	<b>31.12.2019</b>
6.	Unit no.	4B, 4 <sup>th</sup> floor, Building no. 1 [Page 24 of complaint]
7.	Unit measuring	2280 sq. ft.
8.	Date of execution of flat buyer's agreement	21.10.2013 [Page 23 of complaint]
9.	Payment plan	Construction linked payment plan [Page 42 of complaint]
10.	Total consideration as per applicant ledger dated 23.09.2020 at page 34 of reply	Rs.1,22,26,200/-



11.	Total amount paid by the complainant as per applicant ledger dated 23.09.2020 at page 35 of reply	Rs.1,12,63,338/-
12.	Due date of delivery of possession as per clause 8.1 (a) of the said agreement i.e. 36 months from the date of signing of this agreement (21.10.2013) plus 3 months grace period [Page 30 of complaint]	21.01.2017
13.	<b>Date of offer of possession to the complainant</b>	<b>Not Offered Yet</b>
14.	Delay in handing over possession till date of date of decision i.e. 08.10.2020	3 years 8 months 18 days

3. As per clause 8.1(a) of the said agreement, the possession of the unit in question was to be handed over within a period of 36 months from the date of signing of flat buyer's agreement dated 21.10.2013 plus 3 months grace period which comes out to be 21.10.2017. Clause 8.1(a) of the flat buyer's agreement is reproduced below:

**"8. Possession**

**8.1 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 conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the Flat within a period of thirty six (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 36 months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex"

4. The complainants submitted that they signed flat buyer's agreement on 21.10.2013. The said agreement states that the unit i.e. 4B, 4<sup>th</sup> floor, building no.1 admeasuring 2280 sq. ft. was allotted to them. The complainants were invited to the sale office and were lavishly entertained and promises were made to them that the project would be completed by November 2016, including parking, horticulture, club and other common areas. Further, the respondent fraudulently and illegally charged for car parking, PLC and club membership charges.
5. The complainants further submitted that, the respondent have in an unfair manner siphoned of funds meant for project and utilised same for their own benefit for no cost. Also, that the complainants have lost confidence and in fact has got no trust left in them as the respondent have deliberately and wilfully indulged in undue enrichment, by cheating the complainants beside being guilty of indulging in unfair trade practices and deficiency in services in not delivering the possession of the apartment and then remaining non-responsive to the requisitions of the complainants. Hence, this complaint for the following reliefs:



- i. Direct the respondent to pay interest for the alleged delayed possession to the complainants along with possession.
6. 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.
7. The respondent contests the complaint on the following grounds:
  - i. That on 10.09.2012, the complainants were allotted unit no. 4B, 3BHK + PR + SR having an approximate super area of 2280 sq. ft. in the building-1 of the project "The Leaf" at the basic rate of Rs. 4550/- per sq. ft. and preferential location charges (PLC) of Rs. 225/- per sq. ft. external development charges (EDC) of Rs. 355/- per sq. ft., infrastructure development charges (IDC) of Rs. 35/- per sq. ft. to be payable as per the payment plan. It is submitted that the total sale consideration of the flat booked by the complainants was Rs. 1,22,26,200/-. However, the total sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which are to be paid by the complainants at the applicable stage. The complainants

- agreed that the payment will be made as per the payment plan (construction linked payment plan).
- ii. That the complainants have not come before the Hon'ble Authority with clean hands and they have deliberately concealed the fact that on 02.04.2014 they wrote an e-mail to the respondent that due to financial problem they could not pay the dues on time and requested for waiver off interest and accordingly the respondent through e-mail dated 05.05.2014 acknowledged the request of the complainants and waived off the interest. Furthermore, on account of non-receipt of the installment amount on time despite reminder, the respondent had as per the terms of the allotment and flat buyer's agreement also issued a final notice dated 06.12.2013 to the complainants. Despite the assurance, the complainants kept on defaulting in making the payments on time.
  - iii. That the project "The Leaf" has been registered with the authority vide registration no. 23 of 2019. There is a huge outstanding amount to be paid by the allottees which has resulted in alleged delay in handing over of possession to the allottees. Further, due to the money crunch created by the allottees by not making timely payments and in order to meet the gap for cost of completion of the project arisen



on account of non-payment/default in payment of installments by the allottees, the company approached "SWAMIH INVESTMENT FUND - I (Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects)" which has been formed to complete construction of stalled, brownfield, RERA registered residential developments that are in the affordable housing / mid-income category, are net worth positive and requires last mile funding to complete construction.

- iv. That the irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer/builder in proceeding towards timely completion of the project. The respondent shall offer the possession of the unit to the complainants shortly upon the payment of the remaining dues by the complainants.
8. 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.
9. The authority, on the basis of information and other submissions made and the documents filed by both the parties,

is of considered view that there is no need of further hearing in the complaint.

10. Arguments heard.
11. 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 complainant at a later stage.
12. On consideration of the circumstances, the documents and submissions made by the parties regarding contravention as per provisions of rule 28(2), 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's agreement executed between the parties on 21.10.2013, possession of the booked unit was to be delivered within a period of 36 months from the date of signing of flat buyer's agreement i.e. 21.10.2013 plus 3 months grace period. The grace period of 3 months is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 21.01.2017. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.



Since, the promoter has not offered the possession of the subject unit to the complainants till date.

13. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the agreement dated 21.10.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 21.01.2017 till offer of possession as per section 18(1) of the Act read with rule 15 of Rules.
14. 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. 9.30 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 21.01.2017 till the 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 and thereafter monthly payment of interest till offer of


- possession shall be paid before 10<sup>th</sup> of each subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
  - v. Interest on the due payments from the complainants shall be charged at the prescribed rate i.e. 9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
15. Complaint stands disposed of.
16. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.10.2020

  
**(Subhash Chander Kush)**

Member