

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 22.11.2018
Complaint No.	63/2018 case titled as Mr. Pramod Kumar Agarwal Vs. M/s S.S Group Pvt. Ltd
Complainant	Mr. Pramod Kumar Agarwal
Represented through	Shri Satender Kumar Goyal, Advocate for the complainant.
Respondent	M/s S.S Group Pvt. Ltd.
Respondent Represented through	Ms. Richa Tuteja, Legal Officer and Shri Sunil Shekhawat, Manager (Legal) on behalf of the respondent.
Last date of hearing	25.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

The project is not registered with the authority.

Arguments heard.

Notice was given by the complainant for cancellation of his booked unit. Respondent is directed to reply to their letter/application regarding intention to terminate the agreement within a month and comply with the provisions of agreement as stated above.

In case the orders of the authority are not complied with, the promoter shall be liable to penal proceedings and allottee shall be at

liberty to approach again before the authority by filing a separate complaint.

As per clause 8.1 of the Space Buyer Agreement, the flat/unit No. 4D, Tower-3, in "THE LEAF" Sector-84, village Badha, Tehsil Manesar, District Gurugram was to be handed over to the complainant on 1.4.2017. However, the respondent has not delivered the unit in time. The complainant has already deposited Rs.64,45,701/- out of total sale consideration of Rs.96,86,675/-, as such complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

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

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
22.11.2018

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

Complaint No. : 63 of 2018
Date of Institution : 16.2.2018
Date of Decision : 22.11.2018

Mr. Pramod Kumar Agarwal,
R/o - Flat no.41, Vidyasagar Apartment
Plot No.34, Sector-6, Dwarka
New Delhi-110075

...Complainant

Versus

S.S. Group Pvt. Ltd.,
Office at: Plot No.77, Sector-44,
Gurugram, Haryana

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Satyender Kumar
Shri Aashish Chopra

Advocate for the complainant
Advocate for Respondent



ORDER

1. A complaint dated 2.4.2018 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, Mr. Pramod Kumar Agarwal, against S.S. Group Pvt. Ltd., on account of violation of stage no.11 of payment plan for unit no. 4D, tower T-3 in the project "THE LEAF" for not giving possession by the due date 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: -

***Nature of project – Residential**

***Licence holder – M/s Shiva Profins Private Limited**

***Licence valid upto – 14.9.2014**

1.	Name and location of the project	'The Leaf' Sector 84, Village Badha, Tehsil Manesar, District Gurugram, Haryana.
2.	Registered / not registered	Not registered
3.	Unit/ Villa no.	4D, fourth floor, tower T-3.
4.	Unit measuring	1645 sq. ft.
5.	Total consideration	Rs.96,86,675
6.	Percentage of considerate amount	Approx. 66.54
7.	Date of execution of SBA	31.12.2013
8.	Amount paid by the complainant till date	Rs.64,45,701/-
9.	Payment plan	Construction linked- instalment plan
10.	Due date of delivery of possession.	1.4.2017 clause 8.1 – 36 months from the date of



		signing of ABA + 90 days grace period for applying and getting OC.
11.	Date of delivery of possession	Not delivered
12.	Penalty clause as per apartment buyer agreement dated 31.12.2013	Clause 8.3- Rs.5 per sq. ft' per month of super area for 12 months or till handing over the possession, whichever is earlier.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer agreement is available on record for unit no. 4D according to which the possession was to be delivered by 6.6.2018.
4. Taking cognizance of the complaint, the authority issued notice on 2.4.2018 to the respondent for filing reply and for appearance. The respondent appeared on 17.4.2018. The case came up for hearing on, 17.4.2018, 10.5.2018, 5.6.2018, 11.7.2018, 9.8.2018, 23.8.2018, 12.9.2018, 25.9.2018. The reply on behalf of the respondent was filed on 2.5.2018.



FACTS OF THE CASE

5. That the complainant booked a flat no. 4D on 4th floor of tower T-3 at group housing complex "THE LEAF" at Sector-



84-85 within the revenue estate of Village Badha, Tehsil Manesar, District Gurugram, Haryana for Rs.96,86,675 and the complainant has already paid Rs.64,45,701. The flat buyer's agreement was executed on 31.12.2013.

6. The date of delivery of possession has lapsed but the complainant has not been provided with possession. On visit to the site the complainant found that the project will require 2-3 more years to get completed.
7. Moreover, the respondent on 1.11.2017 raised a demand of Rs.5,17,261 regarding stage of construction without following the payment plan and skipped stage no.11 "on completion of final floor slab". So, the respondent without completing stage no.11 has raised the demand for stage no.12.

8. **ISSUES TO BE DECIDED**

- i. Whether the project "THE LEAF" is not delivered timely to the customers?
- ii. Whether the complainant is within its rights to terminate the agreement due to default on the part of developer and ask for refund of his entire money



along with interest, compensation and benefits accrued to him under the agreement?

9. RELIEF SOUGHT

- i. To direct the respondent to treat the agreement dated 31.12.2013 as cancelled with effect from 1.11.2017 due to default in delivering possession within committed period.
- ii. To refund the amount of Rs.64,45,701 paid by the complainant along with interest @18% per annum payable from the date of payments till actual realisation.
- iii. To direct respondent to pay compensation of Rs.15,00,000 on account of mental harassment, agony caused to the complainant, monetary loss and loss of appreciation of value of the property.



REPLY ON BEHALF OF RESPONDENTS

10. The reliefs claimed by the complainant do not fall within the realm of this authority. Section 31 of the RERA Act provides:

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations

made thereunder against any promoter allottee or real estate agent, as the case may be.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations

11. Rule 28 of the 2017 rules provide for filing complaint with Ld. authority in reference to section 31. Sub-clause (1) provides that any aggrieved person may file a complaint with the authority for any violation of provisions of 2016 Act or rules made thereunder, *save as those provided to be adjudicated by the adjudicating officer, in form 'CRA'*. Authority and adjudicating officer are separate and distinct. "Adjudicating officer" has been defined under section 2(a) to mean adjudicating officer appointed under sub-section(1) of section 71, whereas the "authority" has been defined under section 2(i) to mean the Real estate regulatory authority established under section 20(1). The adjudicating officer is appointed by the authority in consultation with appropriate government for adjudging compensation under sections 12,14,18 and 19. So, the claim of return of amount with interest and compensation where allottee wishes to withdraw from the project lies with the adjudicating officer.



Moreover, the complainant cannot get his claim adjudicated as the project is not registered with the authority.

12. No sale agreement has been executed between the promoter and the allottee and the agreement referred to herein is an apartment buyers agreement. The adjudication of complaint for interest and compensation u/s12,14,18,19 has to be in reference to agreement for sale and no other agreement.
13. The complainant cannot invoke the jurisdiction of adjudicating officer when there is an arbitration clause provided in the buyers agreement for any disputes arising out of this agreement.
14. The respondent company has invested huge amounts in this project. The total cost is 167 crores in which 30 crores have been paid to HUDA for EDC, IDC, licence fees and clearing charges. Also, certain works were sub-contracted for which 100 crores were paid. The respondent company has paid these amounts whether the money was received by the allottee(s) or not. Due to default in payments it becomes very difficult for the respondent company to carry on construction



work without hindrances. The defaulter allottees are responsible for delay in the project.

15. The said flat was initially allotted to Mr. Amit Kumar Choudhary and upon his request it was transferred to the complainant on 27.3.2014. This request was accepted by the respondent on 23.4.2014. Also, the complainant only paid Rs.62,10,087 as on 30.5.2018 instead of Rs.64,45,701 as contested by the complainant. The complainant is in material breach of the terms of the buyers agreement as he has failed to pay the instalments as per the agreed plan and the total due instalments amount to Rs.15,51,795 along with interest of Rs.91,576 as on 30.5.2018. Several reminders were sent to the complainant but no payment was made.

16. The allegation of the complainant that the respondent has skipped stage 11 and demanded payment for stage 12 is misleading in light of clause 7.1(a) of buyers agreement which reads as:

"The Flat Buyer(s) has seen, reviewed and accepted the payment plan provide in Annexure-I, tentative floor plan as provided in Annexure-III and the tentative specifications as provided in Annexure-IV of this agreement and which are subject to change at the sole discretion of the Developer and the Flat



Buyer(s) has accepted and consented to this condition”.

DETERMINATION OF ISSUES

17. With respect to the first, as per clause 8.1 of the buyers agreement, possession should be handed over within 36 months + 90 days from the date of execution of the agreement. The buyers agreement was executed on 31.12.2013. The clause regarding possession of said unit is reproduced below:

“possession shall be handed over within a period of 36 months from the date of signing of ABA + 90 days grace period for applying and getting OC”.

As per this clause the possession of the unit in dispute should have been handed over to the complainant by 1.4.2017 but the same has not been effected till date. Therefore the respondent has not delivered the possession as per the agreement.

18. With regard to the issue of the right of the complainant to terminate the agreement due to default on the part of the respondent clause 8.3(b) provides:

“in case the developer fails to deliver the possession of the flat within 51 months (or such extended period as per the sanctioned plan), from the date of signing the agreement,



or as may be extended in a situation covered in clause 8.1(b) then in such case the Flat Buyer(s) shall have the option to give notice to the developer within 90 days from the expiry of the said period conveying the flat buyers intention to terminate the agreement."

The said period of 51 months expired on 30.4.2018 so the complainant has right to terminate this agreement till 31.7.2018. However, the authority is of the view that if the allottee is allowed a refund at such an advance stage it will adversely affect the right of other allottees who wish to continue with the project and will also hamper the completion of the project. However, the complainant is entitled to a prescribed rate of interest till the date of handing over possession.

19. With respect to the right of respondent to forfeit the amount deposited by the complainant, it is important to note that the complainant has deposited the requested amount upto the 10th part of the payment plan and the receipt for the same has been attached from page no. 41 to 52. The complainant hasn't deposited demands from the 11th part of the payment plan on account of delay in completion of the said project which has not been delivered as promised. No proof has been provided by the respondent towards the completion status of





the project so the respondent shall not be allowed to demand money for completion of subsequent parts and shall not be allowed not forfeit the money.

FINDINGS OF THE AUTHORITY

20. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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.

The amendment of section 8 of the Arbitration and conciliation act does not have the effect of nullifying the ratio of catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.





21. As the possession of the apartment was to be delivered by 1.4.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.
22. The complainants made a submission before the authority under section 34 (f) to ensure compliance of the obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter for the same.
23. In the present complaint, the complainants are seeking refund of the entire money paid till date i.e.62,44,861/- along with interest @ 18% p.a. from the date of payments till the date of actual realisation.
24. However, keeping in view keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees who wish to continue with the project. However, the complainant will be entitled to a prescribed rate of interest till the date of handing over of possession.



25. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession.

DECISION AND DIRECTIONS OF THE AUTHORITY

26. 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 respondent in the interest of justice and fair play:

- (i) Respondent is directed to reply to their letter/application regarding intention to terminate the agreement within a month and comply with the provisions of agreement.
- (ii) In case the orders of the authority are not complied with, the promoter shall be liable to penal proceedings and allottee shall be at liberty to approach again before the authority by filing a separate complaint.
- (iii) As per clause 8.1 of the Space Buyer Agreement, the flat/unit No. 4D, tower-3, in "THE LEAF" Sector-84,





Village Badha, Tehsil Manesar, District Gurugram was to be handed over to the complainant on 1.4.2017. However, the respondent has not delivered the unit in time. The complainant has already deposited Rs.64,45,701/- out of total sale consideration of Rs.96,86,675/-, as such complainant is entitled for delayed possession charges @ 10.75% per annum as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016, till the actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

- (iv) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.



27. The order is pronounced.

28. Case file be consigned to the registry.

(Sanjay Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2018

