

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

Complaint no. : 3416 OF 2019  
First date of hearing: 13.11.2019  
Date of decision : 27.02.2020

1.Gaurav Gulati  
2.Smt. Shalini Saluja  
Both RR/o Flat No. 601, Regal Tower,  
Mapsko Royale Ville,  
Sector-82, Gurugram

**Complainants**

Versus

M/s Mapsko Builders Pvt. Ltd.  
Corporate Office: Banni The Address,  
6<sup>th</sup> Floor, No. 1, Golf Course Road,  
Sector-56, Gurgaon-122011

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

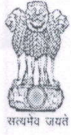
**Member**  
**Member**

**APPEARANCE:**

Shri Gaurav Bhardwaj along with Ms. Surbhi Garg Bhardwaj Advocates for the complainants  
Shri Ankur Berry along with Shri Yashvir Singh Advocates for the respondent  
Shri Udai Pratap Singh GM Legal on behalf of the respondent

**ORDER**

1. The present complaint dated 13.08.2019 has been filed by the complainants/allottees 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



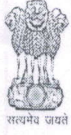
prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as per the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se them.

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	"Mapsko Royale Ville" Sector-82, Gurugram.
2.	Project area	17.168 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	114 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Name of licensee	M/s Shivam Infratech Pvt. Ltd. and M/s Onkareshwar Properties Pvt. Ltd.
6.	RERA registered/ not registered	Not registered
7.	i.	<b>First flat buyer's agreement</b> 10.08.2011 [Page 47 of complaint]
	ii.	Unit no. 802, 8 <sup>th</sup> floor, Tower- Glory [Page 48 of complaint]
	iii.	Unit measuring 1790 sq. ft.
	iv.	Due date of offer of possession as per buyer's agreement dated 10.08.2015



		10.08.2011 Clause 17(a): 42 months from the date of signing of this agreement (10.08.2011) with the buyer or 6 months grace period [Page 49a of complaint]	
	v.	Offer of possession to the complainants	21.07.2017 [Page 62 of complaint]
	vi.	Occupation certificate received on	20.07.2017 [Page 38 of reply]
8.	i.	<b>Subsequent buyer's agreement</b>	18.08.2017 [Page 47 of complaint]
		<b>Note:</b> On request of the complainant, new buyer's agreement was executed for new flat.	
	ii.	New unit allotted nearing no.	601, 6 <sup>th</sup> floor, Tower-Regal [Page 69 of complaint]
	iii.	Unit measuring	2300 sq. ft.
	iv.	Payment plan	Construction linked payment plan {Page 75 of complaint}
	v.	Total consideration of the unit as per 'applicant ledger as on 28.05.2019'	Rs.83,80,386/- [Page 56 of complaint]
	vi.	Total amount paid by the complainants	Rs.91,89,218/- [Page 61 of complaint]
	vii.	Due date of possession as per buyer's agreement dated 18.08.2017 Clause 17(a): 42 months from the date of signing of this agreement (18.08.2017) with the buyer or 6 months grace period [Page 72 of complaint]	18.08.2021
	viii.	<b>Key handover letter</b> signed on	08.10.2017 [Page 82 of complaint]
	ix.	Delay in handing over possession	<b>No delay</b>



9.	Relief sought	i. To pay delay interest as prescribed for every month of delay from the due date of possession i.e. 06.07.2015 (as per first buyer's agreement) till the handing over of the apartment.
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3. As per clause 17(a) of the Agreement dated 18.08.2017, the possession was to be delivered within a period of 42 months from the date of execution of agreement plus grace period of 6 months which comes out to be 18.08.2021. Clause 17 (a) the buyer's agreement is reproduced hereinafter:

*"17(a) That the promoter shall endeavour to complete the construction of the said Flat within a period of 42 months from the date of signing of this Agreement with the Buyer or within an extended period of six months, subject to force majeure conditions as mentioned in Clause (b) hereunder or subject to any other reason beyond the control of the promoter..."*

4. The complainants submitted that the unit bearing no. 802, Tower Glory was initially allotted to Sh. Mam Chand Mehra (original allottee) and the buyer's agreement was executed on 10.08.2011 between the original allottee and the respondent. The complainants purchased the said unit from the original allottees. The respondent endorsed the flat buyer agreement dated 10.08.2011 in favour of the complainants and further endorsed all the payment receipts in favour of the complainants which were earlier issued in favour of the



earlier allottee. As per clause 17(a) of the flat buyer agreement dated 10.08.2011, the respondent had undertaken to complete the project within a period of 42 months from the date of execution of the flat buyer agreement within a further grace period of six months i.e. 10.08.2015. The complainant received email offering possession of the said flat on 21.07.2017 but upon approaching the project, the complainant learnt that the flat was not ready for possession.

5. The complainant submitted that the upon complaining that the said unit is not complete, the respondent had requested the complainant to give some time to get all the things fixed or to take possession of the upgraded flat. Thereafter, the complainant visited the upgraded flat and after seeing the situation of the upgraded flat bearing no. 601 in Regal tower. The complainant requested the respondent to give possession of the said flat instead of the incomplete flat bearing no. 802, Glory tower.
6. The complainant submitted that on 18.08.2017, buyer's agreement was executed between the complainant and the respondent for upgraded flat bearing no. 601 in Regal tower. Finally on 08.10.2017, the respondent called the complainants to take possession of the said residential unit bearing no. 601 in Regal tower upon which the complainants



vide key handover letter took the possession after a delay of over 2 years.

7. After taking possession of the said flat till now the complainants are facing several issues regarding the construction as well as regarding the maintenance of the said project. Hence, this complaint inter-alia for the aforesaid reliefs.
8. On the date of hearing, the Authority explained to the respondents/allottees 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.
9. The respondent contests the complaint of the following grounds:
  - i. The respondent submitted that the project in question is not covered within the definition of ongoing project under rule 2(1)(o) of the Rules. The respondent has already obtained the occupation certificate on 20.07.2017 vide memo no. ZP-487/SD(BS)/2017/17333 which was prior to coming in force of HRERA Rules. It is pertinent to mention that the offer of possession was given by the respondent on 21.07.2017.
  - ii. The respondent submitted that on 10.08.2011, the first flat buyer's agreement was executed between the original buyer and the respondent. The complainants



stepped into the shoes of the original allottee when he purchased the unit from him. Thereafter, occupation certificate was received by the respondent. The offer of possession was sent to the complainants who kept delaying the possession on one pretext or another. Thus, the respondent company in good faith upon insistence of the complainants upgraded the previous flat to unit no. 601, Regal Tower.

- iii. The respondent submitted that for the upgraded flat a new agreement was executed between the complainants and the respondent on 18.08.2017. the agreement dated 18.08.2017 thus defines the rights and duties qua the new unit in question. As per FBA buyer's agreement dated 18.08.2017, the delivery was intended to be given within 48 months and the respondent fulfilled the terms of the buyer's agreement and offered possession to the complainants within 3 months which was accepted without any protest by the complainants on 08.10.2017.
- iv. The respondent submitted that the allottee has taken possession and is residing in the flat since 08.10.2017. Further, the relationship between the allottee and the builder has ceased to exist since the relationship was in terms FBA dated 18.08.2017 and buyer's agreement



stands fulfilled with the execution of the conveyance deed.

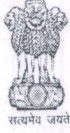
- v. The primary relief sought by the complainants being delay interest from the due date of possession to the day the complainants took the possession is untenable in view of the fact that a new FBA dated 18.08.2017 was executed between the allottee and builder whereon the tentative date of delivery was 18.08.2021 and the same was granted by the respondent on 08.10.2017. Further without any prejudice to the rights of the respondent even if the pre-dated FBA were to be considered yet there were no delays in granting the possession of the apartment. The buyer's agreement dated 08.10.2011 stood suspended after executing the new buyer's agreement dated 18.08.2017. It is pertinent to mention that the timelines alteration was on account of reason beyond the control of the respondent and the complainants have been aware of the alteration in the timeline to offer possession and completion of the project.
- vi. That the present complaint is an utter abuse of the process of law and hence, deserves to be dismissed.
10. Copies of all the relevant documents have been filled and placed on the record. Their authenticity is not in dispute.





Hence, the complaint can be decided on the basis of these undisputed documents.

11. The Authority, on the basis of information and other submission made and the document filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
12. Arguments heard.
13. On consideration of the documents placed and submissions made by both the parties, the Authority is satisfied that the respondent is not in contravention of the provisions of the Act. Initially the buyer's agreement dated 10.08.2011 was executed between the original allottee and the respondent in respect of unit no. 802 tower Glory. The said unit was later purchased by the complainants and endorsement in this regard was made in the buyer's agreement. The possession of the said unit was offered to the complainants on 21.07.2017. Upon non satisfactory condition of the said unit and insistence of the complainants to upgradation of the said unit, a subsequent buyer's agreement was executed on 18.08.2017 for an upgraded unit bearing no. 601, tower Regal. The agreement made between the parties on 18.08.2017 was a new and independent contract and it completely discharged the earlier contracts between them. Therefore, in terms of clause 17(a) of subsequent agreement dated 18.08.2017, the



possession of the said unit was to be offered by 18.08.2021 however, the possession was taken over by the complainants vide letter dated 08.10.2017. Hence there is no delay on the part of the respondent to offer the possession of the unit in question to the complainant.

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


  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.02.2020

**Judgement uploaded on 10.11.2020**

  
(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram