

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

Complaint no. : 3321 of 2020
First date of hearing : 18.11.2020
Date of decision : 18.11.2020

Tuhina Bangia & Aman Bangia
Address: - 42-A, Sidharth Extension, Pocket-C,
New Delhi-110014

Complainants

Versus

M/s Mapsko Builders Pvt. Ltd.
Corporate Office:- Baani the address, 6th floor,
No. 1 Golf Course Road, Sector-56, Gurgaon

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri S.K.Bangia, AR
Shri Sumesh Malhotra

Advocate for the Complainants
Advocate for the Respondent

ORDER

1. The present complaint dated 16.10.2020 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 under the provision of the Act or the rules and regulations made there under or to the allottee 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 complainant, 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	Residential Group Housing Complex
4.	DTCP license no. and validity status	114 of 2008 dated 01.06.2008 valid upto 31.05.2018
5.	Name of licensee	Shivam Infratech Pvt. Ltd. and Onkareshwar Properties Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	1404, 13 th floor, Tower- Crowne
8.	Unit measuring	1790 sq. ft.
9.	Date of execution of Flat Buyers Agreement	10.09.2011 (page 44 of the complaint)
10.	Payment plan	Construction linked payment plan

11.	Total consideration as per payment plan	Rs. 59,80,146/- (as per applicant ledger dated 16.07.2020, page 56 of the complaint)
12.	Total amount paid by the complainant	Rs. 64,86,531 (as per applicant ledger dated 16.07.2020, page 56 of the complaint)
13.	Due date of delivery of possession as per clause 17 (a) -42 months from the date of signing agreement with the buyer plus 6 months grace period	10.03.2015 (due date calculated from the date of execution of agreement)
14.	Key handover on date	07.12.2018 (page 66 of complaint)
15.	Delay in handing over possession till offer of possession	3 years 08 months 2days
16.	Status of the project	OC received on 20.07.2017

3. As per clause 17(a) of the Flat Buyers Agreement dated 10.09.2011 the possession was to be delivered within a period of 42 months from the date of signing of agreement with the buyer plus 6 months grace period which comes out to be 10.03.2015. Clause 17 (a) of the Flat Buyers Agreement is reproduced below.

17 (a). POSSESSION OF UNIT

17(a) That the promoter shall endeavor to complete the construction of the said Flat within a period of 42 months from the date of signing of this agreement with the buyers

or within an extended period of six months, subject to force major conditions as mentioned in clause (b) hereunder or subject to any other reasons beyond the control of promoter. No claim by way of damage/compensation shall lie against the promoter in case of delay in handing over the possession beyond 48 months from the date of signing of this agreement, except charges Rs. 5 per sq. ft. per month will be payable by the promoter to the original allottee only till the handing over the possession, further no said charges will be payable by the promoter to the original allottee whose payment not received as per time frame mentioned in this agreement.

4. The complainants submitted that on 12.11.2010 complainant no. 1 booked apartment no. 1404 in their Mapsko Royal Ville Project measuring 1790 sq. ft. That in contravention of Section 13 (1) of RERA Act Respondents took 16.10 % of the advance money before signing of the Builder's Buyers Agreement as against not more than 10 % as envisaged. The complainants were forced to sign on the Builder Buyers agreement on 10.9.2011 which was a one-sided agreement with no negotiation or bargaining powers with the complainants, else Complainant's earnest money of Rs.9,62,995/- would have been forfeited by the Respondents.
5. That on 27.11.2008, Respondents sent an intimation of possession by mail to the Complainant no. 2 by payment of

holding charges. That on the same day i.e 7.12.2018 after a visit to the apartment by Mr. S.K.Bangia along with Mr. Mridul Paliwal, it was found that wooden flooring was not yet laid down in all the three bed rooms and glaring deficiencies in the apartment, for which last payment was demanded and taken in September 2017, which were agreed to by the Respondent's representative. As such under instructions from him a list of the deficiencies along with key of the main door was taken back by Mr. Mridul Paliwal against his acknowledgement for laying of wooden flooring in all three bed rooms and removal of the deficiencies as the apartment was not habitable. That on 16.7.2020 conveyance deed was got registered in the office of the SRO, Manesar Tehsil.

6. That failure on the part of the Respondents amounted to deficiency in service in terms of Builder Buyer agreement dated 10.9.11 i.e on or before 10.9.2015, so, Respondents are liable for violation of Section 18 (a) of the RERA Act and Promoters are responsible for the obligations, responsibilities towards the allottee as per the agreement for sale executed on 10.9.2011 inter- se. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to Pay Rs. 38,90,829/- as interest on the cost of the flat from 10.9.15 to

20.5.2019 and interest on it till the payment is actually made.

- ii. Direct the respondents to pay Rs.13,664/- as interest on car parking cost from 20.5.19 (handing over of possession on 21.5.2019 to 23.8.2019 (actual date of allotment) and interest on it till the payment is actually made.

7. 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.
8. Notice to the promoter/respondent through speed post as well as through E-mail at mapskopromoters@gmail.com was sent. The delivery report of the same are placed on record which shows that delivery is complete. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time period. However, the promoter/respondent company's A.R and his advocate have marked attendance on 18.11.2020. This is a clear evidence that the service was completed.
9. 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.

10. The Authority, on the basis of information and other submission made and the document filed by the complainant, is of considered view that there is no need of further hearing in the complaint.

Finding of the Authority :-

11. It has been brought on record by the counsel for the respondent that the complainant (power of attorney holder - Shri S.K.Bangia AR) sold the plot bearing No.1404, 13th floor, Tower No. 3A1 (known as CROWNE) to Smt. Indira Mitra. Counsel for the respondent has also placed on record a copy of judgment of Hon'ble Apex Court passed in civil appeal No.6239 of 2019 in case titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others versus DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd) and Ors. The relevant para No.38 of this judgment is re-produced for ready reference:-

"Similarly, the three appellants who have transferred their title, right and interest in the apartments would not be entitled to the benefit of the present order since they have sold their interest in the apartments to third parties. The written submission which have



been filed before this Court indicate that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. **In HUDA V. Raje Ram** this Court while holding that a claim of compensation for delayed possession by subsequent transferees is unsustainable, observed that: "7. Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re-allotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment etc.). In spite of it, they took re-allotment. Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay."



Even if the three appellants who had transferred their interest in the apartments had continued to agitate on the issue of delay of possession, we are not inclined to accept the submission that the subsequent transferees can step into the shoes of the original buyer for the purpose of benefiting from this order. The subsequent transferees in spite of being aware of the delay in delivery of possession the flats, had purchased the interest in the apartments from the original buyers. Further, it cannot be said that the subsequent transferees suffered any agony and harassment comparable to that of the first buyers, as a result of the delay in the delivery of possession in order to be entitled to compensation”.

Relevant para No.55 (i) is re-produced as under: -

“Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date

of offer of possession after the receipt of the occupation certificate”.

12. The complaint was filed on 16.10.2020 while the sale deed was executed on 18.09.2020 i.e. the complainant has transferred his right before the filling of complaint. But in the complaint the complainant has separated the same fact. Which clear that the complainant does not approach the fact with clear hand and has tried to mislead the authority. So far as, the question of entitled delayed possession charges of the complaint is considered in view of the ratio of Hon'ble Apex court in civil Petition No. 6239 of 2019 the complainant is not entitled to delayed possession charges. the complaint stand dismissed on merits. That case falls in that category in view of ratio of Hon'ble Apex Court, the authority cannot go against the precedent set up by the Apex Court.
13. Complaint stands disposed of.
14. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.11.2020

Judgement uploaded on 01.12.2020


(Subhash Chander Kush)

Member