

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 11.12.2018
Complaint No.	570/2018 case titled as Mr. Surinder Singh Mehndiratta Vs. M/s S.S. Group Pvt Ltd
Complainant	Mr. Surinder Singh Mehndiratta
Represented through	Shri Ajay Barry, Advocate for the complainant.
Respondent	M/S S.S. Group Pvt Ltd
Respondent Represented through	Ms. Richa Tuteja and Shri Sunil Shekhawat representatives on behalf of the respondent
Last date of hearing	18.9.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

**Project is not registered with the authority.**

Arguments heard.

As per clause 8.1 of the Flat Buyer Agreement dated 31.12.2013 for unit No.3D, Tower-3, 3<sup>rd</sup> floor "The Leaf" Sector-85, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 90 days which comes out to be **31.3.2017**. The total consideration of the flat was Rs.87,81,750/- out of which complainant has paid Rs.34,35,699/- as on date. However, the builder/respondent has failed in his contractual liability on account of delivery of possession. Complainant had stopped payment since 31.1.2015.

The project is not registered and application for registration too has already been rejected as builder failed to complete the deficiencies as pointed out to him. There is no hope and scope for completion of project in time.

Since the buyer has stopped payment and has given notice to the builder-respondent to refund his amount. However he has failed in responding to the demands raised by respondent. As such complainant too has not come with clean hands.

Keeping in view the circumstances stated above, the respondent is directed to **refund** the paid up amount after deducting 10% of the total consideration amount towards earnest money. However he will give refund amount alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from today.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

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

**Complaint No. : 570 of 2018**  
**Date of first hearing : 18.09.2018**  
**Date of Decision : 11.12.2018**

Mr Surinder Singh Mehndiratta  
R/o 17, Rajdhani Enclave ,Pritampura, New  
Delhi-110034

**Complainant**

Versus

M/s SS Group Pvt. Ltd  
Regd. office : SS House, Plot no 77, Bhagwan  
Mahaveer Marg, Sector 44, Gurugram-  
122003

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Ajay Barry

Advocate of the complainant

Shri Sunil Shekhawat and Ms  
Richa Tuteja

Advocate of respondent

**HARERA**  
**GURUGRAM**

**ORDER**



1. A complaint dated 20.07.2018 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 Surinder Singh Mehndiratta, against the promoter M/s SS Group Pvt.

Ltd, on account of violation of clause 8.1 of flat buyer agreement dated 31.12.2013 for flat no. 3D, Tower 3, 3<sup>rd</sup> floor in the project 'the leaf' with a super area of 1575 sq. ft for not giving possession on the due date i.e. 31.03.2017 which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the flat buyer agreement was executed on 31.12.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Leaf", Sector 85, Gurugram
2.	Unit no.	3D, Tower 3, 3 <sup>rd</sup> floor
3.	Unit area	1575 sq. ft (2 BHK)
4.	Nature of project	Group housing complex
5.	RERA registered/ not registered.	Unregistered
6.	DTCP license no.	81 of 2011
7.	Total consideration amount as	Rs. 87,81,750/-



	per page 3 of agreement	
8.	Total amount paid by the complainant	Rs 34,35,689/-
9.	Date of flat buyer's agreement	31.12.2013
10.	Date of delivery of possession. (As per clause 8.1 of FBA : 36 months + 90 days grace period from date of execution of agreement)	<b>31.03.2017</b>
11.	Delay of number of months/ years	1 year 8 months 11 days

4. The details provided above have been checked as per record of the case file. A flat buyer agreement dated 31.12.2013 is available on record for flat no. 3D, Tower 3, 3<sup>rd</sup> floor according to which the possession of the aforesaid unit was to be delivered by 31.03.2017. The promoter has failed to deliver the possession of the said unit to the complainant till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 18.09.2018. The case came up for hearing on 18.09.2018 and 11.12.2018. The



reply has been filed on behalf of the respondent on 17.09.2018.

### **Facts of the case**

6. The complainant submitted that in the year 2012, through their promotional advertisements and representations made in respect of a residential scheme launched by the respondents under the name and brand of 'THE LEAF' comprising of various buildings, parking spaces and other utilities, situated in Sector 84-85 in the revenue estate of Village Badha, Tehsil Manesar, Distt Gurgaon, the complainant booked one flat with the respondents by way of an application dated 18.06.2012 and consequent to which a residential flat bearing no-3D, located on 3<sup>rd</sup> floor of Tower/Building No T-3 in the aforesaid group housing having an approximate super area of 1575 sq ft along with a reserved parking space for one Car was allotted to the complainant.

7. The Complainant induced by the false and misleading assurances given by the respondents with respect to the aforesaid residential scheme and believing the same to be



true and bonafide paid an amount of Rs 7,50,000 as advance towards the booking of the aforesaid flat duly acknowledged by way of allotment letter dated 10/09/2012 issued in favour of the complainant by the respondents and vide which the terms of the construction linked installment plan were conveyed to the complainant.

8. The total consideration payable for the said flat in terms of the payment plan provided with the aforesaid allotment letter was agreed to be Rs 87,81,750/-
9. That pursuant to the foregoing, a flat-buyer agreement dated 31.12.2013 was executed between the parties and vide which a fundamental duty was cast upon the respondents wherein they were contractually bound to deliver the possession of the said flat to the complainant within a period of 36 months from the date of signing of the said agreement and further having a grace period of 90 days after the expiry of the thirty six months.
10. It is noteworthy to mention that the complainant acting upon the representations made by the respondents in respect of the aforesaid project and believing the same to be true,



correct and bonafide, has already paid an amount of Rs an amount of Rs 34,35,689 from 18.06.2012 till date, only on the hope, premise and belief that the same shall ensure and enable you to deliver the possession of the said flat within the time-frame as stated above.

11. It is submitted that the aforesaid cheques were duly debited from the account of the Complainant and were duly credited in the account of the respondents and the advance payment receipts in respect of which have also been duly issued by the respondents on regular intervals in lieu of the advance received towards the sale consideration for the flat bearing unit no. 3D, 3<sup>rd</sup> floor, tower T-3, having an area of 1575 sq. ft at The leaf, SS City, Gurugram, Haryana.

12. A perusal of the foregoing clearly shows that based upon the inducements/ representations made by the respondents with respect to the abovementioned residential scheme, the complainant made the aforesaid huge payments, since an assurance was provided to him that the project shall be completed by the respondents within the stipulated time and the possession of the same shall be delivered within a total





period of 39 months (i.e. 36 months + 3 months grace period) and hence the complainant reposing faith, trust and confidence in the respondents parted with such a huge amount.

13. It is further submitted that in terms of clause 6 of the agreement, onerous and stringent obligations with respect to the timely payment of the sale consideration as stipulated under the payment plan provided with the agreement was cast upon the complainant and failing which it was further stipulated that the provisional allotment made in favour of the complainant shall stand terminated and the earnest money paid shall be appropriated.

14. It is noteworthy to mention that the complainant being completely mindful of the aforesaid fact has paid almost 40% of the entire sale consideration to the respondents till date only on the premise and belief that the aforesaid money shall be utilized towards the timely development and construction of the aforesaid flat and shall further ensure that no impediments are caused towards ensuring a timely delivery of the said flats by the respondents to the complainant.



15. Hence, in view of the aforesaid, it is an admitted fact that the respondents has miserably failed to honour the contractual obligations cast upon it in terms of the provisions of the agreement and despite the period of 39 months having long lapsed, have failed to deliver upon its promise in terms of delivering the possession of the fully constructed flat to the complainant and it is further manifested from the conduct of respondents that it is not interested in completing the construction and development of the said project.

16. It is humbly submitted that as a result of the failure of the respondents in delivering the timely possession of the said apartment even after a period of 39 months from the date of the agreement and further even failing to refund the 40% sale consideration paid by the complainant, by willfully and dishonestly defaulting on its obligations, in respect of the aforesaid apartment, the complainant was compelled to terminate and cancel the provisional allotment made in his favour on account of the default committed by the respondents in failing to deliver the said premises in accordance with the provisions of the agreement by way of



issuance of a legal notice to the respondents dated 09/11/2017 and further compelled to seek a refund the sum of Rs 34,35,689 (Rupees Thirty Four Lakhs Thirty Five Thousand Six Hundred Eighty Nine) /- along with interest @ 18% per annum on account of the willful defaults and negligence of respondents in failing to complete the abovementioned project within a time-bound manner as stipulated under the provisions of the agreement, within a period of 15 days from the receipt of the aforesaid notice and which was duly served upon the respondents.

17. It is submitted that despite being in receipt of the aforesaid notice, the respondents has neither replied to the same nor taken any steps to refund the abovementioned amount to the complainant.

18. It is submitted that the aforesaid actions of the respondents in failing to refund the 40% sale consideration till date is clearly an act which is perverse, bad in law and is clearly manifested with malafide on the part of the respondents in discharging its contractual obligations towards the complainant in terms of the standard terms and conditions of



the agreement, wherein a duty was cast upon it to deliver upon its promise of delivering the possession of the fully constructed flat to the complainant.

### Issues Raised by the Complainant

19. The issues raised by the complainant are as follows:-

- i. Whether the respondents have defaulted in handing over the possession of the booked unit within the stipulated time period?
- ii. Whether the complainant is entitled for refund of his entire money along with interest @ 18 % per annum from the date of receipt till its realization?
- iii. Whether the builder have taken the approval or have obtained licence for the project from the competent authorities?
- iv. Whether the promoters/respondents have taken occupation certificate in respect of the said project?
- v. Whether the complainant is entitled for compensation for mental agony and harassment, if yes to what extent?



**Relief Sought:**

26. The reliefs sought by he complainant are as follows :-

- (i) To direct the respondent(s) to refund an amount of Rs 34,35,689 (Rupees Thirty Four Lakhs Thirty Five Thousand Six Hundred Eighty Nine) along with interest @18 % per annum to the complainant from the date of the receipt of the payments made to the respondent(s);
- (ii) To direct the respondent (s) to pay compensation of 10,00,000/- (Rupees Ten Lakhs Only) to the complainant for mental agony, harassment, discomfort and undue hardships caused to the complainant as a result of the above acts and omissions on the part of the opposite party(s);
- (iii) To grant any other relief in favour of the complainant as the authority may deem fit and proper in the fact and circumstances of the case.



### Respondent's Reply

27. The preliminary objection raised on behalf of the respondent is that the authority does not have the jurisdiction to decide the complaint as the said flat buyer agreement dated 28.09.2013 was executed between the parties much prior to the coming into force of the Act. Moreover, the jurisdiction of this authority cannot be invoked as the said agreement contains an arbitration clause whereby the parties resolve to settle the dispute amicably failing which the same is to be settled way of arbitration.

28. The respondent submitted that the complainant is claiming for the refund of the amount along with interest as also the compensation, which, from reading of the provisions of the Real Estate (Regulation and Development) Act, 2016 and 2017 rules, especially those mentioned herein above, would be liable for adjudication, if at all, by the adjudicating officer and not this authority. Thus, on this ground alone, the complaint is liable to rejected.

29. The respondents submits that the project in respect of which the complaint has been made, is not even registered as on



date with this authority, though the respondent no.1 has applied for its registration. Until such time the project is registered with the authority, no complaint, much less as raised by the complainant can be adjudicated upon.

30. From the conjoint reading of the sections/rules, form and Annexure-A, it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure-A, which is required to be executed inter-se the promoter and the allottee.

31. That it is a matter of record and rather a conceded position that no such agreement as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondents and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complainant, though without jurisdiction, is the flat buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint of interest and compensation, as provided under sections 12,14,18 and section 19 of 2016 Act, has to be in



reference to the agreement for sale executed in terms of 2016 Act and 2017 Haryana rules and no other agreement

32. That the aforementioned submissions are being filed as preliminary objections/submissions only, especially when the said objections/submissions question the maintainability as well as the jurisdiction to adjudicate upon the complaint and respondent no.1 reserves its right to file a detailed reply, raising additional pleas and/or filing documents, if need so arises, at a later stage.

### Determination of issues

33. In regard to **first issue** raised by the complainant the promoters have failed to handover the possession of the fat as agreed in the agreement dated 28.09.2013. This fact is fortified from the point that as per clause 8.1 of the agreement dated 31.12.2013 the promoters shall deliver the possession within 36 months plus 90 days grace from the date of execution of the agreement. Therefore, the due date of the possession is 28.12.2016. However, there is delay of 1 year and 10 months in handing over of possession and hence





the complainant is entitled for delayed possession charges.

The relevant portion of clause 8.1 is reproduced below:

*“.....the developer proposes to hand over the possession of the flat within a period of 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 thirty six months, for applying and obtaining the occupation certificate in respect of the group housing complex.....”*

34. In regard to the **second issue**, keeping in view the present status of the project, the respondent is liable to refund total consideration paid by the complainant after deducting 10% of the total sale consideration of the booked unit on account of default in payment of due installments by the complainant.
35. In regard to the **third issue**, The Director of Town & Country Planning, Haryana has issued License bearing no 81 of 2011 to the Land owning agency i.e Shiva Profins Pvt Ltd. Pursuant to the inter se development agreement the land owning company has empowered the developer/respondent for the development of the project in question. The licence of the



project is pending for renewal with the competent authority.

As such, builder does not possess a valid licence as on date.

36. In regard to the **fourth issue**, the authority cannot determine this issue due to lack of any documentary evidence in support of this claim.

37. In regard to the **fifth issue**, the authority does not have jurisdiction to decide the cases of compensation. However the complainant is at liberty to approach the appropriate forum to seek relief.

#### Findings of the authority

38. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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 complainant at a later stage.

39. In the present case, as per clause 8.1 of the flat buyer agreement dated 31.12.2013 for unit no. 3D, tower-3, 3<sup>rd</sup>



floor "The Leaf" Sector-85, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 90 days which comes out to be **31.3.2017**. The total consideration of the flat was Rs.87,81,750/- out of which complainant has paid Rs.34,35,699/- as on date. However, the builder/respondent has failed in his contractual liability on account of delivery of possession. complainant had stopped payment since 31.1.2015. The project is not registered and application for registration too has already been rejected as builder failed to complete the deficiencies as pointed out to him. There is no hope and scope for completion of project in time. Since the buyer has stopped payment and has given notice to the builder-respondent to refund his amount. However he has failed in responding to the demands raised by respondent. As such complainant too has not come with clean hands.



### **Decision and directions of the authority**

40. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development)

Act, 2016 hereby issue the following directions to the respondent :

- i. The respondent is directed to refund the paid up amount after deducting 10% of the total consideration amount i.e Rs 25,57,514/- towards earnest money along with prescribed rate of interest i.e. 10.75% per annum from the date of last payment i.e 27.01.2015 till the date of issuance of this order i.e 11.12.2018 amounting to Rs. 10,64,454.38/- to the complainant within a period of 90 days from the date of issuance of this order.

41. Complaint stands disposed of.
42. The order is pronounced.
43. The file is consigned to the registry

HARERA  
GURUGRAM



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 11.12.2018

Judgement Uploaded on 08.01.2019