



**HARERA**  
**GURUGRAM**

; HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईन्स, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No: 35/2020  
Date of Decision : 12.03.2021**

**Manjeet Kaur W/o Daljit Singh Randhawa  
H No.1395, Sector 31, Housing Board Colony,  
Gurugram - 122001**

**Complainant**

**V/s**

**M/s S.S. Group Private Limited,  
77, SS House, Sector 44, Gurugram-122001**

**Respondent**

**Complaint under Section 31  
of the Real Estate(Regulation  
and Development) Act, 2016**

**Argued by:**

**For Complainant:  
For Respondent:**

**Shri I.S. Sangwan, Advocate  
Shri Dhruv Dutt Sharma, Advocate**

**ORDER**

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017

Shri I.S. Sangwan  
12/3/2021



(hereinafter referred as the Rules of 2017) filed by Smt. Manjeet Kaur W/o Shri Daljit Singh Randhawa, R/o House No.1395, Sector 31, Gurugram seeking refund of Rs.69,24,100/- for booking a unit No. 11C, 2BHK located in Tower 2 having a approximate super area of 1575 sq ft in the project of the respondent known as The Leaf Residential Complex, SS City, Sector 85, Gurugram for a total sale consideration of Rs. 73,23,750/-(approximately) Gurugram besides taxes etc on account of violation of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"THE LEAF SS CITY, Sector 85, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	11C
V.	Tower No. / Block No.	
VI.	Size of the unit (super area)	Measuring 1575 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	14.09.2012
XI.	Date of allotment(original) provisional	01.01.2013



XII	Date of execution of FBA (copy of FBA be enclosed as annexure-B)	11.09.2013
XIII	Due date of possession as per FBA	13.09.2016
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said FBA(Clause 10)	Rs.5/- per sq ft per month for the period of 12 months or till the handing over the possession whichever is earlier

**Payment details**

XVI	Total sale consideration	Rs.73,23,750/- (approximately)
XVII	Total amount paid by the complainants	Rs.69,24,100/-

2. Brief facts of the case can be detailed as under.

A project by the name of 'THE LEAF' SS City, situated in Sector 85, Gurugram was to be developed by the respondent. The complainant booked a unit measuring 1575 sq ft @ Rs.4650/- per sq ft. in its project for Rs.73,23,750/-

It is the case of the complainant that coming to know about the project of the respondent named above, she booked a unit in its project Annexure on 14.07.2012 vide Annexure 'A'. A Flat Buyer Agreement Annexure 'C' was executed between the parties on 11.09.2013. As per terms and conditions of the same, possession of the allotted unit was to be handed over to the complainant within a period of 36 months i.e. 13.09.2016. It is the case of the complainant that as terms and conditions of the above mentioned agreement, she started depositing various amounts and paid a total sum of

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Rs.69,24,100/-. But there was no progress in the construction of the project. So, it led the complainant to send <sup>an</sup> emails Annexure 'B' to the respondent on 16.06.2015 <sup>2</sup>vide email confirmation <sup>of</sup> the due date for the completion of the project as 13.09.2016. This fact was again confirmed to the complainant by writing a letter dated 10.07.2015 as Annexure 'C' by the respondent and it was informed to her that the project would be completed by the due date. It is the case of the complainant that she also moved to CREDAI for completion of the project and wherein the respondent promised to complete the project by 31.03.2018 vide Annexure D. Though as per that, the complainant paid dues upto 31.08.2016 but despite that the respondent failed to complete the project by the due date and offer its possession to the complainant. She is a senior citizen and suffered financially ~~loss~~, mental agony and harassment at the hands of the respondent. Thus, when the respondent failed to complete the project by the due date, she sought refund of the amount deposited with it besides interest and compensation.

3. But the case of the respondent as set up in the written reply is that though the complainant booked a unit with it and deposited different amounts but committed default in making various payments. It was pleaded that the project in question was registered with the HARERA, Gurugram and an application for extension of its registration has also been moved vide Annexure R/20. It was denied that there is any delay in completion of the project. In fact, the respondent spent a sum of R.241.41 crore towards its construction and details of the same are mentioned in Annexure R/3. Though there is some delay in completion of the project but that was due to force majeure beyond its control. Moreover, more than 75% of the project is complete and every effort is being made to complete the construction and offer possession of the allotted unit to the complainant. It was denied that the complainant is entitled to refund of the

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amount deposited with it. Lastly, it was pleaded that since there was violation of terms and conditions of FBA, So, the complaint filed seeking refund is not maintainable.

4. All other averments made in the complaint were denied in toto.

5. I have heard the learned counsel for both the parties and who reiterated their position as stated above.

6. Some of the admitted facts of the case are that on 14.07.2012, the complainant booked the unit in question and deposited a total sum of Rs. Rs.69,24,100/- with the respondent. A Flat Buyer Agreement was executed between the parties on 13.09.2013 and which led to deposit of various amounts with the respondent. The complainant admittedly paid a sum of Rs.69,24,100/- to the respondent and did not deposit the remaining amount. The due date for completion of the project and handing over possession of the allotted unit to the complainant was 36 months with grace period of 90 days as per clause 9 of FBA and which may be reproduced for ready reference...

*The Company shall make all efforts to apply for the occupation certificate of the SS City within thirty six(36) months from the date of signing of the Buyer's Agreement, subject to certain limitations as provided in the Buyer's Agreement and the timely compliance of the provisions of the Buyer's Agreement by the Applicant. The Applicant agrees and understands that the Company shall be entitled to a grace period of 90 days, after the expiry of thirty six(36) months, for applying and obtaining the Occupation certificate in respect of the said complex.*

7. A perusal of the above mentioned clause of FBA shows that the possession of the allotted unit was to be delivered to the complainant within 36 months with a grace period of 90 days. There is nothing on record to show that by that date, the respondent completed the construction of the project and offered possession of the allotted unit to the complainant. Since the

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construction of the project was not going at proper pace and the complainant became apprehensive, so, she wrote a email dated 16.06.2015 seeking refund of the amount deposited with it. This email was replied by the respondent and reproduction of three emails/letter<sup>s</sup> relevant for deciding the controversy in question:

To

(I)

The Leaf

Dear Sir,

The allotment letter is dated 12 Sept 12 and the flat buyer agreement is 11 Sept 13. By your mail you are confirming that the flat will be delivered 11 Sept 16.

This does not appear to be feasible considering the ground position of casting the first floor is in progress, there are atleast 15 more floors to be cast and then the finishing activities.

Kindly provide a detailed activity wise as indicated in the payment plan schedule of completion to enable an assessment of the feasibility of the target date of completion and handing over of the flat.

As you are not likely to complete the project by the dates you are committing, kindly refund the amounts received by you with interest.

Manjeet Kaur

(II)

From: [The.leaf@ssgroup-india.com](mailto:The.leaf@ssgroup-india.com)

To [daljitsinghrandhawa@yahoo.com](mailto:daljitsinghrandhawa@yahoo.com)

Sent: Tuesday, 16 June 2015, 16.20

Subject: Tower 2/11C The leaf

Dear Sir,

Thanks for writing to us. Reference to your letter dated May26,2015 we would like to bring to your kind notice that work at 'The Leaf' site is going in full swing. We invite you to visit 'The leaf' construction site & view the work progress personally. We are enclosing herewith the construction pictures for your kind perusal. The demand for Tower-2 "On Completion of 1st floor Slab; will be raised tentatively by July.

As per the Builder Buyer Agreement the project will be handed over after three years of signing the same and our endeavour is to complete the project on time with the support of our esteemed customers.

For further assistance please feel free to contact us.

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Thanks & Regards Customer Care SS Group.

(III)

Mrs Manjeet Kaur

Date: July 10, 2015

H No.1395, Sector 31, Gurgaon, Haryana

Subject: Tower 2-11C in 'The Leaf' Residential complex SS 'city, Sector 85.  
Gurgaon,

Haryana

Reference to your letter dated June 27<sup>th</sup>, 2015, target date for the remaining milestones for the delivery of the apartment is annexed herewith.

Regarding your request for refunding your amount with interest we hereby draw your attention to clause 8.3(b) of the Builder Buyer Agreement which allows the allottee to claim refund only on the event the developer fails to deliver possession within 51 months from the date of signing of the Builder Buyer Agreement. Since, we are fully on track to complete the development and hand over within the scheduled period and your request for refund of amount is not enforceable at the moment as per the terms of the agreement.

We are looking forward to a long and healthy relationship and the best of our service.

Thanking you,

Yours sincerely

For SS Group Pvt Limited

Sd/-

(Authorised Signatory)

8. A perusal of the above mentioned communications exchanged between the parties shows that though the respondent promised to deliver possession of the allotted unit to the complainant by 11.09.2016 but refused her request for refund in view of Clause 8.3(b) of the FBA. A reference to the provisions mentioned in clause 8.3 of that document instead of clause 10 has been made, providing as under:

(b) Subject to the provisions of Clause 8.1(a) and Clause 8.1.(b), in case the Developer fails to deliver possession of the Flat within fifty one(51) months( or such extended period for want of sanction plan), from the date of signing of this Agreement, or as may be extended in a situation covered in clause 8.1.(b),

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then such case the Flat Buyer(s) shall have the option to give notice to the Developer within nine (90) days from the expiry of the said period of fifty one(51) months conveying the Flat Buyer(s)'s intention to terminate the Agreement. On receipt of such notice from the Flat Buyer(s), the Developer shall be at liberty to sell and/or dispose of the said Flat and the allotted parking space to any other party at such price and upon such terms and conditions as the Developer may deem fit without accounting for the sale proceeds thereof to the Flat Buyer(s). Thereafter, the Developer shall within nine (90) days from the date of said Flat the parking space and after full realisation of the sale price, refund to the Flat Buyer(s), all the monies received from the Flat Buyer(s) during the term of this Agreement. In case the developer fails to refund the sale price, the Developer shall pay interest to the Flat Buyer(s) @18% for any period beyond the said period of 90 days. The Flat Buyer(s) shall have no other claim against the Developer in respect of the said flat and the parking space under this Agreement. If the Flat Buyer(s) fails to exercise his/her/their right of termination within the time limit as aforesaid, by delivery to the developer of a written notice acknowledged by the developer in this regard, then he/she/it shall continue to be bound by the provisions of this Agreement, provided that in such case, the developer shall continue to pay the compensation provided herein.

9. It is evident that though while sending letter dated 12.07.2015, the respondent referred to clause 8.3(b) of FBA taking a period of 51 months for withdrawal of the project. But that condition did not find mention in that clause. Rather, a reference to the same is there in clause 10 of that document. It is well-settled that these conditions with regard to deposit and withdrawal of deposited amount are one sided and are not sustainable in the eyes of law. A reference in this regard may be made to ratio of law laid down in cases of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725** and followed in **Wg Cdr. Ariful Rahman Khan & Others Vs DLF Southern Homes Pvt Ltd. 2020, SCC online SC 667** wherein it was held that the terms of the agreement authored by the developer do not maintain a level platform between the developer and the flat purchaser. The stringent terms imposed on the flat purchaser are not in consonance with the obligation of the developer to meet the timelines for construction and

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handing over possession, and do not reflect an even bargain. The failure of the developer to comply with the contractual obligations to provide the flat within the contractually stipulated period, would amount to a deficiency of service. Then it was also held that the developer cannot compel the apartment buyer to be bound by one-sided contractual terms contained in the Apartment Buyer's Agreement. So, the plea of the respondent that the complainant could have withdrawn from the project giving a notice after 51 months as per terms and conditions of FBA is untenable as the same are one sided and are not binding on the complainant.

10. Faced with this situation, it is contended on behalf of the respondent that the project is at completion stage and more than 75% of the construction is complete and possession of the allotted unit would be offered to the complainant shortly. In this regard a reference has been made to photographs Annexure R/4 showing the stage and extent of construction. No doubt, that document was placed on record by the respondent while filing reply but there is nothing on record to show the stage and extent of latest construction of the project. Neither any quarterly progress report of the project with the Hon'ble Authority has been placed on the file nor there is any affidavit of a person connected with the construction activities. So, in such a situation, it cannot be said that the project is at an advanced stage and its possession would be offered to the complainant and other allottees very shortly. In case of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that when the respondent failed to complete the project by due the date and offer possession of the allotted unit, then the allottees are entitled for refund of the entire amount. The plea of the respondent is that if refund is allowed at this stage, then it may be detrimental to the health of the project

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as well as other allottees. But the plea advanced in this is devoid of merit. It is well-settled that an allottee cannot be made to wait indefinitely for offer of possession of the allotted unit and particularly when due date has already expired. Even otherwise before the due date, the complainant withdrew from the project and sought refund. So, taking into consideration both these facts, the complaint filed by the complainant seeking refund of the amount deposited with the respondent besides interest and compensation is maintainable.

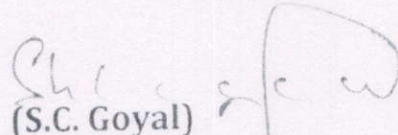
11. Thus, in view of my discussion above, the complaint filed by the complainant seeking refund of the amount deposited with the respondent is hereby allowed. Consequently, the following directions are hereby issued to the respondent

(i) To refund a sum of Rs.69,24,100/- deposited by the complainant with the respondent alongwith interest @ 9.30%p.a. from the date of each payment till receipt of whole amount by the former.

(ii) The respondent is also directed to pay a sum of Rs.10,000/- to the complainant as compensation inclusive of litigation charges within a period of 90 days failing which legal consequences would follow.

12. File be consigned to the Registry.

12.03.2021

  
(S.C. Goyal)  
Adjudicating Officer,  
Haryana Real Estate Regulatory Authority  
Gurugram 12/3/2021

Judgement uploaded on 22.04.2021