



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गुरु सिविल लाईंस गुरुग्राम हरियाणा

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

Complaint No.2557/2018
Date of Decision: 06.04.2021

Anil Sultan & Reeta Sultan
R/o Flat No.574,Pocket C, Sarita Vihar,
New Delhi-110076

Complainants

Vs

M/s SS Group Pvt Ltd.
4th Floor, The Plaza, 77 MG Road, Gurugram
77 SS House, Sector 44, Gurugram

Respondent

II

Complaint No.681/2019
Date of Decision: 06.04.2021

M/s Skynet Enterprises Pvt Ltd.
609, Katra Ishwar Bhawan,
Khari Baoli, Delhi-110006

Complainant

Vs

SLC
6/4/2021

M/s SS Group Pvt Ltd.
4th Floor, The Plaza, 77 MG Road, Gurugram
77 SS House, Sector 44, Gurugram

Respondent

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

Argued by:

For Complainants- Anil Sultan &
Reetu Sultan

Ms Ritu Kapoor, Advocate

For Complainant-M/s Skynet Enterprises
Pvt Ltd.

Ms Samapika Biswal, Advocate

For Respondent:

Sh. Dhruv Dutt Sharma, Advocate

ORDER

2. This common order of mine seeks to dispose of above mentioned two complaints seeking refund of Rs.54,73,225/- and Rs.79,31,503/- deposited with the respondent for booking of different units in its project known as 'The Leaf' situated in Sector 85, Gurugram. These complaints filed 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 (hereinafter referred as the Rules of 2017) by Anil Sultan & Reeta Sultan and M/s Skynet Enterprises Pvt Ltd. on account of violation of obligations on the part of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Sh. Ritu Kapoor
6/4/2021

Project related details Complaint No.2557 of 2018

I.	Name of the project	"THE LEAF" in S.S. City situated in Sector 85, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	12-A
V.	Tower No. / Block No.	12 th Floor
VI.	Size of the unit (super area)	Measuring 1620 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)	29.06.2012 (P/2)
XI.	Date of provisional allotment(original)	12.07.2012
XII.	Date of execution of FBA (P/2)	10.09.2013
XIII.	Due date of possession as per commitment made at the time of booking	10.09.2016
XIV.	Delay in handing over possession till date	More than two years

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6/9/2021

XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	As per clause 15(b) of FBA compensation @Rs. 2 per sq ft per day for the period of delay.
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Payment details

XVI	Total sale consideration	Rs. 91,81,800/-
XVII	Total amount paid by the complainant upto 03.05.2016	Rs. 54,73,225/-

II

Project related details Complaint No.681 of 2019

I.	Name of the project	"THE LEAF" situated in Sector 85, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential

Unit related details

IV.	Unit No. / Plot No.	9-A
V.	Tower No. / Block No.	9 th Floor, Building no. 8
VI.	Size of the unit (super area)	Measuring 2280 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)	10.07.2012
XI.	Date of provisional allotment(original)	10.09.2012(P/2)
XII.	Date of Execution of ABA	04.10.2013
XIII.	Due date of possession as per ABA	03.10.2016

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XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	As per clause 15(b) of FBA compensation @Rs. 2 per sq ft per day for the period of delay.
Payment details		
XVI	Total sale consideration	Rs. 1,21,76,040/-
XVII	Total amount paid by the complainant upto 03.02.2017	Rs.79,31,503/-

3. A project known by the name of "The Leaf" in S.S. City, Sector 85, Gurugram was being developed by the respondent. The complainants coming to know about the same booked their ~~respective~~ units detailed above on 29.06.2012 and 10.07.2012 against total sale consideration of Rs.91,81,800/- and Rs.1,21,76,040/- respectively. It led to execution of Apartment Buyer Agreement on 10.09.2013(P/7) and 04.10.2013(P/6) respectively between the parties to the dispute. It is the case of the complainants that the units were booked under the construction linked payment plan. After the allotment of the respective units and execution of Builder Buyer Agreements the complainants started depositing different amounts as per payment plan and paid a sum of Rs.54,73,225/- and Rs.79,31,503/- upto 03.05.2016 and 03.02.2017 respectively. It is their case that due dates for completion of the project and handing possession of the respective units by the respondent was December, 2016. But despite paying a major portion of the sale consideration, the respondent failed to complete the project and offer possession of the allotted units to them. So, the same led to issuance of legal notices dated 19.07.2017(P/15) and 17.04.2018(P/16) respectively but without any positive

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results So, on these broad averments, they filed separate complaints seeking refund of the above mentioned amounts besides interest and compensation from the respondent.

4. But the case of the respondent as set up in the separate written replies is that though the complainants booked respective units in its project detailed above but they were not regular in paying various amount as per payment plan and committed default in the same. It was denied that the construction of the project is not going as per the payment plan. However, there is some delay in completion of the project but that was due to non-obtaining of various permissions from the competent authority(s), non-payment of amount due by various allottees including the complainants, slow down in the real estate sector, shortage of labour, raw-material and various other factors. So, on account of that, the respondent opted for Swamih Investment Fund, a scheme launched by the Government of India for the cash strapped projects and which led to sanction of sum of Rs.110 crores extendable to Rs.166 crores vide letter dated 23.07.2020. It was pleaded that the construction of the project has re-started and the work is in full swing and is likely to be completed by 30.06.2021. Even the Hon'ble Harera, Gurugram has also extended the period for completion of the project vide Annexure R/12. Lastly, it was pleaded that the claimants are investors and their main motive is to earn profit and not to take possession of the allotted units. If their plea for refund is accepted, then, it may be detrimental for the interest of the project as well as other allottees who are waiting for their dream homes for the last 8/9 years.

5. All other averments made in the complaints were denied in toto.

6. I have heard the learned counsel for both the parties and have also

perused the case file

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7. Some of the admitted facts of the case are that on 29.06.2012(P/12) and 10.09.2012(P/2), the complainants were allotted different units in the project of the respondent known as 'The Leaf' situated in Sector 85, Gurugram against total sale consideration of Rs.91,81,800/- and Rs.1,21,76,040/- besides tax etc. After the allotment of the units in question, they deposited various amounts. Meanwhile Apartment Buyer Agreement dated 10.09.2013(P/7) and dated 04.10.2013(P/6) were executed between the parties mentioning the terms and conditions with regard to allotment, payment plan, specifications of the allotted units, the due date for completion of the project and offer of possession of the allotted units etc. A perusal of clause 8.1 of ABA shows that the possession of the allotted unit was to be offered to the complainants by December, 2016 inclusive of grace period. It is not the case of the respondent that by that date, its project detailed above was complete or near completion and there were any chances of offer of possession of the allotted units to the complainants. It has specifically come in the pleadings of the claimants that after a visit to the site, they were not satisfied with the progress of the construction and opted to withdraw from the project by sending legal notices dated 19.07.2017(P/15) and dated 17.04.2018(P/16) respectively. Though a reply to the earlier notices(R/9) was received but the same did not find favour with the complainants and which led to filing of complaints seeking refund on 31.12.2018 and 15.02.2019 respectively. It is pleaded on behalf of the complainants that when the due date for completion of the project and offer of possession of the allotted units has already expired, they are not obligated to accept offer of possession of the allotted units. A reference in this regard has been made to the 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**

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Homes Pvt Ltd. 2020, SCC online SC 667. In case of Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, the Hon'ble Supreme Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him alongwith compensation. It was also held that when the developer fails to comply with the terms and conditions of ABA, then the allottee has a right to withdraw from the project and seek refund of the amount deposited with it against allotment of a unit.

8. The contention of the learned counsel for the respondent is that no doubt, there is some delay in completion of the project but that is not a ground for allowing refund of the deposited amount to the complainants. A reference was also made to various documents placed on the file including written submissions. It is pleaded that the complainants alongwith other allottees are defaulted in making payments as per payment plan as depicted in Annexure R/10 and so the construction of the project could not be completed. Secondly, due to shortage of labour, raw material and various restraint orders passed by different statutory authorities including National Green Tribunal, the pace of construction of the project could not pick up leading to delay in its completion. Thirdly, the respondent was trying to complete the project despite default committed by the various allottees and moved for investment by way of subscription to non-convertible debentures with SWAMIH INVESTMENT FUND. So, it led to sanction of a sum of Rs. 110 crore besides additional some of Rs. 56.30 crores under that scheme launched by the Government of India. Lastly, the project is registered with HARERA, Gurugram and it is likely to be completed by June, 2021 and then the possession of the allotted unit would be offered to the complainants including the other allottees. So, keeping in view all these facts

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and health of the real estate sector, the complaints filed by the allottees seeking refund are not maintainable and are liable to be rejected.

9. I have duly considered the submissions made in this regard on behalf of both the parties.

10. The booking of the allotted units against total sale consideration detailed above is not disputed. It is also a fact that as per clause 8.1 of ABA, the possession of the allotted unit was to be delivered to the complainants after completion of the project by December, 2016. A perusal of Clause 9 of allotment letter coupled with Clause 8.1 of ABA shows that the respondent agreed to complete the project within a period of 36 months from signing of ABA with grace period of 90 days. When that period expired the complainants opted to withdraw from the project by sending legal notices dated 19.07.2017 (P-15) and 17.04.2018 (P-16) respectively. Though a reply to one of the legal notice was received but a perusal of reply placed on the record does not show a rosy picture. Even, it is admitted that up to now, the project is incomplete and investment ^{is} being made under the SWAMIH INVESTMENT FUND for its completion and offer of possession by June, 2021. No doubt, there was some delay on behalf of the complainants in paying remaining amount and a number of reminders were issued but they have paid a major part of the sale consideration and cannot be held liable for non-payment by other allottees against the allotment of their respective units. Lastly, can the complainants be asked to wait indefinitely for completion of the project and offer of possession of the allotted units. The answer in the negative. A similar situation arose in case of **DLF Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020 as in the present case wherein it was held that the allottee cannot be asked to wait indefinitely for possession of allotted unit and is entitled to seek refund

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after the due date as expired. Though there are some provisions in the ABA and on the basis on which it is argued that the allottee should be asked to wait for possession of the allotted unit but the plea advanced in this regard is devoid of merit. It is well settled that the complainant cannot be asked to wait any more after the due date has expired. So, in view of the factual and legal position detailed above, the defence advanced by the respondent does not hold ground and is without any merit.

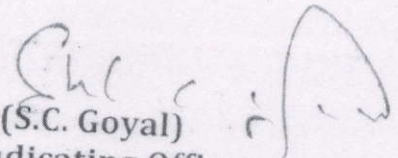
11. Thus, in view of my discussion above, the complaints filed by the complainants are hereby is ordered to be accepted. Consequently, the complainants are held entitled to the refund of Rs. 53,53,225/- and Rs. 79,31,503/- besides interest at the rate of 9.3% p.a. from the date of each payment up to the date of receipt of the same. In addition to that a sum of Rs. 20,000/- is also awarded to ^{each of} the complainants as compensation inclusive of litigation charges.

12. This order be complied with by the respondent within a period of 90 days failing which legal consequences would follow.

13. A copy of this order be placed in connected complaint no. 681/2019.

14. Files be consigned to the Registry.

06.04.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
6/4/2021