

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

Complaint no. : 177 of 2021
First date of hearing : 04.02.2021
Date of decision : 04.02.2021

Lalit
R/o: VPO Fazilpur, Jharsa, Jharsa-Sohna
Road, Gurugram, Haryana

Complainant

M/s S.S. Group Pvt. Ltd.
Regd. Office at: 4th Floor, The Plaza,
M.G. Road, Gurugram-122002

Versus

Respondent

CORAM:
Dr. K.K. Khandelwal
Shri Samir Kumar

सत्यमेव जयते

**Chairman
Member**

APPEARANCE:
Shri Sushil Yadav
Shri C.K. Sharma & Dhruv Dutt
Sharma

Advocate for the complainant

Advocates for the respondent

ORDER

1. The present complaint dated 13.01.2021 has been filed by the complainant/allottee in Form CRA 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 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 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	The Leaf, Sector 85, Gurugram.
2.	Project area	11.093 acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no.	81 of 2011 dated 16.09.2011
	License valid/renewed upto	15.09.2019
	Name of licensee	Shiva Profins Private Limited
5.	HRERA registered/ not registered	Registered vide no. 23 of 2019 dated 01.05.2019
	License valid/renewed upto	31.12.2020(extension received on 20.01.2020)
6.	Unit no.	12A ,Building no. 1, 12 th Floor [Page 16 of complaint]
7.	Unit measuring	2280 sq. ft.
8.	Date of Allotment Letter	10.09.2012 [Page 62 of reply]
9.	Date of execution of flat buyer's agreement	14.03.2014 [Page 15 of complaint]
10.	Total consideration as per applicant ledger dated 22.01.2021 at page 74 of reply	Rs.1,20,55,200/-



11.	Total amount paid by the complainant as per applicant ledger dated 22.01.2021 at page 74 of reply	Rs.1,04,79,981/-
12.	Due date of delivery of possession as per clause 8.1 (a) of the said agreement i.e. 36 months from the date of signing of this agreement (14.03.2014) plus 3 months grace period [Page 19 of complaint]	14.06.2017

3. As per clause 8.1(a) of the said agreement dated 14.03.2014, the possession of the unit in question was to be handed over within a period of 36 months plus 3 months grace period from the date of signing of flat buyer's agreement which comes out to be 14.06.2017. Clause 8.1(a) of the flat buyer's agreement is reproduced below:

"8. Possession

8.1 Time of Handing over the Possession

(a) Subject to terms of this clause and subject to the Flat Buyer(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the Flat within a period of thirty six (36) months from the date of signing of this Agreement. The Flat Buyer's agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of 36 months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex"

4. The complainant submitted that they signed flat buyer's agreement on 14.03.2014 and as per clause 8.1 of the said agreement the possession of the unit was to be delivered within a period of 36 months from the date of execution of the



agreement and the respondent failed to deliver the possession till date. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant, booked an apartment/flat admeasuring 2280 sq. ft. in aforesaid project of the respondent and same was purchased by the complainant for total sale consideration is Rs. 1,20,55,200/- which includes BSP, car parking, IFMS, Club Membership, PLC etc.

5. The complainant further submitted that that complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the Tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of 95% payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within



stipulated period. Hence, this complaint for the
aforementioned relief:

- i. Direct the respondent to pay interest for the alleged
delayed possession to the complainant.
6. 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.
7. The respondent contests the complaint on the following
grounds:
- i. That on 10.09.2012, the complainant was allotted unit no.
12A, 3BHK having an approximate super area of 2280 sq.
ft. in the Building-1 of the project "The Leaf" at the basic
rate of Rs. 4550 per sq. ft. and Preferential Location
Charges (PLC) of Rs. 150/- per sq. ft. External
Development Charges (EDC) of Rs. 355/- per sq. ft.,
Infrastructure Development Charges (IDC) of Rs. 35/- per
sq. ft. to be payable as per the payment plan. It is
submitted that the total sale consideration of the flat
booked by the complainant was Rs. 1,20,55,200/-.
However, the total sale consideration amount was
exclusive of the registration charges, stamp duty charges,
service tax and other charges which are to be paid by the



complainant at the applicable stage. It is submitted that the complainant agreed that the payment will be made as per the payment plan (construction linked payment plan). It is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the flat from the very inception. Furthermore, on account of non-receipt of the installment amount on time despite reminder, the respondent had as per the terms of the allotment and flat buyer's agreement also issued a final notice dated 06.12.2013 to the complainant.

- ii. It is further stated that due to the money crunch created by the allottees by not making timely payments and in order to meet the gap for cost of completion of the project arisen on account of non-payment/default in payment of installments by the allottees, the respondent approached **SWAMIH INVESTMENT FUND - I** (Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects) which has been formed to complete construction of stalled, brownfield, RERA registered residential developments that are in the affordable housing / mid-income category, are networth positive and requires last mile funding to complete construction. It has a target corpus of Rs. 12,500 Crores



with a green-shoe option of Rs.12,500 Crores. The **SWAMIH INVESTMENT FUND - I** vide their letter dated **23.07.2020** has sanctioned an initial amount of Rs. 110 Crores which may extend upto Rs. 166 Crores if required to complete the project. The company had already completed all the formalities and the First Trench had already been disbursed to the Respondent company in the month of September, 2020 and the same is being infused into the project for speedy construction. As per the condition of the fund sanctioned the entire amount of the fund shall be utilized only in completion of the project under the observation and monitoring of the agency deployed by the SWAMIH FUND in the project. Further stated that after the halt in work due to various reasons and not limited to delay on the part of the allottees, NGT notifications, Covid-19 pandemic, etc., recently the work had re-started and is going on in full swing and would be completed before 30.06.2021, within the timeline committed before RERA Gurugram.

- iii. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter and flat buyer's agreement and as such the complaint is liable to



be rejected. It is submitted that out of the total consideration of Rs. 1,20,55,200/- of the flat, the amount actually paid by the complainant is **Rs. 99,30,847/-**. It is pertinent to mention here that the complainant has not come before the Hon'ble Authority with clean hands and he had deliberately concealed the fact that on various occasions the complainant requested for waiver off interest and accordingly the respondent acknowledged the request of the complainant and waived off the interest. It is pertinent to mention here that the complainant had also booked another unit bearing no. 12B in building-2 of the same project which was cancelled due to difficulty in payment on the request of the complainant and the amount paid was duly given credit. Further, the cheque given by the complainant towards the milestone "On Commencement of Construction Work" was bounced and upon the request of the complainant the payment was adjusted after cancellation of Unit No. 12B in Building-2 towards the sale consideration of the present unit. It is submitted that despite the assurance, the complainant kept on defaulting in making the payments on time. It is further submitted that the complainant is a real estate investor who has made the



booking with the respondent only with an intention to make profit in a short span of time. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant is now raising several untenable pleas on highly flimsy and baseless grounds. The complainant after defaulting in complying with the terms and conditions of the flat buyer's agreement, now wants to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainant.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
9. The Authority has complete jurisdiction to decide the complaint regarding 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.
10. On consideration of the circumstances, the documents and submissions made by the parties regarding contravention as



per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8.1(a) of the flat buyer's agreement executed between the parties on 14.03.2014, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the date of signing of flat buyer's agreement. The grace period of 3 months is allowed to the respondent due to exigencies beyond the control of the respondent. Therefore, the due date of handing over possession comes out to be 14.06.2017. As such this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

11. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the agreement dated 14.03.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at rate of the prescribed @ 9.30% p.a. w.e.f. 14.06.2017 till offer of possession plus 2 months as per section 18(1) of the Act read with rule 15 of Rules. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2



months from the date of receipt of occupation certificate. The allottee comes to know about the receipt of occupation certificate, on the date he receives the letter for offer of possession. Therefore, in the interest of natural justice, the complainant is given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. However, the occupation certificate is not received by the promoter and nor the respondent has offered the possession of the unit in question to the complainant. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 14.06.2017 till the expiry of 2 months from the date of offer of possession.

12. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainant from due



- date of possession i.e. 14.06.2017 till the offer of possession plus 2 months.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession plus 2 months shall be paid before 10th of each subsequent month.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainant shall be charged at the prescribed rate @ 9.30% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
13. Complaint stands disposed of.
14. File be consigned to registry.

(Sanir Kumar)
Member

(Dr. K.K. Khandelwal)
Chairman

Dated : 04.02.2021