

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

Complaint no. : 6623 of 2019
First date of hearing : 15.01.2020
Date of decision : 04.02.2021

Inderjeet Khurana
R/o: C-17, Ram Dutt Enclave,
Uttam Nagar, New Delhi

Complainant

Versus

M/s S.S. Group Pvt. Ltd.
Address:77, S.S. House, Sector-44,
Gurugram, Haryana-122003

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Anil Chhabra
Shri C.K. Sharma & Dhruv Dutt
Sharma

Advocate for the complainant
Advocates for the respondent

ORDER

1. The present complaint dated 24.12.2019 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 84, 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. | 2C, Tower no. 2 [Page 17 of complaint] |
| 7. | Unit measuring | 1575 sq. ft. |
| 8. | Date of Allotment Letter | 10.09.2012 [Page 17 of complaint] |
| 9. | Date of execution of flat buyer's agreement | 18.10.2013 [alleged by the complainant as well as respondent] |
| 10. | Total consideration as per applicant ledger dated 21.01.2020 at page 28 of reply | Rs.87,81,750/- |



| | | |
|-----|--|---|
| 11. | Total amount paid by the complainant as per applicant ledger dated 21.01.2020 at page 28 of reply | Rs.71,16,872/- |
| 12. | Building plans were revised on | 13.11.2013 [As admitted by the respondent in para 6 page 2 of reply] |
| 13. | 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 (18.10.2013) plus 3 months grace period [Page 19 of reply] | 18.12.2016 |

Note: Both the complainant and the respondent failed to annexed the BBA. The respondent and the complainant both alleged that the BBA executed between the parties on 18.10.2013 at page 11 para (c) of the complaint and at page 25 para (f) of the reply. **Therefore, the due date will be calculated from the alleged dated 18.10.2013. Also, reproduce the possession clause 8.1(a) form the BBA at page 19 para 9 of reply.**

3. As per clause 8.1(a) of the said agreement dated 18.10.2013, 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 18.12.2016. 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 18.10.2013 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. Further, the respondent has illegally charged PLC of Rs. 2,43,000/- @ Rs. 150/- per sq. ft. and additional PLC of Rs. 1,62,000/- @ Rs. 100/- per sq. ft. and even there is nothing unique about the location.
5. The complainant further submitted that the respondent has claimed reserved car parking slot charges exorbitantly to Rs. 3,50,000/- ignoring the fact that reserved car parking charges charge is part of common area for which respondent cannot charge any parking charges on account of cost from the complainant. Hence, this complaint for the following reliefs:
 - i. Direct the respondent to pay interest for the alleged delayed possession to the complainant.
 - ii. Direct the respondent to handover the possession of the unit in a habitable form with all amenities immediately.



- iii. Direct the respondent to pay the amount of GST service tax, VAT charges, car parking charges , PLC and club membership charges.
 - iv. Direct the respondent to withdraw Rs. 51,488/- illegally charged on account of interest from 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. 2C, 2BHK having an approximate super area of 1575 sq. ft. in the tower-2 of the project "The Leaf" at the basic rate of Rs. 4650/- per sq. ft. and Preferential Location Charges (PLC) of Rs. 250/- 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 and and the complainant was aware of the said charges at the time of signing of the agreement dated 18.10.2013 . It is submitted that the total sale consideration of the flat booked by the complainant was Rs. 87,81,750/-. 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. That the complainant further concealed the fact that on 02.04.2014 the complainant wrote an e-mail to the respondents that due to financial problem he could not pay the dues on time and requested for waiver off interest. That despite the assurance, the complainant kept on defaulting in making the payments on time. That again on 05.02.2016 the complainant wrote a letter to the respondent that he is shortage of funds and again requested for waiver off interest.



8. The complainant filed the written submission on 28.09.2020 wherein the complainant has reiterated and asserted the facts of the complaint only.
9. The respondent filed the written arguments on 08.10.2020 in which the respondent states that there is a huge outstanding amount to be paid by the allottees which has resulted in alleged delay in handing over of possession to the allottees. 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.

10. 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.
11. The Authority, on the basis of information and other submissions made and the documents filed by both the parties, is of considered view that there is no need of further hearing in the complaint.
12. 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.

13. 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. In the present complaint, the complainant as well as the respondent failed to produce the flat buyer's agreement on record but both the respondent and the complainant alleged that the flat buyer's agreement executed between the parties on 18.10.2013 at page 11 para (c) of the complaint and at page 25 para (f) of the reply. **Therefore, the due date will be calculated from the alleged execution of said agreement dated 18.10.2013.** By virtue of clause 8.1(a) of the flat buyer's agreement executed between the parties on 18.10.2013, 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 18.12.2016. 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.

14. With respect to the relief of GST, the complainant is at liberty to approach the appropriate competent authority.

15. With respect to the relief of car parking charges, PLC and club membership charges, the Authority observed that as per allotment letter dated 10.09.2012, the complainant accept to pay the PLC of Rs. 250 per sq. ft. and in respect of car parking charges and club membership charges nothing is mentioned in the allotment letter and both the parties failed to annexed the complete BBA but the at page 32 of complaint schedule of payments annexed which constitutes like;

“Right to use car parking charge, club membership fee, power backup, IFMS, stamp duty & Registration charges shall be payable extra at the time of handing over of possession.”

And, at page 35 to 37 of reply payment plan has been annexed by the respondent where all the charges are duly listed and the same payment plan has been signed by the complainant.

16. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the agreement dated 18.10.2013 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 complainant is entitled to delayed possession charges at rate of the prescribed @ 9.30% p.a. w.e.f. 18.12.2016 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. 18.01.2017 till the expiry of 2 months from the date of offer of possession.

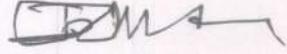
17. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- 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. 18.01.2017 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.

18. Complaint stands disposed of.

19. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 04.02.2021

JUDGMENT UPLOADED ON 11.10.2021



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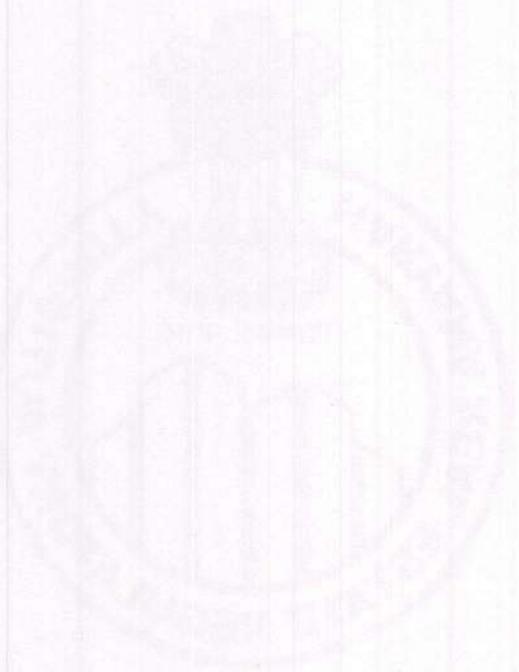
Complaint No. 001/2021

File be lodged in registry

[Signature]
Haryans Hari Basu Registrar, Authority, Guruhama
(Chairman)

[Signature]
Member
(Joint Member)

Date: 04.02.2021



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GURUHAMA