

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

Complaint no. : 3661 of 2020
First date of hearing : 26.11.2020
Date of decision : 04.02.2021

1. Mr. Dharmesh Meena
2. Mrs. Swati Verma
Both R/o: Flat No. A2/901, Tower 4,
Purvanchal Royal Park, Sector-137 Noida
UttarPradesh-201305

Complainants

Versus

M/s S.S. Group Pvt. Ltd.(Through its directors)
Regd. Office at:77, SS House, Sector-44,
Gurugram-122003, Haryana

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri C.K. Sharma & Dhruv Dutt
Sharma

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 23.10.2020 has been filed by the complainants/allottees 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 complainants, 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 Coralwood & Almeria, Sector 84, Gurugram. |
| 2. | Project area | 15.275 acres |
| 3. | Nature of the project | Group Housing Colony |
| 4. | DTCP license no. | 59 of 2008 dated 19.03.2008 |
| | License valid/renewed upto | 18.03.2020 |
| | Name of licensee | M/s North Star Apartment Pvt. Ltd. |
| 5. | HRERA registered/ not registered | Registered vide no. 381 of 2017 dated 12.12.2017 |
| | RERA registration valid upto | 31.12.2019 |
| 6. | Unit no. | 902, Tower no. F, 9 th Floor Type: M [Page 23 of complaint] |
| 7. | Unit measuring | 2250 sq. ft. |
| 8. | Date of execution of flat buyer's agreement | 11.08.2012 [Page 22 of complaint] |
| 9. | Total consideration as per applicant ledger dated 20.11.2020 at page 82 of reply | Rs.93,63,500/- |

| | | |
|-----|---|--|
| 10. | Total amount paid by the complainant as per applicant ledger dated 20.11.2020 at page 82 of reply | Rs.86,30,171/- |
| 11. | Occupation Certificate on | 06.03.2020 [As annexure R/5 at page 84 of reply] |
| 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 (11.08.2012) plus 3 months grace period [Page 28 of complaint] | 11.11.2015 |
| 13. | Offer of Possession | 07.03.2020 [As annexure R-6 at page 87 of reply] |

3. As per clause 8.1(a) of the said agreement dated 11.08.2012, 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 11.11.2015. The respondent offer the possession letter enclosed in mail dated 07.03.2020 to the complainants. 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 complainants submitted that the original Allottee i.e. Mr Swapan Das s/o Late Bhibuthi Bhushan Das & Mrs. Anita Das w/o Mr Swapan Das they wanted to sell unit/flat no. 902, tower/building no. F on the ninth floor, admeasuring 2250 Sq. Ft in the project "The Coralwood" Sector 84, Gurugram, allotted to him vide Flat Buyer Agreement dated 11.08.2012.
5. The complainants submitted that endorsement dated 19.04.2014 the unit/plot in question was endorsed in the name of the complainants herein and the endorsement to which effect was also made on the original flat buyer's agreement by the respondent. That even at the time of making the endorsement, the respondents assured that the possession of the flat in question would be given as per the terms of the agreement.
6. The complainants submitted that mail dated 07.03.2020 the complainants made various correspondence with regards to the handing over the possession of the flat booked by the complainants complete in all respects with immediate effect without any further delay after adjustment of the amounts mentioned in the mail dated 07.03.2020 and pay the balance amount but to no avail. It is submitted that despite the various communications none of the respondent chose to either reply



to the said mail or to approach the complainants to redress his grievances, which further proves the deficient service on the part of the respondent. 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.
7. 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.
8. The respondent contests the complaint on the following grounds:
- a. That the complainants have 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 there is an outstanding amount of Rs. 18,53,115/- including interest payable by the complainants as on 31.10.2020 as per the construction linked plan opted by the complainants.

- b. That It is pertinent to mention here that the respondent, after having applied for grant of occupation certificate on 15.11.2019 in respect of the project, which had thereafter been even issued through memo dated 06.03.2020 had offered possession to the complainants vide e-mail dated 07.03.2020.
- c. That the respondent has already completed the construction of the tower in which the unit allotted to the complainants is located. It is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the Agreement. It is submitted that it is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the



interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer / builder in proceeding towards timely completion of the project.

9. The complainant filed the written submission on 03.02.2021 wherein the complainant has reiterated and asserted the facts of the complaint only.
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. By virtue of clause 8.1(a) of the flat buyer's agreement dated 11.08.2012 executed between the parties, 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 11.11.2015. In the present case, the respondent received the occupation certificate on 06.03.2020 of the unit in question and the respondent offer the possession letter enclosed in mail dated 07.03.2020 to the complainants.

14. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the agreement dated 11.08.2012 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. 11.11.2015 till offer of possession i.e. 07.03.2020 plus 2 months which comes out to be 07.05.2020 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. In the present complaint, the occupation certificate was granted by the competent authority on 06.03.2020 and the respondent offered the possession of the unit in question to the complainant on 07.03.2020. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be 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. It is further clarified that the delay possession charges shall be

payable from the due date of possession i.e. 11.11.2015 till the expiry of 2 months from the date of offer of possession (07.03.2020) which comes out to be 07.05.2020.

15. 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 complainants from due date of possession i.e. 11.11.2015 till expiry of 2 months from the date of offer of possession (07.03.2020) which comes out to be 07.05.2020.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
- v. Interest on the due payments from the complainants shall be charged at the prescribed rate @ 9.30% by

the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

16. Complaint stands disposed of.
17. File be consigned to registry.

(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 04.02.2021

Judgement uploaded on 09.06.2021.

(Dr. K.K. Khandelwal)
Chairman



HARERA
GURUGRAM