

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

Complaint no. : 128 of 2021
First date of hearing : 31.03.2021
Date of decision : 31.03.2021

Mr. Subhas Pramanik
R/o-H.No-14 Naturoville, Yaprul,
Secunderabad, Hyderabad.

Complainant

Versus

M/s SS Group Pvt. Ltd.
Regd. Office: 77, SS House, Sector 44,
Gurugram-122003, Haryana.

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Col M.S Sehrawat Advocate for the complainants
Shri C.K. Sharma and Shri Advocate for the respondent
Dhruv Dutt Sharma

ORDER

1. A complaint dated 18.01.2021 was filed 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) by the complainant Subhas Pramanik, against the promoter M/s SS Group Pvt. Ltd., on account of violation of the clause 8.1 of flat buyer's agreement executed on 10.05.2012 in



respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 10.05.2012 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under:

1.	Name and location of the project	"The Coralwood", Sector 84, Gurugram, Haryana.
2.	Nature of the project	Group housing complex colony
3.	Project area	15.275 acres
4.	Registered/not registered	Registered
5.	HRERA registration number	381 of 2017dt. 12.12.2017
6.	HRERA registration certificate valid up to	31.12.2019
7.	DTCP license no.	59 of 2008 dated 19.03.2008(valid upto 18.03.2020)
8.	Occupation certificate granted on	17.10.2018 (as alleged by the respondent)
9.	Date of execution of flat buyer's agreement	10.05.2012



10.	Flat/unit no.	1202 A, 13 th floor, tower H, type C
11.	Flat measuring	1750 sq ft.
12.	Payment plan	Construction linked payment plan
13.	Total consideration amount	Rs.73,36,000/- (as per statement of account dated 27.03.2021 on page no. 25 of reply)
14.	Total amount paid by the complainants till date	Rs.79,96,907/- (as per applicant ledger dated 27.03.2021 pg 25 of complaint)
15.	Date of delivery of possession as per clause 8.1 of flat buyer's agreement i.e. 36 months from the date of signing of this agreement i.e. 10.05.2012.	10.05.2015
16.	Delay in handing over possession from due date of possession till date of offer of possession via email i.e. 10.08.2018	3 years 3 months
17.	Date of offer of possession via email	10.08.2018
18.	Penalty clause as per flat buyer's agreement	Clause 8.3 of the agreement i.e. Rs.5/- per sq. ft. per month of the super area for a period of 12 months or till the handing over of the possession, whichever is earlier.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement

dated 10.05.2012 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 10.05.2015. Neither the respondent has delivered the possession of the said unit till date to the complainant nor the respondent has paid any compensation @ Rs.5/- per sq. ft. per month of the super area for a period of 12 months or till the handing over of the possession, whichever is earlier as per clause 8.1 of flat buyer's agreement dated 10.05.2012. Therefore, the promoter has not fulfilled its committed liability as on date.

A. Brief facts of the complaint

5. The complainant submitted that he made an application for allotment of a dwelling unit in 'The Coralwood', on the printed stationary of the respondent, on 03.04.2012 along with a payment of Rs 6,80,000/- through cheque, which was duly encashed.
6. The complainant submitted that on 10.05.2012, complainant was called to respondent's office to complete the formalities of agreement. At that stage, respondent produced a pre - printed agreement duly stamped on 10.05.2012 and same was signed jointly by both parties. Complainant was left with no option but, to continue paying further to buy this unit, hoping that agreed unit would be delivered to him on time as specified in



the agreement. Since respondent kept raising demand notes at various dates and times, complainant, inter - alia, felt satisfied that construction was progressing as per the listed schedule of payments. In compliances to various demand notes, the complainant has already paid Rs 79,96,409/- amounting to more than 100% of the total cost. (Excess by Rs 4,49,909/-)

7. On 12/06/2017, complainant again visited the site and found that the construction work was still in progress. Respondent was duly informed on same vide e-mail dated 12/06/2017.
8. After continuous follow up and repeated mails to respondent to provide possession of allotted flat, the respondent issued a letter on 10.08.2018 offering possession for fit out only, even without completing the work on the flat. Not even that, respondent has arbitrarily enhanced cost of allotted flat which is not in line with buyer's agreement.
9. Complainant raised an issue to respondent about regularly asking for payments from him, despite the fact that project was delayed without any plausible reasons, was unjustified and goes against the timelines agreed by the respondent.
10. The complainant submitted that the respondent sent letter dated 01.09.2015 to complainant for amalgamation of North star apartments private limited into SS Group private Limited and change the account detail for further payments.

B. Relief sought by the complainant

11. The complainant is seeking the following relief:
- i. Respondents are liable to pay DPC amounting to Rs 34,78,021/- to complainant from 10/05/2015 i.e scheduled date of handing over the unit till 15-10-2020. Total amount to be given by the respondent Rs. 39,15,521.

C. Reply by the respondent.

12. The respondent submitted that the complaint filed by the complainant before the Id. authority, besides being misconceived and erroneous, is untenable in the eyes of law. the complainant has misdirected himself in filing the above captioned complaint before this Id. authority as the reliefs being claimed by the complainant, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Id. authority.
13. It would be pertinent to make reference to some of the provisions of the the Act, made by the Government of Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section 84 of the Act. section 31 of the Act provides for filing of complaints with this Id. authority or the adjudicating officer. Sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation



or contravention of the provisions of the Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of the rules provides for filing of complaint with this Id. authority, in reference to section 31 of the Act. Sub-clause (1) inter alia, provides that any aggrieved person may file a complaint with the authority for any violation of the provisions of the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in form 'C.R.A'. Significantly, reference to the "authority", which is this Id. authority in the present case and to the "adjudicating officer", is separate and distinct. "adjudicating officer" has been defined under section 2(a) to mean the adjudicating officer appointed under sub-section (1) of section 71, whereas the "authority" has been defined under section 2(i) to mean the real estate regulatory authority, established under Sub-section (1) of section 20.

14. Apparantly, in the present case, the complainant is seeking interest which, from reading of the provision of the Act and the Rules, especially those mentioned hereinabove, would be liable for adjudication, if at all, by the adjudicating officer and not

this Ld. Authority. Thus, on this ground alone the complaint is liable to be rejected.

15. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 act and the Rules, has been executed between respondent and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the flat buyer's agreement, executed much prior to coming into force of the Act.
16. The adjudication of the complaint for interest and compensation, as provided under sections 12, 14, 18 and 19 of the act, if any, has to be in reference to the agreement for sale executed in terms of the Act and the rules and no other agreement. This submission of the respondent inter alia, finds support from reading of the provisions of the Act as well as the rules, including the aforementioned submissions.
17. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition that this is without prejudice to the submission that in any event, the complaint, as filed, is not maintainable before this Id. authority.
18. That the reliefs sought by the complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof.

19. That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
20. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the allotment/ flat buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the flat buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. that the complainant has also misdirected in claiming interest on account of alleged delayed offer for possession. besides the fact that this Id. authority cannot be said to have any jurisdiction to award/grantsuch relief to the complainant, it is submitted that there cannot be said to be any alleged delay in offering of the possession.

D. Jurisdiction of the authority

21. The preliminary objection raised by the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observed that it has territorial as well

as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I. Territorial jurisdiction

22. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

23. The respondent has contended that the complainant is seeking interest which, from reading of the Act and the rules, would be liable for adjudication, if at all, by the adjudicating officer and not this Id. Authority. 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. (complaint no. 7 of 2018)*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020,

in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*

E. Findings of the authority on objections raised by respondent.

E.I Holding charges.

24. The respondent is contending that the complainant is liable to pay holding charges as per the flat buyer's agreement for the reason that complainant has delayed in taking possession even after offer of possession being made by the respondent. The authority observed that as per clause 9 of the agreement, in the event the flat buyer delays to take the possession of the unit within the time limit prescribed by the company in its intimation/offer of possession then the promoter shall be entitled to holding charges. However, it is interesting to note that the term holding charges has not been clearly defined in the flat buyer's agreement or any other relevant document submitted by the respondent/promoter. Therefore, it is firstly important to understand the meaning of holding charges which is generally used in common parlance. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid by the allottee if the possession has been offered by the builder to the owner/allottee and physical possession of the unit has not been taken over by the allottee, the flat/unit is lying vacant

even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

25. The hon'ble NCDRC in its order dated 03.01.2020 in case titled as "Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd., Consumer case no. 351 of 2015" held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

26. The said judgment of NCDRC was also upheld by the hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of NCDRC (supra). The authority earlier, in view of the provisions of the Act in a lot of complaints decided in favour of promoters that holding charges are payable by the allottee. However, in the



light of the recent judgement of the NCDRC and hon'ble Apex Court (supra), the authority concurring with the view taken therein decides that a developer/ promoter/ builder cannot levy holding charges on a homebuyer/allottee as it does not suffer any loss on account of the allottee taking possession at a later date.

27. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

F. Findings on the relief sought by the complainant.

28. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....



Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

30. As per clause 8.1 of the flat buyer's agreement provides for handing over of possession and is reproduced below:

Subject to terms of this clause and subject to the Flat Buyer(s) having complied with all the terms and condition of this Agreement and not being in default under any if the provisions of this Agreement and complied with all the provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to handover the the possession of the Flat within a period of thirty six (36) months from the date of signing of this Agreement. However this period will be automatically stand extended for the time taken in getting the building plans sanctioned. The Flat Buyer(s) agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months or such extended period (for want of building sanctioned plans), for applying and obtaining the Occupation Certificate in respect of the group housing complex."

31. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within 36 months from the date of signing of the flat buyer's agreement.



This period of 36 months expires on 10.05.2015. Further the flat buyer's agreement provides that promoter shall be entitled to a grace period of 90 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the flat buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 90 days cannot be allowed to the promoter at this stage. The same view has been upheld by the hon'ble Haryana Real Estate Appellate Tribunal in appeal nos. 52 & 64 of 2018 case titled as ***Emaar MGF Land Ltd. VS Simmi Sikka*** case and observed as under: -

68. As per the above provisions in the Buyer's Agreement, the possession of Retail Spaces was proposed to be handed over to the allottees within 30 months of the execution of the agreement. Clause 16(a)(ii) of the agreement further provides that there was a grace period of 120 days over and above the aforesaid period for applying and obtaining the necessary approvals in regard to the commercial projects. The Buyer's Agreement has been executed on 09.05.2014. The period of 30 months expired on 09.11.2016. But there is no material on record that during this period, the promoter had applied to any authority for obtaining the necessary approvals with respect to this project. The promoter had moved the application for issuance of occupancy certificate only on 22.05.2017 when the period of 30 months had already expired. So, the promoter cannot claim the benefit of grace period of 120 days. Consequently, the learned Authority has rightly determined the due date of possession.

32. On consideration of facts and the flat buyer's agreement dated 10.05.2012 for unit no. 1202A, 13th floor, tower- H, type- C in "The Coralwoods", Sector 84, Gurugram possession was to be



handed over to the complainant within a period of 36 months from the execution of this agreement which comes out to be 10.05.2015. It was construction linked plan. However, respondent has not delivered the unit on time. Complainant has already paid Rs.79,96,907/- to the respondent against a total sale consideration of Rs.73,36,000/-. As such, the complainant is entitled for delay possession charges at prescribed rate of interest i.e.9.30% per annum w.e.f 10.05.2015 till 10.08.2018 plus two months as per the provisions of section 18 of the Act ibid.

G. Directions of the authority.

33. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- 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.
- ii. The respondent is directed to pay interest accrued from 10.05.2015 to 10.08.2018 plus two months on account



of delay in handing over of possession to the complainant within 90 days from the date of order.

iii. The respondent is directed to not to charge anything from the complainant which is not the part of buyers agreement.

34. Complaints stands disposed of.

35. File be consigned to the registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

V.I. 
(Vijay Kumar Goyal)

Member

Dated: 31.03.2021