

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

Complaint no. : 2708 of 2021
First date of hearing : 02.09.2021
Date of Decision : 29.09.2021

Sukhwinder Singh
Address: Village Udarsi, Kurukshetra,
Haryana-136118

Complainant

Versus

SS Group Private Limited Realtors Private Limited
Address: SS House, Plot no.77,
Sector-44, Gurugram, Haryana-122003

Respondent

CORAM

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE

Sh. Sanchit (As proxy counsel)
Sh. C.K. Sharma

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 16.07.2021 has been filed by the complainant/allottee 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of project, unit, 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 122102
2.	Project area	11.09 acres
3.	Nature of the project	Group Housing Project
4.	a) DTCP license no.	81 of 2011 dated 16.09.2011
	b) License valid up to	15.09.2024
	c) Name of the licensee	M/S Shiva Profins Private Limited
5.	a) RERA registered/not registered	Registered
	b) Registration certificate no.	23 of 2019 dated 01.05.2019 valid up to 31.12.2019
	c) Extension	5 of 2020 dated 20.01.2020 valid up to 31.12.2020
6.	Building plan approved on	08.08.2013
7.	Unit no.	16B, Tower-2, 16 th floor [Page no. 21 of complaint]
8.	Size of unit	1620 sq. ft.
9.	Allotment letter	10.09.2012 [Page no. 45 of complaint]
10.	Date of execution of buyer's agreement	17.10.2013 [Page no. 20 of complaint]
11.	Due date of delivery of possession as per clause 8.1(a) of flat buyer's	17.10.2016



	agreement, 36 months from the date of this agreement, and buyer agrees and understands that the developer shall be entitled for a grace period of 90 days for applying and obtaining occupation certificate [Page 28 of complaint]	Note- Grace period, not to be given as OC was not applied within time stated in BBA)
12.	Total consideration	Rs.90,26,280/- [As per applicant ledger dated 29.06.2021 on page no.66 of complaint]
13.	Total amount paid by the complainants	Rs.72,15,385/- [As per applicant ledger dated 29.06.2021 on page no.66 of complaint]
14.	Delay in handing over the possession till date of this order i.e., 29.09.2021	4 years 11 months 12 days
15.	Offer of Possession	Not offered
16.	Occupation Certificate	Not received

B. Facts of the complaint

The complainant submitted as under: -

3. The complainant booked a unit no. 16B, tower-2, 2BHK having area 1620 sq. ft. in the project "The Leaf" at sector-85, Gurugram on 20.07.2012. On 10.09.2012, the respondent allotted the said unit to the complainant. The flat buyer agreement for the allotted was executed between the parties on 17.10.2013. The total consideration of the said unit was Rs. 90,26,280/- out of which the complainant has made a total payment of Rs. 72,15,385/- on various dates as per



construction linked payment plan. The respondent had issued payments receipts in favour of complainant.

4. That as per clause 8.1 of the agreement dated 17.10.2013, the possession of the unit was to be delivered within a period of 36 months from the date of the execution of the agreement till 17.10.2016 and the respondent failed to deliver the possession till date.

C. Relief sought by the complainant:

5. The complainant has sought following reliefs:
 - (i) Direct the respondent to complete the construction of the flat and handover the possession to the complainant.
 - (ii) Direct the respondent to pay the interest @ 18% p.a. on the amount collected from the complainant on account of delay in possession.
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.

D. Reply by the respondent

- (i) That the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before this authority as the relief being claimed



by them cannot be said to even fall within the realm of jurisdiction of this authority.

(ii) That it would be pertinent to make reference to some of the provisions of the Act of 2016 and rules, 2017 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 of 2016. Section 31 of 2016 Act provides for filing of complaints with this 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 2016 Act or the rules and regulations made thereunder 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 2017 provides for filing of complaint with this authority, in reference to section 31 of Act of 2016.

(iii) That in the present case, the complainant is seeking interest which, from reading of the provisions of the Act of 2016 and rules of 2021, would be liable for adjudication, if at all, by the adjudicating officer and not this authority. Thus, on this ground alone the complaint is liable to be rejected.

(iv) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the



filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.

- (v) That it is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of Act of 2016 and rules 2017, has been executed between the respondent and the complainant.
- (vi) That the adjudication of the complaint for interest as provided under sections 12, 14, 18 and 19 of 2016 Act, if any, has to be in reference to the agreement for sale executed in terms of Act of 2016 and rules 2017 and no other agreement. This submission of the respondent *inter alia*, finds support from reading of the provisions of Act of 2016 as well as rules 2017 including the aforementioned submissions.
- (vii) That the relief sought by the complainant appear to be on misconceived and erroneous basis. Hence, they are estopped from raising the pleas, as raised in respect thereof.
- (viii) That apparently, the complaint filed by the complainant was 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.
- (ix) That the complainant has miserably and wilfully 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. The complainant has also misdirected in claiming interest on account of alleged delayed offer for possession. That there cannot be said to be any alleged delay in offering of the possession.

- (x) That it has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the flat buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation, etc., the developer proposes to handover the possession of the unit in question within a period of 36 months from the date of signing of the agreement. It had also been agreed that the respondent would also be entitled to a further grace period of 90 days after expiry of 36 months.
- (xi) It is submitted that the Municipal Corporation of Gurugram vide direction dated 14.10.2019 bearing memo no. MCG/ADMC/2019 imposed a complete ban from 11.10.2019 to 31.12.2019 on the construction activities in Gurugram. Further, Environment Pollution (Prevention and Control) authority for NCR vide direction dated



01.11.2019 bearing EPCA-R/2019/L-53 imposed a complete ban from 01.11.2019 to 05.11.2019. Further, hon'ble Supreme Court vide its order dated 04.11.2019 in the matter bearing W.P (C) No. 13029/1985 also banned the construction activities in Delhi NCR till further orders keeping in mind the damage caused to the environment due to construction and demolition activities. It is pertinent to mention here that the Hon'ble Supreme Court has only on 09.12.2019 partially uplifted the ban on construction activities in Delhi NCR between 6am to 6pm. Thereafter despite facing practical issues in arranging manpower, the respondent had hardly managed to maintain the minimum labour force constantly in the labour camp at the project site to complete the pending work at the earliest. This clearly shows bona fide intention of the respondent to complete the project on time.

- (xii) It is also submitted that due to the ban imposed by the above said authorities, there was no progress at site consequent to which respondent manpower, plant & machinery and other resources which stood fully mobilized at site were rendered idle thereby casting upon the respondent heavy financial losses due to the stagnancy of resources. It is also pertinent to mention herein that such bans majorly affect the projects which are near completion like the project in question. Hence, even after putting days and nights in completing the



project, the delay occurred due to such circumstances which were beyond the control of the respondent company.

- (xiii) That in the present case, it is a matter of record that the complainants have not fulfilled their obligation and have not even paid the instalments on time that had fallen due. Accordingly, no relief much less as claimed can be granted to the complainants.
- (xiv) 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 submitted 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 instalments by the allottees, the company 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 net worth positive and requires last mile funding to complete construction. It has a target corpus of Rs. 12,500 crores with a greenshoe 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 to complete the project. The first trench had



already been disbursed to the respondent company 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 utilised only in completion of the project under the observation and monitoring of the agency deployed by the swamih fund in the project. The primary objective of establishment of swamih fund is to help the home buyers in getting their homes and is sponsored by the department of economic affairs, Ministry of finance, Government of India. If any adverse relief is allowed by this hon'ble court, then the basic objective of the intervention of the Government of India shall be defeated.

- (xv) That the project "The Leaf" has been registered with the authority vide registration no. 23 of 2019. It is submitted that even 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 restarted and is going on in full swing. The respondent endeavours to handover the unit soon.
- (xvi) It is submitted that the complainant has 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 the complainant has till date did not make the payment of demand raised for HVAT and completion of external plaster in superstructure. It is

submitted that there is an outstanding amount of Rs. 4,76,307/- excluding interest payable by the complainant as on 17.08.2021.

- (xvii) 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 pertinent to mention here 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 to note that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is further 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, statutory renewals, 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.
- (xxi) It is submitted that the project is near completion and the respondent shall offer the possession of the unit to



complainant shortly upon the payment of the remaining dues by the complainant.

7. Copies of all the relevant do 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 and submission made by the parties.

E. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

E.II Subject matter jurisdiction

9. The respondent has contended that the relief regarding refund and compensation are within the jurisdiction of the adjudicating officer and jurisdiction w.r.t the same does not lie



with the authority. It seems that the reply given by the respondent is without going through the facts of the complaint as the same is totally out of context. The complainant has nowhere sought the relief of refund and regarding compensation part the complainant has stated that he is reserving the right for compensation and at present he is seeking only delay possession charges. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding format of the compliant

10. The respondent has raised contention that the present complaint is not maintainable as the complainant have filed the present complaint before the adjudicating officer and the same is not in amended CRA format. The reply is patently wrong as the complaint has been addressed to the authority and not to the adjudicating officer. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complainant is filed before adjudicating officer. There is a prescribed proforma for filing complaint before the authority under section 31 of the



Act in form CRA. There are 9 different headings in this form (i) particulars of the complainant-have been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii)is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the complaint (iv) facts of the case have been given at page no. 5 to 8 (v)relief sought that has also been given at page 10 of complaint (vi)no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix)list of enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t rejection of complaint on this ground is also rejected and



the authority has decided to proceed with this complaint as such.

G. Findings regarding relief sought by the complainants

Relief sought by the complainant - Direct the respondent to complete the construction of the flat and handover the possession to the complainant.

11. In the present complaint, the complainant intends 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."*

12. Clause 8.1(a) of the flat buyer's agreement (in short, the agreement) dated 17.10.2013, provides for handing over of possession and is reproduced below:

"8.1(a) possession

"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 thirty-six (36) months, for applying and obtaining the occupation certificate in respect of the Group Housing Complex."

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

Relief sought by the complainant - Direct the respondent to pay the interest @ 18% p.a. on the amount collected from the complainant on account of delay in possession.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate, i.e., proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed



to award the interest, it will ensure uniform practice in all the cases.

16. **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 17.10.2016. 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.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to



the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession of the subject unit within the stipulated time as per the said agreement. By virtue of clause 8.1 of the buyer's agreement executed between the



parties on 17.10.2013, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of agreement plus 90 days grace period. The grace period is not included for the reasons mentioned above. Therefore, the due date of handing over possession comes out to be 17.10.2016. Accordingly, it is the failure of the promoters to fulfil its obligations, responsibilities as per the buyer's agreement dated 17.10.2013 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, the complainant is entitled to delayed possession charges i.e. interest at prescribed rate @ 9.30% p.a. w.e.f. 17.10.2016 till handing over of possession after obtaining occupation certificate as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f): -
 - i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay



from the due date of possession i.e., 17.10.2016 till the date of handing over of possession after obtaining occupation certificate.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/ promoter which is same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. Moreover, holding charges shall not be charged by the promoter at any point of time even after being part of the agreement as per law settled by the hon'ble Supreme

Court in civil appeal no. 3864-3889/2020 dated
14.12.2020.

22. Complaints stands disposed of.
23. File be consigned to the registry.

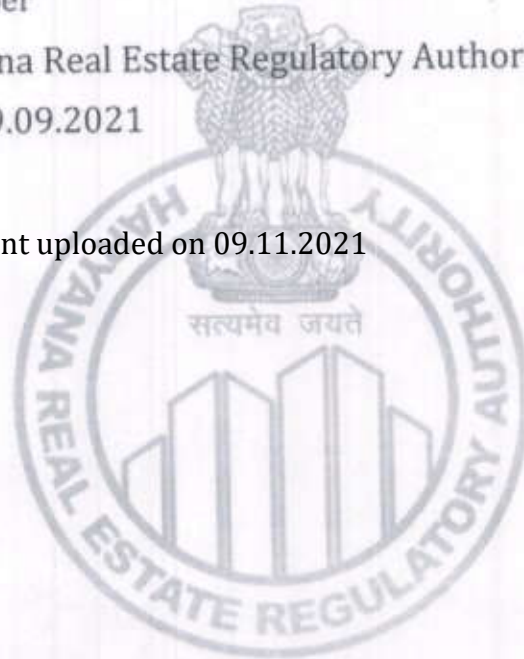

(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.09.2021

Judgement uploaded on 09.11.2021



HARERA
GURUGRAM