

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

Complaint no. : 1853 of 2018
Date of first hearing : 13.03.2019
Date of decision : 13.03.2019

1. Smt. Madhu Bhutani
2. Mr. Sunil Kumar Bhutani
R/o : 6/57, Old Rajinder Nagar,
New Delhi – 110060

Complainants

Versus

M/s SS Group Private Limited
Regd. Office: 77, SS House, Sector-44,
Gurugram, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shi M. Chatterjee Advocate for the complainant.
Ms. Madhu Bhutani Complainant in person
Shri Sunil Shekhawat Legal manager for the
respondent.



ORDER

1. A complaint dated 12.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of The Haryana Real Estate (Regulation and

Development) rules, 2017 by the complainant Ms. Madhu Bhutani, against the promoter M/s SS Group Private Limited., on account of violation of clause 8.1(a) of flat buyer agreement executed on 01.05.2012, in respect of apartment described as below for not handing over the possession on due date ie. 01.08.2015 which is an obligation under section 11 (4) (a) of the Act ibid.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Coralwood", Sector-84, Gurugram
2.	Flat no.	801, tower-B, 8 th floor
3.	Registered/ un registered	Registered (381 of 2017)
4.	Revised registration date	31.12.2019
5.	DTCP license no.	59 of 2008 dated 19.03.2008
6.	Nature of real estate project	Groups Housing complex
7.	Total area of the allotted unit no.	1890 sq. ft'
8.	Date of flat buyer agreement	01.05.2012
9.	Total consideration amount	Rs. 62,27,040/- (Annexure-I, page 62)
10.	Total amount paid by the complainant	Rs. 58,66,635/- (Annexure-E, page 71)



11.	Due date of delivery of possession Clause 8.1(a)- 36 months+ 90 days grace period from the date of execution of the agreement.	01.08.2015
12.	Offer of possession for fit outs	16.08.2018
13.	Delay for number of months/ years till date	3 years 7 months 6 days
14.	Penalty clause as per flat buyer agreement	Clause 8.3(a) 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 later.

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A flat buyer agreement dated 01.05.2012 is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered on 01.08.2015. The promoter has neither fulfilled his committed liability by not giving possession as per the terms of the flat buyer agreement. Neither paid any compensation i.e. @ Rs. 5/- per sq. ft. per month for the period of delay as per flat buyer



agreement which is in violation of section 11(4)(a) of the Act
ibid.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed by the respondent.

Facts of the complaint

5. The complainants had been allotted flat no. 801 type B located in tower B on 8th floor in a group housing complex namely, 'The Coralwood' of the respondent, having an approximate super area of 1890 sq. ft' (175.59 square meters) for a total sale price of Rs. 62,27,040/-. As per the buyer's agreement, the possession of the said property had to be handed over within a period of 36 months (with a grace period of 90 days for obtaining building sanction plans or occupation certificate for group housing complex).
6. The project 'the Coralwood' is registered under RERA vide registration certificate dated 12-12-2017. Subsequently, the possession was offered vide possession offer letter dated 16-08-2018 after a delay of 36 months and 15 days (including grace period of 90 days), subject to balance payment of Rs. 9,91,947/-. However, the respondent has not



adjusted/accounted for compensation by way of interest for delay in possession as per clause 15 of the HRERA rules, 2017.

7. The complainants have been demanding compensation towards delay in possession by way of interest @10.45% per month till 16-08-2018 amounting to about Rs. 15,20,051/- from the respondent (Annexure I). However, the respondent has refused to pay any compensation.
8. The facts in brief leading to the present complaint are as follows:
9. One Mr. Hitesh Kumar R/o 801, Aravali Homes, Golden Jubilee, CGHS, GH-89, Sector 54, Gurugram, vide application dated 23.01.2011, had been allotted unit no. 801, type B having super area of 1820 square feet in tower B of the project 'The Coralwood' Condominium complex, Sector 84, Gurugram, for sale price of Rs. 60,07,520/-.
10. On 01-04-2012, the complainants purchased the said property from Mr. Hitesh Kumar whereupon the allotment was then transferred to the complainants vide transfer letter dated 30.04.2012 after due payment of transfer charges to



the respondent. The first three instalments had already been paid to the respondent by this time.

11. Upon such transfer, the respondents got executed an unregistered 'buyer's agreement' dated 01-05-2012 between the parties herein towards booking and allotment of the said property i.e. flat no. 801 type B located in tower B on 8th floor in a group housing complex namely, 'The Coralwood' of the respondent, having an approximate super area of 1890 square feet (175.59 square meters) for a total sale price of Rs. 62,27,040/-.
12. The complainant had initially booked the said property with a developer running its business under the name and style of 'M/s North Star Apartment Pvt. Ltd.' However, such developer company was subsequently amalgamated into the SS Group Pvt. Ltd. (the Respondent) w.e.f. 07.03.2015.
13. The said 'buyer's agreement' dated 01.05.2012 consisted of entirely one-sided clauses favouring the respondent without any safeguard for the complainants. However, since the complainants had invested a substantial amount of money, fearing forfeiture of the same, the complainants had no other alternative but to sign the said 'buyer's agreement'.



14. It is pertinent to mention that as per the agreement dated 01.05.2012 under clause 8 titled 'possession', the developer proposed to handover possession of the flat within a period of 36 months (3 years) from the date of signing of the agreement. More than one year had elapsed between the initial allotment of the said property till the date of buyer's agreement, however with miniscule progress in completion of the project. The representatives of the respondents still assured the complainants that the project would be completed in time and that possession would be delivered within the time frame promised. In this manner, as per the undertaking of the respondent itself, the proposed date for delivery of possession was to be 01.08.2015.

15. Much to the shock of the complainants, the flat was not ready by the proposed date for delivery of possession as per the agreement dated 01.05.2012. Upon asking, the respondent assured that the complainants would get the possession of the flat along with full interest on delay and regretted for the inconvenience. Since, the complainants had invested a substantial amount of their hard-earned money, they decided to wait for the project to complete. The complainants continued to pay amounts as per the demands of the respondent in order to ensure early completion of the project.



16. As per clause 8.3 titled 'compensation' of the buyer's agreement dated 01.05.2012, the flat buyer shall be entitled to receive compensation for delay at the rate of Rs. 5 per square feet per month of the super area for a period of 12 months or till the handing over of possession whichever is earlier.
17. Till 15-09-2017, the complainant had paid a total amount of Rs. 58,66,635/- i.e. more than 85% of the total cost of the flat. The Haryana Real Estate Regulatory Authority, Haryana was pleased to issue registration certificate vide certificated dated 12.12.2017 to the respondent for their project 'Coralwood and Almeria' effective from 12.12.2017 to 31.12.2019. The respondent is thus effectively bound by the provisions of the HRERA rules, 2017.
18. After a delay of about 3 years and 15 days, the complainants received offer of possession letter dated 16.08.2018 offering to take possession of the allotted unit B-801. However, the possession could only be taken upon payment of amount of Rs. 9,91,947/- which included balance sale consideration, electricity connection charges and maintenance charges and other miscellaneous costs as per the calculations of the respondent.



19. The complainants were shocked to receive the said demand of Rs. 9,91,947/- wherein no adjustment had been made towards penalty and compensation for delay in handing over possession.
20. As per clause 15 of the HRERA rules, 2017, 'the rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent'. Thus, the complainants are entitled to receive interest on the delay in possession at the rate of 10.45% per month until 16-08-2018.
21. The son of the complainants, Sh. Tushar Bhutani, immediately wrote to the respondent on behalf of the complainants vide email dated 19.08.2018 requesting for adjusting the amount of interest on delay payable to the complainants @10.45% per month for a period of 3 years 15 days amounting to Rs. 15,20,051/-. Therefore, effectively, the respondent ought to refund an amount of Rs. 5,28,554/- to the complainants after all due adjustments. However, the respondent did not respond to the said email.
22. The respondent sent a revised demand letter vide email dated 25.09.2018, however, adjusted merely Rs. 1,13,400/- towards



delay in possession. Such calculation was in blatant disregard of the HRERA rules, 2017 and thus the complainants, through their son, replied to the demand letter dated 25.09.2018 and objected to the incorrect adjustment of amounts in lieu of delay in possession and further requested for issuance of occupancy certificate at the earliest as per RERA rules.

23. However, despite repeated requests of the complainants vide several emails and telephonic calls, the respondent continued to demand 100% payment of Rs. 9,91,947/- and refused to adjust the compensation against delay in possession as per the HRERA rules, 2017.

24. Issues raised by the complainant

- I. Whether the developer has offered possession of flat no. 801 type B located in tower B on 8th floor in a group housing complex namely, 'The Coralwood' with inordinate delay of 36 months and 15 days (inclusive of grace period)?
- II. Whether the developer is liable to compensate the complainants for delay in possession as per the clause 15 of the Haryana Real Estate Regulation Authority rules, 2017 @10.45% per month till possession is handed over?



25. Relief sought

- I. Pass on order directing the respondent to pay compensation to the complainants on account of delay in possession @10.45% per month until possession is handed over;
- II. Pass an order directing the respondent to adjust the compensation for delay in possession against the demand of Rs. 9,91,947/-;
- III. Pass an order directing the respondent to handover possession of the flat no. 801 type B located in tower B on 8th floor in the group housing complex namely, 'the Coralwood' along with relevant documentation in favour of the complainants;
- IV. Pass an order directing the respondent to pay cost of the present complaint to the complainants;
- V. Any other order(s) as this hon'ble tribunal may deem fit.



Respondent's reply

26. At the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been

categorically denied by respondent and may be read as travesty of facts.

27. The complaint filed by the complainants before the Ld. authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. authority as the reliefs being claimed by the complainants, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Ld. authority.

28. It would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) 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 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this Ld. 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 Haryana rules provides for filing of complaint with this Ld. authority, in reference to section 31 of 2016 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 2016 Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in form 'CRA'. Significantly, reference to the "authority", which is this Ld. 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.



29. Apparently, under section 71, the adjudicating officer is appointed by the authority in consultation with the appropriate government for the purpose of adjudging compensation under sections 12, 14, 18 and 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A

reference may also be made to section 72, which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. The domain of the adjudicating officer cannot be said to be restricted to adjudging only compensation in the matters which are covered under sections 12, 14, 18 and 19 of the 2016 Act. The inquiry, as regards the compliance with the provisions of sections 12, 14, 18 and 19, is to be made by the adjudicating officer. This submission find support from reading of section 71(3) which inter alia, provides that the adjudicating officer, while holding inquiry, shall have power to summon and enforce the attendance of any person and if on such inquiry he is satisfied that the person had failed to comply with the provisions of any of the sections specified in sub-section (1) he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Suffice it is to mention that the sections specified in sub-section (1) of section 71 are sections 12, 14, 18 and 19. Thus, this Ld. authority cannot assume the powers of the Ld. adjudicating officer, especially keeping in view the nature of reliefs sought by the



complainants, as such, on this ground alone the complaint is liable to be rejected.

30. 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.

31. The reliefs sought by the complainants appear to be on misconceived and erroneous basis. That the complainants have also misdirected in claiming payment of interest on account of alleged delayed offer for possession. Besides the fact that this Ld. authority cannot be said to have any jurisdiction to award/grant such relief to the complainants, it is submitted that there cannot be said to be any alleged delay in offering of the possession.

32. It had been categorically agreed between the parties that subject to the complainants 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 proposed to handover the possession of the unit in question within a



period of 36 months from the date of signing of the agreement, which period would automatically stand extended for the time taken in getting the building plan sanctioned. It had been agreed that the respondent would also be entitled to a further grace period of 90 days after expiry of 36 months or such extended period for want of building sanction plans. Reference may be made to clause 8.1(a) of the flat buyer's agreement.

33. 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 possession of the flat within a period of thirty six 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.”



34. Further, it had been also agreed and accepted that in case of any default/delay in payment as per the schedule of payments as provided in Annexure 1 to the flat buyer's agreement, the date of handing over of the possession shall be extended accordingly. Reference may be made to Clause 8.1(b)(iii) of the flat buyer's agreement.

“8.1(b) (iii) the flat buyer(s) agrees and accepts that in case of any default/ delay in payment as per the schedule of payments as provided in Annexure I, the date of handling over of the possession shall be extended accordingly solely on developer's discretion till the payment of all outstanding amounts to the satisfaction of the developer.”

35. Furthermore, even in the affidavit filed by the complainants alongwith the endorsement form as Annexure 2, the complainants had stated that they undertakes to pay the balance sale consideration (outstanding amount payable by the nominee/joint nominee to the company) as per buyer's agreement/ allotment letter directly to the company.

36. 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 that had fallen due. Accordingly, no



relief for alleged delayed offer for possession can be said to be maintainable.

37. The aforementioned submission is without prejudice to the submission that from perusal of the provisions of 2016 Act and/or the 2017 Haryana rules and conjoint reading of the same, it is evident that the 'Agreement for Sale' that has been referred to under the provisions of 2016 Act and 2017 Haryana rules, is the 'Agreement for Sale', as prescribed in Annexure 'A' of 2017 Haryana rules. Apparently, in terms of section 4(1), a promoter is required to file an application to the 'authority' for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term 'prescribed' has been defined under section 2(z)(i) to mean prescribed by rules made under the Act. Further, section 4(2)(g) of 2016 Act provides that a promoter shall enclose, along with the application referred to in sub-section 1 of section 4, a proforma of the allotment letter, agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13 (1) of 2016 Act inter alia, provides that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person, without first



entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. Sub-section 2 of section 13, inter alia, provides that the Agreement for Sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said sub-section. Rule 8 of 2017 Haryana rules categorically lays down that the agreement for sale shall be as per Annexure 'A'. Suffice it is to mention that Annexure 'A' forms part of the 2017 Haryana rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

38. Besides the aforementioned Sections, a reference may be made to rule 5 of 2017 Haryana rules, which inter alia, provides that the authority shall issue a registration certificate with a registration number in form 'REP-III' to the promoter. Clause 2(i) of form 'REP-III' provides that the promoter shall enter into agreement for sale with the allottees as prescribed by the government.

39. From the conjoint reading of the aforementioned sections/rules, form and annexure 'A', it is evident that the 'agreement for sale', for the purposes of 2016 Act as well as 2017



Haryana rules, is the one as laid down in annexure 'A', which is required to be executed inter se the promoter and the allottee.

40. 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 2017 Haryana 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 2016 Act.

41. The adjudication of the complaint for interest and compensation, 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 2016 Act and 2017 Haryana rules and no other agreement. This submission of the respondent inter alia, finds support from reading of the provisions of 2016 Act as well as 2017 Haryana rules, including the aforementioned submissions.

42. 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 Ld. authority.

43. Without prejudice to the aforementioned submissions, it is submitted that even otherwise, the complainants cannot invoke the jurisdiction of this Ld. authority in respect of the unit allotted to the complainants, especially when there is an arbitration clause provided in the flat buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicably failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an alternative dispute redressal forum, invoking the jurisdiction of this Ld. authority, is misconceived, erroneous and misplaced.

44. 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.

45. Without prejudice to the submissions made hereinabove, it is submitted that the complainants themselves are not entitled to be granted any relief from this Ld. authority since the reciprocal obligations casted upon the complainants have not



been fulfilled by them and they have failed to make due payments towards the consideration of the flat allotted to them.

46. It is pertinent to mention here that the respondent, after having applied for grant of occupation certificate in respect of the project, which had thereafter been even issued through memo dated October 17, 2018 had offered possession to the complainants. The complaint filed by the complainants, being in any case belated, is even subsequent to the date of grant of occupation certificate. No indulgence much less as claimed by the complainants is liable to be shown to them.

Determination of issues

47. With respect to the **first issue**, the respondent has offered possession for fit outs dated 16.08.2018 and no proof of final possession has been supplied by complainant and respondent.
48. With respect to the **second issue**, the respondent has not delivered the unit within due date of possession i.e. 01.08.2015 and the possession has been delayed by 3 years 7 months 6 days till date. The project is registered with the authority and the revised registration date as per the



registration certificate is 31.12.2019. Therefore, the complainant cannot get refund at this point of time but is entitled to get delay compensation from the date of payment till the possession is offered. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

Findings of the authority

49. The respondent admitted the fact that the project The Coralwood is situated in sector-84, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

50. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the



authority stands rejected. 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 complainants at a later stage.

51. The delay compensation payable by the respondent @ Rs.5/- per sq.ft. per month for the period of delay as per clause 8.3(a) of the flat buyer agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

52. The complainant by an application for amendment of complaint reserve their right to seek compensation from the



promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of the authority

53. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) As per clause 8.1 (a) of the builder buyer agreement dated 1.5.2012 for unit no.801, tower-B, in project “The Coralwood”, sector-84, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of builder buyer agreement + 90 days grace period which comes out to be 1.8.2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.58,66,635/- to the respondent against a total sale consideration of Rs.62,27,040/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 1.8.2015 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.



Possession of the unit has already been offered to the complainant, accordingly, complainant is also directed to take over the possession within 30 days by paying the dues to the respondent.

- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.
- (iii) The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

54. The complaint is disposed of accordingly.

55. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.03.2019

Judgement Uploaded on 28.03.2019

