

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

**Complaint No. : 946 of 2018**  
**First date of hearing: 14.02.2019.**  
**Date of Decision : 06.03.2019.**

Mr. A.S. Bedi  
R/o. F 902, Park View City II,  
Sector 49, Sohna Road, Gurugram,  
Haryana.

**Complainant**

Versus

M/s DSS Buildtech P. Ltd.  
Address: - 506, 5<sup>th</sup> floor, Time Square Building,  
B-block, Sushant Lok, Phase I,  
Gurugram, Haryana.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman**  
**Member**

**APPEARANCE:**

Complainant in person with Mr. Advocate for the complainant  
Hemant Choudhary

Mr. Vijay Kaundal

Advocate for the respondent

**ORDER**

1. A complaint dated 14.09.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. A.S. Bedi against the promoter, M/s DSS Buildtech P. Ltd., on account of violation of clause 8.1 read with clause 21.1 of apartment



buyer's agreement dated 16.08.2016 in respect of apartment no. A-903, in the project, namely 'the melia' located at sector 35, Sohna, district Gurugram for not affecting the surrender of allotment and refund of paid amount which is an obligation of the respondent under section 18(1) of the Act *ibid*.

2. Since the apartment buyer's agreement dated 16.08.2016 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondent under section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"The melia" at sector-35.Sohna, Gurugram.
2.	Nature of real estate project	Group housing complex
3.	Total area of the project	17.418754 acres
4.	Allotted apartment/unit no.	A-903, 9 <sup>th</sup> floor
5.	Admeasuring area of the apartment	1750 sq. ft.
6.	RERA Registered / not registered	<b>registered vide no. 288 of 2017</b>
7.	Date of booking	24.10.2013
8.	Date of apartment buyer's agreement	16.08.2016( <b>Annx P/2</b> )
9.	Payment plan	Construction linked payment plan ( <b>Annx P/3</b> )
10.	Total consideration as per statement	Rs. 83,17,750/-( <b>Annx</b>



	of accounts	<b>P/3)</b>
11.	Total amount paid by the complainant till date	Rs. 50,40,910/- ( <b>Annx P/3)</b>
12.	Due date of delivery of possession as per <b>clause 14.1</b> of the buyer's agreement <b>Note-</b> Due date is to be calculated from the date of environment clearance i.e. 12.11.2016, which is prerequisite for commencement of construction	<b>11.05.2021</b> (48 months' + 180 days' grace period from the date of last approval for commencement of construction or signing of agreement, whichever is later)
13.	Date of email for surrender of allotment	28.02.2018( <b>Annx P/5)</b>
14.	Revised date for delivery of possession as per RERA certificate	25.10.2021

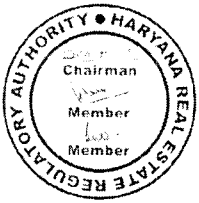
4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer agreement dated 16.08.2016 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainant by 16.08.2020. The respondent did not give effect to the surrender of allotment by the complainant. The complainant is seeking refund of amount after deduction of earnest money as per clause 8.1 of the agreement.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 14.02.2019. The case came up for hearing on 14.02.2019 and 06.03.2019. The reply has been filed



on behalf of the respondent on 13.10.2018 which has been perused by the authority.

**Facts of the complaint: -**

6. Briefly stated, facts relevant for the disposal of the present complaint are that the complainant booked an apartment admeasuring 1750 sq. ft. super area at the rate of Rs. 4,753/- per sq. ft., in the project namely "the melia" located at sector 35, Gurugram. In pursuance to aforesaid booking of the complainant, respondent company issued allotment letter ref. no. DSS/TM/ALT/146 dated 03.06.2016 wherein they allotted apartment no. A-903 on 9<sup>th</sup> floor admeasuring 1750 sq. ft. in favour of complainant. The total consideration of the apartment was agreed at Rs.83,17,750/-, as against which the complainant has made total payment of Rs. 50,40,910/- of the total consideration on various dates. On 16.08.2016, apartment buyer's agreement was executed between the parties. As per clause 14.1 of the agreement, possession of the unit was to be delivered within 48 months plus 180 days' grace period from the date of approval of building plan or execution of agreement whichever is later.



7. Due to financial constraints the complainant vide email dated 28.02.2018 requested for the surrender of apartment and sought refund of the paid amount from the respondent. It was

alleged by the complainant that respondent in reply to the said email denied cancellation of the allotment and refused to refund the paid amount after deducting 10% of the total sales consideration which is in violation of clause 8 of the apartment buyer's agreement.

8. The complainant has alleged that despite service of legal notice the respondent did not pay any heed to the complainant's request, therefore the complainant was constrained to file the instant complaint.

**Issue to be determined -**

- **Whether the respondent company by not effecting the surrender of complainant's allotment and refund of paid amount has violated the terms of agreement dated 16.08.2016?**

**Relief sought: -**

- **Direct the respondent to refund Rs. 47,26,646/- alongwith interest to the complainant.**

**Respondent's reply:-**

9. The respondent in their reply denied each and every averment made by the complainant. It was submitted by the respondent that the complainant has not approached the authority with clean hands and is trying to suppress material facts. Also the complaint is being devoid of merits and liable to be dismissed



on this ground alone as neither buyer's agreement nor any contract subsists between the complainant and the respondent as on date or any time after the date of termination.

10. The hon'ble authority has no jurisdiction to entertain the present complaint as the complainant has claimed interest on the paid amount, because any claim for interest, if any, is maintainable before adjudicating authority only in terms of section 71 of the Real Estate (Regulation and Development) Act, 2016.
11. The complainant has suppressed the material facts of the case, the subject apartment was initially allotted to Mr. Harminder Singh, subsequently on the joint request of Mr. Harminder Singh and the complainant, name of the complainant was substituted in place of original allottee.
12. It was contended by the respondent that the complainant has purchased the subject apartment for investment purpose and not for his personal use. The respondent further contended that the complainant has not made payments of due instalments since January, 2018 and hence, he has failed to fulfil obligations under section 19(6) of the Act *ibid*.
13. By virtue of clause 21 of the apartment buyer agreement dated 16.08.2016, the respondent has exclusive and sole discretion to



accept or reject any request of any allottee as well as that of the complainant for the surrender of the apartment.

14. The respondent has duly complied with all applicable provisions of the Act ibid and also that of agreement for sale qua the complainant and other allottees. There is no cause of action accrues against the respondent, hence, the present complaint is liable to be dismissed on this ground alone.

#### **Determination of Issues-**

1. As regards **the core issue** raised by the complainant regarding surrender of allotment and refund of the paid amount. It is observed by the authority from the perusal of record that clause 21 incorporated under the apartment buyer agreement dated 16.08.2016 is to be read with clause 8.1 of the agreement.

Hence, non-acceptance of surrender letter of the complainant by the respondent keeping in view clause 21.1 of the BBA is justified in the eyes of law and the respondent is not liable to refund the paid amount of the complainant after deducting 10% of the sales consideration as per clause 8.1 of the agreement dated 16.08.2016. Relevant portion of clause 8.1 and 21.1 of the agreement are reproduced below-

*“8.1 The buyer agrees that 10% of the Total Sale Consideration shall be treated as Earnest Money which shall be liable to be forfeited in the event of cancellation of this*



*Agreement due to any breach of the provisions of this Agreement by the Buyer or due to surrender of the Apartment at the option of the buyer”*

21.1“*Before taking possession of the apartment, any request for surrender of the apartment shall be at the discretion of the company and in case the company accepts any request for surrender, the company shall cancel this agreement such amount without interest after adjusting amounts in relation to deductions and holding charges.”*

### **Findings of the authority-**

15. The authority has complete jurisdiction to decide the complaint in regard to 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.
16. 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.





17. Project is registered with the authority.
18. Arguments heard. Learned counsel for the complainant submitted that he is seeking cancellation of the agreement or surrender of the apartment under clause 8.1 of the builder buyer's agreement. Learned counsel for the respondent drew the attention of the authority regarding clause 21.1. Learned counsel for the respondent also submitted that project is complete around 50% and as per RERA registration it shall be completed by 25.10.2021. Per contra learned counsel for the complainant submitted that request for surrender of the apartment was made in the month of February, 2018. There was no response from the respondent but the counsel for the respondent has stated that they have replied to the complainant and his request for surrender was rejected. Learned counsel for the complainant has also submitted that there is no lapse on his part regarding payments to be paid to the respondent as per construction linked plan.



**Decision and directions of the authority -**

19. After taking into consideration all the material facts produced by the parties, 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: -

- Keeping in view the provision of clause 8.1 of the Builder Buyers' Agreement read with clause 21.1 of the BBA, non-acceptance of surrender letter of the complainant by the respondent, the respondent is well within its right not to accept the surrender letter of the complainant.
- The project is nearly 50% complete and is likely to be completed by 25.10.2021 as per RERA registration. Promoter/respondent are hopeful to complete the project even before the date of completion declared in RERA registration. As per BBA, the due date of delivery of possession as per clause 14.1 of the BBA comes out to 16.2.2021 (48+6 months from the approval of sanctions required to start construction or signing of BBA whichever is later. In this case, it is environment clearance i.e. 12.11.2016). There is still two years time left in the due date of delivery of



possession. At this stage, the surrender will adversely affect the completion of the project as there may be other allottees also who may seek refund. Keeping in view the progress of the work and the likely date of completion of project and due date of possession, it is not fair on the part of the authority to refund at this stage.

- To be fair to the complainant, the respondent made a statement that they are willing to waive off delayed payment interest charges as the complainant has failed to pay the due instalments as per construction linked plan for the last one year. Accordingly, the complainant may make payment of the due instalments and respondent shall not charge interest due to delayed payment.
- The respondent has also assured the authority that to help out the complainant, they will try to find a suitable customer for this apartment/unit and also assured that they will not charge any transfer charges from the complainant. Complainant is at liberty to



approach the authority, in case, any other relief is required from the respondent/promoter and the relief being just and reasonable.

20. The order is pronounced.
21. Case file be consigned to the registry.

**(Dr.K.K. Khandelwal)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.03.2019.

**(Subhash Chander Kush)**

Member

**Judgement uploaded on 28.03.2019**

