BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1640 of 2018
First date of hearing : 12.03.2019
Date of decision : 12.03.2019

Shri Ravinder Jain
Ms Nikita Jain
R/o : House no 999, Sector 14, Gurugram **Complainants**

Versus

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

CORAM:
Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:
Shri Sanjeev Sharma Advocate for the complainants

Shri Sunil Shekhawat, Legal Manager Advocate for the respondent

ORDER

1. A complaint dated 19.11.2018 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 complainants Shri Ravinder Jain and Ms Nikita Jain 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 04.10.2012 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 04.10.2012 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 contractual 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
3.	Project area	15.275 acres
4.	Registered/not registered	**Registered**
5.	HRERA registration number	**381 of 2017**
6.	HRERA registration certificate valid up to	**31.12.2019**
7.	DTCP license no.	59 of 2008
8.	Occupation certificate granted on	17.10.2018 (as alleged by the respondent)
9.	Allotment letter	04.09.2012
10.	Date of execution of flat buyer's agreement	04.10.2012
11.	Flat/unit no.	D-203, 2nd floor, tower D, type B
12.	Flat measuring	1890 sq. ft.

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13.	Payment plan	Construction linked payment plan
14.	Total consideration amount (as per applicant ledger dated 04.10.2018)	Rs.69,32,526/-
15.	Total amount paid by the complainants till date (as per applicant ledger dated 04.10.2018)	Rs.60,41,940/-
16.	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. 04.10.2012 + grace period of 90 days)	**04.01.2016**
17.	Delay in handing over possession	3 years 2 months 8 days
18.	Date of offer of possession **for fit outs**	17.08.2018
19.	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 complainants and the respondent. A flat buyer's agreement dated 04.10.2012 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 04.01.2016. Neither the respondent has delivered the possession of the said unit till date to the complainants nor they have 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 04.10.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 12.03.2019. The case came up for hearing on 12.03.2019. The reply filed on behalf of the respondent has been perused.

Brief facts of the complaint

6. Briefly stated, the facts of the complaint are that the respondent M/s SS Group Pvt. Ltd. (formerly known as M/s North Star Apartment Pvt. Ltd) had launched and solicited for project by the name and style of "The Coralwoods" for providing comfortable and affordable housing in Sector 84 of Gurugram. As per the brochure of the respondent company the housing project was to include children's park, basketball court, tennis court, aesthetic landscaping with water bodies, trellises, walkways, stone seats, jogging park, compounded complex with round the clock security with an intercom system, 24x7 treated water supply, 100% power backup and a clubhouse having gym, swimming pool, party lawn and a sports centre. That the location of the project was to have

easy connectivity and proximity to airport, railway station and NH8 and a proposed metro station. Therefore, in the given circumstances the complainants were allured to purchase one apartment. Sh. Anil Goel (original allottee) wanted to sell unit/flat no. 203, tower/building no. D allotted to him vide allotment letter dated 04.09.2012.

7. The complainants submitted that the above named original allottee after negotiations agreed to transfer the said unit and in that way the complainants acquired the said unit on payment of Rs.18, 15,523/-. As per flat buyer's agreement the possession of the said unit was to be handed over within 36 months from the date of signing of the said agreement dated 04.10.2012 as provided under clause 8 of the agreement i.e. by October 2015. In terms of endorsement form dated 09.12.2012 the unit/plot in question was endorsed in the name of the complainants herein and the endorsement to which effect was also made on the original flat buyer's agreement by the respondent. That even at time of making the endorsement, the respondent assured that the possession of the flat in question would be given as per the terms of agreement.

8. The complainants submitted that they were shocked to see the state of affairs upon the visit to site as there was no

progress in the development of the project and thereby served the respondent with legal notice dated 17.12.2014 calling upon him to complete the project on time and deliver possession on due date failing which they would claim interest @18% on their investment. In the reply dated 28.03.2015 to the above-said notice, the respondent falsely claimed that construction was in "full swing" and ensured that the construction would be completed on time and possession would be delivered as per the terms of agreement that is by October 2015 which is 36 months from date of agreement.

9. The complainants submitted that they again served the respondent with legal notice dated 10.01.2017 bringing into its attention the illegal demand of interest @ 18% on account of delayed payment when the construction was not itself completed as per the construction linked scheme, and demanded that possession be offered at the earliest while the interest for delay till the handing over of possession, which respondent is liable to pay at the same rate as demanded from complainants i.e. 18%, be paid or adjusted towards the balance amount due. The respondent in its reply dated 22.02.2017 was evasive and silent regarding the illegal demand of interest on account of delayed payment and its liability to pay the interest for delay till the handing over of

possession at the same rate as charged i.e. 18%. That it was falsely claimed that the possession "shall be tentatively delivered in the year 2017 itself".

10. The complainants submitted that the respondent vide letter dated 17.08.2018 sent offer of possession only for fit-outs without the occupation certificate would constitute a breach of contractual and legal obligations on the part of the builder. That a letter of fit-out is an offer from the developer which allows flat owners to carry out fit-out/furnishing, whilst they are not allowed to occupy the flats. The developers do not procure OC and give out fit out possession, which causes lot of practical difficulties for the home buyers. In such cases, there are high chances that the OC is not granted on account of possible gross violations/deviations from the approved building lay out plan on the part of the builder.

11. The complainants submitted that while visit to the site on 28.10.2018, they were taken aback upon finding the abysmal condition of the flat. The mala fide of the respondent was manifest from the fact that lift was not working, bathroom, kitchen, room flooring and electric work were still incomplete. The offer of 'fit outs' possession is just a ploy to grab money and put the complainants in a lurch.

12. The complainants submitted that the preferential location charges (PLC) of Rs 94,500/- @ 50 per sq. ft. are illegal. PLC charges are an additional burden put upon the complainants even though there is nothing unique about the location such as park facing or corner unit/flat and natural justice requires that the same be reversed. The complainants submitted that the respondent has wrongly and illegally claimed reserve car parking slot charges amounting to an exorbitant amount of Rs. 3 lacs. The reserve car parking charge is part of common area for which the builder cannot seek any cost from the complainants.

13. The complainants submitted that the electricity connection charges amounting to Rs.1,29,181/- (as per annexure-a attached with letter of offer of possession) are exorbitant in nature. The complainants are willing to pay charges as per the norms of DHBVN otherwise also such charges are taken in the cost price already. The club membership charges amounting to Rs.50,000/- are charged by way of undue influence with the respondent being in dominant position and misusing the position to coerce the complainants to pay the same. Generally, such charges are optional in nature as such luxurious amenities cannot be forced upon the buyer. The unit has been sold on basis of super area as opposed to

carpet area which is unlawful after the enactment of the Act ibid.

14. The complainants submitted that the respondent has illegally demanded interest on delayed payments amounting to Rs.1,46,605/-. The payment plan was construction linked and the respondent company is itself in default as it had deliberately delayed the construction. Thus, the demand is unjustified taking into consideration the fact that the complainants has made all payments of installments as and when demanded and no notice of delayed payment was ever received by the complainants. The complainants had time and again objected to the illegal demand of interest on delayed payments vide letters dated 25.06.2015 and 11.10.2017 and have stated that actual amount of installment is being deposited under protest without prejudice to their right of interest on account of delay of possession.

15. The complainants submitted that being aggrieved by the fact that offer of possession was delayed by almost 3 years and not receiving any interest for delayed possession, the complainants are filing the present complaint before this hon'ble authority. The subject-matter falls within the jurisdiction of this hon'ble authority.

Issues to be decided

16. The issues raised by the complainants are as follows:

i. Whether the promoter is liable to get itself registered with this hon'ble authority under the Act ibid?

ii. Whether the respondent has caused exorbitant delay in handing over the possession of the unit to the complainants and for which the respondent is liable to pay interest to the complainants on amount received by the respondent from the complainants and which interest should be paid on the amount from the date when the respondent received the said amount?

iii. Whether open parking space and parking in common basements be sold to the allottees as separate unit by the promoter, which the respondent has sold as separate unit at a cost of Rs.3,00,000/- and if not than the amount so collected be returned back to the allottees from whom charged?

iv. Whether the respondent can legally sell super area instead of carpet area?

v. Whether the respondent is liable to refund the monies so collected by it from the complainants toward the goods and service tax which came on statute and implemented from 01.07.2017 as the said tax became payable only due to delay in handing over the possession by the

respondent, as if the possession was given by the respondent on time then the question of GST would never have arisen?

vi. Whether the complainants are liable to pay preferential location charges with the same being unjustified for majority of flat owners are being charged PLC making the imposition worthless and there being nothing unique about the location vis-à-vis other flats?

vii. Whether the complainants are liable to pay electricity connection charges with the same being exorbitant in nature and already part of cost price?

viii. Whether the respondent can coerce the complainants to pay club membership charges when the same should be optional being a luxury?

Reliefs sought

17. The complainants are seeking the following reliefs:

i. The respondent be directed to make refund of the excess amount collected on account of any area in excess of carpet area as the respondent has sold the super area to the complainants which also includes the common areas and which sale of common area is in total contradiction

of the Act ibid, for the reason as per the Act ibid the monetary consideration can only be for the carpet area.

ii. The respondent be directed to make payment of interest accrued on amount collected by the respondent from the complainants, on account of delayed offer for possession and which interest should be at prescribed rate from the date as and when the amount was received by the respondent from the complainants.

iii. The respondent be directed to refund the amount of GST, if collected from the complainants, which had to be paid by the complainants only for the reason of delayed offer of possession, as, if the offer of possession was given on time, then no question of GST would have arisen as on such date GST service tax was not in existence.

iv. Any common area car parking including basement car park, which is not garage, if sold then the money collected on such account shall be refunded along with interest.

v. The preferential location charges be reversed and the amount collected from the complainants till date be refunded.

vi. The electricity connection charges be reversed and the amount collected from the complainants till date be refunded.

vii. The club membership charges be made optional with the same being a luxury.

viii. The orders may be passed against the respondent in terms of section 59 of the Act ibid for the failure on part of the respondent to register itself with this hon'ble authority under the Act ibid.

Respondent's reply:

18. The respondent submitted that North Star Apartment Pvt. Ltd. has amalgamated into SS Group Pvt. Ltd., through a scheme of amalgamation approved by the Hon'ble Punjab and Haryana High Court, through its orders dated 30.09.2014 and 10.11.2014, passed in company petition nos.155 of 2003 and 203 of 2013, w.e.f. 07.03.2015.

19. The respondent submitted that 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.

20. The respondent submitted that under section 71 of the Act ibid, 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 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 Act ibid. 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.

21. The respondent submitted that the complainants, before this ld. authority has given a declaration for supplementing the complaint and also amending the same, as mentioned in the declaration itself. Vide the said declaration, the complainants have shown its intention not to withdraw from the project and rather claimed purported interest for every month of alleged delay, till the handing over of the possession, by alleging that they are entitled to the same as per the proviso of section 18(1) of the Act ibid. As submitted hereinabove, the adjudication even in respect of the claim of interest and/or the complainant's entitlement thereof, under section 18, is to be carried out by the adjudicating officer. Without prejudice, to the said submission, it is submitted that filing of the declaration and/or supplementing/amending the complaint, is a procedure alien to the provisions of 2016 Act and 2017 Haryana Rules and cannot be allowed to be carried out and as such, the complainants cannot maintain the complaint in present form.

22. The respondent submitted that the complainants have misdirected themselves in seeking refund of the alleged excess amount collected on account of the area in excess of

carpet area. Concededly, the complainants had purchased the rights of their predecessor-in-interest namely Anil Goyal, who had executed flat buyer's agreement with the respondent on 04.10.2012. The said agreement, which even stands endorsed on 09.12.2012, in favor of the complainants on account of transfer of the rights thereunder, by their predecessor-in-interest, in their favour, categorically provides that the developer had agreed to sell and the flat buyers have agreed to purchase the flat no. 203, type B, located in tower no. D, on the 2nd floor, having super area of 1890 sq. ft. approximately. In the agreement, the sale price of Rs.64,28,240/- is payable, which is sum total of different amounts reflected against different components, as mentioned therein.

23. The respondent has submitted that the super area has been defined in annexure-ii to the agreement. It provides that the super area of the premises shall be the sum of specific area of the said premises and its non-exclusive pro-rata share of common areas in the said complex and its periphery. As such, the complainants have been aware not only of the sale price but also the fact that the same has been calculated by taking into account various components and as against the super

area, which even stood defined in the agreement. Further, the complainants were even aware that the said super area was tentative and has been mentioned in the agreement for the purpose of computing sale price in respect of the said flat only and the inclusion of common.

24. The respondent submitted that 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:

"8.1 Time of handing over the possession

> **(a)** *Subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and 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 (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."*

25. The respondent submitted that 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. In the present case, it is a matter of record that the complainants have not fulfilled their obligation and have not even paid the installments that had fallen due. Accordingly, no relief for alleged delayed offer for possession can be said to be maintainable.

26. The respondent submitted that from the conjoint reading of the 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. It is matter of record no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between respondent and the complainants. 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.

27. The respondent submitted that the complainants have further misdirected in claiming the relief for refund of amount of GST, service tax etc. on a misconceived premise that no question of GST, service tax would have arisen, as on the purported date of offer of possession for fit outs, no GST, service tax was in existence. The respondent submitted that broadly there are 2 facets of taxation – one being *'direct tax'* i.e. tax/levy which is payable on the income/profit of the assessee, example income tax and second being *'indirect tax'* i.e. tax which is payable on supply of goods and services, and

on the value addition made thereon, example GST, service tax, VAT, etc. Indirect taxes by their very nature are consumption-based value added taxes which are charged on each stage of manufacturing/ supplying, and ultimately affect the price of goods/services sold in the market. There is no provision under the 2016 Act, which empowers this ld. authority to pass an order on the taxability of an event and/or to change in the incidence of tax.

28. The respondent 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.

29. The respondent 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 consideration of flat allotted to them.

30. The respondent submitted that after having applied for grant of occupation certificate in respect of the project, which had thereafter been even issued through memo dated 17.10.2018 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.

31. The respondent denied that the possession of the Unit was to be handed over within 36 months, as alleged. Evidently, the complainants are seeking to provide a self-serving interpretation to clause 8 of the agreement.

32. The respondent submitted that the averments through which the complainants have acknowledged the issuance of reply by the respondent, is a matter of record. However, it is wrong that there was any false plea made in the reply. Further, any

suggestion sought to be derived by the complainants in their favour from the contents of the reply, be taken to have been denied.

33. The respondent denied that that the possession for fit outs, as offered was illegal and not complete. The roads, as referred to by the complainants, are evidently falling within the ambit of external developmental works, to be carried out by the government.

34. The respondent submitted that the preferential location charges of Rs.3,02,400/- i.e Rs 160 per sq. ft have been specified in the flat buyer's agreement, which was agreed to by the complainants. The complainants were aware of the said charges at the time of filing of the endorsement form dated 09.12.2012. the respondent denied that the charges are exorbitant in nature.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

35. With respect to the **first issue** raised by the complainants, the respondent has already registered the project in question with the authority vide registration no. 381 of 2017 dated 12.12.2017 and the said registration is valid till 31.12.2019.

36. With respect to the **second issue** raised by the complainants, as per clause 8.1 of flat buyer's agreement dated 04.10.2012, the possession of the flat was to be handed over within 36 months from the date of signing of this agreement i.e. 04.10.2012 plus grace period of 90 days. Accordingly, the due date of possession was 04.01.2016 and the possession has been delayed by 3 years 2 months and 8 days till the date of decision. As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to pay interest to the complainant at prescribed rate i.e. 10.75% per annum for every month of delay from the due date i.e. 04.01.2016 till the handing over of possession to the complainant.

37. With respect to the **third issue** raised by the complainants, the authority is of the opinion that open parking spaces

cannot be sold/charged by the promoter. As far as issue regarding parking in common basement is concerned, the matter is to be dealt as per the provisions of the space buyer agreement where the said agreement have been entered into before coming into force the Real Estate (Regulation and Development) Act, 2016. As per clause 1.2(a) read with clause 1.4 of the agreement dated 04.10.2012, the respondent has already charged cost of reserved car parking of Rs.3,00,000/- and the same has already been included in the sale consideration. Accordingly, the promoter has no right to charge it separately from the buyer. If it has been separately charged, then the amount be returned by the promoter to the complainants.

38. With respect to the **forth issue** raised by the complainants, as the flat buyer's agreement was executed prior to the commencement of the Act ibid, the said agreement is sacrosanct as regards the dealings between parties. As per clause 1.1 provides about sale of the flat having super area of 1890 sq. ft. and the complainants have signed the said agreement with wide open eyes.

39. With respect to the **fifth issue** raised by the complainants, the complainants shall be at liberty to approach any other suitable forum regarding levy of GST.

40. With respect to the **sixth issue** raised by the complainants, as per clause 1.2(b) of the said agreement, the complainants have agreed to pay PLC amounting to Rs.3,02,400/-. per sq. ft. of super area for the flat in question. However, the same clause also entitles the complainants to refund of the said amount in case the said flat ceases to be preferentially located due to change in layout plan which is not the situation in the present complaint. Thus, this issue is decided in negative.

41. With respect to the **seventh issue** raised by the complainants, as per clause 1.5 of the said agreement, the complainants are liable to pay charges for bulk supply of electrical energy, amount spent towards additional transformers, sub-stations etc. Thus, this issue is decided in negative.

42. With respect to the **eighth issue** raised by the complainants, as per clause 1.2(a) of the said agreement, the complainants have agreed to pay club membership charges amounting to Rs.50,000/-. The complainants have not made any protest at the time of execution of the said agreement, thus they are barred to agitate the said issue at such belated stage. Thus, this issue is decided in negative.

Findings of the authority

43. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

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

45. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court,

particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Another. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

46. Further, in ***Aftab Singh and others. v. Emaar MGF Land Ltd and others., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court in **civil appeal no.23512-23513 of 2017**.

47. In the present case, the authority has observed that brief facts leading to this complaint are that complainants had booked a flat/unit no. D-203, 2nd floor, tower D, type B in project "The Coralwood", Sector 84, Gurugram. By virtue of clause 8.1. of the agreement dated 04.10.2012 executed inter-se the parties, the possession of the booked unit was to be delivered to the complainant on 04.01.2016. Respondent has offered the possession to the complainant for fit outs but no actual possession has been offered to the complainant which

is of no consequence in the eyes of law. Occupation certificate has been granted to the respondent on 17.10.2018. Since the possession of flat has been delayed by three years, as such the complainants are well within their rights to get interest at the prescribed rate of interest i.e. 10.75% per annum w.e.f. 04.01.2016 as per provisions of Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

Directions of the authority

48. 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. 10.75% per annum for every month of delay on the amount paid by the complainants w.e.f 04.01.2016 as per provisions of Section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

ii. The respondent is also directed to give them the actual possession of the flat within one month and adjust the delayed possession charges with the dues payable by the

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Chairman
Member
Member

complainant as per the provision of Section 18(1) of the Act ibid.

49. The order is pronounced.

50. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 12.03.2019

Judgement uploaded on 09.04.2019