

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

**Complaint no. : 1061 of 2018**  
**First date of hearing : 27.03.2019**  
**Date of decision : 27.03.2019**

1. Ruhi Gulati
2. Namita Gulati

Both r/o 536, B-block, Sector 23,  
Gurugram, Haryana: 122017.

**Complainants**

Versus

M/s Sare Gurugram Pvt. Ltd.,  
(earlier known as M/s Sare Realty  
Pvt. Ltd.)  
E-7/12, LGF, Malviya Nagar,  
New Delhi: 110017.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Complainant in person with Ms. Vaishnavi R. Iyer  
Shri Rahul Yadav

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. A complaint dated 13.11.2018 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 Ruhi Gulati

and Namita Gulati, against the promoter M/s Sare Gurugram Pvt. Ltd., on account of violation of the clause 3.3 of flat buyer's agreement executed dated 27.02.2013 in respect of unit no. P061202, admeasuring 2093 sq. ft. of the project 'Green ParC II located at sector 92 , Gurugram for not handing over possession of the unit by the due date i.e. by 29.04.2016 which is an obligation of the respondent under section 11(4)(a) of the Act *ibid.*

2. Since the flat buyer's agreement dated 27.02.2013 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 noncompliance of statutory obligations on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid.*

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

1.	Name and location of the project	Green ParC II forming part of Crescent ParC, Sector 92 Gurugram, Haryana.
2.	Unit no.	P061202

3.	Nature of real estate project	Residential colony
4.	DTCP license no.	44 of 2009 dated 14.08.2009 68 of 2011 dated 21.07.2011
5.	Project area	48.818 acres
6.	Admeasuring super area of the allotted unit	2093 sq. ft.
7.	RERA registered/unregistered	<b>Registered</b> <b>270 of 2017 dated</b> <b>09.10.2017</b>
8.	Revised date of completion as per registration certificate	31.03.2019
9.	Date of execution of flat buyer's agreement	27.02.2013
10.	Payment Plan	<b>Construction linked</b>
11.	Total consideration amount as per annexure A of the flat buyer's agreement	Rs. 86,81,420/-
12.	Total amount paid by the complainant as per customer ledger dated 15.06.2017	Rs. 64,14,727/-
13.	Date of construction	29.10.2012
14.	Due date of delivery of possession as per clause 3.3 -36 months plus grace period of 6 months from the date of commencement of construction	29.04.2016
15.	Delay in handing over possession till date	2 years 10 months 28 days
16.	Penalty as per clause 3.3 of flat buyer's agreement	Rs. 5/- per sq. ft per month of the super area
17.	Termination and cancellation	05.06.2017

4. The details provided above have been checked as per record available in the case file which has been provided by the

complainant and the respondent. A flat buyer's agreement dated 27.02.2013 is available on record for the aforesaid flat no. P061202 according to which the possession of the same was to be delivered by 29.04.2016. The respondent has failed to deliver the possession till date. Therefore, the promoter has not fulfilled his obligation which is in violation of section 11(4)(a) of the Act *ibid*.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case come up for hearing on 27.03.2019 and the respondent through its counsel appeared on 27.02.2019. The reply filed by the respondent has been perused.

**FACTS OF THE COMPLAINT:**

6. The complainants purchased a residential flat having super area 2093 sq. ft. bearing unit no. P061202, block P-06 on 12<sup>th</sup> floor in the project namely Green ParC 2 at Crescent ParC, Sector 92, Gurgaon, Haryana from the initial buyer namely Mrs. Madhuri Patel for a total sales consideration of Rs. 89,82,020/-. The complainants paid Rs.28,50,000/- to the initial buyer which was already paid by her to the respondent

and remaining amount i.e. Rs. 61,32,020/- was to paid to the respondent.

7. The complainants submitted that the respondent allotted the said residential flat to the complainants vide application form dated 31.12.2012. It is pertinent to mention here that application form was in the nature of allotment letter and agreement as it defines the rights and liabilities of the parties.
8. Further, as per clause 18 of the application form, the possession of the flat was to be given within 42 months including a grace period of 6 months from the date of sanction of building plan and receipt of all necessary approvals required for starting the construction.
9. The license was granted to the respondent by the Town and Country Planning Department, Haryana on 07.06.2010, therefore, the possession of the flat including grace period of 6 months, should been given by 29.04.2016.
10. The complainants submitted that they have paid the total amount towards sales consideration of the flat of Rs. 63,93,523 which was duly acknowledged by the respondent.

11. The complainants undertook a home loan of Rs. 41,50,000 with a rate of interest of 10% from ICICI Bank. The complainants made various follow ups stating their grievances during this period but vague and unsatisfactory replies were given by the respondent
12. The complainant submitted that the project has not been completed still and no demand has been made for the payment. Therefore, this present complaint for refund of the amount already paid to the respondent along with interest.

**ISSUES TO BE DECIDED:**

13. The complainants have raised the following issues:
  - i. Whether or not the respondent has violated the terms and conditions of the agreement thereby delaying possession?
  - ii. Whether the promoter is liable to return the amount invested by the complainants?
  - iii. Whether the respondent has unjustly enriched itself by misusing the hard earned money of the complainant?

**RELIEFS SOUGHT:**

14. The complainants are seeking the following reliefs:

- i. To direct the respondent to return the amount of Rs. 64,14,727/- along with interest.
- ii. Pass any other order as this hon'ble authority deem fit and proper to meet the ends of justice.

**REPLY BY RESPONDENT:**

15. The name of the respondent no.1 company has been changed to SARE Gurugram Pvt. Ltd. As such, the present reply is being filed on behalf of SARE Gurugram Pvt. Ltd.
16. The respondent submitted that at the very outset it is submitted that the respondent is developing a larger residential group housing project over land measuring 48.818 acres in Sector 92, Village Wazipur and Mewka, Gurugram. This entire project is being developed by the respondent in various phases. The unit/flat of the complainant falls under phase IV which has been separately registered under RERA vide registration no. 270 of 2017. The progress report regarding status of internal plaster plumbing, fire fighting, floor tiles, toilet wall mild floor tiles, electrification, internal paint, external plaster, external paint,



lift installation, civil work, sewerage was updated to the complainants.

17. The subject tower/project i.e. P 06 of the Petioles at Green ParC II. Crescent ParC, Sector-92, Gurugram, has been registered with Haryana Real Estate Regulatory Authority, Panchkula and Registration Certificate bearing Memo No. MEM-454/2017/1294 dated 09.10.2017 with registration no. 270 of 2017 has been issued by the authority. As per the registration certificate, the respondent no.1 has been allowed to complete the project till 31.03.2019.
18. The respondent submitted that it is a law abiding real estate developer for whom customer satisfaction is paramount. It is in the process of developing inter alia various residential and commercial projects to the satisfaction of its customers. The respondent is doing its level best to implement the projects undertaken by the respondent in time and to deliver good quality apartments/units and to provide excellent services to its clients/customers.
19. The respondent submitted that on the request of the complainants the flat bearing no. P061202, having super area



2,093 square ft. in tower-P06 The Petioles in project Green ParC 2 at Crescent ParC, Sector-92, Gurugram, was allotted by the respondent to the original allottee Mrs. Madhuri Patel and the parties entered into legally binding flat buyer's agreement and the said unit/flat was purchased by the present complainants from the original allottees. The parties are bound to follow the terms and conditions of the flat buyer's agreement and in case of termination of allotment or in case of delay in possession necessary provisions for payment of compensation to allottee have been incorporated therein. Therefore, any relief beyond the terms and conditions of the flat buyer's agreement, is unjustified.

20. The registration certificate is valid for a period till 31.03.2019 and as per section 5 (3) of the Act, the registration granted under this section shall be valid for a period given by the promoter under sub-section (c), of clause/of subsection (2) of section 4 of the Act for completion of the project or phase thereof, as the case may be. Therefore the respondent has been allowed to complete the project by 31.03.2019.

21. The respondent submitted that the RERA Act or the Rule nowhere declares the terms and conditions of the existing flat buyer's agreement for sale (executed prior to the effective date of the Act, or Rules) as null or void, therefore the terms of should not be selectively enforced. If developer is expected to complete the project as per the timeline given under the flat buyers agreement, then the delay compensation, OR cancelation/surrender of the allotment by the allottee and refund should also be according to the flat buyer's agreement.
22. That the explanation given at the end of the prescribed agreement for sale in annexure A of the Rules, it has been clarified that the promoter shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing agreement executed with its customers. Therefore both the parties are bound to follow the terms and conditions of the flat buyer's agreement entered between them.
23. The respondent submitted that timely payment of the installments by the allottees of the entire project was essential terms for completion of the aforesaid project,

However, the said project could not be completed within the tentative time given under FBA as the various allottees defaulted in payments of their installments.

**DETERMINATION OF ISSUES:**

After considering the facts submitted by the complainants and perusal of record on file, the issue wise findings of the authority are given below:

24. With respect to the **issue no. 1 and issue no. 2** raised by the complainant, as per clause 3.3 of the flat buyer's agreement dated 27.02.2012 the respondent was under obligation to handover the possession within 3 years from the date of start of construction with six months grace period. The construction commenced on 29.10.2012. Thus the due date comes out to be 29.04.2016. However, the possession has been delayed by 2 years and 10 months 28 days till the date of decision. The authority is of the view that the promoter has failed to fulfil its obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. The authority is of the view that the complainant has certain outstanding dues despite being reminded to pay them time

and again by the respondent. The respondent even sent a termination letter to the complainant on 05.06.2017 thereby forfeiting Rs. 61,93,448/-. But there is no document produced which shows that the remaining balance has been refunded. Keeping in view all the circumstances, the complainants are entitled for refund of amount along with prescribed rate of interest i.e. 10.75% per annum.

25. With respect to the **third issue**, the complainants has only alleged the same. However no proof is produced. Thus this issue is decided in negative.

**FINDINGS AND DIRECTIONS OF THE AUTHORITY:**

26. **Jurisdiction of the authority-** 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 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.

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 complainant at a later stage.

27. 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.

28. As per clause 3.3 of the flat buyer's agreement dated 27.02.2013 for unit no P0612021 in the project Green ParC-II, sector 92, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of construction i.e. 29.10.2012 plus 6 months grace period which comes out to be 29.04.2016. It was a construction linked plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 64,14,727/- to

the respondent against a total sale consideration of Rs. 86,81,420/-. The counsel for the respondent has submitted that the respondent cancelled the unit of the complainant after sending several reminders. This case has been decided on the basis of incriminating circumstances which the complainants have brought to the notice of authority and is against the unilateral exercise of dominating position on behalf of respondent.

**DECISION AND DIRECTION OF AUTHORITY:**

29. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:
- i. The respondent is directed to refund the amount to the complainants alongwith prescribed rate of interest i.e. 10.75% per annum within 90 days from issuance of this order.
30. Order is pronounced.
31. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that

separate proceeding will be initiated against the respondent.

A copy of this order be endorsed to registration branch for further action in the matter.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated: 27.03.2019

Judgement uploaded on 18.04.2019



**HARERA**  
GURUGRAM