

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

Complaint no. : 2466 of 2018  
First date of hearing : 16.05.2019  
Date of decision : 16.05.2019

1. Mr. Abhishek Singhal  
2. Mrs. Preeti Singhal.  
R/o. House no. 1286, 2<sup>nd</sup> Floor, Sector - 4,  
Gurugram (Haryana) - 122001.

**Complainants.**

**Versus**

M/s Supertech Ltd.  
**Office Address:** 1114, 11<sup>th</sup> floor, Hemkunt  
Chambers, 89, Nehru Place, New Delhi- 110019. **Respondent.**

**CORAM:**

Shri Samir Kumar  
Shri SubhashChander Kush

**Member  
Member**

**APPEARANCE:**

Shri Abhishek Singhal and  
Smt. Preeti Singhal.  
Shri Rishabh Gupta

Complainant in person.  
Advocate for the respondent.

**ORDER**

1. A complaint dated 11.01.2019 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. Abhishek Singhal and Mrs. Preeti Singhal, against the respondent M/s Supertech Ltd., in respect of allotment letter dated

31.07.2017 of flat/unit no. R058LRJ0J62A/ Flat # J62A, in the project "Officer enclave in Hill Town" at Sector 2, Sohna Road, Gurugram for not paying the pre EMIs till offer of possession in terms of clause (b) of the MOU dated 28.08.2017 which is in violation of obligation of respondent promoter in terms of section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	"Officer's enclave in Hill Town", Sector 2, Sohna Road, Gurugram.
2.	DTCP license no.	124 of 2014 dated 23.08.2014
3.	Nature of real estate project	Residential colony
4.	Flat/unit no.	R058LR0J62A/FLAT# J62A
5.	Measuring area of the allotted flat	1,375 sq. ft.
6.	RERA Registered/ unregistered	<b>Registered vide no. 258 of 2017</b>
7.	Date of completion as per RERA registration certificate.	<b>02.10.2020</b>
8.	Date of booking	18.07.2017
9.	Date of execution of allotment letter cum agreement.	31.07.2017 <b>(Annx P3)</b>
10.	Date of MoU between the complainant and the respondent for pre EMI	28.08.2017 <b>(Annx P4)</b>

11.	Payment Plan	Special payment plan(Pg. 29 of the complaint)
12.	Total consideration amount as per the agreement	Rs.50,44,574/-
13.	Total amount paid by the complainants till date	Rs. 41,25,351/- (as per statement of account Annex P-6)
14.	Due date of delivery of possession as per possession clause 26 of the allotment letter dated 31.07.2017- i.e. June,2019 + 6 months' grace period.	31.12.2019
15.	Delay in handing over possession till 16.05.2019	No delay

3. 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. An allotment letter dated 31.07.2017 and memorandum of understanding dated 28.08.2017 is available on record for the aforesaid flat/unit no. R058LR0J62A/FLAT# J62A. As per clause (b) of the MoU dated 28.08.2017 the respondent was under obligation to pay the pre EMI under subvention payment plan till offer of possession. However, the respondent has failed to pay the pre EMI after October, 2018 which is in violation of the provisions 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 respondent through its counsel appeared on 16.05.2019. The case came up for hearing on 16.05.2019. The reply has been filed by the respondent on 18.02.2019 which has been perused by the authority.

**Facts of the complaint :-**

5. Briefly put facts relevant for the disposal of the present complaint as per the complainant's version are that the respondent had launched the "Officers Enclave" low rise project at Hill Town situated at Sector -2, Sohna Road, Gurugram. Complainants came to know about this project from broker Aman Khatana who is part of real estate firm "M/s. Realistic One"
6. The complainants submitted that they booked a unit bearing no. J62-A in the said project under "no pre EMI till possession scheme". Respondent signed MOU on 28.08.2017 with complainants for this scheme. As part of this scheme, respondent is supposed to pay pre EMI amount to bank till possession offered by them. Complainant took a loan of Rs.

36,00,000/- from Allahabad bank. Complainants made a total payment of Rs. 41,00,515/- to Supertech.

7. The complainants alleged that respondent has started to delay pre EMI payment from July, 2018. After multiple follow ups, it paid the pre EMI till October, 2018. Respondent has stopped pre EMI payment completely from November, 2018 onwards.
8. It was further alleged by the complainant that despite repeated requests and meetings the respondent has showed their inability to pay the pre EMI due to shortage of funds. On 20.12.2018, respondent had sent an email to the complainants asking them to pay pre EMI from their own pocket and adjust it at the time of possession.
9. The complainants submitted that they are paying the pre EMI amount to the bank since November, 2018 at the rate of Rs. 24,836/- per month. The complainants are living on rent and not in position to pay pre EMI due to additional financial burden.

10. The complainant alleged that the respondent has breached MOU and made false promise of paying the pre EMI till possession.
11. The complainant was shocked to see the statement of account for flat J62-A on 25.12.2018 wherein the respondent has made false entry towards pre EMI for the month of November, 2018 which shows that the respondent is manipulating with the statement of accounts.
12. After booking the project, the complainant visited the construction multiple times and found that the construction work was going with very slow speed. When the complainants enquire about it then they got the reply that the construction is not happening due to lack of funds. Currently only 10-15% of construction is completed while respondent promised to offer possession by June, 2019. Complainant losing all its hopes of getting possession on time filed the complaint before this authority.

**Issues to be decided: -**

1. Whether the respondent has failed to pay pre EMIs since the month of November, 2018 to Allahabad bank under "no pre EMI till possession" scheme, is breach of the MOU dated 28.08.2017?
2. Whether the respondent is liable to refund Rs. 41,00,515/- alongwith interest at the prescribed rate to the complainants?
3. Whether the respondent is liable to pay pre EMI before 30<sup>th</sup> of every month?
4. Whether the complainants are entitled to damages/compensation and litigation expenses?
5. Whether the respondent would be able to handover the possession of the said flat to the applicants by agreed time?
6. Whether respondent is manipulating statement of accounts and not maintaining it honestly?

**Reliefs sought: -**

- Direct the respondent to remit the total amount paid by the complainants towards Pre EMIs since month of November,2018 till date alongwith prescribed rate of interest.

- Direct the respondent to refund the amount paid by the complainants till date i.e. Rs. 41,00,515/- towards the cost of the said flat alongwith prescribed rate of interest.
- Direct the respondent to pay pre EMI before 30<sup>th</sup> of every month.
- Direct the respondent to maintain statement of accounts honestly.

**Application for rejection of complaint on behalf of the respondent:-**

13. The respondent has contended that the complaint filed by complainants is pre-mature, hence it is liable to be dismissed on this solely ground alone. As per Allotment Letter dated 31.7.2017, executed between the parties for allotment of unit No. J62A of project "Hill Town", the proposed possession date for the allotted unit was in the month of June 2019 and as per the agreed terms and conditions of the flat buyer agreement, a further grace period of 6 months was also agreed by the parties to the agreement, which comes will end up in December 2019, and prior to this no cause of action arose in favour of the complainant for filing the instant complaint. The



clause 26 of the Allotment Letter is reproduced herein below:-

*26. The Possession of the allotted Floor/ Apartment shall be given by **June 2019** subject to force majeure conditions with an extended grace period of **6 (six) months**. The developer also agrees to compensate the Allottee (s) @ Rs. 5/- per sq. feet of area of the Floor/Apartment per month for any delay in handing over possession of the floor/ Apartment beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.*

14. The respondent submitted that the project Supertech "Hill Town / Hill Crest Low Rise" is registered before this authority vide registration no. 258 of 2017 which is valid upto October 2020.

15. The respondent further contended that the complainant has not come with clean hands and has suppressed true and material fact before this hon'ble authority. Hence, the compliant may also be liable to be dismissed on this ground also. It has been held in various authorities by hon'ble Apex Court that "if a complaint is a pre-mature, then it can either await maturity or be returned to the complainant for filing latter."

**Determination of issues:-**

16. As regards **issue no. 1, 2 and 3** raised by the complainants, the authority has come across that as per clause (b) of the memorandum of understanding dated 28.08.2017 executed between the complainants and the respondent, the respondent was under contractual obligation to pay pre EMIs to the Allahabad bank till offer of possession under subvention payment plan. Relevant portion of clause (b) is reproduced below: -

*".....The developer expects to offer possession of the booked unit to the Buyer by that time. However if due to any reason the possession of the booked unit gets delayed, then the developer undertakes to pay the Pre EMI only to the buyer even after 27 months. The payment of Pre EMI shall continue till offer of possession with regard to the booked flat is issued to the buyer."*

However, the emails exchanged between the complainants and respondent dated 20.10.2018, 13.11.2018 and 20.12.2018 (annexed as **Annexure P\_P7**) clarified that the respondent has shown their inability to make payment of pre EMIs since November, 2018 and put the complainants under the additional burden of paying the same to the Allahabad bank, which is clear cut violation of clause (b) of the MOU dated

28.8.2018 and also the provision of section 11(4)(a) of the Act *ibid*. Hence, the respondent is liable to refund the amount of pre EMIs to the complainant so paid since the month of November, 2018.

17. As regards **issue no. 4** raised by the complainants, the authority has no jurisdiction to award damages/litigation expense and in this regard the complainant may file separate application before the adjudicating officer under section 71 and other relevant provisions of the Act, if required.

18. As regards **issue no. 5** raised by the complainants, since the due date of delivery of possession as per clause 26 of the allotment letter dated 31.07.2017 is 31.12.2019 which is yet to come. Moreover, the project is registered with the authority vide no. 258 of 2017 as per which the revised date of completion of project is 02.10.2020, hence, at this stage the complainants are advised to wait till due date for delivery of possession. In case the respondent will fail to deliver the possession on due date, then the complainants are at liberty to file fresh complaint before adjudicating officer for refund of their paid amount.

19. As regards **issue no. 6** raised by the complainants, the complainants have failed to adduce any documentary evidence to prove the accounts have been manipulated by the respondent. Hence, this issue cannot be decided for the want of documentary evidence in support.

**Findings of the authority: -**

20. 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 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.

21. Arguments heard. By virtue of this complaint, the complainants are seeking direction against the respondent to remit the total amount paid by the complainant towards pre- EMIs since November, 2018 till date alongwith prescribed rate of interest and to pay pre-EMIs before 30<sup>th</sup> of every month. In addition to this, the complainants are also seeking relief in the shape of refund of Rs. 41,00,515/-.
22. During pendency of complaint, the complainant by moving an application dated 09.01.2019 sought permission of this authority to amend the complaint by restricting their relief to the extent of payment of pre EMIs by the respondent as per the terms of MoU dated 28.08.2017.
23. Brief facts of the matter are that the complainant had booked a unit/flat no. J-62A in the project "Officers Enclave", Sector 2, Sohna Road, Gurugram and allotment letter cum agreement to this effect was executed inter se the parties on 31.07.2017. In addition to it a memorandum of understanding (MoU) dated 28.08.2017 also executed inter se the parties. As per the terms and conditions of the said MoU, the respondent was obligated to pay the pre EMIs till possession of the unit in question be

delivered to the complainant, but the respondent has stopped to pay the requisite pre- EMIs since November, 2018.

24. Considering all the facts and circumstances of the matter and hearing the learned counsel for the parties, the authority is of the considered view that the respondent is liable to fulfil its obligation cast upon them by virtue of terms and conditions of MoU dated 28.08.2017 and to pay pre EMIs regularly.

**Decision and directions of the authority : -**

25. 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 pre EMIs due from November, 2018 onwards as per the terms and conditions of MoU dated 28.08.2017 alongwith prescribed rate of interest of 10.65% per annum, if
- (ii) period of 30 days from the date of issuance of this order.

Deleted  
vide  
order  
dated

X 05/07/19

Corrected vide order dated 05/07/19.

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① Respondent is liable to fulfill its obligation cast upon them by virtue of MOU dated 28.08.2017. Respondent is directed to pay pre EMI regularly till offer of possession.

(iii) The respondent is also directed to reimburse the

amount of pre EMIs paid by the complainant till date.

alongwith prescribed rate of interest of 10.65% per


annum.


*Deleted vide order dated 26/02/2020  
within a period of 30 days from  
the date of issuance of this order.*

26. Complaint is disposed of accordingly.

27. The order is pronounced.

28. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(SubhashChander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: -16.05.2019

*Corrected vide order  
dated 05/07/19.*

Corrected Judgement uploaded on 27.02.2020.

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

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**Respondent.**

**CORAM:**

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Shri SubhashChander Kush

**Member  
Member**

**APPEARANCE:**

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

1.	Name and location of the project	"Officer's enclave in Hill Town", Sector 2, Sohna Road, Gurugram.
2.	DTCP license no.	124 of 2014 dated 23.08.2014
3.	Nature of real estate project	Residential colony
4.	Flat/unit no.	R058LR0J62A/FLAT# J62A
5.	Measuring area of the allotted flat	1,375 sq. ft.
6.	RERA Registered/ unregistered	<b>Registered vide no. 258 of 2017</b>
7.	Date of completion as per RERA registration certificate.	<b>02.10.2020</b>
8.	Date of booking	18.07.2017
9.	Date of execution of allotment letter cum agreement.	31.07.2017 <b>(Annex P3)</b>
10.	Date of MoU between the complainant and the respondent for pre EMI	28.08.2017 <b>(Annex P4)</b>

11.	Payment Plan	Special payment plan( <b>Pg. 29 of the complaint</b> )
12.	Total consideration amount as per the agreement	Rs.50,44,574/-
13.	Total amount paid by the complainants till date	Rs. 41,25,351/- ( <b>as per statement of account Annx P-6</b> )
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3. 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. An allotment letter dated 31.07.2017 and memorandum of understanding dated 28.08.2017 is available on record for the aforesaid flat/unit no. R058LR0J62A/FLAT# J62A. As per clause (b) of the MoU dated 28.08.2017 the respondent was under obligation to pay the pre EMI under subvention payment plan till offer of possession. However, the respondent has failed to pay the pre EMI after October, 2018 which is in violation of the provisions 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 respondent through its counsel appeared on 16.05.2019. The case came up for hearing on 16.05.2019. The reply has been filed by the respondent on 18.02.2019 which has been perused by the authority.

**Facts of the complaint :-**

5. Briefly put facts relevant for the disposal of the present complaint as per the complainant's version are that the respondent had launched the "Officers Enclave" low rise project at Hill Town situated at Sector -2, Sohna Road, Gurugram. Complainants came to know about this project from broker Aman Khatana who is part of real estate firm "M/s. Realistic One"
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**Issues to be decided: -**

1. Whether the respondent has failed to pay pre EMIs since the month of November, 2018 to Allahabad bank under “no pre EMI till possession” scheme, is breach of the MOU dated 28.08.2017?
2. Whether the respondent is liable to refund Rs. 41,00,515/- alongwith interest at the prescribed rate to the complainants?
3. Whether the respondent is liable to pay pre EMI before 30<sup>th</sup> of every month?
4. Whether the complainants are entitled to damages/compensation and litigation expenses?
5. Whether the respondent would be able to handover the possession of the said flat to the applicants by agreed time?
6. Whether respondent is manipulating statement of accounts and not maintaining it honestly?

**Reliefs sought: -**

- Direct the respondent to remit the total amount paid by the complainants towards Pre EMIs since month of November, 2018 till date alongwith prescribed rate of interest.

- Direct the respondent to refund the amount paid by the complainants till date i.e. Rs. 41,00,515/- towards the cost of the said flat alongwith prescribed rate of interest.
- Direct the respondent to pay pre EMI before 30<sup>th</sup> of every month.
- Direct the respondent to maintain statement of accounts honestly.

**Application for rejection of complaint on behalf of the respondent:-**

13. The respondent has contended that the complaint filed by complainants is pre-mature, hence it is liable to be dismissed on this solely ground alone. As per Allotment Letter dated 31.7.2017, executed between the parties for allotment of unit No. J62A of project "Hill Town", the proposed possession date for the allotted unit was in the month of June 2019 and as per the agreed terms and conditions of the flat buyer agreement, a further grace period of 6 months was also agreed by the parties to the agreement, which comes will end up in December 2019, and prior to this no cause of action arose in favour of the complainant for filing the instant complaint. The

clause 26 of the Allotment Letter is reproduced herein below:-

*26. The Possession of the allotted Floor/ Apartment shall be given by **June 2019** subject to force majeure conditions with an extended grace period of **6 (six) months**. The developer also agrees to compensate the Allottee (s) @ Rs. 5/- per sq. feet of area of the Floor/Apartment per month for any delay in handing over possession of the floor/ Apartment beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.*

14. The respondent submitted that the project Supertech "Hill Town / Hill Crest Low Rise" is registered before this authority vide registration no. 258 of 2017 which is valid upto October 2020.

15. The respondent further contended that the complainant has not come with clean hands and has suppressed true and material fact before this hon'ble authority. Hence, the compliant may also be liable to be dismissed on this ground also. It has been held in various authorities by hon'ble Apex Court that "if a complaint is a pre-mature, then it can either await maturity or be returned to the complainant for filing latter."

**Determination of issues:-**

16. As regards **issue no. 1, 2 and 3** raised by the complainants, the authority has come across that as per clause (b) of the memorandum of understanding dated 28.08.2017 executed between the complainants and the respondent, the respondent was under contractual obligation to pay pre EMIs to the Allahabad bank till offer of possession under subvention payment plan. Relevant portion of clause (b) is reproduced below: -

*".....The developer expects to offer possession of the booked unit to the Buyer by that time. However if due to any reason the possession of the booked unit gets delayed, then the developer undertakes to pay the Pre EMI only to the buyer even after 27 months. The payment of Pre EMI shall continue till offer of possession with regard to the booked flat is issued to the buyer."*

However, the emails exchanged between the complainants and respondent dated 20.10.2018, 13.11.2018 and 20.12.2018 (annexed as **Annexure P\_P7**) clarified that the respondent has shown their inability to make payment of pre EMIs since November, 2018 and put the complainants under the additional burden of paying the same to the Allahabad bank, which is clear cut violation of clause (b) of the MOU dated

28.8.2018 and also the provision of section 11(4)(a) of the Act *ibid*. Hence, the respondent is liable to refund the amount of pre EMIs to the complainant so paid since the month of November, 2018.

17. As regards **issue no. 4** raised by the complainants, the authority has no jurisdiction to award damages/litigation expense and in this regard the complainant may file separate application before the adjudicating officer under section 71 and other relevant provisions of the Act, if required.

18. As regards **issue no. 5** raised by the complainants, since the due date of delivery of possession as per clause 26 of the allotment letter dated 31.07.2017 is 31.12.2019 which is yet to come. Moreover, the project is registered with the authority vide no. 258 of 2017 as per which the revised date of completion of project is 02.10.2020, hence, at this stage the complainants are advised to wait till due date for delivery of possession. In case the respondent will fail to deliver the possession on due date, then the complainants are at liberty to file fresh complaint before adjudicating officer for refund of their paid amount.

19. As regards **issue no. 6** raised by the complainants, the complainants have failed to adduce any documentary evidence to prove the accounts have been manipulated by the respondent. Hence, this issue cannot be decided for the want of documentary evidence in support.

**Findings of the authority: -**

20. 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 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.

21. Arguments heard. By virtue of this complaint, the complainants are seeking direction against the respondent to remit the total amount paid by the complainant towards pre- EMIs since November, 2018 till date alongwith prescribed rate of interest and to pay pre-EMIs before 30<sup>th</sup> of every month. In addition to this, the complainants are also seeking relief in the shape of refund of Rs. 41,00,515/-.

22. During pendency of complaint, the complainant by moving an application dated 09.01.2019 sought permission of this authority to amend the complaint by restricting their relief to the extent of payment of pre EMIs by the respondent as per the terms of MoU dated 28.08.2017.

23. Brief facts of the matter are that the complainant had booked a unit/flat no. J-62A in the project "Officers Enclave", Sector 2, Sohna Road, Gurugram and allotment letter cum agreement to this effect was executed inter se the parties on 31.07.2017. In addition to it a memorandum of understanding (MoU) dated 28.08.2017 also executed inter se the parties. As per the terms and conditions of the said MoU, the respondent was obligated to pay the pre EMIs till possession of the unit in question be

delivered to the complainant, but the respondent has stopped to pay the requisite pre- EMIs since November, 2018.

24. Considering all the facts and circumstances of the matter and hearing the learned counsel for the parties, the authority is of the considered view that the respondent is liable to fulfil its obligation cast upon them by virtue of terms and conditions of MoU dated 28.08.2017 and to pay pre EMIs regularly.

**Decision and directions of the authority : -**

25. 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 pre EMIs due from November, 2018 onwards as per the terms and conditions of MoU dated 28.08.2017 along with prescribed rate of interest of 10.65% per annum, if
- (ii) period of 30 days from the date of issuance of this order.


Deleted  
vide  
order  
dated  
05/07/19.

Corrected vide order dated 05/07/19.

① Respondent is liable to fulfill its obligation cast upon them by virtue of MOU dated 28.08.2017. Respondent is directed to pay pre EMI regularly till offer of possession.

- (iii) The respondent is also directed to reimburse the amount of pre EMIs paid by the complainant till date alongwith prescribed rate of interest of 10.65% per annum. *within a period of 30 days from the date of issuance of this order.*

26. Complaint is disposed of accordingly.
27. The order is pronounced.
28. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(SubhashChander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: -16.05.2019

*Corrected vide order  
dated 05/07/19.*

Corrected Judgement uploaded on 08.07.2019

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

**Complaint no. : 2466 of 2018**  
**First date of hearing : 16.05.2019**  
**Date of decision : 16.05.2019**

1. Mr. Abhishek Singhal
2. Mrs. Preeti Singhal.

R/o. House no. 1286, 2<sup>nd</sup> Floor, Sector – 4,  
Gurugram (Haryana) – 122001.

**Complainants.**

**Versus**

M/s Supertech Ltd.

**Office Address:** 1114, 11<sup>th</sup> floor, Hemkunt  
Chambers, 89, Nehru Place, New Delhi-  
110019.

**Respondent.**

**CORAM:**

Shri Samir Kumar  
Shri SubhashChander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Abhishek Singhal and  
Smt. Preeti Singhal.  
Shri Rishabh Gupta

Complainant in person.

Advocate for the respondent.

**ORDER**

1. A complaint dated 11.01.2019 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. Abhishek Singhal and Mrs. Preeti Singhal, against the respondent M/s Supertech Ltd., in respect of allotment letter dated

31.07.2017 of flat/unit no. R058LRJ0J62A/ Flat # J62A, in the project “Officer enclave in Hill Town” at Sector 2, Sohna Road, Gurugram for not paying the pre EMIs till offer of possession in terms of clause (b) of the MOU dated 28.08.2017 which is in violation of obligation of respondent promoter in terms of section 11(4)(a) of the Act *ibid*.

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

1.	Name and location of the project	“Officer’s enclave in Hill Town”, Sector 2, Sohna Road, Gurugram.
2.	DTCP license no.	124 of 2014 dated 23.08.2014
3.	Nature of real estate project	Residential colony
4.	Flat/unit no.	R058LR0J62A/FLAT# J62A
5.	Measuring area of the allotted flat	1,375 sq. ft.
6.	RERA Registered/ unregistered	<b>Registered vide no. 258 of 2017</b>
7.	Date of completion as per RERA registration certificate.	<b>02.10.2020</b>
8.	Date of booking	18.07.2017
9.	Date of execution of allotment letter cum agreement.	31.07.2017 <b>(Annx P3)</b>
10.	Date of MoU between the complainant and the respondent for pre EMI	28.08.2017 <b>(Annx P4)</b>

11.	Payment Plan	Special payment plan( <b>Pg. 29 of the complaint</b> )
12.	Total consideration amount as per the agreement	Rs.50,44,574/-
13.	Total amount paid by the complainants till date	Rs. 41,25,351/- ( <b>as per statement of account Annex P-6</b> )
14.	Due date of delivery of possession as per possession clause 26 of the allotment letter dated 31.07.2017- i.e. June,2019 + 6 months' grace period.	31.12.2019
15.	Delay in handing over possession till 16.05.2019	No delay

3. 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. An allotment letter dated 31.07.2017 and memorandum of understanding dated 28.08.2017 is available on record for the aforesaid flat/unit no. R058LR0J62A/FLAT# J62A. As per clause (b) of the MoU dated 28.08.2017 the respondent was under obligation to pay the pre EMI under subvention payment plan till offer of possession. However, the respondent has failed to pay the pre EMI after October, 2018 which is in violation of the provisions 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 respondent through its counsel appeared on 16.05.2019. The case came up for hearing on 16.05.2019. The reply has been filed by the respondent on 18.02.2019 which has been perused by the authority.

**Facts of the complaint :-**

5. Briefly put facts relevant for the disposal of the present complaint as per the complainant's version are that the respondent had launched the "Officers Enclave" low rise project at Hill Town situated at Sector -2, Sohna Road, Gurugram. Complainants came to know about this project from broker Aman Khatana who is part of real estate firm "M/s. Realistic One"
6. The complainants submitted that they booked a unit bearing no. J62-A in the said project under "no pre EMI till possession scheme". Respondent signed MOU on 28.08.2017 with complainants for this scheme. As part of this scheme, respondent is supposed to pay pre EMI amount to bank till possession offered by them. Complainant took a loan of Rs.

36,00,000/- from Allahabad bank. Complainants made a total payment of Rs. 41,00,515/- to Supertech.

7. The complainants alleged that respondent has started to delay pre EMI payment from July, 2018. After multiple follow ups, it paid the pre EMI till October, 2018. Respondent has stopped pre EMI payment completely from November, 2018 onwards.

8. It was further alleged by the complainant that despite repeated requests and meetings the respondent has showed their inability to pay the pre EMI due to shortage of funds. On 20.12.2018, respondent had sent an email to the complainants asking them to pay pre EMI from their own pocket and adjust it at the time of possession.

9. The complainants submitted that they are paying the pre EMI amount to the bank since November, 2018 at the rate of Rs. 24,836/- per month. The complainants are living on rent and not in position to pay pre EMI due to additional financial burden.

10. The complainant alleged that the respondent has breached MOU and made false promise of paying the pre EMI till possession.
11. The complainant was shocked to see the statement of account for flat J62-A on 25.12.2018 wherein the respondent has made false entry towards pre EMI for the month of November, 2018 which shows that the respondent is manipulating with the statement of accounts.
12. After booking the project, the complainant visited the construction multiple times and found that the construction work was going with very slow speed. When the complainants enquire about it then they got the reply that the construction is not happening due to lack of funds. Currently only 10-15% of construction is completed while respondent promised to offer possession by June, 2019. Complainant losing all its hopes of getting possession on time filed the complaint before this authority.

**Issues to be decided: -**

1. Whether the respondent has failed to pay pre EMIs since the month of November, 2018 to Allahabad bank under “no pre

EMI till possession” scheme, is breach of the MOU dated 28.08.2017?

2. Whether the respondent is liable to refund Rs. 41,00,515/- alongwith interest at the prescribed rate to the complainants?
3. Whether the respondent is liable to pay pre EMI before 30<sup>th</sup> of every month?
4. Whether the complainants are entitled to damages/compensation and litigation expenses?
5. Whether the respondent would be able to handover the possession of the said flat to the applicants by agreed time?
6. Whether respondent is manipulating statement of accounts and not maintaining it honestly?

**Reliefs sought: -**

- Direct the respondent to remit the total amount paid by the complainants towards Pre EMIs since month of November,2018 till date alongwith prescribed rate of interest.

- Direct the respondent to refund the amount paid by the complainants till date i.e. Rs. 41,00,515/- towards the cost of the said flat alongwith prescribed rate of interest.
- Direct the respondent to pay pre EMI before 30<sup>th</sup> of every month.
- Direct the respondent to maintain statement of accounts honestly.

**Application for rejection of complaint on behalf of the respondent:-**

13. The respondent has contended that the complaint filed by complainants is pre-mature, hence it is liable to be dismissed on this solely ground alone. As per Allotment Letter dated 31.7.2017, executed between the parties for allotment of unit No. J62A of project "Hill Town", the proposed possession date for the allotted unit was in the month of June 2019 and as per the agreed terms and conditions of the flat buyer agreement, a further grace period of 6 months was also agreed by the parties to the agreement, which comes will end up in December 2019, and prior to this no cause of action arose in favour of the complainant for filing the instant complaint. The

clause 26 of the Allotment Letter is reproduced herein below:-

*26. The Possession of the allotted Floor/ Apartment shall be given by **June 2019** subject to force majeure conditions with an extended grace period of **6 (six) months**. The developer also agrees to compensate the Allottee (s) @ Rs. 5/- per sq. feet of area of the Floor/Apartment per month for any delay in handing over possession of the floor/ Apartment beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.*

14. The respondent submitted that the project Supertech "Hill Town / Hill Crest Low Rise" is registered before this authority vide registration no. 258 of 2017 which is valid upto October 2020.

15. The respondent further contended that the complainant has not come with clean hands and has suppressed true and material fact before this hon'ble authority. Hence, the compliant may also be liable to be dismissed on this ground also. It has been held in various authorities by hon'ble Apex Court that "if a complaint is a pre-mature, then it can either await maturity or be returned to the complainant for filing latter."

**Determination of issues:-**

16. As regards **issue no. 1, 2 and 3** raised by the complainants, the authority has come across that as per clause (b) of the memorandum of understanding dated 28.08.2017 executed between the complainants and the respondent, the respondent was under contractual obligation to pay pre EMIs to the Allahabad bank till offer of possession under subvention payment plan. Relevant portion of clause (b) is reproduced below: -

*".....The developer expects to offer possession of the booked unit to the Buyer by that time. However if due to any reason the possession of the booked unit gets delayed, then the developer undertakes to pay the Pre EMI only to the buyer even after 27 months. The payment of Pre EMI shall continue till offer of possession with regard to the booked flat is issued to the buyer."*

However, the emails exchanged between the complainants and respondent dated 20.10.2018, 13.11.2018 and 20.12.2018 (annexed as **Annexure P\_P7**) clarified that the respondent has shown their inability to make payment of pre EMIs since November,2018 and put the complainants under the additional burden of paying the same to the Allahabad bank, which is clear cut violation of clause (b) of the MOU dated

28.8.2018 and also the provision of section 11(4)(a) of the Act  
ibid. Hence, the respondent is liable to refund the amount of pre  
EMIs to the complainant so paid since the month of November,  
2018.

17. As regards **issue no. 4** raised by the complainants, the authority  
has no jurisdiction to award damages/litigation expense and in  
this regard the complainant may file separate application before  
the adjudicating officer under section 71 and other relevant  
provisions of the Act, if required.

18. As regards **issue no. 5** raised by the complainants, since the due  
date of delivery of possession as per clause 26 of the allotment  
letter dated 31.07.2017 is 31.12.2019 which is yet to come.  
Moreover, the project is registered with the authority vide no.  
258 of 2017 as per which the revised date of completion of  
project is 02.10.2020, hence, at this stage the complainants are  
advised to wait till due date for delivery of possession. In case  
the respondent will fail to deliver the possession on due date,  
then the complainants are at liberty to file fresh complaint  
before adjudicating officer for refund of their paid amount.

19. As regards **issue no. 6** raised by the complainants, the complainants have failed to adduce any documentary evidence to prove the accounts have been manipulated by the respondent. Hence, this issue cannot be decided for the want of documentary evidence in support.

**Findings of the authority: -**

20. 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 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.

21. Arguments heard. By virtue of this complaint, the complainants are seeking direction against the respondent to remit the total amount paid by the complainant towards pre- EMIs since November, 2018 till date alongwith prescribed rate of interest and to pay pre-EMIs before 30<sup>th</sup> of every month. In addition to this, the complainants are also seeking relief in the shape of refund of Rs. 41,00,515/-.

22. During pendency of complaint, the complainant by moving an application dated 09.01.2019 sought permission of this authority to amend the complaint by restricting their relief to the extent of payment of pre EMIs by the respondent as per the terms of MoU dated 28.08.2017.

23. Brief facts of the matter are that the complainant had booked a unit/flat no. J-62A in the project "Officers Enclave", Sector 2, Sohna Road, Gurugram and allotment letter cum agreement to this effect was executed inter se the parties on 31.07.2017. In addition to it a memorandum of understanding (MoU) dated 28.08.2017 also executed inter se the parties. As per the terms and conditions of the said MoU, the respondent was obligated to pay the pre EMIs till possession of the unit in question be

delivered to the complainant, but the respondent has stopped to pay the requisite pre- EMIs since November, 2018.

24. Considering all the facts and circumstances of the matter and hearing the learned counsel for the parties, the authority is of the considered view that the respondent is liable to fulfil its obligation cast upon them by virtue of terms and conditions of MoU dated 28.08.2017 and to pay pre EMIs regularly.

**Decision and directions of the authority :-**

25. 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 pre EMIs due from November, 2018 onwards as per the terms and conditions of MoU dated 28.08.2017 alongwith prescribed rate of interest of 10.65% per annum, if
- (ii) period of 30 days from the date of issuance of this order.

(iii) The respondent is also directed to reimburse the amount of pre EMIs paid by the complainant till date alongwith prescribed rate of interest of 10.65% per annum.

26. Complaint is disposed of accordingly.

27. The order is pronounced.

28. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(SubhashChander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -16.05.2019

Judgement uploaded on 27.05.2019

**HARERA**  
**GURUGRAM**