

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

Complaint No. : 186 of 2018
First date of hearing: 24.05.2018
Date of Decision : 28.08.2018

Mr. Anil Kumar,
R/o. H. No. 780, first floor,
Section 9-A, Gurugram-122001

Complainant

Versus

M/s ALM Infotech Pvt. Ltd.
Regd. Office: B-418, New Friends Colony,
New Delhi-110087.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Anil Kumar
Shri Complainant in person
Shri Shrikant

Complainant in person
Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 08.04.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Anil Kumar, against the promoter, M/s ALM Infotech Pvt. Ltd., on account of violation of the clause 9(i) of the apartment buyer's agreement executed on 18.04.2013 in respect of apartment



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

Complaint No. : 186 of 2018
First date of hearing: 24.05.2018
Date of Decision : 28.08.2018

Mr. Anil Kumar,
R/o. H. No. 780, first floor,
Section 9-A, Gurugram-122001

Complainant

Versus

M/s ALM Infotech Pvt. Ltd.
Regd. Office: B-418, New Friends Colony,
New Delhi-110087.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Anil Kumar Complainant in person
Shri Complainant in person Advocate for the complainant
Shri Shrikant Advocate for the respondent

ORDER

1. A complaint dated 08.04.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Anil Kumar, against the promoter, M/s ALM Infotech Pvt. Ltd., on account of violation of the clause 9(i) of the apartment buyer's agreement executed on 18.04.2013 in respect of apartment





number/unit no. 2B, 2nd floor, block/tower 'Skytree' in the project 'ILD Grand' for not handing over possession on the due date i.e. 36 months from the date of agreement plus the grace period of 6 months, which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"ILD Grand", Sector 37, Gurugram
2.	Apartment/unit no.	2B on 2 nd floor, block/tower 'skytree'
3.	Apartment measuring	1819 sq. ft.
4.	RERA registered/ not registered.	Registered (386 of 2017)
5.	Booking date	21.02.2012
6.	Date of execution of apartment buyer's agreement	18 th April 2013
7.	Payment plan	Construction linked payment plan
8.	Basic sale price	Rs.58,22,619/-
9.	Total amount paid by the complainant till date	Rs.63,62,414/-
10.	Date of delivery of possession as per clause 9(i) of apartment buyer's agreement (36 Months + 6 months grace period from the date of agreement)	18 th October 2016
11.	Delay in handing over possession till date	1 year, 10 months and 12 days
12.	Penalty clause as per apartment buyer's agreement dated 18.04.2013	Clause 9(iii) of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 16th October, 2016. Neither the respondent has delivered the possession of the said unit till date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 9(iii) of apartment buyer's agreement dated 18.04.2013. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent did not appear on 24.05.2018. The case came up for hearing on 11.07.2018 & 28.08.2018. The reply filed on behalf of the respondent dated 14.05.2018 has been perused. The respondent has supplied the details and status of the project along with the reply. The complainant has filed a rejoinder dated 02.06.2018 wherein he has re-asserted the contentions raised in the complaint.



Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 10th October 2011 the complainant booked the flat in the project namely 'ILD Grand' situated at sector 37-C. That relying on the advertisement, the complainant had applied in an affordable housing project under 'Government of Haryana Affordable Housing Scheme' and was allotted the said apartment having a super area of 1819 sq. ft. approx. with an exclusive right to use of the apartment together with the proportionate undivided, unidentified, impartial interest in the land underneath with the right to use the common areas and facilities in the said housing complex vide apartment buyer's agreement.
6. The complainant paid booking amount of Rs.3,00,000/-. On 16.02.2012, the complainant received allotment letter from the respondent. The apartment buyer's agreement was executed on 18.04.2013 wherein the developer agreed to handover possession of the flat within 36 months plus 180 days grace period from the date of execution of the apartment buyer's agreement and the respondent failed to develop so called project within the said period. The builder has also taken more than 90% payment of total project cost and the project got delayed by 2 years even as per the agreement and is still under construction and there is no hope of possession.



That the complainant has been paying loan EMI and rent both and builder is not giving any compensation.

7. Issues raised by the complainants as per the amended complaint are as follow:

- i. Interest for the delay of the project as per the RERA rule.
- ii. Whether the complainant deserves to be compensated for rental expense as the complainant is paying loan EMI and house rent.

8. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondent to pay Interest for the delay of the project as per RERA rule.
- ii. Direct the respondent to pay compensation for rental expense Rs. 19,000/- per month.

Respondent's reply

9. The respondent admitted the fact that the complainant out of their free will booked a flat bearing no. 2B, in skytree, Type 3BR situated at 2nd floor, having super area 1819 sq. ft. approx. in 'ILD Grand' at sector 37C, Gurugram, Haryana. The complainant opted for construction linked payment plan and





fully aware that payment of the instalment has to be made in accordance with the construction.

10. That the project 'ILD Grand' is under construction stage and the respondent has taken the certificate under the RERA Act and valid for 21 months from 18.12.2017 and i.e. 17.09.2019. That the respondent will offer the possession of the flat after obtaining the Occupation Certificate. The major delays for construction and possession of ILD Grand is lack of infrastructure in these areas. Due to non-completion of sector road the respondent faced many hurdles to complete the project. The present complaint has been filed by the complainant with the sole purpose of compensation and without adding the co-applicant as the plaintiff. The present complaint lack merits and thus liable is to be dismissed.
11. That the respondent will fulfill its commitment as per the agreement dated 18.04.2013. The question of delay compensation shall be decided at the time of handing over possession of the aforesaid flat. It is wrong to say that there is no hope of possession of the said flat. Therefore, the contents of the issue and relief are denied, and the complaint is not entitled to the relief prayed for compensation as per the RERA Act and Rule.





Rejoinder

12. That the complainant is not responsible for the reasons given by the respondent i.e. lack of infrastructure/ lack of sector road and Govt. regulation. The sole purpose of the complaint is to get possession on time and have paid 95% money of total cost of flat on time. The complainant has nothing in his hand and is paying EMI loan and rent both. Therefore, the complainant is suffering of mental agony and depression.
13. That the respondent is liable to pay compensation of Rs.5/- per sq. ft. per month in case of delay. That the respondent had promised to give possession within three years from the date of booking. The complainant booked flat through some Mr. Deepesh Singh who was posted in ILD company as Assistant General Manager sales and he promised to the complainant that he will deliver the project within three years from the date of booking. The builder buyer agreement was made on 18.04.2013 by the persistent request made by the complaint to the respondent.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority is as under:





14. With respect to the first issue raised by the complainant the authority came across that as per clause 9(i) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of the booking of the flat or from the date of execution of builder buyer's agreement (with a grace period of 6 months) upon receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent in year 2011 and the builder buyer agreement was executed on 18.04.2013. Therefore, the due date of handing over possession will be computed from 18.04.2013. The clause regarding the possession of the said unit is reproduced below:

"9(i) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of the execution of this agreement, under normal circumstances."

15. Accordingly, the due date of possession was 18.10.16 and the possession has been delayed by one year seven months till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said flat as per clause 9(iii) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the





respondent and are completely one sided as also held in para 181 of Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017), wherein the Bombay HC bench held that:

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

16. As the possession of the flat was to be delivered by 18th October, 2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or





buildings, as the case may be, to the allottees are executed."

17. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

18. With respect to the second issue raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:





"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

19. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.
20. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered





opinion that the respondent has failed to deliver the possession of the apartment number 2B, 2nd floor, block/tower 'Skytree' to the complainant by the committed date i.e. 16th October 2016 as per the said agreement and the possession has been delayed by 1 year 10 months 12 days till the date of decision i.e. 28.08.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession. The complainant has made an amendment to the complaint dated 02.06.2018 whereby the complainant is seeking interest at the prescribed rate as per the rule of RERA. Further, the respondent has submitted during the oral arguments that the construction of the project is almost complete, and they shall offer the possession of the unit to the complainant by 17th September 2019.

Decision and directions of the authority

21. 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 duty bound to hand over the possession of the said unit by 17th September 2019 as committed by the respondent.
- (ii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% ^{p.a.} for every month of delay from the due date of possession i.e. 18.10.2016 till the actual date of handing over of the possession.
- (iii) In case the respondent defaults in giving possession by 17.09.2019, the complainant shall be at liberty to exercise his right as per section 19 (4) of the Act, ibid. the complaint is disposed of accordingly.

22. The order is pronounced.

Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date:28.08.2018

Corrected Judgement uploaded on 27.05.2019



Corrected vide
order dated
27/05/19.

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 28.08.2018
Complaint No.	186/2018 Case titled as Dr. Anil Kumar & Others V/s M/s Infotech City Pvt. Ltd.
Complainant	Dr. Anil Kumar & Others
Represented through	Complainant in person
Respondent	M/s Infotech City Pvt. Ltd.
Respondent Represented through	Shri Shrikant Advocate for the respondent.
Last date of hearing	11.07.2018

Proceedings

The Project is registered.

The allotment letter was issued on 21.2.2012 in respect of unit No.2B, 2nd floor, Tower-Skytree, ILD Grand, Sector-37C, Gurugram. The agreement was executed on 18.4.2013. As per clause-9 of the agreement, the developer was to handover possession within 36 months + 6 months grace period i.e. 18.10.2016. The project is likely to be completed by 17.9.2019. Keeping in view that there is failure on the part of the promoter to hand over the possession by due date, accordingly in terms of Section 18 (1) of the Real Estate (Regulation & Development) Act 2016, the allottee shall be paid by the promoter interest for every month of delay at the prescribed rate i.e. 10.45% till handing over the possession. (Once the offer of possession is made by the

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

builder, the allottee shall take possession within one month). In case of default in giving possession by 17.9.2019, the complainant shall be at liberty to exercise his right as per section 19 (4) of the Act ibid. The complaint is disposed of accordingly. Order is pronounced. Detailed order will follow. File be consigned to the Registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
28.08.2018

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

Complaint No. : 186 of 2018
First date of hearing: 24.05.2018
Date of Decision : 28.08.2018

Mr. Anil Kumar,
R/o. H. No. 780, first floor,
Section 9-A, Gurugram-122001

Complainant

Versus

M/s ALM Infotech Pvt. Ltd.
Regd. Office: B-418, New Friends Colony,
New Delhi-110087.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Anil Kumar Complainant in person
Shri Complainant in person Advocate for the complainant
Shri Shrikant Advocate for the respondent

ORDER

1. A complaint dated 08.04.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Anil Kumar, against the promoter, M/s ALM Infotech Pvt. Ltd., on account of violation of the clause 9(i) of the apartment buyer's agreement executed on 18.04.2013 in respect of apartment



number/unit no. 2B, 2nd floor, block/tower 'Skytree' in the project 'ILD Grand' for not handing over possession on the due date i.e. 36 months from the date of agreement plus the grace period of 6 months, which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"ILD Grand", Sector 37, Gurugram
2.	Apartment/unit no.	2B on 2 nd floor, block/tower 'skytree'
3.	Apartment measuring	1819 sq. ft.
4.	RERA registered/ not registered.	Registered (386 of 2017)
5.	Booking date	21.02.2012
6.	Date of execution of apartment buyer's agreement	18 th April 2013
7.	Payment plan	Construction linked payment plan
8.	Basic sale price	Rs.58,22,619/-
9.	Total amount paid by the complainant till date	Rs.63,62,414/-
10.	Date of delivery of possession as per clause 9(i) of apartment buyer's agreement (36 Months + 6 months grace period from the date of agreement)	18 th October 2016
11.	Delay in handing over possession till date	1 year, 10 months and 12 days
12.	Penalty clause as per apartment buyer's agreement dated 18.04.2013	Clause 9(iii) of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 16th October, 2016. Neither the respondent has delivered the possession of the said unit till date to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 9(iii) of apartment buyer's agreement dated 18.04.2013. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent did not appear on 24.05.2018. The case came up for hearing on 11.07.2018 & 28.08.2018. The reply filed on behalf of the respondent dated 14.05.2018 has been perused. The respondent has supplied the details and status of the project along with the reply. The complainant has filed a rejoinder dated 02.06.2018 wherein he has re-asserted the contentions raised in the complaint.



Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 10th October 2011 the complainant booked the flat in the project namely 'ILD Grand' situated at sector 37-C. That relying on the advertisement, the complainant had applied in an affordable housing project under 'Government of Haryana Affordable Housing Scheme' and was allotted the said apartment having a super area of 1819 sq. ft. approx. with an exclusive right to use of the apartment together with the proportionate undivided, unidentified, impartial interest in the land underneath with the right to use the common areas and facilities in the said housing complex vide apartment buyer's agreement.
6. The complainant paid booking amount of Rs.3,00,000/-. On 16.02.2012, the complainant received allotment letter from the respondent. The apartment buyer's agreement was executed on 18.04.2013 wherein the developer agreed to handover possession of the flat within 36 months plus 180 days grace period from the date of execution of the apartment buyer's agreement and the respondent failed to develop so called project within the said period. The builder has also taken more than 90% payment of total project cost and the project got delayed by 2 years even as per the agreement and is still under construction and there is no hope of possession.



That the complainant has been paying loan EMI and rent both and builder is not giving any compensation.

7. Issues raised by the complainants as per the amended complaint are as follow:

- i. Interest for the delay of the project as per the RERA rule.
- ii. Whether the complainant deserves to be compensated for rental expense as the complainant is paying loan EMI and house rent.

8. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondent to pay Interest for the delay of the project as per RERA rule.
- ii. Direct the respondent to pay compensation for rental expense Rs. 19,000/- per month.

Respondent's reply

9. The respondent admitted the fact that the complainant out of their free will booked a flat bearing no. 2B, in skytree, Type 3BR situated at 2nd floor, having super area 1819 sq. ft. approx. in 'ILD Grand' at sector 37C, Gurugram, Haryana. The complainant opted for construction linked payment plan and



fully aware that payment of the instalment has to be made in accordance with the construction.

10. That the project 'ILD Grand' is under construction stage and the respondent has taken the certificate under the RERA Act and valid for 21 months from 18.12.2017 and i.e. 17.09.2019. That the respondent will offer the possession of the flat after obtaining the Occupation Certificate. The major delays for construction and possession of ILD Grand is lack of infrastructure in these areas. Due to non-completion of sector road the respondent faced many hurdles to complete the project. The present complaint has been filed by the complainant with the sole purpose of compensation and without adding the co-applicant as the plaintiff. The present complaint lack merits and thus liable is to be dismissed.
11. That the respondent will fulfill its commitment as per the agreement dated 18.04.2013. The question of delay compensation shall be decided at the time of handing over possession of the aforesaid flat. It is wrong to say that there is no hope of possession of the said flat. Therefore, the contents of the issue and relief are denied, and the complaint is not entitled to the relief prayed for compensation as per the RERA Act and Rule.



Rejoinder

12. That the complainant is not responsible for the reasons given by the respondent i.e. lack of infrastructure/ lack of sector road and Govt. regulation. The sole purpose of the complaint is to get possession on time and have paid 95% money of total cost of flat on time. The complainant has nothing in his hand and is paying EMI loan and rent both. Therefore, the complainant is suffering of mental agony and depression.
13. That the respondent is liable to pay compensation of Rs.5/- per sq. ft. per month in case of delay. That the respondent had promised to give possession within three years from the date of booking. The complainant booked flat through some Mr. Deepesh Singh who was posted in ILD company as Assistant General Manager sales and he promised to the complainant that he will deliver the project within three years from the date of booking. The builder buyer agreement was made on 18.04.2013 by the persistent request made by the complaint to the respondent.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority is as under:



14. With respect to the first issue raised by the complainant the authority came across that as per clause 9(i) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of the booking of the flat or from the date of execution of builder buyer's agreement (with a grace period of 6 months) upon receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent in year 2011 and the builder buyer agreement was executed on 18.04.2013. Therefore, the due date of handing over possession will be computed from 18.04.2013. The clause regarding the possession of the said unit is reproduced below:

"9(i) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of the execution of this agreement, under normal circumstances."

15. Accordingly, the due date of possession was 18.10.16 and the possession has been delayed by one year seven months till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the said flat as per clause 9(iii) of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the



respondent and are completely one sided as also held in para 181 of Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017), wherein the Bombay HC bench held that:

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

16. As the possession of the flat was to be delivered by 18th October, 2016 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

"11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or



buildings, as the case may be, to the allottees are executed.”

17. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.



18. With respect to the second issue raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

19. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage.
20. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered



opinion that the respondent has failed to deliver the possession of the apartment number 2B, 2nd floor, block/tower 'Skytree' to the complainant by the committed date i.e. 16th October 2016 as per the said agreement and the possession has been delayed by 1 year 10 months 12 days till the date of decision i.e. 28.08.2018. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession. The complainant has made an amendment to the complaint dated 02.06.2018 whereby the complainant is seeking interest at the prescribed rate as per the rule of RERA. Further, the respondent has submitted during the oral arguments that the construction of the project is almost complete, and they shall offer the possession of the unit to the complainant by 17th September 2019.

Decision and directions of the authority

21. 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 duty bound to hand over the possession of the said unit by 17th September 2019 as committed by the respondent.
- (ii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 18.10.2016 till the actual date of handing over of the possession.
- (iii) In case the respondent defaults in giving possession by 17.09.2019, the complainant shall be at liberty to exercise his right as per section 19 (4) of the Act, ibid. the complaint is disposed of accordingly.

22. The order is pronounced.

Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



Date:28.08.2018