

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

Complaint no. : 197 of 2018
Date of First
hearing : 29.05.2018
Date of decision : 22.11.2018

1. Mr. Sanjay Dhawan
2. Sheeba Dhawan
R/o House no.933, Sector 17B, Gurgaon,
Haryana-122001

...Complainants

Versus

M/s Emaar MGF Land Limited
Office at: Emaar Business Park, Mehrauli
Gurgaon Road, Sikanderpur Chowk, Sector-
28, Gurugram, Haryana-122002
Also at: 1st floor, ECE House, 28, Kasturba
Gandhi Marg, New Delhi-110001

...Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Complainant in person
Shri Ketan Luthra, legal
representative of the
respondent company with Shri
J.K. Dang, Advocate

Advocate for the complainants

Advocate for the respondent



ORDER

1. A complaint dated 25.04.2018 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 Mr. Sanjay Dhawan and Smt. Sheeba Dhawan against the promoter M/s Emaar MGF Land Limited on account of violation of clause 14(a) of the buyer's agreement executed on 28.03.2018 for unit no. PTS-01-0601 on 6th floor, measuring in the project "The Palm Terraces Select" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the act ibid.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"The Palm Terraces Select" in Sector 66, Gurugram
2.	Unit no.	PTS-01-0601
3.	Project area	45.373 acres
4.	Registered/ not registered	Registered (19 of 2018)
5.	DTCP license	50 of 2010, 93 of 2008, 228 of 2007
6.	Date of booking	19.07.2010 Note: Demand raised on 18.07.2010. But booking amount paid on 19.07.2010





7.	Date of provisional allotment letter	10.08.2010
8.	Date of buyer's agreement	28.03.2018
9.	Total consideration	Rs. 1,75,59,457/- (as per statement of account dated 09.03.2018)
10.	Total amount paid by the complainant	Rs. 1,66,97,119/-
11.	Payment plan	Construction linked plan
12.	Occupation certificate received on	25.01.2018
13.	Date of delivery of possession Note: Date of booking is 19.07.2010. However, buyer's agreement was executed on 28.03.2018. As per clause 14(a) of agreement, due date of possession - 24 months from date of execution of agreement + 3 months grace period i.e. 28.06.2020. Thus, the complaint will be pre-mature. On 09.03.2018, an offer of possession was made to the complainants. In these circumstances, it will be just to calculate the due date of possession as per the application for provisional allotment.	Clause 20 of application for provisional allotment dated 18.07.2010- 36 months from commencement of construction, i.e. 31.07.2012(on start of foundation- as per statement of account dated 09.03.2018-pg 69 of the complaint) + 3 months, i.e. 31.10.2015
14.	Delay of number of months/ years up to 09.03.2018(date of offer of possession)	2 years 4 months
15.	Penalty clause as per provisional allotment letter dated 18.07.2010	Clause 21- Rs. 7.50/- per sq. ft. of super area of unit per month





3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer's agreement dated 28.03.2018 is available on record for unit no. PTS-01-0601 on 6th floor, tower/block no.01 admeasuring approx. 2410 sq. ft. However, the date of booking is 19.07.2010 and more than 7 years have elapsed since the said date. As per clause 14(a) of agreement, due date of possession comes out to be 28.06.2020(24 months from date of execution of agreement + 3 months grace period) and thus, the complaint will be pre-mature. On the contrary, on 09.03.2018, an offer of possession was made to the complainants, prior to the execution of the agreement. In these circumstances, it will be just to calculate the due date of possession from the date of booking as per the application for provisional allotment. Accordingly, as per clause 20 of application for provisional allotment dated 18.07.2010, the due date of possession is 31.10.2015 (36 months from commencement of construction, i.e. 31.07.2012(on start of foundation- as per statement of account dated 09.03.2018-pg 69 of the complaint) + 3 months).
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.





Accordingly, the respondent appeared on 29.05.2018. The case came up for hearing on 29.05.2018, 14.06.2018, 18.07.2018, 26.07.2018, 30.08.2018, 04.10.2018 and 05.11.2018. The reply has been filed by the respondent on 07.06.2018.

Facts of the complaint

5. On 19.07.2010, the complainants booked a unit in the project named "Palm Terraces Select", Sector 66, Gurugram by paying an advance amount of Rs 10,00,000/- to the respondent. Accordingly, the complainants were allotted a unit bearing PTS-01-0601 on 6th floor.
6. The complainants submitted that the respondent collected a sum of approx Rs 44.00 lacs within 90 days period of booking of the flat. This was approx 26% of the proposed flat cost. On 10.08.2010, the welcome letter along with the provisional allotment letter was sent.
7. The complainants made payments of all instalments demanded by the respondent and within first 4 years and 5 months, an amount of Rs. 1.66 crores, amounting to over 98% of the proposed value was paid by the complainants.
8. The complainants submitted that more than 7 years and 9 months have passed from the date of booking, but still the



project has not been completed and possession has not been handed over.

9. The complainants further submitted that as per the RERA, the promoter cannot accept more than 10% of the cost of the flat from a person without entering into a written agreement.
10. It is further submitted that the respondent asked the complainants to pay a sum of Rs.2,59,777/- as an FD endorsed to the respondent in lieu of a contingent liability of GST/HVAT post March 2014. Further, the respondent has demanded a sum of Rs.1,19,440/- as advance maintenance charges for 1 year as a precondition to handing over the possession which is not right as possession cannot be linked to paying maintenance charges. The complainants submitted that they have no faith in the competence of the respondent to deliver an apartment with promised quality.

11. Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:

- I. Whether the property is in ready condition to be handed over to the complainant?
- II. Whether the complainants are entitled to refund along



with interest at the prescribed rate?

- III. Whether there are anomalies in price, errors in accounts, arbitrary increase in price?
- IV. Whether the complainants are entitled to compensation for the delay in giving in possession and mental agony and harassment subsequently caused?

12. Relief sought

- I. Refund of the principal amount paid along with interest.
- II. Request from the authority to appoint an inspecting officer to inspect the project site.
- III. Compensation for the delay in handing over the possession.
- IV. Compensation for the litigation cost of Rs.5,00,000/-.
- V. Penalize the respondent with Rs.20,00,000/- for mental harassment and undue pressure.



Respondent's reply

13. The respondent stated that the present complaint is not maintainable in law or facts. The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the project in question. Application for occupation certificate was made on 01.07.2017 which is before the notification of



the Haryana Real Estate (Regulation and Development) Rules 2017. The occupation certificate has been thereafter issued on 25.01.2018. Thus, the project is not an 'on-going project'. The present complaint is liable to be dismissed on this ground alone.

14. The respondent submitted that the present complaint has been filed seeking possession, interest and compensation for alleged delay in delivering possession of the apartment booked by the complainant. Thus, it was further submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicating officer under section 71 of the said act read with rule 29 of HARERA rules 2017 and not by this authority.
15. The respondent submitted that the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the agreement.
16. Respondent further submitted that the complainants have been extremely irregular in payment of instalments.



17. Respondent submitted that the construction of the project/apartment in question stands completed and the respondent had already applied for the occupation certificate and had been granted the same for various towers including the tower in which the unit of the complainant is situated. Further, vide letter dated 09.03.2018, offer of possession was made to the complainants. Complainants were called upon to complete certain formalities detailed in the said letter and also to make payment of outstanding amount.
18. It is further submitted that instead of doing the needful, the complainants have proceeded to institute the present false and frivolous complaint. It is submitted that as soon as the balance payment is remitted by the complainants and the necessary formalities are completed, the respondent shall hand over the possession of the apartment to the complainants.
19. The respondent submitted that there is no default or lapse on the part of the respondent. It is the complainants who are refraining from taking the possession of the apartment by raising false and frivolous excuses.
20. The respondent submitted that all the payments were demanded and realised strictly in accordance with the



payment schedule admitted and acknowledged by the complainants to be correct. Further, the respondent has got no control over the taxation policies. As far as the excess amount is concerned, the same is a result of reversal of statutory charges.

21. The respondent denied that they hold more than 98.8% value of the property without assigning any legally conforming buyer's agreement. Rather, the respondent had sent the buyer's agreement for execution in 17.09.2010 and it was the complainants who failed to execute the same and send back to the respondent for execution at their end.
22. The respondent denied any demand of furnishing of fixed deposit towards satisfaction of VAT liability or demand of maintenance charges is illegal or wrongful.
23. The respondent denied that any substandard quality materials have been utilised in the construction. No particulars of alleged substandard materials used in the construction have been furnished by the complainants.



Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the

authority decides seriatim the issues raised by the parties as under:

24. With respect to the **first issue** raised by the complainant, it is submitted by the respondent in his reply that the occupation certificate for the tower in question has been obtained by him on 25.01.2018 and the apartment in question is ready for possession and accordingly, a letter for offer of possession dated 09.03.2018 was sent to the complainants. Further, in regard to the point of substandard quality of construction raised by the complainants is concerned, the complainants have failed to furnish any material particulars in this regard.
25. With respect to **second issue**, the apartment in question was offered for possession to the complainants on 09.03.2018. Thus, in these circumstances, the complainants cannot be entitled to refund of the amount paid by them. As discussed above, the due date of handing over possession as per the application for provisional allotment is 31.10.2015. Thus, the complainants are entitled to interest at the prescribed rate of 10.75% p.a. from the due date of 31.10.2015 till the date of offer of possession, i.e. 09.03.2018.
26. With respect to **third issue**, the complainants submitted that as per the initial brochure, the total amount was Rs.



1,66,89,733/-. However, it has been enhanced to Rs. 1,68,54,215. The respondents submitted that no amount has been illegally charged from the complainants and the increase if any is on account of taxation charges. However, in this regard, if the complainants have any grievance with respect to the amount enhanced on account of tax, they can approach the appropriate forum.

27. With respect to **fourth issue**, the authority does not have the jurisdiction to grant compensation. Thus, the complainants can seek compensation before the adjudicating officer.
28. 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.

29. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

30. **Jurisdiction of the authority-** The project "The Palm





Terraces Select” is located in Sector 66, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. 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 preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.



31. Keeping in view the status of the project, submissions and arguments made by the parties and other intervening circumstances, the authority is of the view that the respondent has already offered possession on 09.03.2018.

Thus, the complainants are bound to take possession of the apartment within one month, failing which they can be penalized under the act. Further, it has been accepted that the occupation certificate issued by the competent authority is only for the part of the project, but large number of amenities in the project are still to be completed/constructed by the respondent. Respondent in their registration application have mentioned that completion date of the project was 30.04.2018. Accordingly, complainants are at liberty if such amenities are not provided by the respondent, they may approach the authority/Adjudicating Officer either for fulfillment of the obligation and or for compensation before the Adjudicating Officer.

Decision and directions of the authority

32. 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:

- (i) The respondent has already offered possession on 09.03.2018. Accordingly, complainants are bound to take possession within one month and, in case the possession is not taken by the complainants during the prescribed period, they may also be penalized as per provisions of the



Act. The respondent is duty bound to allow the complainants to get the flat/apartment inspected before handing over the possession. Complainants after taking over the possession of the flat/apartment may approach the respondent for removal of any defect(s) noticed per the obligation on the part of the promoter provided under the Act. In case of non-compliance, complainants may lodge a complaint before the authority.

- (ii) The complainants raised question of holding charges and maintenance charges for which counsel for the respondent assured that the matter would be settled outside the authority. The authority further directs the respondent to give details of holding charges and maintenance charges along with justification.
- (iii) The respondent is further directed to take action for handing over common area either to the association of the allottees or to the competent authority as the case may be.
- (iv) Under the Transfer of Property Act, the owner has absolute right to transfer the property. If there is any hindrance created by the respondent, the complainants may seek remedy.



- (v) The matter regarding removal of lien also came up during arguments and the counsel for the respondent assured that lien on the property would be removed within 15 days if the loan has already been paid by the complainants and certificate to this effect to be submitted to the respondent.
- (vi) The respondent is directed to charge registration charges and stamp charges as per the provisions of law and if at all some administrative charges have been allowed by the district administration but not beyond, over and above or in excess of the legal charges.
- (vii) The counsel for the respondent assured on 22.11.2018 that within a week, a statement of accounts would be made available to the complainants and thereafter within a week, complainants may raise objection, if any, and thereafter within a week, respondent will reply to the objections raised by the complainants. As on now, there are no details available as to what are the reasonable charges over and above in the agreement. If there remains any specific dispute about payment, complainants may approach the authority by filing a separate complaint.
- (viii) The authority further directs that respondent shall be responsible for payment/adjustment of the interest at the



prescribed rate of interest i.e. 10.75% per annum for every month of delay from due date of possession i.e. 31.10.2015 till the date of offer of possession i.e. 9.3.2018. Dues, if any, to be paid by the complainants to the respondent before taking over possession of the unit from the respondent. After adjustment of the interest and order passed on 18.7.2018 corrected statement of accounts will be submitted by the respondent to the authority and copy of the same shall be provided to the complainants and if any, dues from the complainants are still due, they will be paid to the respondent.


within 90 days from the date of order.

33. The complaint is disposed of accordingly.
34. The order is pronounced.
35. 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

Dated: 22.11.2018

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Corrected Judgement uploaded on 27.04.2019

Corrected vide order dated 24.04.2019.

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 22.11.2018
Complaint No.	197/2018 Case titled as Sanjay Dhawan & Mrs. Sheeba Dhawan V/S M/S EMAAR Mgf Land Ltd
Complainant	Sanjay Dhawan & Mrs. Sheeba Dhawan
Represented through	Complainant in person
Respondent	M/S EMAAR Mgf Land Ltd
Respondent Represented through	Shri Ketan Luthra, authorized representative with S/Shri J.K. Dang and Ishaan Dang, Advocates.
Last date of hearing	5.11.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Written arguments submitted by the parties alongwith further arguments have been considered. The authority after hearing both the parties decides as under:-

- (i) Complainant accepted that the occupation certificate issued by the competent authority is only for the part of the project, but large number of amenities in the project are still to be completed/constructed by the respondent. Respondent in their registration application have mentioned that completion date of the project was 9.3.2018. Accordingly, complainant is at liberty if such amenities are not provided by the due date by the respondent he may approach the authority/Adjudicating Officer either for fulfillment of the obligation and or for compensation before the Adjudicating Officer.

- (ii) Respondents have already offered possession on 9.3.2018. Accordingly, complainant is bound to take possession within one month and, in case, the possession is not taken by the complainant during the prescribed period, he may also be penalized as per provisions of the Act. Respondent is duty bound to allow the complainant to get the flat/apartment inspected before handing over the possession. Complainant after taking over the possession of the flat/apartment may approach the respondent for removal of any defect(s) noticed per the obligation on the part of the promoter provided under the Act. In case of non-compliance, complainant may lodge a complaint before the authority.
- (iii) Complainant raised question of holding charges and maintenance charges for which counsel for the respondent assured that the matter would be settled outside the authority. The authority further directs the respondent to give details of holding charges and maintenance charges alongwith justification.
- (iv) Respondent is further directed to take action for handing over common area either to the association of the allottees or to the competent authority as the case may be.
- (v) Under the Transfer of Property Act, the owner has absolute right to transfer the property. If there is any hindrance created by the respondent, the complainant may seek remedy.
- (vi) The matter regarding removal of lien also came up during arguments and the counsel for the respondent was kind enough and assured that lien on the property would be removed within 15 days if the loan has already been paid by the complainant and certificate to this effect to be submitted to the respondent.
- (vii) Respondents are directed to charge registration charges and stamp charges as per the provisions of law and if at all some administrative charges have been allowed by the district

administration but not beyond over and above or in excess of the legal charges.

(viii) Counsel for the respondent assured that within a week, a statement of accounts would be made available to the complainant and thereafter within a week, complainant may raise objection, if any, and thereafter within a week, respondent will reply to the objections raised by the complainant. If there remains any specific dispute about payment, complainant may approach the authority by filing a separate complaint. As on now we have no details as to what are the reasonable charges over and above in the agreement.

(ix) The authority further directs that respondent shall be responsible for payment/adjustment of the interest at the prescribed rate of interest i.e. 10.75% per annum for every month of delay from due date of possession i.e. 31.10.2015 till the date of offer of possession i.e. 9.3.2018. Dues, if any, to be paid by the complainant to the respondent before taking over possession of the unit from the respondent. **After adjustment of the interest and order passed on 18.7.2018 corrected statement of accounts will be submitted by the respondent to the authority and copy of the same shall be provided to the complainant and if any, dues from the complainant are still due, they will be paid to the respondent.**

Accordingly the complainant stands disposed of in above terms.

Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
22.11.2018

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

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3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A buyer's agreement dated 28.03.2018 is available on record for unit no. PTS-01-0601 on 6th floor, tower/block no.01 admeasuring approx. 2410 sq. ft. However, the date of booking is 19.07.2010 and more than 7 years have elapsed since the said date. As per clause 14(a) of agreement, due date of possession comes out to be 28.06.2020(24 months from date of execution of agreement + 3 months grace period) and thus, the complaint will be pre-mature. On the contrary, on 09.03.2018, an offer of possession was made to the complainants, prior to the execution of the agreement. In these circumstances, it will be just to calculate the due date of possession from the date of booking as per the application for provisional allotment. Accordingly, as per clause 20 of application for provisional allotment dated 18.07.2010, the due date of possession is 31.10.2015 (36 months from commencement of construction, i.e. 31.07.2012(on start of foundation- as per statement of account dated 09.03.2018-pg 69 of the complaint) + 3 months).
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20. The respondent submitted that all the payments were demanded and realised strictly in accordance with the



payment schedule admitted and acknowledged by the complainants to be correct. Further, the respondent has got no control over the taxation policies. As far as the excess amount is concerned, the same is a result of reversal of statutory charges.

21. The respondent denied that they hold more than 98.8% value of the property without assigning any legally conforming buyer's agreement. Rather, the respondent had sent the buyer's agreement for execution in 17.09.2010 and it was the complainants who failed to execute the same and send back to the respondent for execution at their end.
22. The respondent denied any demand of furnishing of fixed deposit towards satisfaction of VAT liability or demand of maintenance charges is illegal or wrongful.
23. The respondent denied that any substandard quality materials have been utilised in the construction. No particulars of alleged substandard materials used in the construction have been furnished by the complainants.



Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the

authority decides seriatim the issues raised by the parties as under:

24. With respect to the **first issue** raised by the complainant, it is submitted by the respondent in his reply that the occupation certificate for the tower in question has been obtained by him on 25.01.2018 and the apartment in question is ready for possession and accordingly, a letter for offer of possession dated 09.03.2018 was sent to the complainants. Further, in regard to the point of substandard quality of construction raised by the complainants is concerned, the complainants have failed to furnish any material particulars in this regard.
25. With respect to **second issue**, the apartment in question was offered for possession to the complainants on 09.03.2018. Thus, in these circumstances, the complainants cannot be entitled to refund of the amount paid by them. As discussed above, the due date of handing over possession as per the application for provisional allotment is 31.10.2015. Thus, the complainants are entitled to interest at the prescribed rate of 10.75% p.a. from the due date of 31.10.2015 till the date of offer of possession, i.e. 09.03.2018.
26. With respect to **third issue**, the complainants submitted that as per the initial brochure, the total amount was Rs.



1,66,89,733/-. However, it has been enhanced to Rs. 1,68,54,215. The respondents submitted that no amount has been illegally charged from the complainants and the increase if any is on account of taxation charges. However, in this regard, if the complainants have any grievance with respect to the amount enhanced on account of tax, they can approach the appropriate forum.

27. With respect to **fourth issue**, the authority does not have the jurisdiction to grant compensation. Thus, the complainants can seek compensation before the adjudicating officer.

28. 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.

29. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Findings of the authority

30. **Jurisdiction of the authority-** The project "The Palm



Terraces Select” is located in Sector 66, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. 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 preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.



31. Keeping in view the status of the project, submissions and arguments made by the parties and other intervening circumstances, the authority is of the view that the respondent has already offered possession on 09.03.2018.

Thus, the complainants are bound to take possession of the apartment within one month, failing which they can be penalized under the act. Further, it has been accepted that the occupation certificate issued by the competent authority is only for the part of the project, but large number of amenities in the project are still to be completed/constructed by the respondent. Respondent in their registration application have mentioned that completion date of the project was 30.04.2018. Accordingly, complainants are at liberty if such amenities are not provided by the respondent, they may approach the authority/Adjudicating Officer either for fulfillment of the obligation and or for compensation before the Adjudicating Officer.

Decision and directions of the authority

32. 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:

- (i) The respondent has already offered possession on 09.03.2018. Accordingly, complainants are bound to take possession within one month and, in case the possession is not taken by the complainants during the prescribed period, they may also be penalized as per provisions of the



Act. The respondent is duty bound to allow the complainants to get the flat/apartment inspected before handing over the possession. Complainants after taking over the possession of the flat/apartment may approach the respondent for removal of any defect(s) noticed per the obligation on the part of the promoter provided under the Act. In case of non-compliance, complainants may lodge a complaint before the authority.

- (ii) The complainants raised question of holding charges and maintenance charges for which counsel for the respondent assured that the matter would be settled outside the authority. The authority further directs the respondent to give details of holding charges and maintenance charges along with justification.
- (iii) The respondent is further directed to take action for handing over common area either to the association of the allottees or to the competent authority as the case may be.
- (iv) Under the Transfer of Property Act, the owner has absolute right to transfer the property. If there is any hindrance created by the respondent, the complainants may seek remedy.



- (v) The matter regarding removal of lien also came up during arguments and the counsel for the respondent assured that lien on the property would be removed within 15 days if the loan has already been paid by the complainants and certificate to this effect to be submitted to the respondent.
- (vi) The respondent is directed to charge registration charges and stamp charges as per the provisions of law and if at all some administrative charges have been allowed by the district administration but not beyond, over and above or in excess of the legal charges.
- (vii) The counsel for the respondent assured on 22.11.2018 that within a week, a statement of accounts would be made available to the complainants and thereafter within a week, complainants may raise objection, if any, and thereafter within a week, respondent will reply to the objections raised by the complainants. As on now, there are no details available as to what are the reasonable charges over and above in the agreement. If there remains any specific dispute about payment, complainants may approach the authority by filing a separate complaint.
- (viii) The authority further directs that respondent shall be responsible for payment/adjustment of the interest at the



prescribed rate of interest i.e. 10.75% per annum for every month of delay from due date of possession i.e. 31.10.2015 till the date of offer of possession i.e. 9.3.2018. Dues, if any, to be paid by the complainants to the respondent before taking over possession of the unit from the respondent. After adjustment of the interest and order passed on 18.7.2018 corrected statement of accounts will be submitted by the respondent to the authority and copy of the same shall be provided to the complainants and if any, dues from the complainants are still due, they will be paid to the respondent.

33. The complaint is disposed of accordingly.
34. The order is pronounced.
35. Case file be consigned to the registry.

HARERA
GURUGRAM



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2018

Judgement Uploaded on 08.01.2019

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