

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

Complaint no. : 711 of 2018  
First date of hearing : 18.12.2018  
Date of decision : *15.01.2019*

Mr. Sandeep Singhal  
R/o H no. 415/5, main market road  
Patel Nagar, Gurugram.

**.. Complainant**

Versus

M/s Umang Realtech Pvt Ltd  
Registered office D-64, 2<sup>nd</sup> floor, Defence  
colony,  
New Delhi- 110001.

**...Respondent**

**CORAM:**

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

**Chairman  
Member  
Member**

**APPEARANCE:**

Advocate for the complainant  
Advocate for the respondent



**ORDER**

1. A complaint dated 10.08.2018 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 complainant, Mr Sandeep Singhal against the promoter M/s Umang Realtech Pvt Ltd.

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

2. Since, the apartment buyers agreement dated 09.02.2015 has been executed prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by both the parties, the authority has decided to treat this complaint as an application to issue directions for compliance of obligations by the promoters under section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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

**Nature of project: Residential**

**DTCP License no: 38 of 2008 dated 02.03.2008 and 77 of 2012 Dated 01.08.2012**

1.	Name and location of the project	Monsoon Breeze 78 II Sector 78, Gurugram.
2.	Registered/Unregistered	<b>Registered</b> 14 of 2018 dated 16.01.2018
3.	RERA registration valid up to	<b>31.12.2020</b>
4.	Unit no.	402, tower-P, 4 <sup>th</sup> floor
5.	Unit admeasuring	1550 sq. ft.
6.	Date of agreement	09.02.2015
7.	Total consideration As per 3.1 of the agreement	Rs. 98,87,500 /-
8.	Total amount paid by the complainant	Rs. 31,71,328/-





	as per clause 4.2 of the agreement	
9.	Payment plan	Construction linked
10.	Date of approval of building plans	Not available
11.	Date of delivery of possession. Clause 6.1 & 6.2 (42 from the date of approval of building plans or the signing of agreement whichever is later months + 180 days grace period	09.02.2019 (calculated from date of agreement)
12.	Delay in handing over possession till date	Pre mature
13.	Penalty clause as per apartment buyer's agreement	Clause 6.7 of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.
14.	Environmental clearance	21.02.2014

3. As per the details provided above, which have been checked as per record of the case file. An apartment buyer agreement is available on record for unit no. 402, tower-P, 4<sup>th</sup> floor. The promoter has failed to deliver the possession of the said unit to the complainants. 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 for appearance. Accordingly, the respondent appeared on 13.12.2018. The case came up for hearing on 18.12.2018 and 15.01.2019. The reply has been filed on behalf of the respondent.



### FACTS OF THE CASE

5. Mr. Sandeep Singhal booked an apartment admeasuring 1550 sq. ft. in the aforesaid project of the respondent for a total sale consideration of Rs 98,87,500/- which includes BSP, car parking, PLC, EDC etc. the complainant has made a payment of Rs 31,71,328 to the respondent vide different cheques on different dates.
6. That as per the flat buyers agreement the respondent had allotted a unit bearing number P-402 on 4<sup>th</sup> floor in tower P having a super area of 1550 sq ft. that as per clause 6.1 of the said agreement the respondent had agreed to deliver the possession of the flat within 42 months from the date of signing of the agreement with an extended period of 180 days.
7. That the complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. The only intention of the respondent was to take payments for the project without completing the work. The respondent has cheated the complainant. That despite receiving the payments as per demands raised by the



respondent, the respondent has failed to deliver the possession of the allotted flat.

8. That it could be seen that the construction of the project in which the complainant flat was booked with a promise by the respondent to deliver the flat by the due date was not completed within time for the reasons best known to the respondent.
9. That on 31.08.2017 the complainant came to know that the respondents are not developing the said project and on being contacted by the respondent company they were asked to shift to another project of the respondent.
10. That keeping in view of the present status of the project, the complainant wishes to withdraw from the project and seek refund of the amount invested by him in the said project.

**ISSUES RAISED BY THE COMPLAINANT:**

11. The following issues has been raised by the complainant
  - i. Whether or not the respondent has violated the terms and conditions of the builder buyers agreement thereby delaying possession of the booked unit? OR



- ii. **Whether or not the complainant is entitled for refund of the money invested by him in the said project?**

**RELIEF SOUGHT BY THE COMPLAINANT:**

15. **The following reliefs have been prayed for:**
- Direct the respondent to refund the amount of Rs 31,71,328/- along with interest**
  - Any other relief which this hon'ble authority deem fit to meet the ends of justice.**

**REPLY BY THE RESPONDENT:**

16. It is denied that as per the terms of apartment buyer agreement dated ~~09.04.2014~~ <sup>09.02.2015</sup>, the respondent was obligated to deliver the possession of the apartment within 42 months from the date of the agreement and with the grace period of 180 days. Therefore, the due date for handing over possession of the subject apartment is ~~09.08.2019~~ <sup>09.02.2019</sup>. As the complaint is premature and deserve to be dismissed.

17. ~~Respondent has offered the booking in another project Winter Hills 77, which is situated in Sector 77 Gurugram was offered to complainant.~~ Since the subject project has run into some impediments created due to certain unforeseen

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





circumstances which are completely beyond the control of the respondent and thus, constitute force majeure event in the terms of clause 6.4 of the agreement. ~~Thus, the complainant was offered to shift the booking of the apartment of similar specification in the project. It is an admitted fact that the complainant had given the consent to such transfer of booking. It is denied on the date of such meeting, issue arose on the terms of payment.~~

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18. It is submitted that not only is the instant complaint premature, ~~but the complainant has agreed to shift the booking i.e. Winter Hills 77 Gurugram is located at a very short distance.~~ Further, the said project is nearing completion of construction and development activity at the said project would be completed by January 2019 which is much before the stipulated time for offering of possession under the subject project.

19. Respondent is entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract between parties.



20. The respondent is entitled to reasonable extension of time for completion of apartment because the delay in handing over the possession was caused on account of the reasons falls in clause 6.1.

Following Important aspects are relevant which are submitted for the kind consideration of this hon'ble authority;

- i. Non-booking of all apartments seriously affected the construction.
- ii. Other various challenges being faced by the respondent, i.e. Lack of adequate sources of finance, shortage of labour, rising manpower and material costs, approvals and procedural difficulties.

21. The respondent has submitted that the subject project had been faced with an unprecedented issue ~~wherein the plans of construction of entire project had to be scrapped since the answering respondent is not in a position to construct the referred project due to the issue of revenue recta which has been communicated to the complainant.~~

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22. The respondent had submitted that the issue of revenue rasta had impacted the clearance of Phase II of the subject project from Haryana State Environment Impact Assessment Authority which created a hindrance in building plans and progress of construction work at the project site since the year 2014. However, in spite of such roadblocks and hindrances, answering respondent, being a customer-oriented organization and fully committed to welfare of its valued customers and abiding by the terms of respective apartment buyer agreements, made serious efforts to resolve the issue of revenue rasta in order to obtain environment clearance for the entire phase-II of subject project.

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23. The respondent submitted that the answering respondent is a customer-oriented organization and is also willing to offer to the complainants, in their best tradition i.e. an option to transfer their booking in another project of our client in Winter Hills Project, Sector 77, Gurugram which is now in the advanced stage of construction and can be handed over the possession to the customers very soon.



24. The respondent submitted that as per the apartment buyer agreement which is binding between the complainants and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondent on account of delay is specified in the clause 6.7 of the said agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by them. In this view of the matter, the captioned complaint is not maintainable in law and liable to be dismissed.
25. The respondent submitted that allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this hon'ble commission.
26. The respondent answering opposite party is bonafide attempting to complete the project construction in a time bound manner considering the interests of its customers.



#### **DETERMINATION ON ISSUES**

27. Issue wise determination are as follows:



- i. With respect to the **first issue** raised by the complainant, it is observed that as per clause 6.1 and 6.2 of the flat buyers agreement dated 09.02.2015 the possession of the said unit is supposed to be delivered within 42 months + grace period of 180 days from the date of signing of the said agreement or commencement of construction whichever is later. ~~The date approval of building plans is not available.~~ In the present case, the agreement date is later than the date of commencement of construction. Thus the due date shall be computed from 09.02.2015 and the possession date comes out to be 09.02.2019. Keeping in view the submission of the respondent that the project is to be scrapped, then due date of possession loses its significance. The project cannot be delivered by the due date although construction of this tower has begun and new date of handing over possession/date of completion has been declared to be 31.12.2020 as per registration.

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- ii. With respect to the **second issue** raised by the complainant, there was a Local Commissioner appointed to ascertain the status of project. As per the report, the construction of the tower in which the complainant has booked his unit is complete till the 6<sup>th</sup> floor. The complainants unit is on the 4<sup>th</sup> floor. (whether or not refund to be given, to be ascertained after proceedings)

**FINDINGS OF THE AUTHORITY:**

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



30. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
31. As per the report submitted by the local commissioner, the tower in which the complainant has booked is unit( which is on the 4<sup>th</sup> floor) is complete till the 6<sup>th</sup> floor. The overall progress of the project has been assessed on the basis of actual construction at site and it is submitted that the physical progress is only 10%. During the site visit the respondent was trying to show that the work is going on in full swing as 100-200 labour force was present at site on 28.12.2018 but the work condition states that the work is stopped from last one year.
32. As per the BBA dated ~~09.01.2015~~ <sup>09.02.2015</sup> the possession of the said unit is to be delivered within 42 months+ grace period of 180 days from the date of signing of the said agreement or commencement of construction whichever is later. The due date of possession comes out to be 09.02.2019 if benefit of 180 grace period is also given to the respondent. Keeping in view the submission of the respondent that project had to be scrapped then due date of possession loses its significance. The LC was appointed to intimate the progress of the project.



Corrected vide order  
dated 05/07/19.

As of now only 10% work has been found done on site. The project cannot be delivered by due date. Although now construction of this tower has begun and new date of handing over possession/ date of completion has been declared to be 30.12.2020 as per registration. As the construction on site is negligible, the complainant shall be at liberty to demand refund of the amount deposited along with prescribed rate of interest i.e. 10.75% by them after expiry of due date of possession, once they intend to withdraw from the project.

#### DECISION AND DIRECTION OF AUTHORITY

33. 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 hereby directed to refund the amount paid by the complainant, once a request is received from the complainant after due date of possession is over i.e. 09.02.2019 within a period of 90 days from the date of demand.






- ii. In case complainant intends to continue with the project, he shall be given interest at the prescribed rate for every month of delay before 10<sup>th</sup> of every subsequent month.

34. Case file be consigned to the registry.

35. Order is pronounced.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Corrected Judgement uploaded on 08.07.2019**



**HARERA**  
**GURUGRAM**

<b>PROCEEDINGS OF THE DAY</b>	
Day and Date	Tuesday and 15.01.2019
Complaint No.	711/2018 Case Titled As Mr. Sandeep Singhal V/S M/S Umang Realtech Pvt Ltd.
Complainant	Mr. Sandeep Singhal
Represented through	Complainant in person with Shri Sushil Yadav Advocate.
Respondent	M/S Umang Realtech Pvt Ltd.
Respondent Represented through	Shri Yash Varma Advocate for the respondent.
Last date of hearing	18.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

### Proceedings

#### **Project is registered with the authority.**

Arguments heard.

As per the BBA dated 09.1.2015 the possession of said unit is to be delivered within 42 months + grace period of 180 days from the date of signing of the said agreement or commencement of construction which ever is later. The due date for possession comes out to be 9.2.2019 if benefit of 180 days of grace period is also given to the respondent. Keeping in view the submission of the respondent that project had to be scrapped then due date of possession loses its significance. The LC was appointed to intimate the progress of the project. As on now only 10% work has been found done on site. The project cannot be delivered by due date. Although now construction of this tower has began and new date of handing over possession/date of



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

completion has been declared to be 30.12.2020 as per registration. As the construction as on now is negligible at site, accordingly the complainant shall be at liberty to demand refund of the amount deposited alongwith prescribed rate of interest i.e. 10.75% by them after expiry of due date of possession, once they intend to withdraw from the project. The respondent is hereby directed to make the payment once a request is received from the complainant after due date of possession is over i.e. 9.2.2019 within a period of 90 days from the date of demand. In case complainant intends to continue with the project, he shall be given interest at the prescribed rate for every month of delay before 10<sup>th</sup> of subsequent month.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
15.01.2019

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

Complaint no. : 711 of 2018  
First date of hearing : 18.12.2018  
Date of decision :

Mr. Sandeep Singhal  
R/o H no. 415/5, main market road  
Patel Nagar, Gurugram.

**...Complainant**

Versus

M/s Umang Realtech Pvt Ltd  
Registered office D-64, 2<sup>nd</sup> floor, Defence  
colony,  
New Delhi- 110001.

**...Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Advocate for the complainant  
Advocate for the respondent



**ORDER**

1. A complaint dated 10.08.2018 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 complainant, Mr Sandeep Singhal against the promoter M/s Umang Realtech Pvt Ltd.

2. Since, the apartment buyers agreement dated 09.02.2015 has been executed prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively for contravention of any legal provision. Hence, keeping in view the facts of the case and submissions made by both the parties, the authority has decided to treat this complaint as an application to issue directions for compliance of obligations by the promoters under section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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

**Nature of project: Residential**

**DTCP License no: 38 of 2008 dated 02.03.2008 and 77 of 2012 Dated 01.08.2012**

1.	Name and location of the project	Monsoon Breeze 78 II Sector 78, Gurugram.
2.	Registered/Unregistered	<b>Registered</b> 14 of 2018 dated 16.01.2018
3.	RERA registration valid up to	<b>31.12.2020</b>
4.	Unit no.	402, tower-P, 4 <sup>th</sup> floor
5.	Unit admeasuring	1550 sq. ft.
6.	Date of agreement	09.02.2015
7.	Total consideration As per 3.1 of the agreement	Rs. 98,87,500 /-
8.	Total amount paid by the complainant	Rs. 31,71,328/-



	as per clause 4.2 of the agreement	
9.	Payment plan	Construction linked
10.	Date of approval of building plans	Not available
11.	Date of delivery of possession. Clause 6.1 & 6.2 (42 from the date of approval of building plans or the signing of agreement whichever is later months + 180 days grace period	09.02.2019 (calculated from date of agreement)
12.	Delay in handing over possession till date	Pre mature
13.	Penalty clause as per apartment buyer's agreement	Clause 6.7 of the agreement i.e. Rs.5/- per sq. ft per month of the super area of the said flat.
14.	Environmental clearance	21.02.2014

3. As per the details provided above, which have been checked as per record of the case file. An apartment buyer agreement is available on record for unit no. 402, tower-P, 4<sup>th</sup> floor. The promoter has failed to deliver the possession of the said unit to the complainants. 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 for appearance. Accordingly, the respondent appeared on 18.12.2018. The case came up for hearing on 18.12.2018 and 15.01.2019. The reply has been filed on behalf of the respondent.



## FACTS OF THE CASE

5. Mr. Sandeep Singhal booked an apartment admeasuring 1550 sq. ft. in the aforesaid project of the respondent for a total sale consideration of Rs 98,87,500/- which includes BSP, car parking, PLC, EDC etc. the complainant has made a payment of Rs 31,71,328 to the respondent vide different cheques on different dates.
6. That as per the flat buyers agreement the respondent had allotted a unit bearing number P-402 on 4<sup>th</sup> floor in tower P having a super area of 1550 sq ft. that as per clause 6.1 of the said agreement the respondent had agreed to deliver the possession of the flat within 42 months from the date of signing of the agreement with an extended period of 180 days.
7. That the complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. The only intention of the respondent was to take payments for the project without completing the work. The respondent has cheated the complainant. That despite receiving the payments as per demands raised by the



- respondent, the respondent has failed to deliver the possession of the allotted flat.
8. That it could be seen that the construction of the project in which the complainant flat was booked with a promise by the respondent to deliver the flat by the due date was not completed within time for the reasons best known to the respondent.
  9. That on 31.08.2017 the complainant came to know that the respondents are not developing the said project and on being contacted by the respondent company they were asked to shift to another project of the respondent.
  10. That keeping in view of the present status of the project, the complainant wishes to withdraw from the project and seek refund of the amount invested by him in the said project.

**ISSUES RAISED BY THE COMPLAINANT:**

11. The following issues has been raised by the complainant
  - i. Whether or not the respondent has violated the terms and conditions of the builder buyers agreement thereby delaying possession of the booked unit? OR

- ii. **Whether or not the complainant is entitled for refund of the money invested by him in the said project?**

**RELIEF SOUGHT BY THE COMPLAINANT:**

15. **The following reliefs have been prayed for:**
- i. **Direct the respondent to refund the amount of Rs 31,71,328/- along with interest**
  - ii. **Any other relief which this hon'ble authority deem fit to meet the ends of justice.**

**REPLY BY THE RESPONDENT:**

16. It is denied that as per the terms of apartment buyer agreement dated 09.04.2014, the respondent was obligated to deliver the possession of the apartment within 42 months from the date of the agreement and with the grace period of 180 days. Therefore, the due date for handing over possession of the subject apartment is 09.08.2019. As the complaint is premature and deserve to be dismissed.

17. Respondent has offered the booking in another project Winter Hills 77, which is situated in Sector 77 Gurugram was offered to complainant since the subject project has run into some impediments created due to certain unforeseen



circumstances which are completely beyond the control of the respondent and thus, constitute force majeure event in the terms of clause 6.4 of the agreement. Thus, the complainant was offered to shift the booking of the apartment of similar specification in the project. It is an admitted fact that the complainant had given the consent to such transfer of booking. It is denied on the date of such meeting, issue arose on the terms of payment.

18. It is submitted that not only is the instant complaint premature, but the complainant has agreed to shift the booking i.e. Winter Hills 77 Gurugram is located at a very short distance. Further, the said project is nearing completion of construction and development activity at the said project would be completed by January 2019 which is much before the stipulated time for offering of possession under the subject project.

19. Respondent is entitled for reasonable extension of time in completing the construction and handing over possession in terms of the agreed contract between parties.



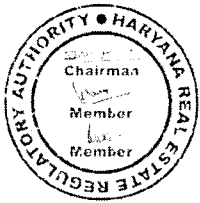


20. The respondent is entitled to reasonable extension of time for completion of apartment because the delay in handing over the possession was caused on account of the reasons falls in clause 6.1.

Following Important aspects are relevant which are submitted for the kind consideration of this hon'ble authority;

- i. Non-booking of all apartments seriously affected the construction.
- ii. Other various challenges being faced by the respondent, i.e. Lack of adequate sources of finance, shortage of labour, rising manpower and material costs, approvals and procedural difficulties.

21. The respondent has submitted that the subject project had been faced with an unprecedented issue wherein the plans of construction of entire project had to be scrapped since the answering respondent is not in a position to construct the referred project due to the issue of revenue rasta which has been communicated to the complainant.



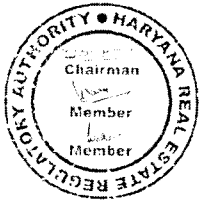
22. The respondent had submitted that the issue of revenue rasta had impacted the clearance of Phase II of the subject project from Haryana State Environment Impact Assessment Authority which created a hindrance in building plans and progress of construction work at the project site since the year 2014. However, in spite of such roadblocks and hindrances, answering respondent, being a customer-oriented organization and fully committed to welfare of its valued customers and abiding by the terms of respective apartment buyer agreements, made serious efforts to resolve the issue of revenue rasta in order to obtain environment clearance for the entire phase-II of subject project.

23. The respondent submitted that the answering respondent is a customer-oriented organization and is also willing to offer to the complainants, in their best tradition i.e. an option to transfer their booking in another project of our client in Winter Hills Project, Sector 77, Gurugram which is now in the advanced stage of construction and can be handed over the possession to the customers very soon.



24. The respondent submitted that as per the apartment buyer agreement which is binding between the complainants and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondent on account of delay is specified in the clause 6.7 of the said agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by them. In this view of the matter, the captioned complaint is not maintainable in law and liable to be dismissed.

25. The respondent submitted that allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this hon'ble commission.



26. The respondent answering opposite party is bonafide attempting to complete the project construction in a time bound manner considering the interests of its customers.

#### **DETERMINATION ON ISSUES**

27. Issue wise determination are as follows:

- i. With respect to the **first issue** raised by the complainant, it is observed that as per clause 6.1 and 6.2 of the flat buyers agreement dated 09.02.2015 the possession of the said unit is supposed to be delivered within 42 months + grace period of 180 days from the date of signing of the said agreement or commencement of construction whichever is later. The date approval of building plans is not available. In the present case, the agreement date is later than the date of commencement of construction. Thus the due date shall be computed from 09.02.2015 and the possession date comes out to be 09.02.2019. Keeping in view the submission of the respondent that the project is to be scrapped, then due date of possession loses its significance. The project cannot be delivered by the due date although construction of this tower has begun and new date of handing over possession/date of completion has been declared to be 31.12.2020 as per registration.



- ii. With respect to the **second issue** raised by the complainant, there was a Local Commissioner appointed to ascertain the status of project. As per the report, the construction of the tower in which the complainant has booked his unit is complete till the 6<sup>th</sup> floor. The complainants unit is on the 4<sup>th</sup> floor. (whether or not refund to be given, to be ascertained after proceedings)

**FINDINGS OF THE AUTHORITY:**

28. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
29. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



30. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
31. As per the report submitted by the local commissioner, the tower in which the complainant has booked is unit( which is on the 4<sup>th</sup> floor) is complete till the 6<sup>th</sup> floor. The overall progress of the project has been assessed on the basis of actual construction at site and it is submitted that the physical progress is only 10%. During the site visit the respondent was trying to show that the work is going on in full swing as 100-200 labour force was present at site on 28.12.2018 but the work condition states that the work is stopped from last one year.
32. As per the BBA dated 09.01.2015 the possession of the said unit is to be delivered within 42 months+ grace period of 180 days from the date of signing of the said agreement or commencement of construction whichever is later. The due date of possession comes out to be 09.02.2019 if benefit of 180 grace period is also given to the respondent. Keeping in view the submission of the respondent that project had to be scrapped then due date of possession loses its significance. The LC was appointed to intimate the progress of the project.



As of now only 10% work has been found done on site. The project cannot be delivered by due date. Although now construction of this tower has begun and new date of handing over possession/ date of completion has been declared to be 30.12.2020 as per registration. As the construction on site is negligible, the complainant shall be at liberty to demand refund of the amount deposited along with prescribed rate of interest i.e. 10.75% by them after expiry of due date of possession, once they intend to withdraw from the project.

#### DECISION AND DIRECTION OF AUTHORITY

33. 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 hereby directed to refund the amount paid by the complainant, once a request is received from the complainant after due date of possession is over i.e. 09.02.2019 within a period of 90 days from the date of demand.



- ii. In case complainant intends to continue with the project, he shall be given interest at the prescribed rate for every month of delay before 10<sup>th</sup> of every subsequent month.
34. Case file be consigned to the registry.
35. Order is pronounced.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Judgement Uploaded on 21.01.2019

