

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

Complaint No. : 498 of 2018
First date of hearing : 28.08.2018
Date of Decision : 15.01.2019

Mr. Bhupinder Singh Chaddha
R/o B-110 2nd floor Fateh Nagar, Jail Road,
Delhi

Versus

Complainant

M/s Earth Infrastructure ~~Pvt.~~ Ltd.
Regd Office: 26, First Floor, Pusa Road, Karol
Bagh Metro Station, Delhi

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Arvind kumar
None of the respondent

Advocate for the complainant
Advocate for the respondent



ORDER

1. A complaint dated 03.07.2018 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. Bhupinder Singh Chadha, against the promoter M/s Earth infrastructure Ltd.

2. Since, the Memorandum of Understanding has been executed on 27.12.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016
3. The particulars of the complaint are as under: -

1.	Name and location of the project	Earth Iconic, sector-71, Badshahpur , Gurugram
2.	Shop no.	E-113, block E, 1 st floor
3.	Nature of project	Commercial complex
4.	DTCP license no.	64 of 2008
5.	Project area	13795.79 sq. mtrs.
6.	Allotment letter dated	03.02.2014
7.	Registered/ unregistered	unregistered
8.	Date of Memorandum of understanding	27.12.2012
9.	Total sale consideration	Rs. 29,73,382/-
10.	Total amount paid by the complainant till date	Rs. 24,53,505 /-
11.	Date of delivery of possession	Cannot be ascertained



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4. The details provided above have been checked as per the record available in the case file provided by the complainant.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came for the hearing on 28.08.2018, 06.12.2018 and 15.01.2019. The reply has not been filed by the respondent.

FACTS OF THE CASE

6. The complainant submitted that in 2014, complainant booked a shop in the project which were to be located at block E, unit no. E-113 at first floor, having super area of 319.69 sq. ft, for the total consideration of Rs. 29,73,382/-
7. The complainant submitted that the promotor issued a letter of allotment in favour of the complainant on 03.02.2014 and MOU was executed between complainant and promotor on 27.12.2012. The complainant submitted that he has paid Rs.24,53,505/-
8. The complainant submitted that as per clause 2.2 of the allotment letter, the expected date of possession is nowhere mentioned, however the allottee has to be made payment of the balance amount before June 2015 or on the date of possession,



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whichever is later therefore it is presumed that expected date of possession is June 2015.

9. The complainant submitted that the delivery of the possession of the flat was June 2015 but till date the promotor has not given possession.
10. The complainant submitted that he has tried to contact the promotor but the was no response. On the contrary, the promotor has threatened the complainant.
11. The complainant submitted that promotor has not given the possession of the flat booked so far.

ISSUES RAISED BY THE COMPLAINANT

- I. Where the flat has been handed over to the complainant and if there is a reasonable justification for delay?
- II. Whether the promotor contravened the various laws including the provision of RERA Act?

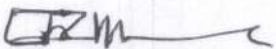


Relief sought

- I. Direct the respondent to refund the total amount till date along with interest at the prescribed rate.

Respondent's reply

12. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority hereby



proceeds ex-parte on the basis of the facts available on record and adjudges the matter in the light of the facts adduced by the complainant in its pleading.

Inferences drawn by the authority

13. As the concerned project is located in sector 95, Gurugram and is in the nature of real estate project i.e. group housing colony therefore the authority has complete territorial and subject matter jurisdiction to entertain the present complaint.
14. The authority has complete subject matter 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, and the nature of the project relates to real estate therefore this authority has complete territorial jurisdiction and subject matter jurisdiction to entertain the present complaint.



Decision and directions of the authority

15. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority is of the view that since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent.
16. On 28.08.2018, counsel for the respondent appeared before the authority and service was completed but no reply was filed by the respondent and later on subsequent hearing, the respondent himself or the counsel were not present. Accordingly authority decided to proceed exparte.
17. The complainant had booked a commercial space in the project "Earth Iconic" having area of 319.6 sq. ft. for a total consideration of Rs.29,73,382/-. A MoU was executed between the complainant and the respondent on 27.12.2012. The complainant as per the MoU made a down payment of Rs. 24,53,505/-. The balance amount of Rs. 7,40,409/- was to be paid before June 2015 or on the date of offer of possession whichever is later. It is fact that an amount of Rs.24,53,505/- remained with the respondent right from 27.12.2012. So far, the possession has not been offered. Neither the respondent



Signature

has filed any reply. Keeping in view an abnormal delay in handing over the possession of the unit, the authority exercising powers under section 34(f) of the Real Estate (Regulation and Development) Act 2016 to ensure compliance of obligation casts upon the promoters under section 18(1) of the Act *ibid*.

18. 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 directs the respondent to refund the amount of Rs.24,53,505/- as paid by the complainant with the interest at the prescribed rate i.e. 10.75% per annum. The amount should be refunded within period of 90 days from the date of order.


19. The order is pronounced.


20. Case file be consigned to registry.

21. Copy of this order be consigned to the registration branch.




(Samir Kumar)
Member


(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.01.2019

Corrected Judgement uploaded on 10.07.2019

PROCEEDINGS OF THE DAY	
Day and Date	Tuesday and 15.01.2019
Complaint No.	498/2018 Case titled as Mr. Bhupinder Singh Chaddha V/S M/S Earth Infrastructures Private Limited
Complainant	Mr. Bhupinder Singh Chaddha
Represented through	Dr. Arvind Kumar Advocate for the complainant.
Respondent	M/S Earth Infrastructures Private Limited
Respondent Represented through	Respondent already exparte
Last date of hearing	6.12.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

On 28.8.2018, counsel for the respondent appeared before the authority and service was complete but no reply was filed by the respondent and later-on on subsequent hearing, the respondent himself or the counsel were not present. Accordingly authority decided to proceed exparte.

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

The complainant had booked a commercial space in the project "Earth Iconic" having area of 319.69 square feet for a total consideration of Rs.29,73,382/-. A MoU was executed between the complainant and the respondent on 27.12.2012. The complainant as per the MoU made a down payment of Rs.24,53,505/-. The balance amount of Rs.740409/- was to be paid before June 2015 or on the date of offer of possession whichever is latter. It is a fact that an amount of Rs.24,53,505/- remained with the respondent right from 27.12.2012. So far the possession has not been offered, Neither the respondent have filed any reply. Keeping in view an abnormal delay in handing over possession of unit, the authority exercising powers under section 34 (f) of the Real Estate (Regulation & Development) Act 2016 to ensure compliance of obligation casts upon the promoters under section 18 (1) of the Act ibid hereby directs to return the amount received by him in respect of the unit with interest at the prescribed rate i.e.10.75% per annum. The amount be refunded within period of 90 days from the date of this order as per provision of rule 16 of Haryana Real Estate (Regulation and Development) Rules, 2017.

Matter is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
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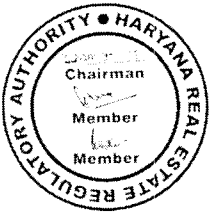


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Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.01.2019

Judgement Uploaded on 16.01.2019