

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

**Complaint no.** : 640 of 2018  
**First date of hearing** : 13.12.2018  
**Date of decision** : 26.02.2019

Mr. Sudhir Kumar Verma  
R/o. Old Bus Stand, Near Matadin Fauji, Naya  
Bazaar, Bhiwani, Haryana-127021

**Complainant**

Versus

M/s Apex Buildwell Pvt. Ltd.  
**Regd. Office** : 14A/36, WEA, Karol Bagh, New  
Delhi-110005.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Ashutosh Kumar Advocate for the complainant

Shri Sandeep Choudhary Advocate for the respondent

**ORDER**

1. A complaint dated 01.08.2018 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. Sudhir Kumar Verma against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3 (a) of the





apartment buyer's agreement executed on 19.01.2013 in respect of apartment number 524, 5<sup>th</sup> floor, tower 'Rose' in the project 'Our Homes' for not handing over possession on the due date i.e. 02.06.2017 which is an obligation under section 11 (4) (a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 19.01.2013 i.e. prior to the commencement of the Act *ibid*, 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 case are as under: -

1.	Name and location of the project	"Our Homes", Sector 37-C, Gurugram
2.	Nature of real estate project	Low cost/Affordable group housing project
3.	RERA registered/ not registered	<b>Not registered</b>
4.	Apartment/unit no.	524, 5 <sup>th</sup> floor, tower 'Rose'
5.	Apartment measuring	48 sq. m carpet area
6.	Booking date	06.09.2012





7.	Date of execution of apartment buyer's agreement	19.01.2013
8.	Payment plan	Construction linked payment plan (As per letter dated 29.05.2013, page 55)
9.	Basic sale price	Rs 16,00,000/-
10.	Total amount paid by the complainant till date	Rs <del>10,72,136/-</del> <b>15,20,000/-</b>
11.	Consent to establish granted on	02.12.2013
12.	Date of delivery of possession as per clause 3 (a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals)  <b>(As per demand letter dated 05.04.2014 issued by the respondent, the date of commencement of construction is 07.02.2013)</b>	<b>07.08.2016</b>
13.	Delay in handing over possession till date of decision	2 years 6 months 19 days
14.	Penalty clause as per apartment buyer's agreement dated 01.03.2013	Clause 3(c)(iv) of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the said flat.



*Corrected vide order dated 31.05.19.*



4. 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 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 19.01.2013. Therefore, the promoter has not fulfilled his committed liability as on date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 13.12.2018. The case came up for hearing on 13.12.2018, 22.01.2019, 26.02.2019. The reply filed on behalf of the respondent 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 10.12.2018 wherein he has re-asserted the contentions raised in the complaint.

**Facts of the complaint**

6. The complainant submitted that the respondent is a company and working in field of construction and development of residential and commercial projects in Gurugram in the name of M/s Apex Buildwell Pvt. Ltd.
7. The complainant submitted that the respondent company is developing its project namely Our Homes situated at Village Garauli-Khurd, Sector-37C, Gurugram, therefore the authority has the Jurisdiction to try the present complaint.
8. The complainant submitted that the respondent advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing project always commit and promise to the targeted consumer that their dream home will be completed and delivered to them within the time agreed





initially in the agreement while selling the dwelling unit to them.

9. The complainant submitted that the respondent is very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed timeline and that is the prime factor which a consumer would see while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the instalments of home loan in the case of other builders in market.

10. The relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under Govt. of Haryana affordable housing scheme and thus





allotted apartment 524, 5<sup>th</sup> floor, tower 'Rose' having a carpet area of approximately 48 sq. meters (where the carpet means the area enclosed under the exterior walls of the said apartment) with an exclusive right to use of on Village Gadoli-Khurd, Sector-37, Tehsil & District Gurugram together with the proportionate undivided, unidentified, impartible interest in the land underneath, the said housing complex with the right to use the common areas and facilities in the said housing complex vide apartment buyers' agreement dated 12.07.2013

11. That the basic sale price of the apartment was of Rs.16,00,00/-, payable by the apartment allottee /complainant as per payment plan and consequently the complainant had made the payment in following manner:-

12. That as per the apartment buyer's agreement, the respondent had promise the complainant to handover the physical possession of the dwelling apartment /unit within a period of 36 months, with a grace period of 6 months.

13. Facts leading to delay in possession are as under:-





a. That at the time of booking of aforesaid unit it was duly assured, represented and promised by the Respondent that the said unit and real estate project will be ready to occupy by the complainant within a period of 36 months from the date of commencement of construction of the complex with a grace period of six (6) months.

b. That since the date of booking, the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

c. That the respondent failed to develop so called project within the period of thirty six months with grace period of 6 months.

14. The complainant submitted that as per clause 3 (a) of the apartment buyer's agreement, the respondent has to hand over the physical possession of the dwelling unit within 36 months with a grace period of 6 months.







15. That thus, the respondent had cheated and played fraud upon the complainant by booking the apartment in the project in question at village Garauli-Khurd, Sector-37C, Gurugram and thus the respondent has committed criminal offence of breach of trust and other offences.

16. That the complainant several times requested the respondents telephonically as well as personal visits at the office for the delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondents but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and the lingered the on one pretext or the other and refused to deliver the possession of the above said flat.

17. The complainant submitted that the respondent by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard earned





money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondent gained wrongfully, which is purely a criminal act

18. The complainant submitted that moreover, respondent and his group are praising themselves by mentioning all good words for him to make the people fool. See the site [www.areteindiaprojects.in](http://www.areteindiaprojects.in) where they have mentioned.

19. The complainant submitted that we are also concerned about the construction quality as when we had checked the internal wall plaster of my allotted unit, its sand is came to my hand and it seems that it was not mixed with the right proportion of cement. As we are not from the construction background and did a very basic test but this plaster material itself shows that the intention of respondent is not on quality but it is just to collect money and spend as low as possible on the construction. So, we request here, that some concerned authority who issued license to the builder (under this Government affordable housing project), should be accountable and





have some mechanism to check the basic construction quality at this stage at least. If we don't have any such mechanism at present, we should add it immediately at least when buyers want to check this otherwise there will be a risk of life for more than 1100 families (approx. 5000 lives) who will start living there. This is important to mention here that this is not a private project and the license is issued under a government affordable housing scheme. Most of the people entered in this project that there should be some Govt authority checks and responsibilities and project will be completed within timeframe with good construction quality. Instead of playing a blame game by the builder and authority after some mis-happening with the lives of approximate 5000 people, we request to please keep a check on its basic construction quality that he has built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent will try to use / deploy cheapest and lowest category material in absence of any such checks from the civic authority. This





is the utmost factor of the complaint as this is not related to hard earned money / financial losses of the buyer but it is directly related to the life of buyer and his family so we request the entire honourable RERA committee to please record this fact and should impose some quality check mechanism which is also reachable to buyers for their satisfaction.

20. That since the respondent had not delivered the possession of the apartment, of which the complainant is suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent and thus, the complainant is entitled to the tune of Rs.2,00,000/- as compensation. Furthermore, the complainant has been constrained by the respondent to live in a rented accommodation.

21. That the complainant, thereafter had tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying





monthly rent and extra interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

22. Some buyer of this projects have filed complaint about this delay in CM window & one of the complaint has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15/01/2018 and at that point we came to know that builder license has been expired and not renewed. We all requested Mr. R.S. Batt to please take some action & help us to get this project complete as early as possible and I came to know that our request to Mr. R. S. Batt (DTP) helped a lot in the process of getting his license renewed. The reason to mention it here is that we should not be sufferer on account of any





license expiration as our complaint helped him in this matter and moreover we paid all the demands on time even in time of license expiry. This is respondent responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.

23. It seems that the funds collected from this project buyers moved outside in buying other assets for their own interest. Even the new office building of respondent at Sec-32, Gurugram has been commenced in the year of 2014. There are 2 reasons for mentioning this point here and these are

i) That the respondent & their families flourish a lot in this time span on cost of all home buyers and their families mental & financial burden.

ii) We came to know from some sources that respondent has to pay lot of fine / fees to Govt. authorities for this delay and he is not willing to pay these fines for which solely





**Issues raised by the Complainant**

24. Issues raised by the complainant are as follow:
- i. Whether the respondent delayed in handing over the possession of the unit to the complainant?
  - ii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?
  - iii. Whether the quality of construction/building material is of sub-standard?

**Relief sought**

25. The complainant is seeking the following relief:
- i. To direct the respondent to pay delay interest at the rate of 18% per annum on total consideration paid by the complainant from the due date of possession.
  - ii. Compensation of Rs.2,00,000/- for mental agony, harassment and financial losses.
  - iii. The complainant is seeking Rs.10,000/- as cost of litigation.

The complainant vide amendment to the complaint stated that he is not seeking compensation as mentioned in the complaint but amending his complaint and is seeking





directions from the authority to the promoter to comply with the obligations.

### Respondent's reply

26. The respondent admitted the fact that the project is situated in sector 37-C, Gurugram, therefore, the authority has territorial jurisdiction to try the present complainant. The respondent company has contended in its reply that the complainant has sought compensation and the same has to be adjudged by the adjudicating officer under section 71 of the Act and hence the authority does not have jurisdiction to hear the matter. That the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully. Further, the respondent has contended that the complainant is estopped from filing the present complaint as the complainant himself defaulted in making payments in timely manner which is *sine qua non* of the performance of the obligations by the respondent. This default has led multiple problems to the







respondent company and extra costs being incurred by the respondent.

27. However, the respondent submitted that the construction of the said project is in full swing. That the respondent company is very much committed to develop the real estate project and as on date the status of construction is as under:

- a) Civil structure : Complete
- b) Internal plaster : Complete
- c) White wash : Under Process
- d) Floorings : Under process 68% complete
- e) Electric fittings : Under process 70% complete

The respondent has scheduled to deliver the possession of the first phase of the project in December 2018 which comprises of 432 flats in 10 towers and complete delivery of 2nd phase by March 2019 comprising of 16 towers having 704 flats.

28. The respondent further admitted that they are behind schedule of completion, but the respondent is not responsible for the delay as the delay occurred is due to extraneous circumstances beyond their control. Further, the respondent





could get the consent to establish only on 02.12.2013 due to which construction could not be started. That the license bearing no. 13 of 2012 expired on 22.02.2016. However the company filed an application for renewal of license on 11.02.2016 but due to policy issues, the license could not get renewed till date and further due to non-renewal of the license, the application for registration with the HRERA, Panchkula could not be allowed and the application of the respondent was rejected as a result of which the bankers are not allowing smooth finances and the respondent company suffered but the company is not letting such issues come in their way of delivering possession.

29. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. The respondent has further contended that the parties are bound by the terms and conditions of the contract and that as per





clause 3(a) of the apartment buyer's agreement, the respondent shall handover the possession of the apartment within 36 months with a grace period of 6 months from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plan/revised building plan and other approvals.

30. The respondent submitted that clause 3(b) of apartment buyer's agreement enumerates certain situations in which the date of possession shall get extended which states that the completion of the said low cost/affordable group housing project including the apartment is delayed by reason of non-availability of steel and cement or other building materials or water supply or electric power or slow down, strike or lockout or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or due to circumstance beyond the power and control of the developer.

31. The respondent submitted that though the said project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bona fide





manner and the delay occasioned had been beyond the control of the respondent and due to multifarious reasons and given the agreed terms between the parties the complainant have no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

**Determination of issues:**

32. 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 are as under:
33. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction upon receipt of all project related approvals i.e 07.02.2013 along with a grace period of 6 months. The clause regarding the possession of the said unit is reproduced below:

"3(a) 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 commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."

34. Accordingly, the due date of possession was 07.08.2016 and the possession has been delayed by two years six months and nineteen days till the date of decision. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said apartment as per clause 3(c)(iv) 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 others.** (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.”

35. As the possession of the flat was to be delivered by 07.08.2016 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 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."*

36. 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.

37. With respect to the **second issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), 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.

38. With respect to the **third issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint. However, the authority has issued directions in succeeding para no. 26.

#### **Findings of the authority**

39. 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.





40. Report of local commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

“Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%”



41. As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for



renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

42. A plea has been taken by the counsel for the respondent that the licence could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.1.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

43. In the present case, the authority has observed that as per clause 3 (a) of the builder buyer agreement dated 19.01.2013 for unit no. 524, 5<sup>th</sup> floor, tower Rose, in project "Our Homes" Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 02.12.2013 + 6 months grace period which comes out to be 02.06.2017. However, the respondent has not delivered the unit in time. Complainant has already paid ~~Rs.10,72,136/-~~ to the



Rs. 15,20,000/-  
Corrected vide order  
dated 31.05.19.



respondent against a total sale consideration of Rs.16,00,000/-.

**Decision and directions of the authority**

44. 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 liable to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **02.06.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.





45. The order is pronounced.
46. Case file be consigned to the registry.
47. Copy of this order be endorsed to registration branch.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Dated : 26.02.2019

Corrected judgement uploaded on 10.06.2019



**HARERA**  
**GURUGRAM**



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

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**Date of decision : 26.02.2019**

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**Member**  
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4. 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 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 19.01.2013. Therefore, the promoter has not fulfilled his committed liability as on date.
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8. The complainant submitted that the respondent advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing project always commit and promise to the targeted consumer that their dream home will be completed and delivered to them within the time agreed



initially in the agreement while selling the dwelling unit to them.

9. The complainant submitted that the respondent is very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed timeline and that is the prime factor which a consumer would see while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the instalments of home loan in the case of other builders in market.

10. The relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under Govt. of Haryana affordable housing scheme and thus



allotted apartment 524, 5<sup>th</sup> floor, tower 'Rose' having a carpet area of approximately 48 sq. meters (where the carpet means the area enclosed under the exterior walls of the said apartment) with an exclusive right to use of on Village Gadoli-Khurd, Sector-37, Tehsil & District Gurugram together with the proportionate undivided, unidentified, impartible interest in the land underneath, the said housing complex with the right to use the common areas and facilities in the said housing complex vide apartment buyers' agreement dated 12.07.2013

11. That the basic sale price of the apartment was of Rs.16,00,00/-, payable by the apartment allottee /complainant as per payment plan and consequently the complainant had made the payment in following manner:-
12. That as per the apartment buyer's agreement, the respondent had promise the complainant to handover the physical possession of the dwelling apartment /unit within a period of 36 months, with a grace period of 6 months.
13. Facts leading to delay in possession are as under:-



- a. That at the time of booking of aforesaid unit it was duly assured, represented and promised by the Respondent that the said unit and real estate project will be ready to occupy by the complainant within a period of 36 months from the date of commencement of construction of the complex with a grace period of six (6) months.
- b. That since the date of booking, the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
- c. That the respondent failed to develop so called project within the period of thirty six months with grace period of 6 months.

14. The complainant submitted that as per clause 3 (a) of the apartment buyer's agreement, the respondent has to hand over the physical possession of the dwelling unit within 36 months with a grace period of 6 months.



15. That thus, the respondent had cheated and played fraud upon the complainant by booking the apartment in the project in question at village Garauli-Khurd, Sector-37C, Gurugram and thus the respondent has committed criminal offence of breach of trust and other offences.

16. That the complainant several times requested the respondents telephonically as well as personal visits at the office for the delivering the possession of the apartment and met with the officials of respondent in this regard and completed all the requisite formalities as required by the respondents but despite that the officials of respondent's company did not give any satisfactory reply to the complainant and the lingered the on one pretext or the other and refused to deliver the possession of the above said flat.

17. The complainant submitted that the respondent by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard earned



money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondent gained wrongfully, which is purely a criminal act

18. The complainant submitted that moreover, respondent and his group are praising themselves by mentioning all good words for him to make the people fool. See the site [www.aretindiaprojects.in](http://www.aretindiaprojects.in) where they have mentioned.

19. The complainant submitted that we are also concerned about the construction quality as when we had checked the internal wall plaster of my allotted unit, its sand is came to my hand and it seems that it was not mixed with the right proportion of cement. As we are not from the construction background and did a very basic test but this plaster material itself shows that the intention of respondent is not on quality but it is just to collect money and spend as low as possible on the construction.

So, we request here, that some concerned authority who issued license to the builder (under this Government affordable housing project), should be accountable and



have some mechanism to check the basic construction quality at this stage at least. If we don't have any such mechanism at present, we should add it immediately at least when buyers want to check this otherwise there will be a risk of life for more than 1100 families (approx. 5000 lives) who will start living there. This is important to mention here that this is not a private project and the license is issued under a government affordable housing scheme. Most of the people entered in this project that there should be some Govt authority checks and responsibilities and project will be completed within timeframe with good construction quality. Instead of playing a blame game by the builder and authority after some mis-happening with the lives of approximate 5000 people, we request to please keep a check on its basic construction quality that he has built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent will try to use / deploy cheapest and lowest category material in absence of any such checks from the civic authority. This





is the utmost factor of the complaint as this is not related to hard earned money / financial losses of the buyer but it is directly related to the life of buyer and his family so we request the entire honourable RERA committee to please record this fact and should impose some quality check mechanism which is also reachable to buyers for their satisfaction.

20. That since the respondent had not delivered the possession of the apartment, of which the complainant is suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent and thus, the complainant is entitled to the tune of Rs.2,00,000/- as compensation. Furthermore, the complainant has been constrained by the respondent to live in a rented accommodation.

21. That the complainant, thereafter had tried his level best to reach the representatives of respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying



monthly rent and extra interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

22. Some buyer of this projects have filed complaint about this delay in CM window & one of the complaint has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers, Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15/01/2018 and at that point we came to know that builder license has been expired and not renewed. We all requested Mr. R.S. Batt to please take some action & help us to get this project complete as early as possible and I came to know that our request to Mr. R. S. Batt (DTP) helped a lot in the process of getting his license renewed. The reason to mention it here is that we should not be sufferer on account of any



license expiration as our complaint helped him in this matter and moreover we paid all the demands on time even in time of license expiry. This is respondent responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.

23. It seems that the funds collected from this project buyers moved outside in buying other assets for their own interest. Even the new office building of respondent at Sec-32, Gurugram has been commenced in the year of 2014. There are 2 reasons for mentioning this point here and these are

i) That the respondent & their families flourish a lot in this time span on cost of all home buyers and their families mental & financial burden.

ii) We came to know from some sources that respondent has to pay lot of fine / fees to Govt. authorities for this delay and he is not willing to pay these fines for which solely



### Issues raised by the Complainant

24. Issues raised by the complainant are as follow:
- Whether the respondent delayed in handing over the possession of the unit to the complainant?
  - Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?
  - Whether the quality of construction/building material is of sub-standard?

### Relief sought

25. The complainant is seeking the following relief:
- To direct the respondent to pay delay interest at the rate of 18% per annum on total consideration paid by the complainant from the due date of possession.
  - Compensation of Rs.2,00,000/- for mental agony, harassment and financial losses.
  - The complainant is seeking Rs.10,000/- as cost of litigation.

The complainant vide amendment to the complaint stated that he is not seeking compensation as mentioned in the complaint but amending his complaint and is seeking



directions from the authority to the promoter to comply with the obligations.

### **Respondent's reply**

26. The respondent admitted the fact that the project is situated in sector 37-C, Gurugram, therefore, the authority has territorial jurisdiction to try the present complainant. The respondent company has contended in its reply that the complainant has sought compensation and the same has to be adjudged by the adjudicating officer under section 71 of the Act and hence the authority does not have jurisdiction to hear the matter. That the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully. Further, the respondent has contended that the complainant is estopped from filing the present complaint as the complainant himself defaulted in making payments in timely manner which is *sine qua non* of the performance of the obligations by the respondent. This default has led multiple problems to the



respondent company and extra costs being incurred by the respondent.

27. However, the respondent submitted that the construction of the said project is in full swing. That the respondent company is very much committed to develop the real estate project and as on date the status of construction is as under:

- a) Civil structure : Complete
- b) Internal plaster : Complete
- c) White wash : Under Process
- d) Floorings : Under process 68% complete
- e) Electric fittings : Under process 70% complete

The respondent has scheduled to deliver the possession of the first phase of the project in December 2018 which comprises of 432 flats in 10 towers and complete delivery of 2nd phase by March 2019 comprising of 16 towers having 704 flats.

28. The respondent further admitted that they are behind schedule of completion, but the respondent is not responsible for the delay as the delay occurred is due to extraneous circumstances beyond their control. Further, the respondent



could get the consent to establish only on 02.12.2013 due to which construction could not be started. That the license bearing no. 13 of 2012 expired on 22.02.2016. However the company filed an application for renewal of license on 11.02.2016 but due to policy issues, the license could not get renewed till date and further due to non-renewal of the license, the application for registration with the HRERA, Panchkula could not be allowed and the application of the respondent was rejected as a result of which the bankers are not allowing smooth finances and the respondent company suffered but the company is not letting such issues come in their way of delivering possession.

29. The respondent submitted that the complete real estate industry is under pressure of delivery and the availability of skilled manpower and material is at its all-time low and thereby, the respondent company does not gain anything by delaying the project and is rather committed to deliver the project in the best standards of quality and performance. The respondent has further contended that the parties are bound by the terms and conditions of the contract and that as per



clause 3(a) of the apartment buyer's agreement, the respondent shall handover the possession of the apartment within 36 months with a grace period of 6 months from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plan/revised building plan and other approvals.

30. The respondent submitted that clause 3(b) of apartment buyer's agreement enumerates certain situations in which the date of possession shall get extended which states that the completion of the said low cost/affordable group housing project including the apartment is delayed by reason of non-availability of steel and cement or other building materials or water supply or electric power or slow down, strike or lockout or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or due to circumstance beyond the power and control of the developer.

31. The respondent submitted that though the said project is going behind schedule of delivery, however the respondent have throughout conducted the business in a bona fide





manner and the delay occasioned had been beyond the control of the respondent and due to multifarious reasons and given the agreed terms between the parties the complainant have no cause of action to file the present complaint as the delay so occasioned is very much due to the factors so contemplated.

**Determination of issues:**

32. 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 are as under:
33. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction upon receipt of all project related approvals i.e 07.02.2013 along with a grace period of 6 months. The clause regarding the possession of the said unit is reproduced below:

“3(a) 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 commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities....”

34. Accordingly, the due date of possession was 07.08.2016 and the possession has been delayed by two years six months and nineteen days till the date of decision. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said apartment as per clause 3(c)(iv) 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 others.** (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.”

35. As the possession of the flat was to be delivered by 07.08.2016 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 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.”*

36. 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.

37. With respect to the **second issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), 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.

38. With respect to the **third issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint. However, the authority has issued directions in succeeding para no. 26.

#### **Findings of the authority**

39. 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.



40. Report of local commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

**“Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%”**



41. As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for

renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

42. A plea has been taken by the counsel for the respondent that the licence could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.1.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

43. In the present case, the authority has observed that as per clause 3 (a) of the builder buyer agreement dated 19.01.2013 for unit no. 524, 5<sup>th</sup> floor, tower Rose, in project "Our Homes" Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 02.12.2013 + 6 months grace period which comes out to be 02.06.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.10,72,136/- to the





respondent against a total sale consideration of Rs.16,00,000/-.

### **Decision and directions of the authority**

44. 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 liable to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **02.06.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10<sup>th</sup> of subsequent month.



45. The order is pronounced.
46. Case file be consigned to the registry.
47. Copy of this order be endorsed to registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 26.02.2019

Judgement uploaded on 18.03.2019



**HARERA**  
GURUGRAM

