

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

**Complaint no. : 1695 of 2018**  
**First date of hearing: 13.12.2018**  
**Date of decision : 30.05.2019**

Mr. Aditya Asija  
**R/o:** House no- 1052, Sector-9, Gurugram  
122001, Haryana

**Complainant**

Versus

M/s Apex Buildwell Pvt. Ltd.  
**Registered office at:** 202, DLF City Centre,  
M.G. Road, Gurugram 122001, Haryana

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Karan Govel and Shri Ishaan Mukherjee  
Shri Yashpal Asija  
Shri Sandeep Choudhary

Advocate for the complainant  
Father of complainant in person  
Advocate for the respondent

**ORDER**

1. The present complaint relates to an apartment buyer's agreement dated 18.02.2015 executed between the complainant and the respondent promoter which is not registered with this Authority in respect of apartment no. 184, 1<sup>st</sup> floor, IRIS measuring 48 sq.mtrs. of the carpet area, of the project, namely, "Our Homes" situated in Sector 37C,

Gurugram, Haryana under the Haryana Affordable Housing Scheme for basic sale price of Rs.16,00,000/-, for a basic sale price of Rs. 16,00,000/- and the complainant opted for time linked payment plan.

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

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|-----|--|---|
| 1.  | Name and location of the project   | "Our Homes", Gadoli Khurd, Sector 37C, Gurugram   |
| 2.  | Project area   | 10.144 acres  |
| 3.  | RERA registered/ not registered.   | <b>Not registered</b>   |
| 4.  | DTCP License no.   | 13 of 2012 dated 22.02.2012   |
| 5.  | DTCP licence renewal date  | 26.04.2019 valid upto 01.12.2019 ( as submitted by the counsel for respondent)  |
| 6.  | Apartment/unit no.   | 184, 1 <sup>st</sup> floor, block/tower "IRIS"  |
| 7.  | Apartment measuring  | 48 sq.mtr. of carpet area   |
| 8.  | Nature of real estate project  | Affordable group housing scheme   |
| 9.  | Date of execution of agreement to sell   | 18.02.2015 (page no 17 of the complaint )   |
| 10. | Payment plan   | Time linked payment plan( page no. 43 of the complaint)   |
| 11. | Total consideration  | Rs.16,00,000/- plus applicable taxes  |
| 12. | Total amount paid by the complainant till date(as per alleged by the complainant in complaint) | Rs. 14,40,000/- ( as stated in "information regarding complaint" sheet)<br>Rs.1915056 (as per receipt attached in the complaint page no. 47-52) |

|     |   |  |
|-----|---|--|
| 13. | Due date of delivery of possession as per clause 3(a) of agreement (36 months + 6 months grace period from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plan/revised plan and approvals of all concerned authorities) | 18.08.2018 ( from the date of agreement) |
| 14. | Delay in handing over possession till date of decision i.e. 30.05.2019  | 9 months and 12 days                     |

3. As per the averments made in the complaint, the respondent had agreed to handover the possession of the subject flat to the complainant within 36 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 plan and approvals of all concerned authorities additional grace period of 6 months. It is, however, stated that the respondent failed to develop the project in question within the stipulated time period.
4. The complainant has further submitted that they regularly visited the said project but no construction was in progress. It was also alleged that the respondent's intention was to take

payment for the tower without the intention to complete the work. The respondent charges 18% interest on delayed payments from the allottees.

5. It is alleged by the complainant that the respondent promoter has refused to deliver the possession of the apartment despite repeated requests and visit of the complainant to their office. It is further alleged by the complainant that the construction quality was very poor as on visiting the site it was found that the internal plaster of the allotted unit, it's sand had come to the hands of the complainant.
6. The complainant has submitted that some buyers of this project have filed a complaint about this delay at CM window and one of the complaint has been forwarded to DTP office, Sector 14, Gurugram. On the request of the home buyers, Mr. R.S. Batt, DTP visited the site along with ATP Mr. Manish on 15.01.2018 and at that point they came to know that builder license has been expired and not renewed. They all requested Mr. R.S. Batt (DTP) to take some action and help them to get this project completed as early as possible. After visiting the premises in question alongwith ATP Mr. Manish on

15.01.2018, they came to know that their request to Mr. R.S. Batt helped a lot in the process of getting respondent's license renewed.

7. The complainant has further submitted that the funds which are collected from this project in question are used by the respondent for its own interest.
8. According to complaint when he checked the internal walls of the subject unit its sand was coming out in hand and it seemed that it was not mixed with right proportion of cement and that the work did not have any quality. However, according to the complainant, he does not intend to withdraw from the project.
9. The following issues have been raised to be decided by the authority: -
  1. Whether there is a delay on the part of the respondent to construct the project and handover the possession of the subject flat to the complainant?
  2. Whether the quality of the construction/ building material used is upto the industry standards? And there should be a timely quality check for work executed till

date and for further work by some concerned authority for this project and that should also be accessible to home buyers of this project?

3. Whether the respondent should pay the interest @18% for the delayed period?

10. The reliefs sought are detailed as under: -

1. Interest charged by the builder is @18% p.a. on delayed payment so therefore respondent should pay as same interest 18% which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to be calculated as and when the 36 months was completed and thereafter the grace period was exhausted.
2. Direct the respondent to deliver the flat in the most efficacious and time bound manner.

Notice of the complaint has been issued to the respondent through speed post and at its given email address and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the

appearance and to file the reply to the complaint. Hence this complaint.

However, Shri Sandeep Choudhary, Advocate for respondent has appeared on 30.05.2019 and made the following submissions:-

- i. Counsel for the respondent has stated that the licence no. 13 dated 22.02.2012 has been renewed upto 01.12.2019 and copy of renewal of licence dated 26.04.2019 has been placed on record. Counsel for the respondent also submitted a copy of application for getting the project registered with the Authority. Counsel for the respondent further submitted that the project is ready and the possession is likely to be given within a period of 6 months.

**8. Issue wise findings of the authority: -**

9. **Issue no.1 and 3:** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the apartment buyer's agreement (copy annexure A), there is every reason to believe that vide the apartment buyer's agreement dated 18.02.2015 the



respondent had agreed to handover the possession of the subject apartment to the complainant within a period of 36 months with a grace period of 6 months which in other words, means that the respondent was bound to offer the physical possession of the subject apartment to the complainant on or before due date 06.08.2017 plus 6 months grace period. However, the possession of the apartment in question has not been delivered till date despite a delay of approx. 9 months and 12 days till date of decision. Hence, it is held that there was a delay of about 9 months and 12 days till date of decision in not offering the possession of the subject apartment to the complainant and this was in violation of the terms and conditions of the apartment buyer's agreement and also violation of section 11(4)(a) of the Real Estate Regulatory Authority Act, 2016. Hence, the complainant is entitled for delayed possession charges for every month of delay at the prescribed rate of interest @10.65% per annum w.e.f. 18.08.2018 in terms of proviso to section 18(1) of the Act read with Rule 15 of Haryana Real Estate Regulatory Authority Rules, 2017.



11. **Issue no. 2:** From the perusal of record it is found that the complainant has failed to produce any documentary evidence in support of his allegation as regards poor quality construction.

### **FINDINGS OF THE AUTHORITY**

11. 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 complainants at a later stage.
12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**Decision and directions of the authority: -**

13. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.65% per annum with effect from the due date i.e. 18.08.2018 of delivery of possession till the date of this order as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The promoter shall not charge anything from the complainant which is not part of BBA. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession. 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.
14. Since the project is not registered with the Authority in violation of section 3(1) of the Act, so the Authority has decided to take suo

moto cognizance of this fact and direct the registration branch to initiate necessary action against the respondent under the Act. A copy of this order be endorsed to the registration branch.

15. The complaint stands disposed of accordingly.

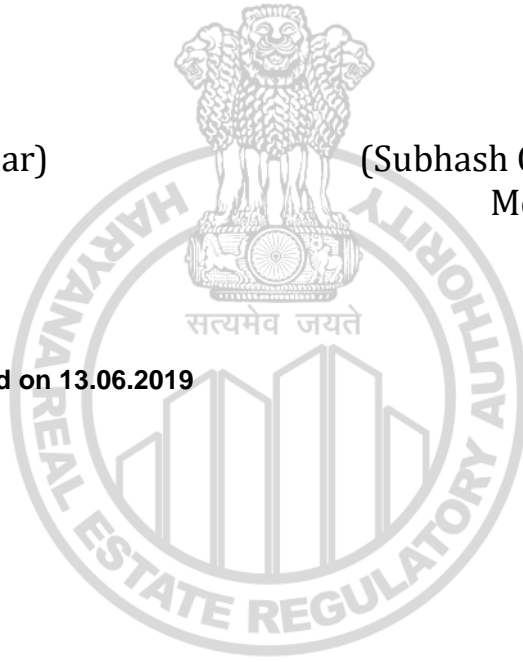
16. The case file be sent to the registry.

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

Dated 30.05.2019

Judgement uploaded on 13.06.2019



HARERA  
GURUGRAM