

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

Complaint no. : 35 of 2019
First date of hearing: 10.04.2019
Date of decision : 10.04.2019

1. Mrs. Preeti Ranvir Singh

2. Mr. Nitin Agarwal

Both R/o Flat no. 101, Tower no. 2, Uniworld
Garden, Sohna Road,
Gurugram, Haryana -122018

Through Mr. Ranvir Singh (Special Power of
Attorney Holder)

Complainants

Versus

M/s IREO Pvt. Ltd.

Address : Ireo campus, Sector-59, Gurugram,
Haryana-122011

Respondent

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Shri Ranvir Singh

Special Power of Attorney Holder
on behalf of the complainants

Shri Garv Malhotra

Advocate for the complainants

Shri M.K. Dang

Advocate for the respondent

ORDER

1. A complaint dated 10.01.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read

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with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mrs. Preeti Ranvir Singh, against the promoters M/s Ireo Pvt. Ltd, on account of violation of the clause 13.3 of apartment buyer's agreement executed on 06.04.2015 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 06.04.2015 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 part of the promoters/respondents 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	"Skyon" Golf Course Extension Road, Sector- 60, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	18.10 acres
4.	DTCP licence no.	192 of 2008 dated



		22.11.2008 (as per annexure R3 of the reply)
5.	Registered/ not registered	Registered vide no. 367 of 2017 dated 24.11.2017
6.	Revised date of completion of project as per RERA registration	21.11.2018
7.	Date of allotment letter	31.12.2014 (Annx 2)
8.	Unit no.	F1001, tower- F, tenth floor
9.	Unit measuring area	2074 sq. ft.
10.	Date of execution of apartment buyer's agreement	06.04.2015 (Annx 5)
11.	Due date of delivery of possession as per clause 13.3 of apartment buyer's agreement.	06.10.2017 (Note - 24 months from the date of execution of agreement + 180 days grace period)
12.	Date of part occupancy certificate for building/tower nos. A, B and F	14.09.2017 (Annx R 3)
13.	Date of notice of possession	21.09.2017 (Annx 7)
14.	Payment plan	Possession linked (as per payment plan at Pg.35 of the complaint)
15.	Basic sale price of the unit	Rs.2,47,58,375/- (as per clause 3.1 of the agreement)
16.	Total sales consideration	Rs 3,08,21,720/- (as per statement of accounts dated 21.09.2017 at Pg. 97)
17.	Total amount paid by the	Rs. 74,87,482 /- (as per

30,815,130/-

Corrected vide order
dated 30/08/2019.



	complainant till date	statement of accounts dated 21.09.2017 at Pg (97)
18.	Delay in actual handing over possession till date of this order	One year, six months approx. (92, 93, 94, 95, 96)
19.	Penalty as per clause 13.4 of apartment buyer's agreement	Rs. 7.50/- per sq. ft. of super area for every month of delay until the actual date fixed for offering the possession of apartment

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant. An apartment buyer's agreement dated 06.04.2015 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 06.10.2017. As per the allegation by the complainant, neither the respondents have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.7.50/- of the area of the said plot for every month for the delay until the actual date fixed for making offer of conveyance of the said plot to the allottees as per clause 13.4 of the agreement duly executed between the parties. Therefore, the promoter has not fulfilled his committed liability as on date.

Corrected vide order
dated 30/08/2019.



5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The reply has been filed by the respondent on 08.02.2019 which has been perused by the authority. The respondent through its counsel appeared on 10.04.2019. The case came up for hearing on 10.04.2019.

Facts of the complaint: -

6. The complainants submitted that they had applied for booking in residential project called SKYON at golf course extension road, sector 60, Gurugram being developed by M/s Ireo Pvt. Ltd., 5th floor, Orchid Centre, Sector 53, golf course road, Gurugram on 20.12.2014 and made a payment of Rs. 25,42,072/-.
7. The complainants submitted that on 31.12.2014 they were allotted a residential apartment no. SY-F-10-01, admeasuring 2074 sq. ft. in group housing project known as SKYON situated in Sector 60, Gurugram along with the payments terms. It is alleged by the complainants that apartment buyer's agreement was signed on 06.04.2015.
8. The complainants submitted that on 21.09.2017, vide a letter and an email they were informed that the developer has

received the occupation certificate and demanded the balance payment of Rs. 2,33,34,239/- as per details in the statement of account, along with completing certain documentary formalities. It is pertinent to mention that this amount included stamp duty charges of Rs.14,92,500/- and even utility advances amounting to Rs. 12,000/-.

9. The complainants submitted that respondent promised possession of the flat within 6 weeks of making the entire payment and completing other formalities/ submitting various documents etc.
10. The complainants contended that even more than 14 months after all the payments amounting to Rs. 3,07,26,325/- has been made, possession was not being given to them.

Issues to be determined: -

11. The following issue have been raised by the complainants:
 - i. Whether the respondent is justified in delaying the possession by more than 1 year and 2 months after taking the full payment including the stamp duty charges?
 - ii. Whether the respondent is liable to pay delayed possession charges at the prescribed rates for the delaying possession by more than 1 year and 2 months?



iii. Whether is justified in taking utility charges more than 14 months in advance and that too before giving the possession of the apartment?

iv. Whether respondent liable to return the advance utility charges along with interest thereon?

Reliefs sought:-

12. The complainants are praying for the following reliefs -

i. The developer be ordered to hand over the possession without any further delay and give us delayed possession charges at the prescribed rates from the date of making final payment i.e. 24.10.2017 till the possession is handed over to them.

ii. Further the developer should be ordered to refund the stamp duty along with interest at the prescribed rates and the same will be given back at the time of purchase of stamp duty papers.

Respondent's reply: -

13. The respondent submitted that it is pertinent to mention that the tower in which the unit allotted to the complainants is located is exempted from registration under the Real Estate



Regulatory Authority Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017. The unit allotted to the complainants does not come under the scope and ambit of 'on-going project' as defined in section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017.

14. The respondent submitted that the request for grant of Occupation Certificate for the unit allotted to the complainants in the project was made before the publication of Haryana Real Estate (Regulation and Development) Rules, 2017 vide application letter dated 17.02.2017 under sub code 4.10 of the Haryana building Code, 2017. Thus, according to the provisions of the said Act and Rules, the project in which the unit is allotted to the complainants is not required to be registered under the said Act and Rules.
15. The respondent alleged that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 34 of the apartment buyer's agreement.
16. The respondent alleged that this hon'ble authority does not have the jurisdiction to decide on the imaginary

compensation and interest as claimed by the complainants. It is submitted that in accordance with Section 71 of the Real Estate Regulatory Authority Act read with Rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

17. The respondent submitted that the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in Section 2(a) of the Real Estate Regulatory Authority Act who has the power and the authority to decide the claims of the complainants.
18. The respondent submitted that the respondent company has developed and delivered several prestigious projects such as 'Ireo City', 'Grand Arch', 'Victory Valley' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
19. The respondent alleged that the complainants undertook and accepted in clause 3 of the booking application form that they

had made the booking and had signed the booking application on the basis of their own estimations and understanding and that they have not been influenced by any advertisement, representations whatsoever.

20. The respondent submitted that the complainants made the payment of the earnest money and part-amount of the total sale consideration. It is submitted that the complainants have made the part-payment of Rs. 3,08,15,130/- out of the total sale consideration of Rs.3,08,21,720/-. The sale consideration of Rs.3,08,21,720/- is inclusive of the stamp duty charges payable by the complainants. It is submitted that the complainants are bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, service tax as well as other charges payable along with it at the applicable stage.
21. The respondent alleged that respondent has already completed the construction of the tower in which the unit allotted to the complainants is located and the photographs of the same are attached. It is pertinent to mention herein that the respondent had applied for the grant of occupation certificate on 17.02.2017 and the same was granted by the concerned authorities on 14.09.2017.

22. The respondent submitted the possession of the unit has been timely offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is further alleged by the respondent that the apartment buyer's agreement was executed on 06.04.2015. Therefore, for the purposes of the present matter, 30 months from 06.04.2015 (including the 180 days' grace period) would have expired only on 06.10.2017. However, the respondent company had already offered the possession of the unit to the complainants on 21.09.2017 i.e. prior to the due date of possession. The respondent informed the complainants that only finishing work of the unit allotted to them is left and that it will hand over the possession to the complainants on payment of the remaining due amount as well on completion of documentation formalities. Therefore, no default whatsoever has been committed by the respondent company. It is further submitted by the respondent that even according to Section 19(10) of the Real Estate (Regulation and Development) Act, 2016, the complainants are supposed to take the possession of the unit that has been allotted to them. The complainants now cannot claim any premium of their

own defaults, laches, delays, misdeeds and illegalities by filing such untenable, baseless, false and frivolous complaint.

23. Respondent alleged that approximately 300 conveyance deeds have already been executed for the 'Skyon' project.

Determination of issues:-

24. As regards **the issue no. 1 and 2** raised by the complainants, it is to be noteworthy from the perusal of record and the submissions made by the parties, due date of delivery of possession is 06.10.2017 in terms of clause 13.3 of the apartment buyer's agreement dated 06.04.2015. Relevant portion of clause 13.3 of the agreement dated 06.04.2015 is reproduced below for ready reference-

"...the Company proposes to offer the possession of the said Apartment to the Allottee within a period of 24 (Twenty Four) months from the date of execution of this agreement ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 (One Hundred and Eighty) days ("grace period"), after the expiry of the said Commitment period to allow for unforeseen delays beyond the reasonable control of the Company."

25. Although, the respondent has already send the notice of offer of possession of unit on 21.09.2017 after receipt of

occupation certificate on 14.09.2017 (**Annexure R3**), but as per the correspondences exchanged between the parties i.e. email dated 02.11.2017, 07.02.2018 and 08.02.2018, it is clear that the respondent has not given the actual physical possession of the apartment in question till date despite receipt of all payments. Hence, the respondent is not justified in delaying the delivery of possession by more than 1 year, which is in violation of section 11 of the Real Estate (Regulation and Development) Act, 2016.

26. With regards to **third and fourth issue** raised by the complainant, from the perusal of record filed by the respondent, it is noted that the complainants have made payment of utility charges on 24.10.2017 after offer of possession by the respondent vide letter 21.09.2017. The said charges were levied by the respondent as per the terms of agreement mention in payment schedule (internal page annexed as annexure IV of the agreement of the buyer's agreement dated 06.04.2015). Hence the respondent is not liable to refund the said amount.
27. It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Findings of the authority:-

28. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.
29. Arguments heard. As per clause 13.3 of the agreement dated 06.04.2015 for unit no. F-1001, tower F in the project 'Skyon', located at Golf Course Extension Road, Sector -60, Gurugram, possession was to be handed over to the complainants within a period of 24 months plus 180 days' grace period which comes out to be 06.10.2017. However, the respondent has not delivered the unit in time. Complainants have already paid



Rs. ~~74,87,482/-~~ ^{30,815,130/-} to the respondent against a total sales consideration of Rs. 3,08,21,720/-.

30. During the course of arguments, it has been alleged by the complainant that even after a lapse of 18 months, no physical possession has been given to them despite depositing of the entire amount. The authority has taken cognizance of the matter in an adverse view. A lot of correspondence has been taken place between the parties with respect to giving final touches to the property in question, as such the buyer is entitled for delayed possession charges at the prescribed rate of interest of 10.75% per annum as per the provision of section 18(1) proviso of the Act *ibid*.

Decision and directions of the authority:-


31. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions-
- The respondent is directed to hand over the physical possession of the apartment to the complainant within a period of 30 days, failing which heavy penalty shall be imposed on the respondent.

*Corrected vide order
dated 30/08/2019.*

- ii. The complainants are entitled for delayed possession charges for every month of delay at the prescribed rate of 10.75% per annum with effect from 06.10.2017 till the actual handing over of possession of the unit.
- iii. No holding charges shall be charges by the respondent from the complainants.
32. The complaint is disposed of accordingly.
33. The order is pronounced. Copy of this order be consigned to registry.


(Samir Kumar)

Member
Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: -10.04.2019

Corrected judgement uploaded on 05.09.2019

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APPEARANCE:

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1. A complaint dated 10.01.2019 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 Mrs. Preeti Ranvir Singh, against the promoters M/s Ireo Pvt. Ltd, on account of violation of the clause 13.3 of apartment buyer's agreement executed on 06.04.2015 in respect of unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 06.04.2015 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 part of the promoters/respondents 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	"Skyon" Golf Course Extension Road, Sector-60, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Project area	18.10 acres
4.	DTCP licence no.	192 of 2008 dated

		22.11.2008 (as per annexure R3 of the reply)
5.	Registered/ not registered	Registered vide no. 367 of 2017 dated 24.11.2017
6.	Revised date of completion of project as per RERA registration	21.11.2018
7.	Date of allotment letter	31.12.2014 (Annx 2)
8.	Unit no.	F1001, tower- F, tenth floor
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10.	Date of execution of apartment buyer's agreement	06.04.2015 (Annx 5)
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15.	Basic sale price of the unit	Rs.2,47,58,375/- (as per clause 3.1 of the agreement)
16.	Total sales consideration	Rs 3,08,21,720/- (as per statement of accounts dated 21.09.2017 at Pg. 97)
17.	Total amount paid by the	Rs.74,87,482/- (as per

	complainant till date	statement of accounts dated 21.09.2017 at Pg. 97)
18.	Delay in actual handing over possession till date of this order	One year, six months approx.
19.	Penalty as per clause 13.4 of apartment buyer's agreement	Rs. 7.50/- per sq. ft. of super area for every month of delay until the actual date fixed for offering the possession of apartment

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant. An apartment buyer's agreement dated 06.04.2015 is available on record for the aforesaid unit according to which the possession of the said unit was to be delivered by 06.10.2017. As per the allegation by the complainant, neither the respondents have delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.7.50/- of the area of the said plot for every month for the delay until the actual date fixed for making offer of conveyance of the said plot to the allottees as per clause 13.4 of the agreement duly executed between the parties. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The reply has been filed by the respondent on 08.02.2019 which has been perused by the authority. The respondent through its counsel appeared on 10.04.2019. The case came up for hearing on 10.04.2019.

Facts of the complaint: -

6. The complainants submitted that they had applied for booking in residential project called SKYON at golf course extension road, sector 60, Gurugram being developed by M/s Ireo Pvt. Ltd., 5th floor, Orchid Centre, Sector 53, golf course road, Gurugram on 20.12.2014 and made a payment of Rs. 25,42,072/-.
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8. The complainants submitted that on 21.09.2017, vide a letter and an email they were informed that the developer has

received the occupation certificate and demanded the balance payment of Rs. 2,33,34,239/- as per details in the statement of account, along with completing certain documentary formalities. It is pertinent to mention that this amount included stamp duty charges of Rs.14,92,500/- and even utility advances amounting to Rs. 12,000/-.

9. The complainants submitted that respondent promised possession of the flat within 6 weeks of making the entire payment and completing other formalities/ submitting various documents etc.
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Issues to be determined: -

11. The following issue have been raised by the complainants:
 - i. Whether the respondent is justified in delaying the possession by more than 1 year and 2 months after taking the full payment including the stamp duty charges?
 - ii. Whether the respondent is liable to pay delayed possession charges at the prescribed rates for the delaying possession by more than 1 year and 2 months?

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iv. Whether respondent liable to return the advance utility charges along with interest thereon?

Reliefs sought:-

12. The complainants are praying for the following reliefs -

i. The developer be ordered to hand over the possession without any further delay and give us delayed possession charges at the prescribed rates from the date of making final payment i.e. 24.10.2017 till the possession is handed over to them.

ii. Further the developer should be ordered to refund the stamp duty along with interest at the prescribed rates and the same will be given back at the time of purchase of stamp duty papers.

Respondent's reply: -

13. The respondent submitted that it is pertinent to mention that the tower in which the unit allotted to the complainants is located is exempted from registration under the Real Estate

Regulatory Authority Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017. The unit allotted to the complainants does not come under the scope and ambit of 'on-going project' as defined in section 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017.

14. The respondent submitted that the request for grant of Occupation Certificate for the unit allotted to the complainants in the project was made before the publication of Haryana Real Estate (Regulation and Development) Rules, 2017 vide application letter dated 17.02.2017 under sub code 4.10 of the Haryana building Code, 2017. Thus, according to the provisions of the said Act and Rules, the project in which the unit is allotted to the complainants is not required to be registered under the said Act and Rules.
15. The respondent alleged that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 34 of the apartment buyer's agreement.
16. The respondent alleged that this hon'ble authority does not have the jurisdiction to decide on the imaginary

compensation and interest as claimed by the complainants. It is submitted that in accordance with Section 71 of the Real Estate Regulatory Authority Act read with Rules 21(4) and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

17. The respondent submitted that the authority shall appoint an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard. It is submitted that even otherwise it is the adjudicating officer as defined in Section 2(a) of the Real Estate Regulatory Authority Act who has the power and the authority to decide the claims of the complainants.
18. The respondent submitted that the respondent company has developed and delivered several prestigious projects such as 'Ireo City', 'Grand Arch', 'Victory Valley' and 'Uptown' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
19. The respondent alleged that the complainants undertook and accepted in clause 3 of the booking application form that they

had made the booking and had signed the booking application on the basis of their own estimations and understanding and that they have not been influenced by any advertisement, representations whatsoever.

20. The respondent submitted that the complainants made the payment of the earnest money and part-amount of the total sale consideration. It is submitted that the complainants have made the part-payment of Rs. 3,08,15,130/- out of the total sale consideration of Rs.3,08,21,720/-. The sale consideration of Rs.3,08,21,720/- is inclusive of the stamp duty charges payable by the complainants. It is submitted that the complainants are bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, service tax as well as other charges payable along with it at the applicable stage.

21. The respondent alleged that respondent has already completed the construction of the tower in which the unit allotted to the complainants is located and the photographs of the same are attached. It is pertinent to mention herein that the respondent had applied for the grant of occupation certificate on 17.02.2017 and the same was granted by the concerned authorities on 14.09.2017.

22. The respondent submitted the possession of the unit has been timely offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is further alleged by the respondent that the apartment buyer's agreement was executed on 06.04.2015. Therefore, for the purposes of the present matter, 30 months from 06.04.2015 (including the 180 days' grace period) would have expired only on 06.10.2017. However, the respondent company had already offered the possession of the unit to the complainants on 21.09.2017 i.e. prior to the due date of possession. The respondent informed the complainants that only finishing work of the unit allotted to them is left and that it will hand over the possession to the complainants on payment of the remaining due amount as well on completion of documentation formalities. Therefore, no default whatsoever has been committed by the respondent company. It is further submitted by the respondent that even according to Section 19(10) of the Real Estate (Regulation and Development) Act, 2016, the complainants are supposed to take the possession of the unit that has been allotted to them. The complainants now cannot claim any premium of their

own defaults, laches, delays, misdeeds and illegalities by filing such untenable, baseless, false and frivolous complaint.

23. Respondent alleged that approximately 300 conveyance deeds have already been executed for the 'Skyon' project.

Determination of issues:-

24. As regards **the issue no. 1 and 2** raised by the complainants, it is to be noteworthy from the perusal of record and the submissions made by the parties, due date of delivery of possession is 06.10.2017 in terms of clause 13.3 of the apartment buyer's agreement dated 06.04.2015. Relevant portion of clause 13.3 of the agreement dated 06.04.2015 is reproduced below for ready reference-

"....the Company proposes to offer the possession of the said Apartment to the Allottee within a period of 24 (Twenty Four) months from the date of execution of this agreement ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 (One Hundred and Eighty) days ("grace period"), after the expiry of the said Commitment period to allow for unforeseen delays beyond the reasonable control of the Company."

25. Although, the respondent has already send the notice of offer of possession of unit on 21.09.2017 after receipt of

occupation certificate on 14.09.2017 (**Annexure R3**), but as per the correspondences exchanged between the parties i.e. email dated 02.11.2017, 07.02.2018 and 08.02.2018, it is clear that the respondent has not given the actual physical possession of the apartment in question till date despite receipt of all payments. Hence, the respondent is not justified in delaying the delivery of possession by more than 1 year, which is in violation of section 11 of the Real Estate (Regulation and Development) Act, 2016.

26. With regards to **third and fourth issue** raised by the complainant, from the perusal of record filed by the respondent, it is noted that the complainants have made payment of utility charges on 24.10.2017 after offer of possession by the respondent vide letter 21.09.2017. The said charges were levied by the respondent as per the terms of agreement mention in payment schedule (internal page annexed as annexure IV of the agreement of the buyer's agreement dated 06.04.2015). Hence the respondent is not liable to refund the said amount.

27. It has been requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

Findings of the authority:-

28. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.

29. Arguments heard. As per clause 13.3 of the agreement dated 06.04.2015 for unit no. F-1001, tower F in the project 'Skyon', located at Golf Course Extension Road, Sector -60, Gurugram, possession was to be handed over to the complainants within a period of 24 months plus 180 days' grace period which comes out to be 06.10.2017. However, the respondent has not delivered the unit in time. Complainants have already paid

Rs. 74,87,482/- to the respondent against a total sales consideration of Rs. 3,08,21,720/-.

30. During the course of arguments, it has been alleged by the complainant that even after a lapse of 18 months, no physical possession has been given to them despite depositing of the entire amount. The authority has taken cognizance of the matter in an adverse view. A lot of correspondence has been taken place between the parties with respect to giving final touches to the property in question, as such the buyer is entitled for delayed possession charges at the prescribed rate of interest of 10.75% per annum as per the provision of section 18(1) proviso of the Act *ibid*.

Decision and directions of the authority:-

31. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions-
- The respondent is directed to hand over the physical possession of the apartment to the complainant within a period of 30 days, failing which heavy penalty shall be imposed on the respondent.

- ii. The complainants are entitled for delayed possession charges for every month of delay at the prescribed rate of 10.75% per annum with effect from 06.10.2017 till the actual handing over of possession of the unit.
- iii. No holding charges shall be charges by the respondent from the complainants.
32. The complaint is disposed of accordingly.
33. The order is pronounced. Copy of this order be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: -10.04.2019

Judgement uploaded on 18.04.2019

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