

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 21.01.2019
Complaint No.	715/2018 Case Titled As Saroj Singal V/S Nimai Developers Pvt. Ltd.
Complainant	Saroj Singal
Represented through	Complainant in person with S/Shri Sukhbir Yadav and Abhinav Sharma, Advocates for the complainant.
Respondent	Nimai Developers Pvt. Ltd.
Respondent Represented through	Shri Chander Parkash Advocate for the respondent
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Shri Chander Parkash Advocate has appeared on behalf of the respondent and filed power of attorney and resolution passed by the Board of Directors.

Arguments heard.

Complaint was filed on 14.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 29.8.2018, 17.9.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 17.9.2018 and 29.11.2018 for non-filing of reply even after service of notices.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Brief facts of the matter are as under :-

As per clause 26 of the Builder Buyer Agreement dated 12.5.2015 for unit No. 621, 6<sup>th</sup> floor, in Nimai Place, Sector -114, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of building plans or date of execution of BBA whichever is later. It was a construction linked plan. Complainant has already paid Rs.16,18,623/- to the respondent against a total sale consideration of Rs.51,54,289/-. However, the respondent has miserably failed to deliver the unit in time. The respondent apprised that the project is registered vide registration No.7 of 2018. 70% of the work is complete and the possession of the flat shall be handed over by December 2019.

Allotment letter is dated 10.7.2014 whereas BBA was signed on 12.5.2015. In the interest of justice, it is admissible that where BBA has not been signed or has been signed at a belated stage, the date of allotment shall be taken from the date of issue of allotment letter. Since the project is registered vide registration No.7 of 2018 and revised date of possession is September 2019. If the respondent fails to deliver the possession of the unit on the revised date, then the complainant is entitled for refund of amount alongwith revised rate of interest. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **10.7.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016

till the handing over possession failing which the complainant is entitled to seek refund of the amount.

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 handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

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

Samir Kumar  
(Member)  
21.1.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 715 of 2018**  
**Date of first hearing: 21.01.2018**  
**Date of decision : 21.01.2018**

Mrs. Saroj Singal  
R/o House no. 1576, Sector-46, Gurugram-  
122002

**...Complainant**

Versus

Nimai Developers Private Limited  
Corporate office: SCO-304, 2<sup>nd</sup> floor, Sector-  
29, Gurugram-122002

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Ms. Saroj Singal Complainant in person  
with  
Shri Sukhbir Yadav and Shri Advocates for the complainant  
Abhinav Sharma  
Shri Chander Parkash Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 14.08.2018 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 Mrs. Saroj Singal, against the promoter Nimai Developers Private Limited, in respect of said plot described below in the project 'Nimai Place', on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 12.05.2015 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Nimai Place" Sector-114 Gurugram, Haryana
2.	Nature of real estate project	Commercial
3.	Project area	3.0125 acres
4.	Unit no.	621 on 6 <sup>th</sup> floor
5.	Unit area	581 sq. ft.
6.	Registered/ not registered	<b>Registered</b> (07 of 2018 dated 13.07.2018) Valid upto September,2019
7.	DTCP license	126 of 2012 dated 20.12.2012



8.	Date of builder buyer agreement	12.05.2015
9.	Total consideration	Rs. 51,54,289/- (Page 2 of builder buyer agreement)
10.	Total amount paid by the complainant	Rs. 16,18,625/- (as per annexure P-1 and P-2)
11.	Payment plan	Construction linked payment plan (annexure A of the agreement)
12.	Building plan were sanctioned dated	22.02.2013 (Annexure P-7 as alleged by the complainant) (page-54)
13.	Date of delivery of possession	Clause 26 - 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later i.e.12.05.2018
14.	Delay of number of months/ years up to 21.01.2019	8 months approx..
15.	Penalty clause	Clause 30- Rs. 10/- per sq. ft. per month on super area for any delay in offering possession of the unit



3. The details provided above have been checked on the basis of the record available in the case file. A buyer's agreement dated 12.05.2015 is placed on record for the aforesaid unit according to which the possession of the same was to be

delivered by 12.05.2018. Neither the respondent has delivered the possession of the said unit till date nor they have paid any compensation @ Rs.10/- per sq. yard per month of the area of the said unit for the period of such delay as per clause 26 of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply.

#### **Facts of the complaint**

5. The complainant submitted that in May 2013, she along with her son and daughter in law visited to the site office of respondent there they meet with the marketing staff of builder and get information about the project. Marketing staff showed rosy picture of the project and allured with proposed specification in collusion with real estate agent. Local staff of respondent gave brochure, application form and payment plan and assured that possession will be delivered within 36 months.



6. The complainant submitted that on date 20.05.2013, her daughter in law issued a cheque of Rs. 4,21,000/- as booking amount vide cheque no. 006155 dated 20.05.2013 drawn in Axis Bank Ltd. with application form. Applicant booked to studio apartment under construction link plan. Total basic cost of unit was Rs. 44,59,157/-.
7. The complainant submitted that on date 14.03.2014 respondent raised a demand on construction stage of "On start of excavation" and same was paid by applicant on date 14.03.2014 vide cheque no. 006163. Till date applicant/original allottee has paid Rs. 16,18,623/-. Further, on date 10.07.2014, respondent issued a provisional allotment letter referring application dated 01.02.2014. Respondent allotted unit no. 621 on sixth floor, area admeasuring 581 sq. ft. for sale consideration of Rs 51,54,289/-.
8. The complainant submitted that on date 15.04.2015 original allottee Mrs. Vashudha Gupta transferred the said unit in to the complainant Mrs. Saroj Singal, with permission of respondent. Further, a pre-printed buyer's agreement was executed on 12.05.2015. It is pertinent to mention that that buyer's agreement was executed after 23 months of application.





9. The complainant submitted that on date 18.07.2016 she visited to office of respondent and raised her concern of delay in possession of unit (as promised, 36 months at the time of accepting the application money). Till that time respondent only constructed basement floor and there was no hope to complete the project as promised. Therefore, she asked for refund of money. As per direction of respondent staff, complainant gave a request letter dated 18.07.2016 to the respondent for cancellation of allotment of unit no. 621.
10. The complainant submitted that, respondent did not consider the request of complainant and kept sending demand letters and till date construction has reached to second floor. It is further submitted that on date 14.05.2018, she visited the project site and construction was abandoned.
11. The complainant submitted that the main grievance of the her in the present complaint is that in spite of she paid more than 31% of the present amount of studio apartment till date 16.03.2014, respondent has failed to raise the construction and due to the inability to complete the project, complainant requested for cancellation of unit.



12. The complainant submitted that it was promised by the respondent party at the time of receiving payment for the studio apartment that the possession of fully constructed apartment would be handed over to the complainant as soon as construction completes i.e. 36 months as per studio apartment buyer agreement. It is pertinent to mention here that plans were sanctioned by department on 22.02.2013.
13. The complainant submitted that respondent party had failed to complete the construction in stipulated time. After request of cancellation of unit and demand for refund, respondent did not pay any heed to just and reasonable demand of complainant. It is pertinent to mention here that respondent did not possess lawful right to exit the project i.e. land of project is owned by Y.B. Builders Pvt. Ltd.
14. The complainant submitted that respondent vide letter dated 16.10.2013 declared that "we have the license to develop and construct a commercial complex in Gurugram". It is pertinent to mention here that respondent did not have any license on his name, license of subject land belongs to B.Y. Builders Pvt. Ltd. and respondent concealed the material fact from complainant. It is axiomatic from the facts that respondent committed fraud and liable to face the heat of law.



15. The complainant submitted that she has also visited several times to the office of respondent for refund of money and served multiple grievances letters to the respondent at his office address and requested to the executive/office bearer of respondent party, before filing this complaint.
16. The complainant submitted that the cause of action for the present complaint arose in or around 2015 when a pre printed buyer agreement containing unfair and unreasonable terms, for the first time, forced upon the allottee. The cause of action further arose in 2016, when the respondent failed to comply with the cancelation request of complainant. The cause of action further arose in May, 2018, when the respondent failed to handover the possession of the studio apartment as per the buyer's agreement. The cause of action again arose on various occasions, including on: a) June 2018, b) July, 2018 and on many time till date, when the protests were lodged with the respondent party about refund of money. The cause of action is alive and continuing and will continue to subsist until such time as this hon'ble authority restrains the respondent by an order of injunction and/or passes the necessary orders.

**17. Issues raised by the complainant**



The relevant issues as culled out from the complaint are as follows:

- i. Whether respondent deliberately conceals the material fact that license of project is in the name of other company?
- ii. Whether the complainant is entitled for refund of all money paid to respondent?
- iii. Whether the complainant is entitled for compound interest @ 24% per annum along with compensation from date of booking to till date of refund?

#### 18. Relief sought

- I. To direct the respondent to refund the amount paid i.e. Rs. 16,18,623/- along with interest @ 24% from date of booking to date of refund.
- II. To direct the respondent party to pay an amount of Rs.1,00,000/- as litigation expenses;
- III. To direct the respondent party may be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the buyer's agreement.



#### 19. Determination of issues

No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

- i. With respect to the **first issue** raised by the complainant, the complainant has only made an allegation and no documentary proof has been attached by the complainant in order to enable the authority to ascertain the same. Hence, the said issue is not maintainable.
- ii. With respect to the **second issue** raised by the complainant, as per clause 26 of the buyer's agreement dated 12.05.2015, the possession of the said unit was to be handed by 12.05.2018. However, the possession has been delayed by 8 months(approx.) till the date of decision. 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. The status of the project cannot be ascertained from the documents available on the case file. Keeping in view the dismal state of affairs with regard to status



of the project the authority is view that the respondent is liable to pay interest at the rate of 10.75% as per section 18(1) proviso of the Act read with rule 15 of the rules ibid.

iii. With respect to the **third issue** raised by the complainant, the complainant can seek compensation from the adjudicating officer for which he shall make a separate application.

20. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

### Findings of the authority

21. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.



The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

22. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000/-.
23. Such notices were issued to the respondent on 29.08.2018, 17.09.2018 and on 29.11.2018. Besides this, a penalty of Rs. 5000/- and Rs. 10,000/- was also imposed on 17.09.2018 and 29.11.2018 for non-filing of reply even after service of notices. A final notice dated 14.01.2019 by way of email was sent to both the parties to appear before the authority on 21.01.2019.
24. As per clause 26 of the buyer's agreement dated 12.05.2015 for unit no. 621, 6<sup>th</sup> floor, in Nimai Place, Sector-114,



Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of building plans or date of execution of the agreement, whichever is later. It was a construction linked plan. Complainant has already paid Rs. 16,18,623/- to the respondent against a total sale consideration of Rs. 51,54,289/-. However, the respondent has miserably failed to deliver the unit in time. The respondent apprised that the project is registered vide registration no. 7 of 2018. 70 % of the work is complete and the possession of the flat shall be handed over by December 2019.

25. Allotment letter is dated 10.07.2014 whereas the agreement was signed on 12.05.2015. In the interest of justice, it is admissible that where the agreement has not been signed or has been signed at a belated stage, the date of allotment shall be taken from the date of issue of allotment letter. Since the project is registered one vide registration no. 7 of 2018 and revised date of possession is September 2019. If the respondent fails to deliver the possession of the unit on the revised date, then the complainant is entitled for refund of amount alongwith revised rate of interest. As such, complainant is entitled for delayed possession charges at





prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.

### Directions of the authority

26. 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:

- i. The respondent is directed to pay refund of the amount deposited by the complainant/buyer of Rs. 16,18,623/- alongwith prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.
- ii. The arrears of interest accrued so far shall be paid to the complainant within a period of 90 days from this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.



27. The complaint is disposed of accordingly.
28. The order is pronounced.
29. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2019

Judgement Uploaded on 08.02.2019



HARERA  
GURUGRAM



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

Complaint no. : 715 of 2018  
Date of first  
hearing: 21.01.2018  
Date of decision : 21.01.2018

Mrs. Saroj Singal  
R/o House no. 1576, Sector-46, Gurugram-  
122002

...Complainant

Versus

Nimai Developers Private Limited  
Corporate office: SCO-304, 2<sup>nd</sup> floor, Sector-  
29, Gurugram-122002

...Respondent

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

Member  
Member

**APPEARANCE:**

Ms. Saroj Singal

Complainant in person  
with

Shri Sukhbir Yadav and Shri  
Abhinav Sharma  
Shri Chander Parkash

Advocates for the complainant  
Advocate for the respondent



**EX-PARTE ORDER**

1. A complaint dated 14.08.2018 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 Mrs. Saroj Singal, against the promoter Nimai Developers Private Limited, in respect of said plot described below in the project 'Nimai Place', on account of violation of the section 11(4)(a) of the Act ibid.

2. Since the buyer's agreement has been executed on 12.05.2015 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Nimai Place" Sector-114 Gurugram, Haryana
2.	Nature of real estate project	Commercial
3.	Project area	3.0125 acres
4.	Unit no.	621 on 6 <sup>th</sup> floor
5.	Unit area	581 sq. ft.
6.	Registered/ not registered	<b>Registered</b> (07 of 2018 dated 13.07.2018) Valid upto September,2019
7.	DTCP license	126 of 2012 dated 20.12.2012





8.	Date of builder buyer agreement	12.05.2015
9.	Total consideration	Rs. 51,54,289/- (Page 2 of builder buyer agreement)
10.	Total amount paid by the complainant	Rs. 16,18,625/- (as per annexure P-1 and P-2)
11.	Payment plan	Construction linked payment plan (annexure A of the agreement)
12.	Building plan were sanctioned dated	22.02.2013 (Annexure P-7 as alleged by the complainant) (page-54)
13.	Date of delivery of possession	Clause 26 - 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later i.e.12.05.2018
14.	Delay of number of months/ years up to 21.01.2019	8 months approx..
15.	Penalty clause	Clause 30- Rs. 10/- per sq. ft. per month on super area for any delay in offering possession of the unit



3. The details provided above have been checked on the basis of the record available in the case file. A buyer's agreement dated 12.05.2015 is placed on record for the aforesaid unit according to which the possession of the same was to be

delivered by 12.05.2018. Neither the respondent has delivered the possession of the said unit till date nor they have paid any compensation @ Rs.10/- per sq. yard per month of the area of the said unit for the period of such delay as per clause 26 of the said agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has not been filed by the respondent till date even after service of three notices consecutively for the purpose of filing reply.

#### **Facts of the complaint**

5. The complainant submitted that in May 2013, she along with her son and daughter in law visited to the site office of respondent there they meet with the marketing staff of builder and get information about the project. Marketing staff showed rosy picture of the project and allured with proposed specification in collusion with real estate agent. Local staff of respondent gave brochure, application form and payment plan and assured that possession will be delivered within 36 months.





6. The complainant submitted that on date 20.05.2013, her daughter in law issued a cheque of Rs. 4,21,000/- as booking amount vide cheque no. 006155 dated 20.05.2013 drawn in Axis Bank Ltd. with application form. Applicant booked to studio apartment under construction link plan. Total basic cost of unit was Rs. 44,59,157/-.
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8. The complainant submitted that on date 15.04.2015 original allottee Mrs. Vashudha Gupta transferred the said unit in to the complainant Mrs. Saroj Singal, with permission of respondent. Further, a pre-printed buyer's agreement was executed on 12.05.2015. It is pertinent to mention that that buyer's agreement was executed after 23 months of application.



9. The complainant submitted that on date 18.07.2016 she visited to office of respondent and raised her concern of delay in possession of unit (as promised, 36 months at the time of accepting the application money). Till that time respondent only constructed basement floor and there was no hope to complete the project as promised. Therefore, she asked for refund of money. As per direction of respondent staff, complainant gave a request letter dated 18.07.2016 to the respondent for cancellation of allotment of unit no. 621.
10. The complainant submitted that, respondent did not consider the request of complainant and kept sending demand letters and till date construction has reached to second floor. It is further submitted that on date 14.05.2018, she visited the project site and construction was abandoned.
11. The complainant submitted that the main grievance of the her in the present complaint is that in spite of she paid more than 31% of the present amount of studio apartment till date 16.03.2014, respondent has failed to raise the construction and due to the inability to complete the project, complainant requested for cancellation of unit.





12. The complainant submitted that it was promised by the respondent party at the time of receiving payment for the studio apartment that the possession of fully constructed apartment would be handed over to the complainant as soon as construction completes i.e. 36 months as per studio apartment buyer agreement. It is pertinent to mention here that plans were sanctioned by department on 22.02.2013.
13. The complainant submitted that respondent party had failed to complete the construction in stipulated time. After request of cancellation of unit and demand for refund, respondent did not pay any heed to just and reasonable demand of complainant. It is pertinent to mention here that respondent did not possess lawful right to exit the project i.e. land of project is owned by Y.B. Builders Pvt. Ltd.
14. The complainant submitted that respondent vide letter dated 16.10.2013 declared that "we have the license to develop and construct a commercial complex in Gurugram". It is pertinent to mention here that respondent did not have any license on his name, license of subject land belongs to B.Y. Builders Pvt. Ltd. and respondent concealed the material fact from complainant. It is axiomatic from the facts that respondent committed fraud and liable to face the heat of law.



15. The complainant submitted that she has also visited several times to the office of respondent for refund of money and served multiple grievances letters to the respondent at his office address and requested to the executive/office bearer of respondent party, before filing this complaint.
16. The complainant submitted that the cause of action for the present complaint arose in or around 2015 when a pre printed buyer agreement containing unfair and unreasonable terms, for the first time, forced upon the allottee. The cause of action further arose in 2016, when the respondent failed to comply with the cancelation request of complainant. The cause of action further arose in May, 2018, when the respondent failed to handover the possession of the studio apartment as per the buyer's agreement. The cause of action again arose on various occasions, including on: a) June 2018, b) July, 2018 and on many time till date, when the protests were lodged with the respondent party about refund of money. The cause of action is alive and continuing and will continue to subsist until such time as this hon'ble authority restrains the respondent by an order of injunction and/or passes the necessary orders.

**17. Issues raised by the complainant**



The relevant issues as culled out from the complaint are as follows:

- i. Whether respondent deliberately conceals the material fact that license of project is in the name of other company?
- ii. Whether the complainant is entitled for refund of all money paid to respondent?
- iii. Whether the complainant is entitled for compound interest @ 24% per annum along with compensation from date of booking to till date of refund?

**18. Relief sought**

- I. To direct the respondent to refund the amount paid i.e. Rs. 16,18,623/- along with interest @ 24% from date of booking to date of refund.
- II. To direct the respondent party to pay an amount of Rs.1,00,000/- as litigation expenses;
- III. To direct the respondent party may be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the buyer's agreement.

**19. Determination of issues**



No reply has been filed by the respondent. After considering the facts submitted by the complainant and perusal of record on file, the case is proceeded ex-parte and the authority decides the issues raised by the parties as under:

- i. With respect to the **first issue** raised by the complainant, the complainant has only made an allegation and no documentary proof has been attached by the complainant in order to enable the authority to ascertain the same. Hence, the said issue is not maintainable.
- ii. With respect to the **second issue** raised by the complainant, as per clause 26 of the buyer's agreement dated 12.05.2015, the possession of the said unit was to be handed by 12.05.2018. However, the possession has been delayed by 8 months(approx.) till the date of decision. 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. The status of the project cannot be ascertained from the documents available on the case file. Keeping in view the dismal state of affairs with regard to status



of the project the authority is view that the respondent is liable to pay interest at the rate of 10.75% as per section 18(1) proviso of the Act read with rule 15 of the rules ibid.

iii. With respect to the **third issue** raised by the complainant, the complainant can seek compensation from the adjudicating officer for which he shall make a separate application.

20. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

### Findings of the authority

21. **Jurisdiction of the authority-** The authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint.





The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

22. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000/-. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000/-.
23. Such notices were issued to the respondent on 29.08.2018, 17.09.2018 and on 29.11.2018. Besides this, a penalty of Rs. 5000/- and Rs. 10,000/- was also imposed on 17.09.2018 and 29.11.2018 for non-filing of reply even after service of notices. A final notice dated 14.01.2019 by way of email was sent to both the parties to appear before the authority on 21.01.2019.
24. As per clause 26 of the buyer's agreement dated 12.05.2015 for unit no. 621, 6<sup>th</sup> floor, in Nimai Place, Sector-114,





Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of building plans or date of execution of the agreement, whichever is later. It was a construction linked plan. Complainant has already paid Rs. 16,18,623/- to the respondent against a total sale consideration of Rs. 51,54,289/-. However, the respondent has miserably failed to deliver the unit in time. The respondent apprised that the project is registered vide registration no. 7 of 2018. 70 % of the work is complete and the possession of the flat shall be handed over by December 2019.

25. Allotment letter is dated 10.07.2014 whereas the agreement was signed on 12.05.2015. In the interest of justice, it is admissible that where the agreement has not been signed or has been signed at a belated stage, the date of allotment shall be taken from the date of issue of allotment letter. Since the project is registered one vide registration no. 7 of 2018 and revised date of possession is September 2019. If the respondent fails to deliver the possession of the unit on the revised date, then the complainant is entitled for refund of amount alongwith revised rate of interest. As such, complainant is entitled for delayed possession charges at





prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.

**Directions of the authority**

26. 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:

i. The respondent is directed to pay refund of the amount deposited by the complainant/buyer of Rs. 16,18,623/- alongwith prescribed rate of interest i.e. 10.75% per annum w.e.f. 10.07.2017 as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.

ii. The arrears of interest accrued so far shall be paid to the complainant within a period of 90 days from this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

*Corrected vide order dated 24/10/19.*





27. The complaint is disposed of accordingly.
28. The order is pronounced.
29. Case file be consigned to the registry.

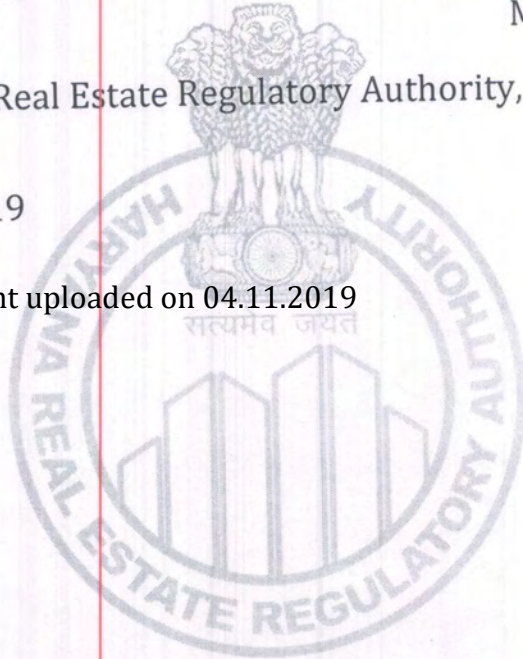
  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2019

corrected judgement uploaded on 04.11.2019



**HARERA**  
GURUGRAM

