



**HARERA**  
GURUGRAM

**HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

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


**PROCEEDINGS OF THE DAY**


Day and Date	Wednesday and 11.7.2018
Complaint No.	72/2018 case titled as Ms. Mridula Parti versus M/s Bestech India Pvt. Ltd.
Complainant	Ms. Mridula Parti
Represented through	Complainant in person with Shri P.S.DE, Advocate
Respondent	M/s Bestech India Pvt. Ltd.
Respondent Represented through	Shri Ishaan Dang, Advocate for the respondent


**Proceedings**

The counsel for the complainant made a statement that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per the Real Estate (Regulation & Development) Act, 2016.

Arguments heard. The learned counsel for the respondent has submitted that the construction of the project is nearly completed and they are ready to give possession of the unit to the complainant. The complainant is directed to take over the possession of the unit from the respondent after completing the formalities. The complaint is disposed of. Detail order will follow. File be consigned to the Registry.

  
Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
11.7.2018

  
Subhash Chander Kush  
(Member)



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

**Complaint No. : 72 of 2018**  
**Date of Institution : 09.03.2018**  
**Date of Decision : 11.07.2018**

Ms. Mridula , R/o D-99, South City-II, Gurugram  
-122018 **Complainant**

Versus

M/s Bestech India Pvt. Ltd., Through its  
Directors, 5D, 5<sup>th</sup> floor, Aria Signature Offices,  
JW Marriot Delhi Aerocity, Hospitality District,  
Near IGI Airport, Delhi-110037 **Respondent**

**CORAM:**

Dr. K.K. Khandelwal **Chairman**  
Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Complainant in person with **Advocate for the complainant**  
Shri P.S.DE  
Shri Ishaan Dang **Advocate for the respondent**

**ORDER**

1. A complaint dated 09.03.2018 was filed under Section 31 of The Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of The Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant (Ms. Mridula) against the promoter (M/s Bestech India Pvt. Ltd.) on account of violation of clause 3(a) of the builder buyer's agreement



executed on 23.06.2012, in respect of apartment described as below for not handing over the possession on due date which is an obligation under section 11 (4) (a) of the act ibid.

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

1.	Name and location of the Project	Park View Grand Spa Signature, Sector -81, Gurugram
2.	Unit No.	2002, 19th floor, tower S
3.	Registered/Un-registered	Un-Registered
4.	Booking amount paid by the buyer to the promoter via agreement dated 23.06.2012	Rs. 6,79,018.00/-
5.	Total consideration amount	Rs. 3,07,31,662/-
6.	Total amount paid by the complainant	Rs. 28,183,641.70/-
7.	Date of delivery of possession from the date of execution of builder buyer agreement	3 years i.e. 23.06.2015
8.	Delay for number of months/years upto date 11.07.2018	3 years 19 days
9.	Penalty Clause as per builder buyer agreement dated 23.06.2012	Clause 3 (c)(iii) of BBA i.e. Rs.5/- per sq.ft. per month for the period of delay
10.	Cause of delay in delivery of possession	No valid reason explained by the promoter.

3. As per the details provided above, which have been checked as per record of the case file. A builder buyer agreement is





available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be delivered by 23.06.2015. The respondent company made an offer of possession on 03.01.2018 which was refused by the complainant as the building in question was not even near completion. The builder being in a dominating position has made a one-sided agreement. The promoter has not fulfilled his committed liability by not giving possession as per the terms of the builder buyer agreement. He has further failed to pay the compensation i.e. @ Rs.5/- per sq. ft of the super area of the said unit per month for the period of the such delay as per builder buyer agreement dated 23.06.2012.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 17.04.2018. The case subsequently, came up for hearing on 10.05.2018, 05.06.2018 & 11.07.2018. The reply has been filed on behalf of the respondent wherein he has stated that the construction of the tower in question was completed and an application for grant of occupation certificate was made on 22.06.2016 which was issued to them on 25.05.2017. The contention of the respondent is found to be vague and evasive as they have



contended that the parties are bound by the terms and conditions of the agreement.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The counsel for the complainant argued that the respondent failed to give possession within the stipulated time i.e. by March 2016 and failed to inform her with respect to the grant of occupation certificate. The counsel also argued before the court that the apartment is still not ready for occupation because the work is not yet finished inside the apartment, bathroom fittings are not installed, and the apartment is not in a liveable condition. As the construction work is going all around, hence there is no chance of a person shifting to the flat even after taking possession.
6. The respondent along with the representative of the company made a statement in the court stating that the construction of the project is nearly completed, and they are ready to handover the possession of the said unit to the complainant. They further put forth before the court that they have applied for part occupational certificate for the said tower in issue and the same was issued on 25.05.2017.







7. As per agreement for sale, clause no. 3(a), the possession of the flat was to be handed over within 36 months from the date of signing of this agreement. The clause regarding the possession of the said flat is reproduced below:

“3(a) offer of Possession:

*That subject to terms of this clause and subject to the apartment allottees(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer proposes to handover the possession of the apartment within a period of thirty six (36) months from the date of signing of this agreement. It is clearly understood and agreed by the apartment allottee(s) that the developer shall be entitled for grace period (beyond a period of 36 months) of six (6) months for towers A to I and nine months (9) for signature tower. It is however understood between the parties that the possession of various towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the apartment allottee(s) of different towers as and when completed and in a phased manner.*

8. Accordingly, as per date of execution of buyer agreement, the due date of possession was 23.06.2015 (excluding the grace period). The terms of the builder buyer agreement have been drafted mischievously and are completely one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt Ltd*





**Vs. UOI and Ors.** (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."*

9. As the possession of the flat was to be delivered by 23.06.2015 as per the clause referred above, the authority is of the view that the promoter has violated 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."*





10. The complainant made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above. Section 34(f) is reproduced below:

***“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.”*

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 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*

11. Keeping in view the present status of the project and intervening circumstances, the complainant wishes to continue with the project and as per section 18(1)(b) of the ibid Act, it's an obligation of the promoter to pay interest for every month of delay till handing over the possession at such rate as may be prescribed to the complainant. Complainant





reserves her right to seek compensation from the promoter for which she shall make separate application to the adjudicating officer, if required. Section 18(1) is reproduced below:

**18 (1) Return of amount and compensation -**

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.





12. Thus, the Authority, exercising powers vested in it under section 37 of The Real Estate (Regulation and Development) Act, 2016 hereby issue directions to the respondent to give interest to the complainant on the amount deposited by the complainant at the prescribed rate i.e. @ 10.45% p.a. for every month of delay from the due date of possession till the handing over the possession. The said interest shall be payable from the date the respondent has received the amount from the complainant and the same shall be payable within 45 days of the date of the order.
13. 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.
14. The authority takes Suo-moto cognizance that the project is registerable and has not been registered by the promoters. The authority has decided to take Suo-moto cognizance for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act.







15. The order is pronounced.
16. Case file be consigned to the registry.



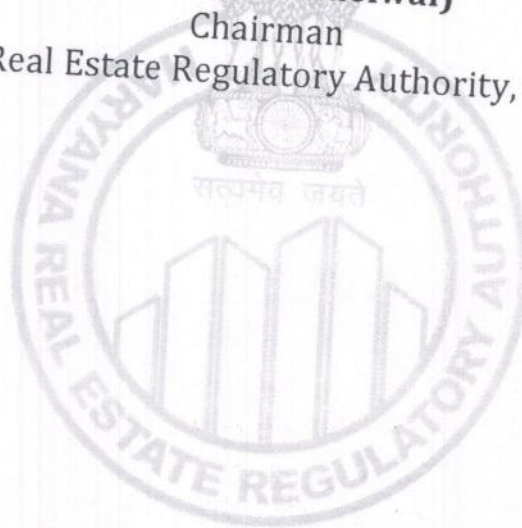
**HARERA**  
GURUGRAM

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



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