



**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 27.6.2018
Complaint No.	36/2018 case titled as Mr. Sunder Lal versus M/s Mascot Buildcom Pvt. Ltd.
Complainant	Mr. Sunder Lal
Represented through	Complainant in person Shri Ravinder Kumar Yadav, Advocate.
Respondent	M/s Mascot Buildcom Pvt. Ltd.
Respondent Represented through	Shri S.K.Sharma, authorized representative on behalf of the company with Shri Gulshan Sharma, Advocate.

**Proceedings**

The counsel for the complainant made a statement that she 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 for which she will be giving application.

The counsel for the respondent alongwith representative of the company made a statement that they will give possession of the unit by 30.9.2019 to the complainant and till then they are bound to give interest at the prescribed rate on the amount deposited by the complainant for every month of delay from the due date of possession. If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the Authority for the remedy as provided under the provisions of the RERA Act. The complaint is disposed of accordingly. Detailed order will follow. File be consigned to the Registry.

Samir Kumar  
(Member)

  
Dr. K.K. Khandelwal  
(Chairman)  
27.6.2018

Subhash Chander Kush  
(Member)

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

**Complaint No. : 36 of 2018**  
**Date of First**  
**Hearing : 10.04.2018**  
**Date of Decision : 27.06.2018**

Mr. Sunder Lal  
Mrs. Savita Yadav  
R/o House No. 1315, Block-C-2, Palam  
Vihar, Gurugram.

**...Complainants**

Versus

Mascot Buildcom Private Limited (Through  
its Managing Director)

Office at:

(i) 294/1, Vishwakarma Colony, Opposite  
ICD, M.B. Road, Lalkuan, New Delhi-110044

(ii) Unit no. 122-124, First floor, JMD  
Megapolis, Sector-48, Sohna Road,  
Gurugram-122101

**...Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**



**APPEARANCE:**

Complainant in person with  
Shri Ravinder Kumar Yadav,  
Advocate.

Advocate for the complainants

Shri S.K.Sharma, authorized  
representative on behalf of  
the company with Shri  
Gulshan Sharma, Advocate.

Advocate for the respondent

**ORDER**

1. A complaint dated 07.03.2018 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 complainants Mr. Sunder Lal and Mrs. Savita Yadav against promoter M/s Mascot Buildcom Pvt. Ltd. on account of violation of clause 36(a) of space buyer's agreement executed on 25.04.2016 for unit no. 905, 9<sup>th</sup> floor in project "Oodles Skywalk". Along with that before entering into the space buyer agreement the parties here entered into MoU dated 28.10.2013. Hence the time period stated in the space buyer agreement would be calculated from the date when the MoU is signed between the parties. Therefore, the violation is being done by the promoter for not giving 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	"Oodles Skywalk" in sector 83, Village Sihi, Tehsil Manesar, Gurugram
2.	Unit no.	905, 9 <sup>th</sup> floor
3.	Project area	3.0326 acres
4.	Registered/ not registered	Registered (294 of 2017)
5.	DTCP license	08 of 2013
6.	Date of space buyer agreement	25.04.2016

7.	Total consideration	Rs. 48,78,576/- (as per the agreement)
8.	Total amount paid by the complainant	Rs. 45,03,174/- (as per the complaint)
9.	Payment plan	Down payment plan
10.	Date of delivery of possession	28.01.2017 (36 months from MoU including 3 months grace period)  Note: Clause 38 of agreement – 36 months from date of agreement or from date of start of construction, whichever is later + 3 months grace period.  An MoU was signed on 28.10.2013. Since payment was made at the time of MoU, the date will be calculated from the date of MoU as per the decision of the authority.
11.	Delay of number of months/ years upto 27.06.2018	1 year 5 months(approx)
12.	Penalty clause as per space buyer agreement dated 25.04.2016	Clause36(a)- If company abandons the project due to any reason, it shall refund the entire amount paid with simple interest @ 9% p.a.



3. As per the details provided above, which have been checked as per record of the case file, a space buyer agreement is available on record for unit no. 905, 9th floor according to which the

possession of the aforesaid unit was to be delivered by 28.01.2017. The promoter has failed to deliver the possession of the said unit to the complainants. 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. Accordingly, the respondents appeared on 10.04.2018. The case came up for hearing on 10.04.2018, 02.05.2018, 22.05.2018 and 27.06.2018. The reply has been filed on behalf of the respondents on 24.04.2018.

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

5. The complainants booked a service apartment measuring 556.28 sq. ft. in the project named "Oodles Skywalk" in Sector 83, Village Sihi, Tehsil Manesar, Gurugram. Accordingly, the complainants were allotted a unit bearing 905 on the 9<sup>th</sup> floor.
6. On 25.04.2016, a space buyer agreement was entered into between the parties wherein as per clause 38, the possession should have been delivered within 36 months from date of agreement or from date of start of construction, whichever is later + 3 months grace period. The payment was made at the





time of MoU so the due date will be calculated from the date of MoU i.e. 28.10.2013. Thus, the due date of possession along with the grace period is 28.01.2017. However, till date the possession of the said unit has not been handed over to the complainants despite making all requisite payments as per the demands raised by the respondents. The complainants made payments of all instalments demanded by the respondents amounting to a total of Rs 45,03,174/-.

7. The complainants submitted that as per article 3 of MoU, the respondent had undertaken for assured return and agreed till the notice for offer of possession is issued, they shall pay to the allottee an assured return at the rate of Rs 87.70/- per sq. ft. of the super area of premises per month. Further, after completion of the construction and till the commencement of first lease rental to allottee from the lessee, the developer shall pay to the allottee an assured return @ Rs 75/- per sq. ft. of the super area of the premises per month.

8. The complainants submitted that the respondent was making rental payment in terms of MoU but respondent arbitrarily issued a letter dated 17.08.2017 whereby in the event of



prevailing of force majeure conditions, the payment of assured return shall remain suspended for such period and payment of same shall resume upon discontinuation of such force majeure conditions, however still such force majeure conditions are prevailing with the company.

9. The complainants submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. Complainants further submitted that given the inconsistent and lack of commitment to complete the project on time, the complainants decided to terminate the agreement.

### Relief sought



1. To fully refund the amount paid by the complainant amounting to Rs 45,03,174/- along with interest @ 24% p.a. amounting to Rs. 36,35,420 as per MoU dated 21.08.2013.

### Respondent's reply

10. The respondents submitted that the alleged frail allegations levelled under the guise of the present complaint, are totally false, incorrect, baseless and misconceived.
11. The complainants, despite repeated notices for payment of due installments, has not deposited the same. In order to avoid penal action against the complainants for defaulting on payment of due installments, the complainants have with sole intent to harass and gain unjust enrichment, has filed this complaint.
11. The respondents submitted that as per clause 83 of the agreement, all previous discussion, application and agreement executed between parties, if any, shall stand superseded and the terms of the space buyer agreement would prevail. Therefore, after execution of the agreement, the assured return payable also stands extinguished in terms of the space buyers agreement.
12. The respondents submitted that in para 9, respondent submitted that though reasons stated in letter dated 17.08.2017 are some reasons for halting assured return payable by the respondent. However, the assured return





payable were liable to be paid by the respondent till execution of the space buyers agreement. Therefore, there existed no reason for the complainants to demand assured returns payment after execution of the agreement.

13. The complainants makes a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

***“34 (f) Function of Authority –***

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.”

14. The complainants 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.”*

### Findings of the authority

15. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that as per the RERA registration of the respondent, they have committed a revised time up till 30.09.2019 for handing over the possession to the allottees. However, the respondent is bound to give interest at the prescribed rate, i.e. 10.45% on the amount deposited by the complainants for every month of delay on the 10<sup>th</sup> of every succeeding month from the due date of possession, i.e. 28.01.2017 till the handing over the possession of the unit on or before 30.09.2019. The respondent is also directed to pay the amount of interest at the prescribed rate from 28.01.2017 to 27.06.2018 on the deposited amount within 90 days from the day of this order. The complainants must wait till 30.09.2019 for the respondent to fulfil its commitment and deliver the possession and in case of any default in the handing over of possession, penal consequences may follow and the complainants can approach this authority for redressal of their grievance. Further, the complainants must also complete the payment due on their part.



16. The complainants reserve their right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

**Decision and directions of the authority**

17. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to give the physical possession of the said flat to the complainants on the date committed by the respondents for handing over the possession, i.e. 30.09.2019.
- (ii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% on the amount deposited by the complainants for every month of delay in handing over the possession. The interest will be given from 28.01.2017 to 27.06.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10<sup>th</sup> of every succeeding month.
- (iii) If the possession is not given on the date committed by the respondent, i.e. 30.09.2019 then the



complainants shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

18. The complaint is disposed of accordingly.
19. The order is pronounced.
20. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member



**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

