



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.	37/2018 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 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 for which he 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)

69/3-7-18

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

Complaint No. : 37 of 2018
Date of First : 10.04.2018
Hearing :
Date of Decision : 27.06.2018

Mr. Sunder Lal (C1)
Mrs. Savita Yadav (C2)
R/o House No. 1315, Block-C-2, Palam Vihar,
Gurugram.

...Complainants

Versus

Mascot Buildcom Private Limited (Through
its Managing Director) (R1)

Office at:

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

(ii) Unit no. 12-124, First floor, JMD
Megapolis, Sector-48, Sohna Road,
Gurugram-122101

...Respondents

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 respondents



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. 906, 9th floor in project "Oodles Skywalk". Along with that before entering into the space buyer agreement the parties here entered into MoU dated 21.08.2013. 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.	906, 9 th Floor
3.	Project area	3.0326 Acres
4.	Registered/ Not Registered	Registered (294 of 2017)
5.	DTCP license	08 of 2013
6.	Date of booking	23.08.2013

7.	Date of space buyer agreement	25.04.2016
8.	Total consideration	Rs. 48,81,600/- (as per the agreement)
9.	Total amount paid by the complainant	Rs. 50,49,194/- (as per the complaint)
10.	Payment plan	Down Payment Plan
11.	Date of delivery of possession	21.11.2016 (36 months from MoU + 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 21.08.2013. 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.
12.	Delay of number of months/ years upto 27.06.2018	1 year 7 months
13.	Penalty clause as per space buyer agreement dated 25.04.2016	Clause 36(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. 906, 9th Floor according to which the possession of the aforesaid unit was to be

delivered by 21.11.2016. 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 25.04.2018.

Facts of the complaint

5. On 23.08.2013, the complainants booked a service apartment measuring 540 sq. ft. in the project named "Oodles Skywalk" in sector 83, Village Sihi, Tehsil Manesar, Gurugram by paying an advance amount of Rs 50,49,194/- to the respondent. Accordingly, the complainants were allotted a unit bearing 906 on the 9th floor.
6. The complainants submitted that on 21.08.2013, they entered into an agreement with the respondent whereby they booked the aforesaid service apartment bearing no. 906 and made a payment of Rs 50,49,194/- towards the said unit.
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. 21.08.2013. Thus, the due date of possession is 21.11.2016. 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 respondent. The complainants made payments of all instalments demanded by the respondents amounting to a total of Rs 50,49,194/-.

7. The complainants submitted that as per article 3 of MoU, the respondent have 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 96.70/- 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 complainant decided to terminate the agreement.

Issues raised by the complainants

No issues have been framed by the complainants.

Relief sought

1. To fully refund the amount paid by the complainant amounting to Rs 50,49,194/- along with interest @ 24% p.a. 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 instalments, has not deposited the same. In order to avoid penal action against the complainant for defaulting on payment of due instalments, the complainant has 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 complainant 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. **Jurisdiction of the authority-** The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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 complainants at a later stage.



6. 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 10th of every succeeding month from the due date of possession, i.e. 21.11.2016 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 21.11.2016 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.

17. 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

18. 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 respondent 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 21.11.2016 to 27.06.2018 on the deposited amount within 90 days from the day of this order and thereafter, on the 10th 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*.



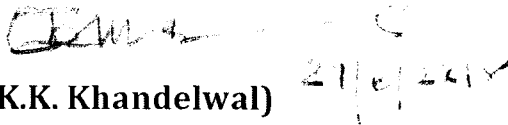
19. The complaint is disposed of accordingly.

20. The order is pronounced.

21. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

