

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 7.8.2018
Complaint No.	49/2018 case titled as Mr. Sushil Kumar Sharma Versus M/s Magic Info Solutions Pvt. Ltd.
Complainant	Mr. Sushil Kumar Sharma
Represented through	Complainant in person
Respondent	M/s Magic Info Solutions Pvt. Ltd.
Respondent Represented through	Shri Sumeet GP Singh, Law Officer on behalf of the respondent.

Proceedings

The project is not registered.

The authorized representative appearing on behalf of the respondent made a statement that the construction of the project is almost completed and they have offered the possession of the unit to the complainant in February 2018 so, the amount is not refunded to the complainant. The occupation certificate has been received by the respondent and the copy of the same has been given to the court. The agreement between the parties was executed and signed on 21.1.2013 and as per agreement, the possession was to be handed over to the complainant within 48 months i.e. 29.1.2017 but the respondent has failed to give the possession on the due date. The complainant has stated that he has paid 100% amount to the respondent and no possession was delivered to him by the respondent. The respondent is bound to give interest at the prescribed rate i.e. 10.15% on the



HARERA
GURUGRAM


HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

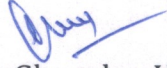
New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह. सिविल लाईंस. गुरुग्राम. हरियाणा

amount deposited by the complainant for every month of delay from the due date of possession i.e. 29.1.2017 till the handing over the possession of the unit. 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)
7.8.2018


Subhash Chander Kush
(Member)

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

Complaint No. : 49 of 2018
First date of hearing: 12.03.2018
Date of Decision : 07.08.2018

Mr. Sushil Kumar Sharma,
R/o. C-84, Oakwood Estate, DLF Phase-2,
Gurugram, Haryana-122002

Complainant

Versus

M/s Magic Info Solutions Ltd.
Regd. Office: D-13, Defence Colony, New Delhi-
110024

Respondent

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Sushil Kumar Sharma
Shri Sumeet GP Singh

Complainant in person
Advocate for the respondent

ORDER

1. A complaint dated 12.03.2018 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, Mr. Sushil Kumar Sharma, against the promoter, M/s Magic Info Solutions Ltd., on account of violation of the clause 4.2 of the apartment buyer's agreement executed on 21.06.2013 in



respect of apartment number J-606, Godrej Summit, Sector-104, Gurgaon in the project 'Godrej summit' for not handing over possession on the due date i.e. 29th January 2017 which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	"Godrej Summit", Flat no J-606, Godrej Summit, Sector-104, Gurugram
2.	Apartment/unit No.	606 on 6 th floor, tower J, Godrej Summit, Sector 114, Gurugram
3.	Flat measuring	171.31sq. mtr. of carpet area
4.	RERA registered/ not registered.	Not registered
5.	Total Land Area	22.123 acre
6.	Date of execution of apartment buyer's agreement	21 st June 2013
7.	Payment plan	Time linked payment plan
8.	Basic sale price	Rs.1,02,34,200/-
9.	Total amount paid by the complainant till date	Rs.21,10,088/-
10.	Date of delivery of possession as per clause 4.2 of apartment buyer's agreement (48 Months + 6 months grace period from the date of issuance of allotment letter)	29.01.2017
11.	Delay in handing over possession till date	1 year, 6months, 9 days
12.	Penalty clause as per apartment buyer's agreement dated 21.06.2013	Clause 4.3 of the agreement i.e. Rs.5/- per sq. ft per month of the carpet area of the said flat.



3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 29.01.2017. Neither the respondent has delivered the possession of the said unit still 07.08.2018 to the purchaser nor they have paid any compensation @ Rs.5/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 4.3 of apartment buyer's agreement dated 21.06.2013. 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 appearance. The respondent appeared on 11.04.2018. The case came up for hearing on 11.04.2018, 01.05.2018, 22.05.2018, 10.07,2018 & 07.08.2018. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply. The complainant has filed a rejoinder dated 30.08.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the complaint



5. Briefly stated, the facts of the case as culled out from the case of complainant are that the promoter has failed to give possession of apartment within tentative completion date 29th July, 2013.
6. The buyers claimed refund of total amount of Rs 12,552,814/- already paid along with simple interest @15% per annum. The respondent has failed to refund the amount along with interest within the time frame of 90 days specified under rule 16 of Haryana Real Estate (Regulation and Development) Rules, 2017.
7. **Issues raised by the complainants are as follow:**
- Whether or not the complainant is entitled to claim refund from the respondent for a sum of Rs. 12,552,814/-already paid by the complainant along with the simple interest @ 15% per annum as per apartment buyer's agreement and as per provisions of sub section (4) of section 19 of the RERA Act and rule 15, 16 of the Haryana Real Estate (Regulation and Development) Rules, 2017 ?
 - Whether the respondent is liable to pay penalty as stipulated in the agreement for delay in possession?
8. **Relief sought:**



The complainant is seeking the following relief:

- i. To fully refund the full amount paid by the complainant to date amounting Rs.12,552,814/- along with simple interest @15% per annum.

9. Reply:

- i. The respondent submitted that the project does not come within the definition of the "ongoing project" as defined under the Haryana Real Estate (Regulation & Development) Rules, 2017. The rules do not include the part of any project which has received part completion, occupation certificate or part thereof, before the publication of the Haryana Real Estate (Regulation & Development) Rules, 2017.
- ii. The respondent lights the fact that the hon'ble authority has no jurisdiction to entertain the present complaint.
- iii. The respondent submitted that the complainant from the beginning of the allotment of the unit have been negligent in paying the installments as per the payment schedule and have been multiple delays on complainants' part.



10. Written Arguments on behalf of respondent:

11. The respondent submitted that the current complaint does not come under the purview of ongoing project as per section 3(1) of the RERA Act read with rule 2(o)(i)(ii) of the HARERA rules.
12. The RERA itself provides for substitution between completion certificate and occupancy certificate as per local laws of the particular state.
13. There is no delay by the respondent in possession of the unit to the complainant as the due date for possession was 29.07.2017 whereas the OC has been granted on 20.06.2017. The present complainant has failed to take possession within 2 months of 20.06.2017 and has filed the complaint with mala fide intention of benefitting from his own wrong.
14. **Determination of issues:**
15. The complainant submitted that in respect to the first issue the possession was to be handed over within 48 months i.e 29.01.2017 as per clause 4.2 of apartment buyer's agreement, the possession of the flat was to be handed over within 48 months from the date of issuance of allotment letter. The developer is entitled for a grace period of 6 months. The clause regarding the possession of the said unit is reproduced below:



“4.2(a)

...the Apartment shall be ready for occupation within 48 months from the date of issuance of allotment letter (tentative completion date), however the Developer is entitled for a grace period of 6 months over and above this months period. Upon the Apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment”

16. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said flat as per clause 4.3 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent 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.”



17. The complainant made 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.

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

18. In regard to the issue raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:



“18.(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.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

19. Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the flat no. J-606, Godrej Summit, sector-104, Gurugram to the complainant by the committed date. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession. The complainant is not interested to continue with the project and wants to withdraw the deposited amount along with interest.



20. Decision and directions of the authority

21. After taking into consideration all the material facts as adduced and produced by both the parties, 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 in the interest of justice and fair play:

- (i) The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.
- (ii) The deposited amount is to be refunded to the complainant along with the prescribed interest.
- (iii) The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 27.01.2017 till the actual date of handing over of the possession.
- (iv) The authority decided that if the possession is not given on the date committed by the respondent



then the complainant is at the liberty to approach the authority for the remedy provided under the provisions of the RERA Act. The respondent is directed to pay interest accrued on account of delay till the date of handing over of possession.

(v) The respondent is directed to allow the complainant to visit the project site freely.

(vi) The respondent is further directed to apply for registration of the project within fifteen days from 07.08.2018.

22. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered & for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

23. The order is pronounced.

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



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 07.08.2018