



**HARERA**  
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

**Application for review of order dated 12.3.19 in complaint no. 1585 of 2018 - Sameer Goel Versus M/s Reliable Realtech Pvt. Ltd.**

**Order**

The Authority has gone through the application for review of order dated 12.03.2019 passed by this Authority in complaint case no. 1585 of 2018-Sameer Goel Vs. M/s Reliable Realtech Pvt. Ltd., the complaint, reply to the complaint and also the order dated 12.03.2019.

The pleas taken in the application for review do not find mention in the reply to the complaint. New facts have been introduced in the application. Application under Section 39 of the Real Estate (Regulation and Development) Act, 2016 can be filed for amendment/rectification of only those mistakes which are apparent from the record and which are not intended to amend the substantive part of the order passed by the Authority under the provisions of the Act. Therefore, altogether new facts introduced in the application for review cannot legally become a ground for review of the order dated 12.03.2019.

Moreover, the affidavit of the person who has filed the application and whose name is even not mentioned in the application is not filed in support of the application. The vakalatnama of Shri Shankar Wig, Advocate, District Court, Gurugram through whom the present application has been filed is not filed along with the application. The original complaint was filed through M/s Surender Sheoran, Associates of Dwarka Court, Delhi.

The application is accordingly dismissed.

Subhash Chander Kush  
(Member)

Samir Kumar  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
HARERA, Gurugram

L. O.



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

**Complaint no. : 1585 of 2018**  
**Date of first hearing : 12.03.2019**  
**Date of decision : 12.03.2019**

Sameer Goel,  
R/o H.no.1207, Sector- 32B,  
Chandigarh

**Complainant**

Versus

1. M/s Reliable Realtech Pvt Ltd.  
2. M/s Decent Realtech Pvt Ltd.  
(through its managing director)  
Registered office: Naya Bazar, Bhiwani  
Corporate office: 34/C-8, Sector-8, Rohini,  
New Delhi-110085

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sanjeev Gupta Advocate for the complainant  
Shri Surender Sheoran Advocate for the respondent

**ORDER**

1. A complaint dated 03.12.2018 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 Mr. Sameer Goel, against the promoter M/s Reliable Realtech Pvt. Ltd. and M/s Decent Realtech Pvt. Ltd. , on account of violation of the

clause 10 of agreement executed on 08.12.2008 in respect of apartment described as below in the project “Antrish Heights” for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the agreement was been executed on 08.12.2008, i.e. prior to the commencement of the Act *ibid*. So penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligations 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	Antriksh Heights, sector 84 ,Gurugram, Haryana.
2.	Project area	23.10 acres
3.	Nature of project	Group housing colony
4.	DTCP license no.	123 of 2008
5.	Registered/ not registered	<b>Not registered</b>
6.	Unit no.	AB-1203, 12 <sup>th</sup> floor, block AB
7.	Allotment letter	14.07.2013
8.	Unit measuring	1825 sq. ft.
9.	Date of buyer’s agreement	08.12.2008

10.	Total consideration according to cost of apartment attached on page 50 of complaint	Rs.48,41,875/-
11.	Total amount paid by the complainant as alleged by him	Rs. 48,31,014/-
12.	Payment plan as per clause 3B of agreement	Instalment linked payment plan
13.	Date of start of construction	Not available
14.	Due date of delivery of possession as per clause 10 of agreement – 3 years from the start of construction	08.12.2011 (calculate from date of agreement)
15.	Applied for OC for tower AB	18.10.2016
16.	Delay in handing over possession till handing over the possession	<b>7 years, 3 months and 4 days</b>
17.	Offer of possession ( cannot be considered as OC not received)	<b>26.03.2016</b>

4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 08.12.2008 is available on record for unit no. AB-1203, 12<sup>th</sup> floor, block AB admeasuring 1825 sq. ft. in the project 'Antriksh Heights' according to which the due date of possession comes out to be 08.12.2011. The respondent has failed to fulfil its obligation till date, which is in violation of section 11(4)(a) of the act *ibid*. However, the possession has been offered by the respondent on 26.03.2016.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance.

The case came up for hearing on 12.03.2019. the respondent through its counsel appear on 12.03.2019. The reply filed on behalf of the respondent has been perused.

### **Facts of the complaint**

6. The complainant submitted that the respondent no.1 and 2 being the owners of land measuring 23.10 acres situated at Sector-84, in the revenue estate of village Sihi, District Gurgaon, Haryana, got the licence vide licence No. 123 of 2008 from the Director, Town and Country Planning, Haryana for construction and Development of a residential group housing colony. The said respondents are developing the group housing colony on the above mentioned land in the name '**Antriksh Heights**'
7. The complainant submitted that the society namely Ministry of External Affairs Employees' Welfare Society, an entity duly registered under the Society Registration Act, 1860, having its registered office at G-110, GF, Sushan Shopping Arcade, Sushant Lok-I, Gurgaon, on behalf of its members approached the respondent no.1 and 2 for allotment of residential apartments to its members in the above mentioned group housing project namely Antriksh Heights. The complainant is also one of the member of the said society. The society was neither the owner

of land nor indulged in the construction of the apartments. The only role of the society was to negotiate and to communicate on behalf of its member and further to supervise the member's flat from to time till completion and quality construction as per agreed specification.

8. The complainant submitted that the basic sale price of residential apartment was to be given to the members of the society was fixed @ Rs.2250/- per sq ft.
9. The complainant submitted that the respondent no.1 and 2 agreed to allot to the complainant, one residential unit/flat under the category of super delux block no. AB having approx. 1825 sq. ft. super built up area in the above mentioned Antriksh Heights. An agreement in respect of said residential unit/flat was executed between the respondent no. 1 and 2 and the complainant, on 8.12.2008. The total sale consideration for the said apartment was fixed as Rs. 4106250/- excluding EDC, IDC and PLC. The complainant opted for construction linked plan i.e. plan A.
10. The complainant submitted that per clause 10 of the said agreement the respondent no.1 and 2 was to hand over the possession within 3 years i.e. by 07.12.2011. But till date the said respondents have failed to deliver the possession of said

unit. They have not been able to provide the possession to the complainant, complete in all aspects. Moreover the respondent no.1 and 2 have failed to obtain the occupancy/completion certificate till date. The respondents are not intentionally getting themselves registered under RERA.

11. The complainant submitted that he has already paid Rs. 48,31,078/- to the respondents but the respondents are adamant in demanding more money for delivering the possession. The complainant has paid 97% of the basic sale price , EDC and IDC of Rs. 5,47,000/-, Car Parking of Rs. 200000- and society membership of Rs. 10500/-.
12. The complainant submitted that as per the payment plan, the complainant was liable to pay the remaining BSP of 3% along with club charges, IBMS etc., only at the time of handing over the possession.
13. The complainant submitted that the respondent no.1 vide its letter dated 06.08.2010 acknowledged the receipt of Rs. 14,60,000/- and further demanded Rs. 11,67,000/- from the complainant, which was duly paid by the complainant on 24.09.2010 by taking loan from the PNB housing. The respondent no.1 also executed certain documents for the



purpose of availing of loan by the complainant. The total cost of the said apartment including all charges, was arrived at Rs. 48,41,875/-. The society vide email dated 01.10.10 acknowledged the receipt of Rs. 11,67,000/-.

14. The complainant submitted that thereafter the society further demanded Rs. 3,63,000/- towards the seventh instalment i.e. (5% BSP+10% car parking + Rs.75 per sq ft of EDC & IDC) vide email dated 13.09.2010. The said amount was paid by the complainant on 18.12.2010 vide cheque bearing no.734247 drawn on ICICI Bank, Chandigarh. The society further raised the demand of Rs. 2,25,000/- towards the 8<sup>th</sup> instalment vide email dated 10.1.011 and asked the complainant to deposit the said amount by Feb,2011. The said amount of Rs. 2,25,000/- was paid by the complainant on 09.04.2011 vide cheque bearing no. 734554 drawn on ICICI Bank, Chandigarh.

15. The complainant submitted that the respondent no.1 vide its letter dated 15.03.2011 acknowledged the receipt of total amount of Rs. 32,15,500/- and further demanded a sum of Rs. 2,25,000/-. The society also gave the details of amount paid by the complainant vide email dated 28.07.2011. In the said email a sum of Rs. 32,26,000/- has been shown to have been paid by the complainant. The said amount of Rs. 32,26,000/- includes



the society membership fee of Rs. 10,500/- . Thus, by April, 2011, the total amount of Rs. 32,15,500/- was paid/forwarded to the respondent no.1, which has also been acknowledged by the respondent no.1 vide its letter dated 15.3.2011.

16. The complainant submitted that the complainant further paid an amount of Rs.4,50,000/- through RTGS on 28.11.011. Thereafter the complainant paid an amount of Rs. 2,25,000/- on 6.10.2012 and Rs. 2,82,344/- on 15.1.2013 vide cheque bearing no. 49909 and 50380 respectively. The society issued the acknowledgement of the receipt of all the previous payments made by the complainant, vide email dated 25.1.2013. The said detail was provided to the complainant on his asking for the detail of payments made by him along with the cheque number, date and amount.

17. The complainant submitted that thereafter the society vide its email dated 29.06.013 asked the complainant to deposit a sum of Rs. 2,25,000/- by 10.07.2013 to participate in the draw of flats of tower AB stated to be held either on 14<sup>th</sup> or 21.07.2013. Accordingly the complainant paid the amount of Rs. 2,25,000/- through cheque bearing no. 49915 on 08.07.2013.

18. The complainant submitted that the respondent no.1 vide allotment letter dated 14.07.2013 allotted unit no. AB-1203,

12th floor, block -AB, area -1825 sq. ft, to the complainant. The said allotment letter was received by the complainant through an email sent by the society.

19. The complainant submitted that the society vide its email dated 15.03.2014 demanded the 14<sup>th</sup> instalment i.e. Rs.2,11,335/- from the complainant and asked him to deposit the same by 15.04.2014. The complainant paid the said amount of Rs. 2,11,335/- on 25.04.2014 vide cheque bearing no. 50398. The said payment made by the complainant was duly acknowledged by the society vide its email dated 29.4.2014.
20. The complainant submitted that the society vide its email dated 04.08.2014 demanded the 15<sup>th</sup> instalment of Rs. 2,11,335/- and asked the same to be paid by 02.09.2018 and further assured the complainant that the builder will deliver the possession by the end of year 2014. The complainant paid the said amount of Rs. 2,11,335 on 10.11.2014 vide cheque bearing no. 50413.
21. The complainant submitted that it was informed by the society vide its email dated 23.12.2014 that the builder will deliver the possession in the year 2015 and at the time of handing over the possession, remaining amount i.e. 3% of BSP

and other charges like club membership, power back up and IBMS will have to be paid by the complainant.

22. The complainant submitted that a meeting took place between the respondents and the governing council of the society on 06.06.2015 and it was agreed in the said meeting that the respondent will start handing over the possession w.e.f 15.12.15 and in case of any delay, it will pay penalty @Rs 5 per sq. ft. per month. It was further agreed that in case any member after getting the possession failed to pay the installment then interest @ 24% shall be levied. It is relevant to mention that no general meeting was called nor any information was given to the members that such meeting with the respondents will take place. The governing council itself without the consent of other members including the complainant, agreed to the arbitrary terms and conditions. The society vide its email dated 13.06.2015 enumerated the mutually agreed conditions to the respondents and in response to that the respondents gave their consent and agreed to all the conditions. The society vide its email dated 09.07.015 informed the complainant about the said meeting and asked the complainant whether he wished to take the possession in the first phase i.e. on or before 15.12.2015. Accordingly, the complainant vide his email dated 31.07.2015



gave his consent to take the possession on or before 15.12.2015. The society duly acknowledged, the said conformation given by the complainant vide its email dated 05.08.2015.

23. The complainant submitted that the society vide its email dated 30.3.2016 sent the offer letter of possession to the complainant on behalf of the respondent no. 1 and also informed him that the builder has started offering the possession to the members. It is relevant to submit here that the said offer of possession was only an eye wash. In fact there was no offer of possession by the builder. The common facilities were not there and moreover even the internal works in the flat were very far from being complete. There was indeed no work in the interior of flat. There was no completion/occupancy certificate given by any competent authority. The said offer of possession was given only to avoid the penalty clause.

24. The complainant submitted that surprisingly the society vide its email dated 11.4.2016 taking a U-turn from the earlier conditions, making reference to a meeting held on 02.04.2016 with the builder, informed the complainant that the members who wish to take the possession shall make the full and final

payment and within 2 months of making the said payment, the possession shall be handed over complete in all aspects. The complainant submitted that some members were taking the important decision on behalf of around 200 members and without their consent were taking crucial decisions. This goes a long way to prove that the governing council of society was in connivance with the respondent no.1 and 2. The complainant had already paid the substantial amount and the balance amount was to be paid by him, only at the time of handing over the possession. The condition of respondent and society that balance payment was to be made first and only then the possession will be handed over after 2 months was arbitrary and they cannot force the complainant to pay the amount which had not become due.

25. The complainant submitted that vide email dated 15.04.2016 the society itself informed that some work is incomplete. The fact is that most of work in the flat was incomplete. Also, vide the said email the society also informed that the builder is going through a financially tough time because of certain reasons and it further informed the complainant that it has taken a decision that members desirous of taking possession of flat shall make full and final payment to the society and that

payment shall remain with it and shall not be passed over to the builder till satisfactory handing over the possession of the flat.

26. The complainant submitted that vide email dated 28.06.2016 he expressed his disappointment over it and again asked for confirmation from him when he had already given his confirmation. The complainant also asked the society to provide NOC from fire department, water and electricity connections confirmations and occupation certificate. The society then informed the complainant vide the email dated 02.07.2016 that the NOC from fire department and occupation certificate for tower AB has not been received yet. In July, 2015, the complainant had already given his confirmation that he will take the possession in December, 2015 and there was no question of asking for confirmation again. On one hand, the society mentioned that the respondent was going through a financially tough time and on the other hand it was telling that the amount will remain with the society and the same will be handed over to the respondent after the completion of work.

27. The complainant submitted that the society vide email dated 28.12.2016 informed the complainant that occupation certificate has been obtained in respect of towers namely palatial flats tower and luxury flats tower. It was assured the



occupation certificate for the remaining towers is expected any time.

28. The complainant submitted that the society vide email dated 18.2.2017 again informed the complainant that occupation certificate for two towers has been received. It was informed that for other towers the occupancy certificate is expected soon. It was admitted by the society that builder/promoter/respondent is too slow to complete the work and this has resulted in undue desperation among all the society members. It also informed that the society had to take control of finishing the interior/exterior of the remaining society tower/flats and asked the members to pay a sum of Rs. 3,00,000/- to the society and the said amount will be adjusted in the final demand. It is relevant to mention that the society, deviating from its earlier stand of keeping the balance payment with it till finishing of remaining work by respondent no.1 and 2, itself decided to complete the work by collecting the money from the members. The society took the said decision and very interestingly without taking any penal or other action against the respondent no.1 and 2 who was to deliver the possession of flat, compete in all aspects.

29. The complainant submitted that the society vide its email dated 02.03.2017 sent the details of the final payment and other charges to be paid by the complainant at the time of handing over the possession. It also asked the complainant to make the payment of Rs. 3,00,000/- to the society in order to complete the work. It also assured that occupancy certificate for all the towers will be received before June, 2017. A sum of Rs. 6,22,795/- was shown to be the balance payment which was to be paid by the complainant.
30. The complainant submitted that again, vide email dated 3.4.2017, the society instead of taking any action against the respondent no.1 and 2 for not completing the work, again tried to justify for taking work into its own hands citing reason of paucity of funds with the builder. It again sent an email on 31.05.2017 requesting the complainant to make the payment of Rs. 3,00,000/-. Feeling that there is a collusion between respondent 1 and 2 and the society, the complainant did not pay any amount as he had already paid 97% of sale consideration along with EDC, IDC, PLC and other charges. The balance amount of 3% of basic sale price and others were to be paid at the time of handing over the possession. The complainant was very well within his right as not to make any further payment. Moreover, instead of asking the builder to

complete the project and taking any action against the said builder, the respondent was very desperate for getting the payment of Rs. 3 lacs from all the members and completing the work on its own. Again, the society sent an email to the complainant on 20.12.2017. Some photographs were also attached with it. But the said photographs only related to the outer structure. Similar email was received by the complainant on 11.5.018. The complainant vide email dated 16.5.2018 asked the society about the occupancy certificate and completion certificate but there was no response from it.

31. The complainant submitted that the society vide email dated 25.08.2018 again sent a statement of accounts which was contrary to the statement sent by it on 02.03.2017. It informed that balance payment which is to be given at the time of possession, amounts to Rs.845655/-. This was contrary to the amount of Rs. 622795/- which was demanded by it vide email dated 2.3.2017.

32. The complainant submitted that on 5.09.2018 the complainant called the representative of society with a request to allow him to visit his flat no. 1203 in order to check as to whether the internal work has been completed or not so that he can take the possession and pay the remaining amount. But



they refused to allow him to visit the flat inspite of making payment of more than Rs. 48 lacs. The complainant, thereafter, vide email dated 5.9.2018 expressed his disappointment for not allowing him to visit his flat and again expressed his desire to see the flat so that he can take the possession and make the balance payment. Also, the complainant vide the said email expressed his disappointment for demanding the payment which was due only at the time of handing over the possession. It was also mentioned in the said email that respondents had committed to give the possession by 15.12.2015. Again, on 07.09.018, the complainant vide an email asked the president of society, about the time when he can visit his flat. It was also conveyed to the president that the complainant has already paid all the instalments by Nov, 2014 which were due before handing over the possession. On not getting any response, again, the complainant vide email dated 12.09.2018 conveyed to the president of society that demanded amount is payable by him at the time of possession. Thereafter, the society asked the complainant vide email dated 12.09.2018 to visit the site and to pay an amount of Rs. 8,45,655/- and take possession of the flat irrespective of the condition of flat. Accordingly, the complainant vide email dated 16.09.018 informed the President of society that he will be visiting on 18.09.018 and

also requested him to allow him to visit to his flat and his brother-in-law's flat. But the complainant did not receive any response to the said email .Vide the email dated 17.09.18 the complainant conveyed to the president of society that he did not get any response and asked him from where he will be able to get the keys of his flat.

33. The complainant submitted that the complainant visited the site on 18.09.2018 and met the representatives of respondents and the society and on his persistent request, the respondents allowed him to visit the flat. The position in the interior of the flat was very pathetic. There was no work inside the flat. The complainant managed to click some photographs. After clicking the photographs the complainant met the respondents and asked them to complete the work. But the respondents were adamant in demanding more money for getting the work done. They did not listen to the complainant and asked him to pay the balance sale consideration, only then will they complete the remaining work and handover the possession. Such approach of the respondent is illegal and against the terms and conditions settled in the agreement. The respondents have kept the hard earned money of the complainant for so many years and they are unable to give the possession to him till today. The respondents in connivance

with the governing council of the society are making fool of people and are intentionally not completing the work. It was the duty of the respondent to deliver the possession of the apartment and the complainant is to pay the balance sale consideration only at the time of handing over the possession. The respondent cannot run away from fulfilling its commitment and it has to deliver the possession of the apartment, complete in all aspects. By doing all such acts the respondent has indulged into unfair trade practices and it has been deficient in providing service to the complainant. The respondent has delayed the possession for so many years and till today it has failed to obtain the occupancy certificate from the competent authorities.

34. The complainant submitted that, the balance amount, which is to be paid by the complainant at the time of handing over the possession, has been calculated on the higher side vide the statement dated 25.8.2018. As per the earlier statement the balance amount to be paid the complainant was calculated at Rs.622795/- vide the statement dated 2.3.2017. The respondent has unnecessarily included other charges which are not liable to be paid by the complainant.

35. The complainant submitted that complainant has already paid Rs. 48,31,078/- which includes 97% of basic sale price, car parking of Rs. 2,00,000/- and EDC & PLC of Rs. 547500/- and society membership fee of Rs. 10,500/. The complainant many times visited the project site during the year 2015 to till date for getting the possession of his flat but the respondents are adamant in demanding more money for completion for remaining work. It is relevant to mention here that complainant has already paid the substantial amount and any balance payment has to be made by him at the time of handing over the possession. It is very strange that the managing committee/governing council of the society has not taken and is not any action against the respondent no. 1 and 2

#### **Issues raised by the complainant**

36. The relevant issues raised in the complainant are:
- i. Whether the respondent is liable pay interest at the rate prescribed for the delayed period?
  - ii. Whether the respondent has been deficient in providing services and indulged into unfair trade practices by not delivering the actual possession till date, not obtaining

the occupancy certificate and demanding more money for completing the pending work?

- iii. Whether the respondent is bound to get the project registered with RERA?

### 37. Reliefs sought by the complainant

- I. Direct the respondent to deliver the actual physical possession of the apartment to the complainant, after completing the pending work and obtaining the occupancy certificate.
- II. Pass appropriate directions to the respondent directing refund of the amount of Rs. 48,31,014/- along with interest from the respective dates of deposit.
- III. Direct the respondent to claim the balance payment which is due at the time of handing over the possession as per statement dated 02.03.2017.

### Respondent's reply

38. The respondent submitted that the respondent obtained the license for the project in question in the year of 2008, got the drawings sanctioned on 05.05.2009, got clearance of environment on 20.07.2010 and clearance/NOC of pollution on 02.12.2010. Upon sanctioning of the drawings and other



clearances and respondent started construction of the project in July-August, 2010, and completed the construction of the project in August, 2013. On 22.8.2013 the respondent applied for issuance of part occupancy certificate to the Director General Town & Country Planning Haryana. Project in question falls on Dwarka Express way or northern periphery way which was stucked due to land litigation and could not be developed by the Govt. of Haryana/ Haryana Urban Development Authority till date. Recently the Dwarka Express Way had to be declared as a National High Way by the Govt. of India through its Minister Shri Nitin Gadkari so that it could be constructed as early as possible. The concerned sector roads, sewers, drains, water pipe lines, electric cables, parks, dispensaries, community centres and schools etc. could not also be developed by HUDA/ Govt. of Haryana because of the above given reasons. Projects in these sectors were not accessible in lack of public transport and sector roads. Due to these problems the DGTCP Haryana issued part occupancy certificate to the respondent in May & October, 2016 which was beyond the control of the respondent. On 19.10.2016 the respondent applied for balance occupancy certificate from DGTCP which had been kept on hold by the respondents on the oral directions of MEAEW society as it did not want early

possession due to non-development of the sector by the HUDA despite paying of huge EDC/IDC to HUDA by the respondents. On applying for the occupancy certificate, the respondents had offered possession to the complainant. Thus there is no delay in possession on the part of the respondent.

39. The respondent submitted that the possession of the flat in question has already been admittedly offered to the complainant long back on 26.03.2016 but the complainant is not taking possession and making the payment of balance consideration amount of Rs 8,07,220/- against the flat in question on different pretext merely to gain time in making the payment of balance consideration amount of the flat in question. Hence the complaint is liable to be dismissed.

40. The respondent submitted that the complainant joined a society namely Ministry of External Affairs Employees Welfare Society as a member for which the O.P has constructed more than 400 flats on very discounted rates with certain terms and conditions incorporated in the agreement executed between the society and the O.P. The complainant is member of the above given society and not a direct allottee of the society. The complainant is not a direct allottee of the respondents being a member of the above named society. However, the O.P. signed

some buyer's agreements of the allottees of MEAEWS society directly on a special request of the above named society only for the purpose of taking bank loan by the society members and for no other purpose as no bank loan was possible without agreement to sale with the allottees and allotment letter of the builder to the allottees. The intention, purpose and motive of signing those agreements was to obtain the bank loan only.

41. The respondent submitted that the MEAEWS society wanted and requested the respondents to delay the possession of its flats in order to avoid the heavy maintenance cost of the project as the surrounding sectors had not been developed by HUDA and there was no accessibility and public transport in that area. Thus, the respondents held possession of the flats of MEAEWS society members as per the society's demand and directions.
42. The respondent submitted that the complaint is without cause of action hence liable to be dismissed.
43. The respondent submitted that the complaint is liable to be dismissed on account of non-joinder/miss-joinder of necessary parties i.e. MEAEWS society, HUDA, Department of Town and Country Planning Haryana & the Haryana Government.

44. The respondent submitted that the MEAEW society made delayed payments to respondents as they did not want early possession of their flats due to non - development of the area by HUDA.

#### **Determination of issues**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

45. In respect of **first issue** raised by the complainant, as per clause 10 of the agreement dated 08.12.2008, the possession of the flat was supposed to be handed over within a period of 3 years from the date of start of construction. Date of start of construction is not available. Thus the due date is calculated from the date of agreement. Therefore, the due date for delivery of possession comes out to be 08.12.2011. The promoter was under a legal obligation for handing over the possession as per the agreement but they have failed to deliver the possession within stipulated period which is in violation of section 11(4)(a) of the Act *ibid*. Therefore, the respondent is liable to pay delayed possession charges at the prescribed rate i.e. 10.75%.

46. In respect of **second issue** raised by the complainant, regarding the deficient services and unfair trade practices the complainant has merely asserted the same and has not produced any documents supporting it. Thus, this issue is decided negative. The authority also observed that an offer of possession was made on 26.03.2016. However, the respondent have so without obtaining the OC. Thus this offer of possession is no offer in the eyes of law. The respondent has admitted that he has applied for OC of tower in which the complainant unit is situated on 18.10.2016.

47. In respect of **third issue** raised by the complainant, the authority is of view that the respondent is bound to get the project registered as per section 3 of the act *ibid*. As the project is registrable and has not been registered by the respondent the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent by the registration branch.

#### **Findings of the authority**

48. **Jurisdiction of the authority-** 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

49. As per clause 10 of the agreement dated 8.12.2008 for unit no.AB-1203, block-AB, in project "Antriksh Heights" Sector-84, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of agreement i.e. 08.12.2011. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.48,31,014/- to the respondent against a total sale consideration of Rs.48,41,875/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 8.12.2011 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

**Directions of the authority**

50. 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:

- i. The complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 08.12.2011 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of his order.
- iii. Thereafter monthly payment of interest shall be paid on or before 10<sup>th</sup> of each subsequent month.

51. Complaint stands disposed of. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 12.03.2019

Judgement Uploaded on 30.05.2019