

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

**Complaint No** 171 of 2018  
**Date of Institution** 19.04.2018  
**Date of Decision** 30.10.2018

Mr. Prabhat Kumar  
R/o H. No 39-AB, Tagore Garden,  
Ambala Cantt,  
Haryana- 133001.

**...Complainant**

Versus

1. Mascot Buildcon Private Limited,  
294/1, Vishwakarma Colony,  
Opposite ICD, MB Road, Lal Kuan,  
New Delhi – 110044.

**...Respondents**

2. V Square Development company  
Private Limited  
R/o at 35/6, Basement,  
Jhandewalan Extension,  
New Delhi- 110055.

3. Home Town Properties Private  
Limited,  
R/o at 85-86, Manglapuri,  
Mehrauli- Gurgaon Road,  
New Delhi.



**CORAM:**

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

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

**APPEARANCE:**

Complainant in person  
Shri S.K. Sharma

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 19.04.2018 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. Prabhat Kumar, against the promoter Mascot Buildcon Private Limited and others on account of violation of clause 5A of the builder-buyer agreement executed on 06.11.2013 for Unit No. E-1903 on 19<sup>th</sup> floor in the project “Oyster Grande” for not giving possession by the due date which is an obligation of the promoter 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, sector 83, Gurgaon.
2.	Payment plan	Construction linked payment plan
3.	Registered/ not registered	<b>Registered</b>
4.	Registration number	<b>294 of 2017</b>
5.	Registration certificate valid up to	31.12.2019
6.	Date of booking	03.01.2013
7.	Date of space buyers agreement	08.04.2015
8.	Unit no.	G-124, ground



		floor
9.	Area of unit	432.50 sq. ft.
10.	Total amount paid by the complainant	Rs 33,07,429
11.	Date of start of excavation	26.03.2014
12.	Date of delivery of possession. As per clause 38 - 36+ 3 months from the date of signing of agreement or from the date of starting of construction whichever is later	08.07.2018
13.	Delay till date	3 months 2 days

3. As per the details provided above, which have been checked as per record available in the case file provided by the complainant and respondents. A space buyers agreement is available on record for G-124 on ground floor according to which the possession of the aforesaid unit was to be delivered by 08.06.2018. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondent appeared on



16.05.2018. The case came up for hearing on 16.05.2018, 14.06.2018, 18.07.2018, 06.09.2018 and 19.09.2018. The reply has been filed on behalf of the respondents

**BRIEF FACTS:**

5. The complainant booked a shop measuring 432.50 sq. ft. in the project named "Oodles Skywalk" situated at Sector 83 Gurgaon, Haryana. It is pertinent to mention here that the respondents have violated section 7 of Haryana Development and Regulation of Urban Areas act, 1975 by way of advertising and then accepting booking the retail shop without obtaining building plan and other approvals against the said project which is specifically mentioned in the application form.
6. Further it was misrepresented that the booking company was in the process of obtaining permissions contrary to the fact that the license was never issued in their name rather it was in the name of some other respondents.
7. That it was assured to the complainant upon booking that the super area of the shop would be 500 sq. ft. and the



amount of total Rs 10,37,500 was paid as booking amount at the price of Rs 10,375 per sq. ft. on 03.01.2013. That thereafter, the complainant was shocked upon receiving the letter dated 12.03.2014 from the respondent no 2 in regards to the allotment of the shop between the complainant and the respondent no 1, as it was mentioned in the letter that the super area of the shop no G- 124 would tentatively be 432.5 and also preferential location charges would be 12,97,500 which is 29% of the basic cost of the shop and other charges.

8. Thereafter nearly after a period of ,more than 2 years and on repeated requests made by the respondent no 1 executed a space buyers agreement on 08.04.2015 and accordingly a unit no G-124 was allotted to the complainant for a total sale consideration of Rs 60,74,462. It is pertinent to state here that in the space buyers agreement too the super area of the shop mentioned was 432.50 sq. ft.

9. That as per clause 33 of the agreement it is specifically stated that incase of any major alterations resulting in more than 10% change in the super area of the said unit of



material change in the specification of the unit any time prior to and upon the grant of occupation certificate then the company shall intimate the allottee and in response to the same the allottee shall give his consent or objections to the changes within 15 days. It is further pertinent to state here that incase the allottee gives his objection to the said modification, then the allotment shall be deemed to be cancelled and the company shall refund the entire money received from the allottee with simple interest @12%p.a.

10. That as per clause 38 of the agreement it was duly agreed between the parties that the possession of the said unit will be handed over to the complainant within 36months of the signing of the agreement or from the date of start of the construction of the said project.

11. That when the complainant visited the site in the month of January 2018 to check the work progress of the said project, he was shocked to see that the adjoined project named 83 avenue in abandoned state as being left after completing foundation works since then. It is pertinent to mention here that as per brochure provided to the complainant upon



booking of the said shop the project oodles skywalk is not in isolation to 83 avenue and that both of the projects are well connected to each other through sky bridges over the central plaza.

12. That there are no clarification for such PLC in the booking application form, but contrary to the same the complainant was PLC amounting to Rs 12,97,500.

13. Furthermore when the complainant became suspicious with regard to the dimension of the allotted shop upon his visit to the project site and after measurements made, the calculated carpet area within the wall which came out to be 190 sq. ft.

14. That it is pertinent to mention here that although the allotment and space buyer agreement was executed by the respondent no 1 with the complainant, but originally the license was obtained by the respondent no 3 from the department of town and country planning, Haryana and as per the required mandate the respondent no 1 did not have any formal permission from the government of Haryana for



executing and selling of the commercial units to general public.

### ISSUES RAISED BY THE COMPLAINANT

The following issues have been raised by the complainant:

- i. Whether or not the conduct of the respondents amounts to cheating and fraud with the complainant under section 7 of the Haryana Development And Regulation Of Urban Areas Act, 1975 and are liable for the penalties as provided under section 10 of the RERA act?
- ii. Whether or not the conduct of the respondents is contrary to the mandate provided under the Haryana Development and Regulation of Urban Area Act, 1975 and based upon total misrepresentation and fraud and whether or not the complainant is entitled for relief?
- iii. Whether or not the respondent has violated the provisions of section 13 of the RERA Act, 2016 which duly prohibits the promoters from receipt of advance without entering into the





agreement for sale?

- iv. Whether or not the act and conduct of the respondents with regards to the change of area of the shop to more than 60% violates the provisions of section 14 of the act especially when the complainant has duly filed his objections and sought refund along with interest?
- v. Whether or not the respondents are liable to process the refund since the complainant wished to withdraw from the project?
- vi. Whether or not the respondents are is liable to pay compensation the complainant?

#### RELIEF SOUGHT BY THE COMPLAINANT

The complainant seeks the following reliefs:

- i. Refund the entire amount paid to the respondent i.e. Rs 33,07,429 along with the interest from the date of deposit till the date of refund.
- ii. Compensation of Rs 5,00,000 should be awarded as part of



damages to the complainant on account of mental agony, torture and harassment.

- iii. Payment of Rs 5,00,000 as compensation to the complainant as part of deficiency on the respondents part.
- iv. Refund all illegal costs incurred by the complainant
- v. Any other relief as this hon'ble authority deem fit to meet the ends of justice.

**RESPONDENTS REPLY:**

15. The respondent submitted that the allegations are false, incorrect, baseless, absurd and misconceived. Therefore the alleged contentions raised in the complaint until and unless being admitted specifically hereinafter by the respondents, same may kindly be treated as denied.

16. It is further submitted by the respondents that the alleged contentions put forth in the complainant clearly spell and show the nefarious purpose of the complainant to tarnish the image of the respondents without any alleged defaults,



asserted in the present complaint by the complainant if pursued and analyzed in its entirety, it would become crystal clear that the complainant has filed the present complaint just to harass the respondents and to gain unjust enrichment.

17. The complainant despite several notices for payment of due instalments has not deposited the same thereby deliberately putting obstructions to the fast progressing project.

#### DETERMINATION OF ISSUES:

18. With regard to the **first and second issues**, it has to be noted that the same does not fall within the jurisdiction of this authority and that the complainant may approach the appropriate forum for the same.

19. With regard to the **third issue**, it is pertinent to mention that section 13 of the RERA Act, 2016 does not apply retrospectively and that the contact and contractual obligations between the parties shall prevail.



20. With regard to the **fourth issue**, that as per clause 33 of the agreement it is specifically stated that incase of any major alterations resulting in more than 10% change in the super area of the said unit of material change in the specification of the unit any time prior to and upon the grant of occupation certificate then the company shall intimate the allottee and in response to the same the allottee shall give his consent or objections to the changes within 15 days. It is further pertinent to state here that incase the allottee gives his objection to the said modification, then the allotment shall be deemed to be cancelled and the company shall refund the entire money received from the allottee with simple interest @12%p.a.

It has to be noted that section 14 of the RERA Act, 2016 does not apply retrospectively and that the contract and contractual obligations between the parties shall prevail.

21. With regard to the **fifth issue**, as per statement of the respondent in the proceedings dated 30.10.2018, the project is under construction and 70% of the project is complete. Granting a refund at this stage will hamper the interest of



the other allottees who wish to continue with the project.

Hence no refund shall be granted.

22. Accordingly, the **sixth issue** raised by the complainant, the complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required. Also, during the proceedings dated 18.07.2018 the counsel for the complainant had made a statement that he is not appearing before the authority for compensation but for the fulfilment of the obligations by the promoter as per the Act. Therefore, the relief sought by the complainant regarding compensation becomes superfluous.

#### **FINDINGS OF THE AUTHORITY:**

23. 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.

24. The authority is of the view of that the respondent has delayed the possession by approximately 3 months and 2 days thus is liable to hand over possession under section 11(4) of the Act.

25. 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.

26. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.

27. Complainant has raised a piquant question that shop No.G-124 as per the allotment letter does not exist as per sanctioned plan. He has been directed to file an affidavit to this extent failing which legal action for mis-representing,



making false statement shall be initiated against him under the provisions of Indian Penal Code.

28. Mascot Buildcon Pvt. Ltd. has entered into an agreement with the complainant with regard to booking of the shop and delivery thereof. However, there are three respondents as per the complaint, one is Mascot Buildcon Pvt. Ltd-respondent No.1, V. Square Development Company-respondent No.2 and Home Town Properties Pvt. Ltd-respondent No.3. All the three respondents have entered into registered collaboration agreement. It has been stated at bar that respondent No.1 Mascot Buildcon Pvt. Ltd had got BIP approval from DTCP (yet to be ascertained from the company, documents to be placed on record). The project is registered one. As per registration certificate, the committed date of delivery of possession is 31.12.2019. The project is under construction and 70% of the project is complete. The complainant too has deposited more than 52% of the total sale consideration. The complainant has submitted that since the progress of the project was slow, he has not deposited the remaining due amount.



## DECISION AND DIRECTIONS OF THE AUTHORITY

29. Thus, The Authority exercising power under section 37 of Real Estate (Regulation & Development) Act, 2016 issue directions:

- i. The respondent is duty bound to hand over the possession of the said unit by 08.07.2018 as committed by the respondent
- ii. As per the provisions of section 19 (a) of the Real Estate (Regulation and Development) Act, 2016 the complainant is also duty bound to pay the due instalment in time.
- iii. The complainant is eligible for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum from the committed date of delivery of possession i.e. 08.07.2018 as per agreement dated 08.04.2015. Issue w.r.t PLC charges shall be decided finally at the time of delivery of possession.





- (i) 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, i.e. Section 19(4) of the Act *ibid*.

30. The order is pronounced

31. The case is consigned.

(Samir Kumar)

Member



सत्यमेव जयते

(Subhash Chander Kush)

Member

Date: 30.10.2018

HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 30.10.2018
Complaint No.	171/2018 Case titled as Mr. Prabhat Kumar V/S M/S Mascot Building Pvt. Ltd. & Others
Complainant	Mr. Prabhat Kumar
Represented through	Complainant in person
Respondent	M/S Mascot Building Pvt. Ltd. & Others
Respondent Represented through	Shri S.K. Sharma authorized representative with Shri Gulshan Sharma Advocate for respondents no.1 and 3 and Shri Drishti Jha Advocate for respondent No.2
Last date of hearing	19.9.2018
Proceeding Recorded by	

**Proceedings**

Arguments heard.

Complainant has raised a piquant question that shop No.G-124 as per the allotment letter does not exist as per sanctioned plan. He has been directed to file an affidavit to this extent failing which legal action for misrepresenting, making false statement shall be initiated against him under the provisions of Indian Penal Code.

Mascot Buildcon Pvt. Ltd. has entered into an agreement with the complainant with regard to booking of the shop and delivery thereof. However, there are three respondents as per the complaint, one is Mascot Buildcon Pvt. Ltd-respondent No.1, V.Square Development Company-

respondent No.2 and Home Town Properties Pvt. Ltd-respondent No.3. All the three respondents have entered into registered collaboration agreement. It has been stated at bar that respondent No.1 Mascot Buildcon Pvt. Ltd had got BIP approval from DTCP (yet to be ascertained from the company, documents to be placed on record). The project is registered one. As per registration certificate, the committed date of delivery of possession is 31.12.2019. The project is under construction and 70% of the project is complete. The complainant too has deposited more than 52% of the total sale consideration. The complainant has submitted that since the progress of the project was slow, he has not deposited the remaining due amount. As per the provisions of section 19 (a) of the Real Estate (Regulation & Development) Act, 2016 he is also duty bound to pay the due instalment in time. However, he is eligible for delayed possession charges at the prescribed rate of interest i.e. 10.45% per annum from the committed date of delivery of possession i.e. 8<sup>th</sup> October, 2018 as per agreement dated 8.4.2015. Issue w.r.t PLC charges shall be decided finally at the time of delivery of possession.

Complaint is disposed of accordingly. Detailed order will follow.  
File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)