

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

**Complaint No.** : 17 of 2018  
**Date of Institution** : 28.02.2018  
**Date of Decision** : 05.06.2018

Ashok Kumar Yadav, R/o E-24 Rosewood city,  
sector 49/50 Gurugram

**Complainant**

Versus

KST Infrastructure Ltd, Office at G-307 1<sup>st</sup>  
floor, shopping arcade, block B Sushant Lok 1,  
Gurugram

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri J.P .Yadav  
Respondent ex parte

Advocate for the Complainant

**ORDER**

1. A complaint dated 28.02.2018 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. Ashok Kumar Yadav) against the promoter (KST Infrastructure Ltd.) for not in a position to hand over possession by the due date





i.e. 27.10.2018 as per clause 53 of builder buyer agreement 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	KST Urban Universe, sector 114, Gurugram
2.	Registered/Un-registered	Un-registered
3.	Unit No.	4S04
4.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 3,00,000
5.	Total consideration amount as per agreement	Rs. 42,97,084
6.	Total amount paid by the complainant	Rs 16,72,368
7.	Date of Agreement	27/10/2014
8.	Date of delivery of possession	48 months i.e. 27/10/2018
9.	Penalty Clause as per builder buyer agreement	Clause 53, Rs 10 per sq. ft. of super area per month
10.	Cause of delay in delivery of possession	Construction not started



3. As per the details provided above, which have been checked as per record available in the case file. A builder buyer agreement is available on record for the unit as described below according to which the possession of the aforesaid unit was to be delivered by 27/10/2018 under clause 53 of the



agreement. The clause regarding the possession of the said unit is reproduced below :

*"53. That the company will sinerely endeavour to give possession of the unit to the intending allottee(s)/intending buyer(s) within 48 months for from the date of execution of the agreement and after providing of necessary infrastructure specially road, sewer and water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the company ....."*

4. Since as per the statement given by the complainant the respondent company has not even started construction of the said project till date therefore the promoter has not fulfilled his committed liability as on date in terms of section 11(4)(a) of the Act ibid.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance on 11.04.2018. The case came up for hearing on 11.04.2018, 25.04.2018, 15.05.2018 & 05.06.2018 but the respondent appeared only on 25.04.2018 and has filed reply but the same is neither correctly addressed nor has been signed by the respondent. The complainant filed his written arguments on 4th June 2018.

6. During hearings, despite giving enough time, the counsel for the respondent has ~~not~~ <sup>failed to file the</sup> filed reply and was not present on the

*Corrected vide order dt 19/12/18*





date of final arguments on 05.06.2018. As a result, the respondent is hereby proceeded against ex-parte. Shri Hans Raj, Junior Engineer from the office of STP Gurugram appeared in person along with the record as a witness and submitted office memo No. STP(G)/2018/4110 dt. 15/5/2018 containing the status of license, occupancy certificate and other information about the project which clearly shows that so far, no pending renewals have been obtained by the respondent and no occupancy certificate (O.C.) has been applied/obtained.

7. From the conduct of the respondent as well as from the documents on record, it is evident that the respondent has not even started the construction of the project so far thus, it is assumed that their intention to implement this project is not positive. Therefore, they are not in a position to deliver the possession of the flat by the time given in the builder buyer agreement.

9. Keeping in view the present status of the project and intervening circumstances, the complainant wishes to **withdraw** from the project and as per section 18(1) of the Act, complainants have made a demand to the promoter to return the amount received by him in respect of the flat allotted to them with prescribed interest. The promoter has failed to return the amount received by him along with the prescribed interest which is an obligation



on the promoter as per section 18(1). The complainant reserves their right to seek compensation from the promoter for which he/she shall make separate application to the adjudicating officer, if required. 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.*

8. The complainant has made a submission before the <sup>a</sup> 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 has 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."*

9. 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.
10. Thus, the Authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016, considers and allows the prayer of the complainant and accordingly the respondent is directed to refund to the complainant the deposited amount i.e. Rs 16,72,368 along with interest calculated till the date of <sup>realisation</sup> ~~decision~~ @ marginal cost of

Completed vide order dt 19/12/18





lending of State Bank of India plus 2% i.e. @ ~~10.15%~~ 10.45% p.a. within  
90 days.

10.45%  
Corrected vide order dt 18/12/18.

11. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the Adjudicating Officer.
12. The order is pronounced.
13. 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

Corrected Judgement uploaded on 26/12/18.

