

**PROCEEDINGS OF THE DAY**

Day and Date	Wednesday and 19.12.2018
Complaint No.	791/2018 Case Titled As Mr. Madho Prasad Rustagi V/S M/S Alm Infotech City Private Limited
Complainant	Mr. Madho Prasad Rustagi
Represented through	Complainant in person with Shri Amit Kumar, Advocate.
Respondent	M/S ALM Infotech City Private Limited
Respondent Represented through	Shri Venkat Rao, Advocate for the respondent
Last date of hearing	
Proceeding Recorded by	H.R. Mehta

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

Counsel for the complainant has stated that the complainant has not received the copy of reply. Counsel for the respondent is directed to supply copy of reply to the complainant today itself.

As per clause 9 (1) of the Apartment Buyer Agreement dated 12.3.2014, for space/unit No.11B, 11<sup>th</sup> floor, Tower Proxima, in ILD Grand Sector-37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 180 days grace period which comes out to be 12.9.2017. However, the respondent has not delivered the unit in time.

Complainant has already deposited Rs.57,99,240 /-with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f 12.9.2017 till the offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. Respondent is also entitled to charge interest on account of delayed payments at the equitable rate of interest that is being granted to the complainant @ 10.75% per annum.

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

Samir Kumar  
(Member)  
19.12.2018

Subhash Chander Kush  
(Member)  
19.12.2018

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

**Complaint no. : 791 of 2018**  
**First date of hearing : 19.12.2018**  
**Date of decision : 19.12.2018**

1. Madho Prasad Rastogi
  2. Himanshu Rastogi
- Both residents of  
R/o House no. 1456, Sector 4, Gurugram.

**Complainants**

Versus

M/s ALM Infotech City Pvt. Ltd.  
R/o B-418, New Friends Colony,  
South Delhi: 110025

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Amit Kumar Advocate for the complainant  
Shri Venkat Rao Advocate for the respondent

**ORDER**

A complaint dated 05.09.2018 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. Prasad Rastogi and Himanshu Rastogi, against the promoter



M/s ALM Infotech City Pvt Ltd., on account of violation of the clause 9(i) of buyer's agreement executed on 12.03.2014 in respect of unit described as below 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 buyer's agreement has been executed on 12.03.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non compliance of contractual obligation 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: -

- **Nature of unit: Residential**
- **DTCP License no: 96/2010 dated 03.11.2010 and 118/2011 dated 26.12.2011**
- **Valid up to: 2.11.2016 and 25.12.2017**



1.	Name and location of the project	ILD Grand, Sector 37 C, Gurugram
2.	Registered/Unregistered	<b>Registered</b>
3.	RERA registration no	<b>386 of 2017</b> Dated 18.12.2017

4.	RERA registration valid up to	18/09/2019
5.	Date of execution of apartment buyer's agreement	12.03.2014
6.	Residential floor space/unit no.	11B, 11 <sup>th</sup> floor, tower-Proxima
7.	Unit measuring	1304 sq. ft.
8.	Payment plan	Construction Linked
9.	Total consideration amount as per apartment buyers agreement	Rs. 61,83,340/-
10.	Total amount paid by the complainant as per statement of account dated 25.09.2018	Rs 57,99,240/-
11.	Date of delivery of possession as per clause 9(i) of apartment buyer's agreement i.e. 36 months from the execution of apartment buyer's agreement + grace period of 180 days	12.09.2017
12.	Delay in handing over possession till date	Approx. 1 year 3 months 7 days
13.	Penalty as per clause 9(iii) of apartment buyer's agreement	Rs 5 per sq. ft.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 12.09.2017. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor have they paid any compensation @ Rs.5 -



per sq. ft per month of the super area of till the notice of possession as per clause 9 (iii) of the buyer's agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 19.12.2018. The reply filed on behalf of the respondent has been perused.

**BRIEF FACTS:**

6. The respondent company claimed itself to be a pioneer in the business of development of various residential and commercial projects in different cities of India.
7. That during the meeting of the sales representatives of the respondent, they were boasted a lot of the quality of construction and other facilities to be made available in the said project. The respondent even assured the complainants that about 80% of the units have been already booked and the construction of the said project is going to start very soon and shall be handed over to the allottees by the end of 2015.



8. That by May 2012 the respondent had received a sum of Rs 10,43,200/- and the respondent issued a provisional allotment letter dated 24.05.2012 acknowledging the said payment and a unit was allotted to them.
9. The complainants even availed a home loan for purchasing the said unit. The respondents entered into a builder buyer agreement dated 12.03.2014.
10. The complainants were shocked and surprised to learn that the respondents have diluted the promises made at the time of booking of the said flat. The complainants were promised at the time of booking that the possession would be handed over to them within a period of 3 years from March 2015. Clause 9(i) of the builder buyer agreement mentions that the possession of the said unit shall be delivered within a period of 36 months + grace period of 180 days from the date of execution of the builder buyers agreement.
11. The complainants have paid a sum of Rs 59,66,785 by June 2016 and the respondent did not start the construction on time and it has been delayed.
12. That the respondent after collecting almost the entire money have stopped the construction of the said project. The complainants have written several letters and emails to





the respondents however the respondents have not given any satisfactory response to the complainants with respect to the possession of the unit booked by the complainants.

13. The respondents herein have been giving false and unreasonable proposals to the complainants to switch to some other project of the respondents in exchange of the unit booked by the complainants herein which is not at all acceptable to the complainants.
14. The complainants have been communicating their plight to the respondents herein regularly. However the respondents have not been paying heed to the request of the honest and bonafide buyers..
15. The complainants visited the site last in March 2016 and there has been no progress whatsoever from the last visit of the complainants till date at the worksite.
16. The respondent has been avoiding the refund of the total amount paid by the complainants and in view of the said circumstances it has become abundantly clear that the respondents have wrongfully and mischievously misappropriated the money paid by the complainants herein and have no intention of refunding the same.





17. That the respondent vide email dated 12.05.2018 have admitted in writing about the delay in the development of the said project and have offered an alternate apartment to the complainants which is not at all acceptable to the complainants herein.

**ISSUES RAISED BY THE COMPLAINANT:**

18. The following issues have been raised by the complainant:
- Whether or not the respondent is justified in delaying the possession?
  - Whether or not the respondents are liable to refund the amount deposited by the complainant along with interest?

**RELIEF SOUGHT BY THE COMPLAINANTS:**

The complainants are seeking the following reliefs:

- The respondent be directed to refund the amount invested by the complainants along with interest @18 % p.a. from the date when payments were made till realization of the amount in full.



- ii. **Any other order this hon'ble authority deem fit to meet the ends of justice.**

**RESPONDENT'S REPLY:**

20. The respondent submitted that the present complaint is a bundle of lies and hence liable to be dismissed without any cause of action. The present complaint is abuse of process of this authority and is not maintainable.

21. The respondent submitted that the complainant has never adhered to the payment schedule and always made the payment after due date of the payment.

22. The respondent denied that he made any misrepresentation to the complainant about the project, status and financial soundness of the company. The respondent submitted that the complainants had voluntarily with their free will and consent after being satisfied about the project jointly booked a flat.

The respondent denied that he had assured that the project will be handed over within 3 years from the date of booking.

24. The respondent further submitted that the complainants have signed the apartment buyer agreement agreeing to all the terms and conditions of clause 9(i) of the said agreement. The agreement was executed on 12.03.2014 and



therefore the possession of the flat becomes due on or before 12.09.2017.

25. The respondent submitted that the demands were raised as per the payment plan duly agreed by the complainants. The respondent further submitted that the project is going on in full swing and the respondent is committed to complete the project as soon as possible.
26. The respondent submitted that the construction of the project got delayed due to reasons beyond the control of the respondent which was due to revision in the building plans.
27. The respondent submitted that the project construction is in full swing and that the revised date as per RERA registration is 17.09.2019.
28. The respondent submitted that an amount of Rs 56,05,645 towards the sale consideration has been paid by the complainants.

The respondent submitted that the he has all the necessary approvals of the concerned authorities for the construction and development of the project.



**DETERMINATION OF ISSUES:**

30. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

- i. With respect to the **first issue** raised by the complainants, as per clause 9(i) of apartment buyer's agreement, the possession of the unit was to be handed over within 36 months plus grace period of 180 days from the date of execution of the said agreement. The buyer's agreement was executed on 12.03.2014. Therefore, the due date of possession shall be computed from 12.04.2014.

Accordingly, the due date of possession was 12.09.2017 and the possession has been delayed by one year three months 7 days till date. The delay compensation payable by the respondent @ Rs. 5/- per sq. ft. per month of the super area till the date of notice of possession as per clause 9(iii) of 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 and unilateral. It has also been observed 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.”*

As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules *ibid*, to pay interest to the complainants at prescribed rate i.e. 10.75% per annum for every month of delay till the handing over of possession.

- ii. With respect to the **second issue** raised by the complainant, there is no document provided on record to ascertain the status of project based upon which the issue regarding the refund can be decided. However, the respondent has submitted in para 13 and 15 of his reply that the project is in full swing and he undertakes to complete the construction very soon. He has also received all the necessary approvals and as per RERA



registration the revised date of delivery of possession is 17.09.2019. Thus, this issue will be determined during the proceedings.

### FINDINGS OF THE AUTHORITY:

31. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.



32. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
33. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
34. Counsel for the complainant has stated that the complainant has not received the copy of reply.
35. As per clause 9(i) of the apartment buyers agreement dated 12.03.2014 for unit no 11B, 11<sup>th</sup> floor, tower Proxima in ILD Grand Sector 37 C, possession was to be handed over to the complainant within a period of 36 months+ 180 days grace period which comes out to be 12.09.2017. However the respondent has not delivered the unit in time. Complainant has already deposited Rs 57,99,240/- with the respondent.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

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 respondent is directed to give the complainant delayed possession charges @ 10.75% per annum w.e.f 12.09.2017 till the date amounting to Rs 7,91,228 /- as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 within 90 days from the date of this order.
- ii. Thereafter the monthly payment of interest amounting to Rs. 51,951 /- on 10<sup>th</sup> of every month of delay till the handing over of possession
- iii. If the possession is not given on the date committed by the respondent then the complainant is entitled to withdraw from the project and get back the amount deposited by him with interest and 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*.



Principal amount paid by the complainant	Interest accrued up to date of decision	Monthly interest to be paid till handover of possession
Rs. 57,99,240/-	Rs. 7,91,228	Rs 51,951/-

38. The order is pronounced.
39. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 19.12.2018



HARERA  
GURUGRAM



Judgement Uploaded on 05.01.2019