

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 22.11.2018
Complaint No.	68/2018 Case titled as Mr. Ram Chander Dahiya Vs. M/s Universal Buildwell Pvt. Ltd.
Complainant	Mr. Ram Chander Dahiya
Represented through	Complainant in person with Shri Baldev Singh Mehra, Advocate
Respondent	M/s Universal Buildwell Pvt. Ltd.
Respondent Represented through	<b>None for the respondent.</b>
Last date of hearing	29.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is not registered with the authority.**

Arguments heard.

On the previous date, ex-parte proceedings have been initiated against the respondent. Today, Shri Baldev Singh Mehra, Advocate alongwith the complainant is present. As per their statement, the project is incomplete.

As per clause 13 (3) of Builder Buyer Agreement, the date of delivery of possession of unit No.I-902, 9<sup>th</sup> Floor, Universal Aura, Sector 82, Gurugram booked by the complainant was 26.3.2015. However, builder has failed to deliver the said unit to the complainant in time. Since nobody is present on behalf of the respondent, as such, no version of the respondent can

be taken on record. As such, there is no choice with the authority but to direct the respondent to refund the amount of Rs.69,69,855/- deposited by the complainant alongwith prescribed rate of interest @ 10.75% p.a.

Accordingly, it is directed that the respondent to refund the entire amount of Rs.69,69,855/- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order.

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

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
22.11.2018

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

**Complaint no. : 68 of 2018**  
**First date of hearing: 17.04.2018**  
**Date of Decision : 22.11.2018**

Mr. Ram Chander Dahiya R/o H.no 1667,  
Sector- 45, Gurugram

**Complainant**

**Versus**

M/s Universal Buildwell Pvt. Ltd,  
8<sup>th</sup> floor, Sector 49, Sohna Road,  
Gurugram -122001

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Ram Chander Complainant in person  
Shri Baldev singh Advocate for the complainant  
None of the respondent Advocate for the respondent

**ORDER**

1. A complaint 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 Shri Ram Chander Dahiya, against the promotor M/s Universal Buildwell Pvt. Limited, on account of violation of the clause 13.3 of the apartment buyer's agreement executed on 26.09.2011 in respect of apartment



number 902, 9<sup>th</sup> floor, block/tower I in the project 'universal aura' with a super area of 1587 sq. ft. for not handing over possession on the due date i.e. 26.03.2015 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	Universal Aura, Sector 82, Gurugram
2.	Apartment/unit no.	I-902, 9 <sup>th</sup> floor
3.	Nature of real estate project	Group housing colony
4.	DTCP license	51 of 2011
5.	Flat measuring	1587 sq. ft. of super area
6.	RERA registered/ not registered.	<b>Not registered</b>
7.	Date of execution of apartment buyer's agreement	26.09.2011
8.	Payment plan	Construction linked payment plan
9.	Total consideration	Rs.50,22,855/-
10.	Total amount paid by the complainant till date	Rs. 69,69,562/-
11.	Date of delivery of possession as per clause 13(3) of apartment buyer's agreement (36 Months + 180 days grace period from the date of execution of agreement)	26.03.2015
12.	Delay in handing over possession till date	3 years 7 months
13.	Penalty clause as per apartment buyer's agreement	Clause 13.4 of the agreement i.e. Rs.10/- per sq. ft per month of the super 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 dated 26.09.2011 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 26.03.2015. Neither the respondent has delivered the possession of the said unit till now to the purchaser nor paid any compensation @ Rs.10/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 13.4 of apartment buyer's agreement dated 26.09.2011. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 29.05.2018. The case came up for hearing on 17.04.2018, 03.05.2018, 29.05.2018, 11.07.2018, 21.08.2018, 27.09.2018, 22.10.2018, 29.10.2018 and 22.11.2018. The reply has been filed on behalf of the respondent on 25.05.2018

#### **Facts of the complaint**

5. The complainant submitted that he has purchased a unit no. 1-902 on 9<sup>th</sup> floor, measuring 1587 sq. ft. situated in the project Universal Aura at Sector 82, Gurugram.
6. The complainant submitted that as per the letter dated 10.12.2013 demand notice was sent by the respondent for the



increase in super area 1824.76 sq. ft. instead of super area 1587 sq. ft.

7. The complainant submitted that he had paid total amount of Rs. 69,69,562/- to the respondent which is 90% of the total consideration of the above said unit.
8. That the respondent has only constructed structure on the spot and there is no other development work. The complainant has been requesting the respondent since long time, but the respondent has failed to adhere the actual and genuine request of the complainant.
9. That the complainant visited several times to the respondent since 2015 to till date for not delivering the possession of the flat and at last the complainant requested to refund the amount paid by the complainant to the respondent but respondent has failed to refund the said amount.
10. That the respondent by providing false and fabricated advertisement, thereby concealing true and material facts about the status of the project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard-earned money in their so called upcoming project, with sole dishonest intention to cheat him and cause him



wrongful loss and in this process the respondent gained wrongful, which is purely criminal act.

**11. Issues raised by the complainants are as follow:**

- i. Whether the respondent is liable for delay in handing over of possession of the unit to the complainant?
- ii. Whether the quality of construction is sub-standard and not in accordance with the provision of the agreement?
- iii. Whether the facilities and amenities as agreed upon/approved in the layout plans have not been provided?
- iv. Whether the complainant is entitled to receive the entire amount along with interest and fine?

**12. Relief sought:**

The complainant is seeking the following relief:

- i. Direct the respondent to refund the amount of Rs. 69,69,562/- along with interest @24% per annum from the date of payment till its actual realisation.
- ii. To direct the respondent to pay Rs. 10 per sq. ft. as penalty for delaying the possession to my client well within prescribed limit.



**Respondent's reply**



13. The respondent submitted that the complaint filed by the complainant is not maintainable and this hon'ble authority has no jurisdiction to entertain the present complaint.
14. The respondent submitted that complaint for compensation and interest under section 12, 14, 18, and section 19 of the Real Estate (Regulation and Development) Act, 2016 is maintainable only before the adjudicating officer under section 71 of RERA Act, 2016.
15. That the complaint lacks real cause of action to pursue the present complaint and complainant has filed the present complaint only to harass and to extort money from the respondent builder and gain wrongfully.
16. The respondent submitted that complainant has failed to discharge his obligations and therefore, the complainant is by his own acts and conduct stopped from filing the present complaint.
17. The respondent company is committed to develop the real estate project named universal aura Sector 82 Gurgaon and the construction work is going on. Though the said project is going behind schedule of delivery, however the respondent has throughout conducted the business in a bonfide manner and the delay is beyond the control of the respondent and due





to multifarious reasons. That there were labour and material shortages affecting the time schedule and further, various allottees had been making default in payment as called by the respondent thereby leading to financial mismanagement for carrying on the project in a timely manner.

18. The respondent submitted that complete real estate industry is under pressure of delivery and availability of skilled manpower and material is at all-time low. On the other hand, even, the respondent company due to uncontrollable delay in delivering the project is suffering because it has to pay huge license fees as for renewal of the licenses. The respondent company had to pay higher renewal charges as per the higher EDC charges due to the uncontrollable delays.
19. The respondent submitted that this hon'ble forum does not have the subject matter jurisdiction as the respondent has not violated or contravened any of the provision of real estate act.
20. The respondent submitted that present case requires detailed investigation and leading of evidence is required and cannot be adjudicated in summary manner, therefore this hon'ble forum authority lacks jurisdiction in the present complaint.
21. Further it is submitted that the intention of the complainant in filing the present complaint is for the sole purpose of extorting



money and the complainant has levied baseless allegation on the respondent.

22. The respondent submitted that due to the delay in the project because of factors beyond the control of the respondent company amounting to force majeure conditions, the complainant is not suffering any losses worth compensating rather it is the respondent company who is suffering for not able to complete the project within the specified time limit.
23. The respondent submitted that complainant out of his free will and after verification purchased the flat from the resale market entirely for the purpose of earning money and endorsed in his name on date 24.04.2012, the unit no. I-902, 9<sup>th</sup> floor of Universal Aura Sector 82 Gurgaon.
24. The respondent has committed deficiency in services or unfair trade practice, in any manner whatsoever as alleged. That the present complaint is an abuse of the process of law. Complainant has filed the present complaint out of his own free will and upon being satisfied with all terms and conditions of the application. It is submitted that the complainant now maliciously with ulterior motives, deliberately trying to wriggle out of obligations derived from the terms of allotment



letter and on this sole ground alone the present complaint is liable to be dismissed.

### **Determination of issues**

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

25. In respect to the **first issue** raised by the complainant the authority decides that as per clause 13.3 of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of execution of the agreement (with a grace period of 6 months). Therefore, the due date of handing over possession is 26.03.2015. The clause regarding the possession of the said unit is reproduced below:

*"13(3) offer of possession*

*...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of execution of agreement after expiry of the said commitment period to allow for unforeseen delays in obtaining the occupation certificate etc, from DTC under the act, in respect of the project ...."*



26. In regarding to **second issue** raised by the complainant related to construction quality not being in accordance with the terms of agreement, as the matter regarding poor

construction quality should be referred to DTCP for further investigation, so as to ensure that the construction in this project is as per specification provided in the Haryana building code 2017 and per the terms and condition.

27. In regarding to **third issue** raised by the complainant related to facilities and amenities as approved in layout plan being in not accordance with the terms of agreement, the matter should be referred to DTCP for further investigation that the construction is accordance with the provisions of the agreement.

28. In regarding the **fourth 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

29. Accordingly, the due date of possession was 26.03.2015. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said flat as per clause 13.4 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."*



30. As the possession of the flat was to be delivered by 26.03.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*“11.4 The promoter shall—*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*

31. 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.*



32. 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.*

**Inferences drawn by the authority**

33. The authority has complete subject matter jurisdiction to decide the complaint regarding 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 14.12.2018 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.





### Decision and directions of the authority

34. Keeping in view the facts and circumstances of the complaint, the authority is of the view that as per clause 13.3 of builder buyer agreement, the date of delivery of possession of unit no. I-902, 9<sup>th</sup> Floor, Universal Aura, Sector 82, Gurugram booked by the complainant was 26.03.2015. However, the builder has failed to deliver the said unit to the complainant on time. Since nobody is present on behalf of the respondent, as such, no version of the respondent can be taken on record
35. 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 here by directs the respondent to refund the amount of Rs 69,69,855/- paid by the complainant along with prescribed rate of interest @ 10.75% p.a. within 90 days from the issuance of this order.
36. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate penal proceeding will be initiated against the respondent under section 59 of the Act ibid by the registration branch.
37. The order is pronounced.



38. The complaint is disposed of. 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

Dated : 22.11.2018



HARERA  
GURUGRAM



Judgement is uploaded on 19.12.2018

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

**Complaint no. : 68 of 2018**  
**First date of hearing: 17.04.2018**  
**Date of Decision : 22.11.2018**

Mr. Ram Chander Dahiya R/o H.no 1667,  
Sector- 45, Gurugram

**Complainant**

**Versus**

M/s Universal Buildwell Pvt. Ltd,  
8<sup>th</sup> floor, Sector 49, Sohna Road,  
Gurugram -122001

**Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Ram Chander Complainant in person  
Shri Baldev singh Advocate for the complainant  
None of the respondent Advocate for the respondent

**ORDER**

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number 902, 9<sup>th</sup> floor, block/tower I in the project 'universal aura' with a super area of 1587 sq. ft. for not handing over possession on the due date i.e. 26.03.2015 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	Universal Aura, Sector 82, Gurugram
2.	Apartment/unit no.	I-902, 9 <sup>th</sup> floor
3.	Nature of real estate project	Group housing colony
4.	DTCP license	51 of 2011
5.	Flat measuring	1587 sq. ft. of super area
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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 dated 26.09.2011 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 26.03.2015. Neither the respondent has delivered the possession of the said unit till now to the purchaser nor paid any compensation @ Rs.10/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 13.4 of apartment buyer's agreement dated 26.09.2011. Therefore, the promoter has not fulfilled his committed liability till date.

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#### **Facts of the complaint**

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6. The complainant submitted that as per the letter dated 10.12.2013 demand notice was sent by the respondent for the



increase in super area 1824.76 sq. ft. instead of super area 1587 sq. ft.

7. The complainant submitted that he had paid total amount of Rs. 69,69,562/- to the respondent which is 90% of the total consideration of the above said unit.
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wrongful loss and in this process the respondent gained wrongful, which is purely criminal act.

**11. Issues raised by the complainants are as follow:**

- i. Whether the respondent is liable for delay in handing over of possession of the unit to the complainant?
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**12. Relief sought:**

The complainant is seeking the following relief:

- i. Direct the respondent to refund the amount of Rs. 69,69,562/- along with interest @24% per annum from the date of payment till its actual realisation.
- ii. To direct the respondent to pay Rs. 10 per sq. ft. as penalty for delaying the possession to my client well within prescribed limit.



**Respondent's reply**



13. The respondent submitted that the complaint filed by the complainant is not maintainable and this hon'ble authority has no jurisdiction to entertain the present complaint.
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to multifarious reasons. That there were labour and material shortages affecting the time schedule and further, various allottees had been making default in payment as called by the respondent thereby leading to financial mismanagement for carrying on the project in a timely manner.

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money and the complainant has levied baseless allegation on the respondent.

22. The respondent submitted that due to the delay in the project because of factors beyond the control of the respondent company amounting to force majeure conditions, the complainant is not suffering any losses worth compensating rather it is the respondent company who is suffering for not able to complete the project within the specified time limit.
23. The respondent submitted that complainant out of his free will and after verification purchased the flat from the resale market entirely for the purpose of earning money and endorsed in his name on date 24.04.2012, the unit no. I-902, 9<sup>th</sup> floor of Universal Aura Sector 82 Gurgaon.
24. The respondent has committed deficiency in services or unfair trade practice, in any manner whatsoever as alleged. That the present complaint is an abuse of the process of law. Complainant has filed the present complaint out of his own free will and upon being satisfied with all terms and conditions of the application. It is submitted that the complainant now maliciously with ulterior motives, deliberately trying to wriggle out of obligations derived from the terms of allotment



letter and on this sole ground alone the present complaint is liable to be dismissed.

### Determination of issues

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

25. In respect to the **first issue** raised by the complainant the authority decides that as per clause 13.3 of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of execution of the agreement (with a grace period of 6 months). Therefore, the due date of handing over possession is 26.03.2015. The clause regarding the possession of the said unit is reproduced below:

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*...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of execution of agreement after expiry of the said commitment period to allow for unforeseen delays in obtaining the occupation certificate etc, from DTC under the act, in respect of the project ...."*



26. In regarding to **second issue** raised by the complainant related to construction quality not being in accordance with the terms of agreement, as the matter regarding poor

construction quality should be referred to DTCP for further investigation, so as to ensure that the construction in this project is as per specification provided in the Haryana building code 2017 and per the terms and condition.

27. In regarding to **third issue** raised by the complainant related to facilities and amenities as approved in layout plan being in not accordance with the terms of agreement, the matter should be referred to DTCP for further investigation that the construction is accordance with the provisions of the agreement.

28. In regarding the **fourth 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

29. Accordingly, the due date of possession was 26.03.2015. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said flat as per clause 13.4 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:

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30. As the possession of the flat was to be delivered by 26.03.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

*“11.4 The promoter shall—*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*

31. 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.*



32. 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.*

**Inferences drawn by the authority**

33. The authority has complete subject matter jurisdiction to decide the complaint regarding 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 14.12.2018 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.



### Decision and directions of the authority

34. Keeping in view the facts and circumstances of the complaint, the authority is of the view that as per clause 13.3 of builder buyer agreement, the date of delivery of possession of unit no. I-902, 9<sup>th</sup> Floor, Universal Aura, Sector 82, Gurugram booked by the complainant was 26.03.2015. However, the builder has failed to deliver the said unit to the complainant on time. Since nobody is present on behalf of the respondent, as such, no version of the respondent can be taken on record
35. 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 here by directs the respondent to refund the amount of Rs 69,69,855/- paid by the complainant along with prescribed rate of interest @ 10.75% p.a. within 90 days from the issuance of this order.
36. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate penal proceeding will be initiated against the respondent under section 59 of the Act ibid by the registration branch.
37. The order is pronounced.



38. The complaint is disposed of. 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

Dated : 22.11.2018

Judgement Uploaded on 08.01.2019



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