

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 18.12.2018
Complaint No.	748/2018 Case Titled As Micro Tradex Private Limited V/S Mapsko Builders Private Limited
Complainant	Micro Tradex Private Limited
Represented through	Ms. Urvashi Sharma, Advocate for the complainant.
Respondent	Mapsko Builders Private Limited
Respondent Represented through	Shri Sanjeev Dhingra Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

**Proceedings**

**Project is registered with the authority.**

Ms. Urvashi Sharma Advocate has appeared on behalf of the respondent and filed power of attorney today.

Project is registered with the authority and the revised date of delivery of possession is 30.11.2019 as per registration certificate.

Complainant has booked unit No.1504, Tower-G, in project "Mapsko Mount Ville, Sector 78-79, Gurugram but no Builder Buyer Agreement was executed inter-se the parties. He has already deposited Rs.29,52,196/- with the respondent against total consideration of Rs.89,82,180/-. In this way, complainant has deposited about 25% of the total sale consideration upto

15.11.2012. However, the BBA sent by the respondent to the complainant for attestation was not signed by the complainant. As per their agreed terms and conditions as mentioned in the BBA executed with other allottees, respondent was duty bound to hand over the booked unit to the complainant within 48 + 6 months grace period on account of force majeure factors.

Counsel for the respondent has raised an issue w.r.t order/judgment dated 31.7.2018 pronounced by **ADJ-7 (West) Tis Hazari Courts, West District, Delhi** where the learned Judge dismissed the plaint of the complainant and directed the parties to settle the matter arbitrarily.

The parties are also obligated to pay prescribed rate of interest 10.75% equitable for late delivery charges. Project is registered one. Once it is registered, the revised date of delivery is 30.11.2019, so both the parties are equally liable to pay interest @ 10.75% per annum.

As per provisions of Section 19 (6) of the Real Estate (Regulation & Development) Act, 2016 complainant is also duty bound to abide by the terms and conditions of contract and make timely payment. As such, complainant is directed to make payment at the prescribed rate of interest i.e. 10.75% per annum till the handing over the possession of the unit by the respondent. However complainant is entitled to late delivery charges at par. Builder as well as complainant are directed to sort out their matter at their own level.

As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f 15.11.2012 the date when the complainant has paid approximately 25% of the total sale consideration, as per the provisions of section 18 (1) of the Real Estate

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

(Regulation & Development) Act, 2016 till the handing over the offer of possession.

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

Samir Kumar  
(Member)  
18.12.2018

Subhash Chander Kush  
(Member)  
18.12.2018

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

Complaint no. : 748 of 2018  
First date of hearing : 18.12.2018  
Date of decision : 18.12.2018

M/s Micro Tradex Pvt. Ltd.  
B-35, South Extension, Part II,  
Lower Ground Floor, New Delhi

**...Complainant**

Versus

M/s Mapsko Builder Pvt Ltd.  
52, North Avenue Road, Punjabi Bagh  
New Delhi

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Ms. Urvashi Sharma  
Shri Sanjeev Dhingra

Advocate for the complainant  
Advocate for the respondent



**ORDER**

1. A complaint dated 23.08.2018 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 M/s Micro

Trader Pvt. Ltd. against the promoter M/s Mapsko Builder Pvt. Ltd. for apartment no. 1504, tower G in the project “Maspsko Ville ” located at Sector 79, gurugram vide memorandum of understanding dated 27.09.2012 for not handing over of possession which is an obligation under section 11(4)(a) of the act ibid.

2. Since, the MoU has been executed on 27.09.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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: -

1.	Name and location of the project	Mapsko Mount Ville, sector 78 -79, Gurugram
2.	Project area	16.369 acres
3.	Unit No.	1504, tower G
4.	DTCP license no.	38 of 2012
5.	Registered/unregistered	Registered (328 of 2017)
6.	Revised date of completion as per registration certificate	30.11.2019
7.	Memorandum of understanding	27.09.2012
8.	Date of agreement	Not executed
9.	Nature of project	Residential group housing complex



10.	DTCP license no.	38 of 2012
11.	Total consideration	Rs. 89,82,180/-
12.	Total amount paid by the complainant	Rs. 29,52,196/-
13.	Payment plan	Instalment Linked plan
14.	Date of delivery of possession	Cannot be ascertained
15.	Agreement to sell between TS enterprise and complainant	27.10.2012

3. As per the details provided above, which have been checked as per record of the case file. A memorandum of understanding dated 27.09.2012 and agreement to sell dated 27.10.2012 for unit no. 1504, tower g in the project is available on record. The promoter has failed to deliver the possession of the said unit to the complainant. 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 for appearance. Accordingly, the respondent appeared on 18.12.2018. The case came up for hearing on 18.12.2018. The reply has been filed by the respondent has been perused.



### Facts of the case

5. The complainant submitted that M/s T.S Enterprises, partnership firm has applied for an apartment by paying the

booking amount of Rs. 15,18,677/- vide Memorandum of Understanding dated 27.09.2012 in the Mapsko Mount Ville a residential group housing complex registered under RERA bearing no. 328 of 2017 dated 23.10.2017 being developed by the respondent.

6. The complainant submitted that respondent has allotted apartment no. 1504 in tower G of saleable area of 1510 sq. ft. for the total sale consideration of Rs.89,82,180/- and the complainant has opted for construction linked plan.
7. The complainant submitted that the respondent has signed an MoU regarding the above-mentioned unit with M.s T.S. Enterprises dated 27.09.2012 and has sold its booking the complainant vide agreement to sale dated 27.10.2012.
8. The complainant submitted that he has paid Rs. 7,59,339/- on 15.11.2012 within 45 days from the date of booking as per the payment plan provided by the respondent and the same is bearing confirmed in the demand notice dated 08.06.2017.
9. The complainant submitted that he has made the timely payment of both 3<sup>rd</sup> and 4<sup>th</sup> instalments on 16.05.2013 and





Rs.2,94,450/- as per the demand raised by the respondent and the same confirmed in the demand notice dated 08.06.2017.

10. The complainant submitted that respondent has not executed any builder buyer agreement even after fetching more than 32% of the total consideration.
11. The complainant submitted that as per the terms of the allotment of the said unit, the respondent was bound to handover the possession with a period of 48 months and 6 months of extension in case of force majeure from the date of flat buyer's agreement i.e. on or before 27.09.2016 but the respondent has failed to comply his duties.
12. The complainant submitted that he was surprised to observe the that the construction of project was moving at a very slow pace and demand raised by the respondent was not in correspondence with the construction linked plan which the complainant has opted.
13. The complainant submitted that he has filed a suit for recover at Tis Harzari at Delhi in year 2017, which is willing to withdraw on the directions of this hon'ble authority.





14. The complainant submitted that he decided and requested the respondent to refund its money along with interest and compensation.

### Issues to be decided

- i. Whether the respondent is liable to refund the amount paid by the complainant along with the prescribed rate of interest?
- ii. Whether the respondent is liable to pay penalty on delay of possession @ Rs. 5 per sq. ft. per month for delayed period of 21 months?
- iii. Whether the respondent is liable to execute builder buyer agreement taking more 10% of the total consideration?

### Relief sought

The complainant, most humbly and respectfully prays in the interest of justice:

- i. Direct the respondents to return the amount of Rs.29,52,196/-, in full to the complainant being the consideration paid by the complainant for the flat unit.



- ii. Direct the respondents to provide interest as per section 18 of the act read with rule 15 of the state rules on amount of Rs. 29,52,196/- from date of receipt till date of final settlement amount to Rs.11,86,641/-.
- iv. Direct the respondent to grant such a penalty towards the delay in offering of possession over amounting Rs.1,58,550/-.

### **Respondent's reply**

15. The respondent submitted that the subject matter of this complaint is situated in project "Mapsko Mount Ville" Sector 79 Gurugram which is within the jurisdiction of this hon'ble authority. It is further denied that hon'ble authority has territorial jurisdiction to try and adjudicate upon the instant complaint. It is submitted that complainant admitted in his complaint and his affidavit that complainant has already filed the recovery suit against respondent before the hon'able court of Additional District and Session Judge , Tis Hazari Court ,Delhi and complainant mentioned in the plaint of recovery suit that the cause of action had arise in delhi. It is further submitted that the hon'ble authority has no



jurisdiction to entertain the present complaint because the matter has already been decided by the hon'ble court of additional District and Session Judge, Tis Hazari Court, Delhi whereby the parties to go arbitration.

16. The respondent submitted that complainant would be required to sign and executed two original copies of the draft flat buyer's agreement and return back the same to the respondent for sign and execution on the part of builder. However, the complainant intentionally didn't sign, executed and return back the said flat buyer's agreement, despite having opportunity to do so.

17. The respondent submitted that timely payment of due instalment as specified in the opted payment plans are essence of agreement, but the complainant failed to pay the due instalments on time.

18. The respondent submitted that structure work of all the towers in the project is completed, brick work along with internal plaster is at completion stage and finishing work is going on. On the status of construction, the respondent will



be able to offer the possession of the flat within next few months.

### Determination of issues

19. In respect to **first issue** raised by the complainant as the project is registered under RERA and the revised date of competition as per the registration certificate i.e. 30.11.2019 and the structure of the project is almost complete. So, the refund cannot be granted at this belated stage as it will otherwise hamper the completion of the project and adversely affect the interest of other allottees who wish to continue with the project. However, project has already been delayed thus as such, the builder is liable for payment of interest at the prescribed rate.
20. In respect to **second issue** raised by the complainant, as the builder buyer agreement has not executed. So, this issue cannot be decided.
21. In regard to **third issue** raise by the complainant, as per 13(1) of the Act the promotor shall not accept a sum of more than 10% of the total consideration from a person without first entering into a return agreement for sale. However, this section cannot be applied retrospectively.



22. 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.”*

23. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

24. The complainants 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.

25. 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.

### **Decision and directions of the authority**

26. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority is of the view that Project is registered with the authority and the revised date of delivery of possession is 30.11.2019 as per registration certificate.
27. Complainant has booked unit no.1504, Tower-G, in project "Mapsko Mount Ville, Sector 78-79, Gurugram but no builder buyer agreement was executed inter-se the parties. He has already deposited Rs.29,52,196/- with the respondent against total consideration of Rs.89,82,180/-. In this way, complainant has deposited about 25% of the total sale consideration upto 15.11.2012. However, the BBA sent by the respondent to the complainant for attestation was not signed by the complainant. As per their agreed terms and conditions as mentioned in the BBA executed with other allottees, respondent was duty bound to hand over the booked unit to the complainant within 48 + 6 months grace period on account of force majeure factors.





28. Counsel for the respondent has raised an issue w.r.t order/judgment dated 31.7.2018 pronounced by **ADJ-7 (West) Tis Hazari Courts, West District, Delhi** where the learned Judge dismissed the plaint of the complainant and directed the parties to settle the matter arbitrarily.
29. The parties are also obligated to pay prescribed rate of interest 10.75% equitable for late delivery charges. Project is registered one. Once it is registered, the revised date of delivery is 30.11.2019, so both the parties are equally liable to pay interest @ 10.75% per annum.
30. As per provisions of Section 19 (6) of the Real Estate (Regulation & Development) Act, 2016 complainant is also duty bound to abide by the terms and conditions of contract and make timely payment. As such, complainant is directed to make payment at the prescribed rate of interest i.e. 10.75% per annum till the handing over the possession of the unit by the respondent. However, complainant is entitled to late delivery charges at par. Builder as well as complainant are directed to sort out their matter at their own level.
31. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f 15.11.2012 to the date of order i.e. 18.12.2018 on the paid up amount Rs.29,52,196/-. As per above order the interest amount has been calculated to amounting Rs. 19,33,728.75/- , as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016. Further





the respondent will pay monthly interest till the handing over the offer of possession which shall be Rs. 26,446/- per month. This monthly interest shall be paid by 10<sup>th</sup> of every subsequent month.

32. Hence the authority exercising its under section 37 of the act hereby directs the respondent to act in accordance with the provisions of section 18 (1) of the Act ibid i.e. to adjust the amount @ 10.75% per annum i.e. delayed possession charges. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
33. The complaint is disposed of accordingly.
34. File be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Da ted :18.12.2018

Judgement Uploaded on 08.01.2019

