

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 21.01.2019
Complaint No.	534/2018 Case Titled As Brigadier Sushil Kumar & Anr V/S Nimai Developers Pvt Ltd
Complainant	Brigadier Sushil Kumar & Anr
Represented through	Complainant in person.
Respondent	Nimai Developers Pvt Ltd
Respondent Represented through	Shri Chander Parkash Advocate for the respondent.
Last date of hearing	13.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is registered with the authority.**

Arguments heard.

Shri Chander Parkash Advocate has appeared on behalf of the respondent and filed power of attorney and resolution passed by the Board of Directors.

Complaint was filed on 16.7.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 6.8.2018, 30.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and 29.11.2018 for non-filing of reply even after service of notices.

A final notice dated 14.1.2019 by way of email was sent to both the parties to appear before the authority on 21.1.2019.

Brief facts of the matter are as under :-

As per clause 26 of the Builder Buyer Agreement dated 3.7.2014 for unit No.606, 6<sup>th</sup> floor, in project "Nimai Place" Sector-114, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of building plan or from the date of execution of BBA whichever is later. As the date of start of excavation work is 16.3.2014 (as per Annexure 14) therefore, the due date of delivery of possession of the unit comes out to be 16.3.2017. It was a construction linked plan. Complainant has already paid Rs.30,90,287/- to the respondent against a total sale consideration of Rs.52,35,620/-. However, the respondent apprised that the project is registered vide registration No.7 of 2018 and 70% of the work is complete. The possession of the flat shall be handed over by September 2019.

If the respondent fails to deliver the possession of the unit on the revised date, then the complainant is entitled for refund of amount alongwith prescribed rate of interest i.e. 10.75% per annum. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **16.3.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

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

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar  
(Member)  
21.1.2019

Subhash Chander Kush  
(Member)

**BEFORE THE HARYANA REAL ESTATE REGULATORY**

**AUTHORITY, GURUGRAM**

**Complaint no. : 534 of 2018**

**First date of hearing: 13.09.2018**

**Date of decision : 21.01.2019**

Brigadier Sushil Kumar Arora and  
Captain Puneet Arora  
H.no. B 60, Jalvayu Vihar, Sector 30,  
Gurugram, Haryana

**Complainants**

Versus

M/s Nimai Developers Pvt. Ltd.  
Office: Plot SCO 304, 2<sup>nd</sup> floor, Sector 29,  
Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Brigadier Sushil Kumar Arora and Captain Puneet Arora  
Complainants in person

Shri Chander Prakash

Advocate for the respondents

**ORDER**

1. A complaint dated 16.07.2018 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 complainants Brigadier Sushil Kumar Arora and Captain Puneet Arora against the promoter M/s Nimai Developers Pvt. Ltd. on account of violation of the section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 16.07.2018. Notices w. r. t. hearing of the case were issued to the respondent on 06.08.2018, 30.10.2018 and 29.11.2018 for making his appearance. Besides this, a penalty of Rs.5,000/- was imposed on 30.10.2018 and a penalty of Rs. 10,000/- was imposed on 29.11.2018. However, despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in there complaint.



3. Since, the buyer's agreement has been executed on 03.07.2014 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.

4. The particulars of the complaint are as under: -

- **Nature of the project: commercial project**
- **DTCP license no: 126 of 2012 dated 20.12.2012**
- **RERA registration: 07 of 2018 dated 13.07.2018**
- **Valid upto : September, 2019**

1.	Name and location of the project	"NIMAI PLACE", Sector-114, Gurugram, Haryana
2.	Payment plan	Construction linked plan
3.	Date of buyer's agreement	03.07.2014
4.	Provisional allotment letter	16.08.2013
5.	Unit no.	606, 6 <sup>th</sup> Floor
6.	Area of unit	581 sq. ft.
7.	Date of booking	01.11.2013
8.	MoU between Nimai and another	26.05.2013



	company by the name of Sugar and Spice India Pvt. Ltd.	
9.	Basic sale price	Rs. 45,60,831/-
10.	Total consideration	Rs.52,35,620/-
11.	Total amount paid by the complainant	Rs 30,90,287/-as per statement of complainants
12.	Due date of possession as per clause 26 of the buyer's agreement is 36 months from the date of sanction of building plan or date of execution of buyer's agreement whichever is later.	<b>As date of start of excavation work is 16.03.2014 as per annexure 14 page no. 65. Therefore, due date will be 16.03.2017</b>
13.	Delay in handing possession	<b>1 year 10 months and 5 days</b>
14.	Delay possession charges as per clause 30	Rs.10/-per sq. ft. of the super area for every month of delay

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Thereafter, again notice was send to respondent but despite service of notice the respondent neither appeared nor file their reply to the authority and complaint. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte



on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondent.

**FACTS OF THE CASE:**

6. The complainants submitted that sometime during the first half of 2013, taken by a very aggressive marketing campaign in the print media and hoardings about their project “Nimai Place” in Sector-114, Gurugram, the complainants got interested in the project and met with their sales team for discussions. It was expressly highlighted that all the necessary sanctions were in place and that the construction was about to commence shortly and there will be no delays in completion and handover of the project and as such, this was a “ Once in a lifetime, not to be missed” investment opportunity for windfall gains in the future due to the escalation in the value of the property as also assured rental income.





7. That the complainants expressed their interest to invest in one unit of studio apartments of approximate super area of 550 sq. ft. jointly. The complainants were then further assured that for a unit of this size, Nimai will undertake to arrange for immediate lease out of the unit on our behalf for a period upto 9 years, for a minimum amount of Rs. 35,000/- per month. In support of this assurance, complainants were also shown a copy of MoU dated 26.05.2013, between Nimai and another company named Sugar and Spice India Pvt. Ltd.
8. That taken by these benefits and assurance of on time delivery of the project, the complainants booked a unit of studio apartment of approximate super area of 550 sq. ft. through a formal application and paid the booking amount of Rs. 4,50,000/- (by way of two cheques dated 16.08.2013 and 31.08.2013). unit no. 606 with an area of 581 sq. ft. was allotted at the basic rate of Rs. 7,850/- per sq. ft. with the basic sale consideration of Rs.45,60,850/-.
9. That while the buyer's agreement had still not been signed, demand of Rs. 7,43,320/- was raised and was also paid in time dated 14.03.2014. The buyer's agreement was delayed



by more than 8 months even after receiving payment of 20% of BSP and signed only on 03.07.2014 after persistent requests and reminders. The buyer's agreement stipulated a period of 36 months for offering of possession.

10. That all subsequent payments based on demand letters issued by the builder from time to time were also paid in time. As of now an amount of Rs. 30,90,287/- has been already paid, constituting 57.5% of BSP and 50% each of EDC and IDC, PLC and car parking space.
11. That a visit to the site in early January, 2018 still indicate a very slow rate of construction. As no positive response was forthcoming to the verbal queries of the complainants, they followed it up formally through written letters dated 10.01.2018, 03.02.2018 and 26.03.2018, to which there is no response from the builders so far.



**ISSUES RAISED BY THE COMPLAINANTS:**

12. **The following issues have been raised by the complainants:**

- i. **Whether the developer has violated the terms and condition of the buyer's agreement?**
- ii. **Whether the complainants are entitled for refund of there entire deposited amount?**

**RELIEF SOUGHT BY THE COMPLAINANTS:**

13. In view of the facts mentioned the following reliefs have been sought by the complainants:

- i. **Direct the respondent to refund the entire deposited amount of Rs. 30,90,287/- to the complainants and compensate with interest of 24% from date of payments till its realization.**
- ii. **Any other relief(s) which this hon'ble authority may deem fit.**

**DETERMINATION OF ISSUES**

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



15. With respect to **first issue** raised by the complainants the authority came across that as per clause 26 of buyer's agreement, the possession of the said apartment was to be handed over within 36 months from the date of the approval of building plans or execution of the buyer's agreement whichever is later. In present case due date of possession will be calculated from date of start of excavation work i.e 16.03.2014 as per annexure 14 page no. 65. Therefore, the due date of possession comes out to be 16.03.2017 and the possession has been delayed by **1 year 10 months and 5 days** till the date of decision. The delay compensation payable by the respondent @Rs. 10/- per sq. ft. of the super area per month of delay of the unit for the period of delay beyond 36 months as per clause 30 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 as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (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.”*

16. Therefore, under section 18(1) proviso the respondent is liable to pay interest to the complainants, at the prescribed rate, for every month of delay till the handing over of possession. The authority issues directions to the respondent u/s 37 of the Real Estate (Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. 16.03.2017 upto the date of offer of possession.

17. With respect to **second issue** raised by the complainants, the project is registered vide RERA registration: 07 of 2018 dated 13.07.2018 valid upto September, 2019 with the authority, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount



will also have adverse effect on the other allottees. Therefore, the relief sought by the complainants cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainant shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.

**FINDINGS OF THE AUTHORITY:**

18. 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 complainants at a later stage.

19. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

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

21. 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 of the Act and to fulfil its obligations.

22. As required by the authority, the respondent has to file reply within 10 days from the date of service of notice. Additional time period of 10 days is given on payment of a penalty of Rs. 5,000. Subsequent to this, last opportunity to file reply within 10 days is given on payment of a penalty of Rs. 10,000.

23. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts



available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. To prove the communication of date of hearing to respondent, it is sufficient to prove that such information was available with the website and an electronic communication (e-mail) was served on the respondent.

24. Shri Chander Parkash Advocate has appeared on behalf of the respondent and filed power of attorney and resolution passed by the board of directors.

25. The complaint was filed on 16.7.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 06.08.2018, 30.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and 29.11.2018 respectively for non-filing of reply even after service of notices. A final notice dated 14.01.2019 by way of email was sent to both the parties to appear before the authority on 21.01.2019.

26. As per clause 26 of the buyer's agreement dated 03.07.2014 for unit no. 606, 6<sup>th</sup> floor, in project "Nimai Place" Sector-114,





Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of sanction of building plan or from the date of execution of BBA whichever is later. As the date of start of excavation work is 16.3.2014 (as per annexure 14) therefore, the due date of delivery of possession of the unit comes out to be 16.03.2017. It was a construction linked plan. Complainants have already paid Rs. 30,90,287/- to the respondent against a total sale consideration of Rs. 52,35,620/-. However, the respondent apprised that the project is registered vide registration no. 7 of 2018 and 70% of the work is complete. The possession of the flat shall be handed over by September 2019.

27. If the respondent fails to deliver the possession of the unit on the revised date, then the complainants are entitled for refund of amount alongwith prescribed rate of interest i.e. 10.75% per annum. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 16.03.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation and



Development) Act, 2016 till the handing over possession failing which the complainant is entitled to seek refund of the amount.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

28. 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 issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainants with the promoter on the due date of possession i.e. 16.03.2017 till the handing over possession failing which the complainants are entitled to seek refund of the amount.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of



this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

29. The order is pronounced.

30. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2019

**(Judgment uploaded on 30.01.2019)**

HARERA  
GURUGRAM

