

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. 871 of 2018
Date of first hearing 20.12.2018
Date of decision 20.12.2018

1. Pradeep Kumar Jaiswal
R/o 602 A, the aralias, DLF Phase IV,
Gurugram

..Complainant

Versus

1. IREO Residences Pvt. Ltd
2. M/s ADSON software Private Limited. R/o: A-11, First Floor, Neeti Bagh, New Delhi-110049
3. M/s Fiveriver Township Pvt. Ltd. R/o: 305, Third Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015
4. M/s Hardcore Realtors Pvt. Ltd. R/o: C-4, First Floor, Malviya Nagar, New Delhi-110017
5. M/s Regai Green Land Pvt. Ltd. R/o: 304, Third Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
6. M/s Ornamental Realtors Pvt. Ltd. R/o: A-11, First Floor, Neeti Bagh, New Delhi-110049
7. M/s Commander Realtors Pvt. Ltd. R/o: A-1 I, First Floor, Neeti Bagh, New Delhi-110049
8. M/s Fiveriver Buildcon Pvt. Ltd. R/o: 305, Third Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.

...Respondents





9. M/s Aspirant Builders Pvt. Ltd.
R/o: 305, Third Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
10. M/S Bulls Realtors Pvt. Ltd. R/o: A-11, First Floor, Neeti Bagh, New Delhi-110049
11. M/S High Star Builders Pvt. Ltd. R/o: A-11, First Floor, Neeti Bagh, New Delhi-110049
12. M/s SU Estates Pvt. Ltd. R/o: A-11, First Floor, Neeti Bagh, New Delhi-110

CORAM:

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

Chairman
Member
Member

APPEARANCE:

Shri Dheeraj Gupta
Shri M.K. Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 07.09.2018 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. Pradeep Kumar Jaiswal against the respondents IREO Residences Company Pvt. Ltd and others.





2. Since, the buyer's agreement has been executed on 12.12.2013 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: -

• **Nature of the project- Residential**

1.	Name and location of the project	Grand Hyatt Gurgaon Residences,
2.	Registered/Unregistered	Not registered
3.	Payment plan	Construction linked
4.	Date of builder buyer agreement	12.12.2013
5.	Unit no.	T2-8-SS, 8 th floor, tower 2
6.	Area of unit	4625 sq. ft.
7.	Total sale consideration	Rs 11,13,74,856/-
8.	Total amount paid by the complainant	Rs 9,34,85,969/-
9.	Building plan approval	03.07.2013





	(as per letter sent to the complainant dated 07.12.2017)	
10.	Fire safety scheme approval	08.01.2015
11.	Consent to establish	Cannot be ascertained, as project is not registered. 18.02.2014 (* respondent be directed to submit relevant documents) Applied for registration.
12.	Possession As per clause 14.3: 48 months+ grace period of 180 days from the date of approval of building plans	03.01.2018 18.08.2018 (calculated as per building plan approval date) Consent to Establish
13.	Delay till date	Approximately 11 4 months 2 days
14.	Penalty: As per clause 14.4	Delay compensation of Rs 12.50/- per sq. ft. of super area

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 21.12.2018. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE:

5. That in 2011/2012 the respondents launched a project by the name of "Grand Hyatt Gurgaon Residences" (hereinafter



referred to as the project") in Sector 58, Gurugram, and Haryana.

6. The respondent is also bound by all the obligations, liabilities and duties as prescribed under Haryana Real Estate (Regulation & Development) Rules, 2017 which were made as per the powers conferred by sub section (1) read with sub section (2) of section 84 of the Real Estate (Regulation and Development) Act, 2016
7. The Project "Grand Hyatt Gurgaon Residences" is situated at Sector 58, Gurugram Haryana hence the project lie within the territorial jurisdiction of Haryana Real Estate Regulatory Authority.
8. That the respondents in 2011, fantastically promoted the project by way of print and other modes mass media with wide publicity and through various print and other modes of mass media to attract the buyers with firm promises and assurances of world class residences and timely delivery. The name "Grand Hyatt" associated to the project was sufficient to





attract home buyers as "Grand Hyatt" is known globally for its world class hospitality, operations and service.

9. The applicant Mr. Pradeep Jaiswal vide an application dated 4.01.2013 applied for the residential unit in the project of the respondents and made a payment of Rs. 50,00,000/- At the time of applying for the unit, the complainant was specifically told that the project would be completed and possession would be handed over within 36 months from the date of application.
10. Thereafter, vide a buyers agreement dated 12.12.13, the complainant was allotted unit no T 2-8-SS on the eighth floor, 2 tower, having a super area of 4625 sq. ft approximately, together with the exclusive right to use 3 parking spaces in the project Grand Hyatt Gurgaon Residences of the respondents.
11. Respondent no 2 to 12 are land owning companies whereas respondent no 1 i.e. IREO Residences Company Pvt. Ltd. was granted development, construction and marketing rights with respect to the project.





12. It is also pertinent to state that respondent no 2 to 12 are associate companies of respondent no 1 and have signed as confirming parties to the buyers agreement.
13. At the time of signing of the buyers' agreement it was represented by the respondents that they have obtained various consents and assurances from the Director General of Department of Town and Country Planning, Haryana Chandigarh with regard to the development of the said land. It was further represented that the respondents are also entitled to develop group housing colony and the said representation was buttressed by the claim that the zoning for an area for approx 17.224 acres has been approved and out of this an area of approx 14.816 acres located near Southern Peripheral Road Sector 58 Gurugram Haryana has been earmarked from development in a condominium setting. At this stage it is relevant to mention that respondent no I had entered into a license agreement, technical services agreement, residences management agreement with Hyatt International corporation. All the agreement between respondent no 1 and 12 were entered into and executed on 28.09.2011. In pursuance to the



agreement between respondent no 1 and Hyatt International corporation, 280 branded residential units in an apartment setting were to be constructed in accordance with the approved building plan along with all the open areas, walkways, common areas, parking spaces, etc.

14. At this stage it is relevant to state that the respondents started to market / advertise the project and the units therein even before approval of the building plans by the concerned authority. Respondents even took certain amount on 04.01.2013 even though the admitted position is that the building plans were sanctioned on 3.07.2013. Such act is in violation of the license terms and conditions and on this ground alone the license of the respondents is liable to be cancelled. Complainants are taking independent action with respect to the breach of license terms by the respondents.

15. That the entire complex was to comprise of residences, dwelling units for economically weaker section, commercial areas, designated community sites, club recreational facilities and other units shop areas.

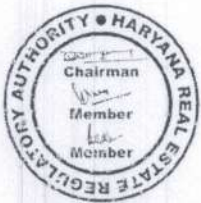




16. At the time of allotment the complainants were told that all the sanctions and approvals, licenses and NOCs are in place and the construction of the buildings and other areas are already underway. It was further represented by the respondents that the unit will be delivered within 3 years from the date of allotment with the grace period of 12 months. And under no circumstance would the delivery of unit be delayed beyond the period of 48 months. It is not also out of place that the primary selling point used by the respondents was the globally renowned name of Grand Hyatt coupled with the world class standards of hospitality and service consistent with the standards comparable to those generally prevailing in the International Grand Hyatt.

17. In terms of the agreement and the application form the total cost of the unit was Rs 10,55,10,356/- as basic Sale Price. Additionally, the respondents also levied Rs 518 per sq ft of super area towards the development charges and Rs 500 per sq ft against PLC

18. The complainants made a total payment amounting to Rs 1,374,856/-





19. Thereafter the respondents raised demands in terms of the payment plan mentioned in the agreement which was met by the applicant as and when raised by the respondents and there has been no default on the part of the complainant in the payment of any demand raised by the respondents.
20. It is submitted that towards the total consideration amount, the complainant has paid more than 95% of the amount.
21. In terms of the application form, the representatives of the respondents assured that the project and the unit would be completed within 3 years with or without the grace period of 12 months from the date of application i.e. 04.01.2013. However, as against the promises and assurances made by the respondents, they failed to complete the project and hand over the possession by 04.01.2013.
22. Since the respondents failed to hand over the possession within the stipulated time, the applicant visited the construction site to pursue the progress of the project. However, the complainant was shocked to learn that there was no sign of completion of project and in fact, at the project site,



the progress of the work has almost stopped. Accordingly, the complainant visited the office of the respondent to conduct a meeting to enquire about the reasons for the slow progress of the project.

23. In response to the queries raised by the complainant in the aforesaid meeting, the respondents sent a letter dated 07.12.2017 to the complainant whereby update on the pending work in the project. The respondents also enclosed photographs of the project from which it can be clearly seen that even on December 2017 the project is far from complete and not ready to be occupied.
24. Without prejudice to the fact, that the possession of the unit should have been delivered by January 2016 and latest by January 2017 in terms of the representation made at the time of applying for the unit in January 2013, the period for 4 years plus grace period of 6 months has already lapsed even from the date of approval of building plan i.e. 03.07.2013.
25. Even till the date of filing of the present claim, the respondents have not handed over the possession to the complainant





despite receiving more than 95% of the payment from the complainant towards the purchase of the flat.

ISSUE RAISED BY THE COMPLAINANTS:

26. The following issues have been raised by the complainant:

- i. Whether or not the respondents have violated terms and conditions of the residence buyers agreement and thereby delayed possession? or**
- ii. Whether or not the complainant is entitled to a refund of the amount invested by him?**

RELIEF SOUGHT BY THE COMPLAINANTS:

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

- i. Direct the respondents to refund the money paid by the complainants along with interest**
- ii. Cost of litigation be awarded in favour of the complainants and against the respondents.**
- iii. Any other relief/ direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint**



REPLY BY THE RESPONDENT:

28. The respondent submitted that they have always acted in accordance with the rules, regulations and provisions of the competent authority but also in accordance to the terms and conditions of the agreement agreed upon by them with several allottees. The respondent submitted that the respondent no 1 has entered into certain agreements with Hyatt International Corporation with regard to license agreement, technical services and resident management agreement and has invested more than 351 crores for the development and construction of the said project.
29. The respondent submitted that no representations were made by the respondents in order to lure the allottees to purchase units in the project of the respondents as falsely stated by the complainants.
30. Mr. Pradeep Jaiswal vide an application dated 04.01.2013 applied for the residential unit in the project of the respondents and made a payment of Rs 50,00,000. The respondent submitted that the complainants own declaration



under clause 4 of the booking application form that he has not been influenced by any plans, brochures in deciding to make the application to the respondents company. That the complainant had undertaken in clause 56 of the schedule 1 of booking application form and the possession of the unit is to be given within a time period of 48 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder.

31. The respondent submitted that the complainant is supposed to adhere to the terms and conditions of the residence purchase agreement that were mutually agreed upon by the parties to this complaint.
32. The respondent submitted that the approval of the building plans were sanctioned on 03.07.2013 (para 1) the complainant knew from the very inception that the building plans have not been sanctioned and are tentative and the same has been accepted by him in clause 33 of schedule 1 of the booking application form.





33. The respondent denied that the complainants were denied that at the time of allotment, the complainants were allegedly told that all the sanctions and approvals, licenses and NOCs are in place or that the construction of the buildings and other areas already underway.
34. The respondents denied that the possession of the unit will be delivered within 3 years from the date of allotment with the grace period of 12 months.
35. The respondent submitted that the possession of the unit is supposed to be given strictly in terms of booking application form and residence purchase agreement.
36. The respondent further submitted that the complainant has an outstanding due of Rs 1,78,88,887/- along with other charges which were mutually agreed in the payment plan.
37. The respondents submitted that the time period for constructing and giving possession of the unit has not yet elapsed and the project is being constructed as per the terms and conditions of the allotment and the complainant is aware about the same.



38. The respondent submitted that the he sent a letter dated 07.12.2017 to the complainant whereby update on the pending work in the project was given along with the photographs of the said project.
39. The respondent submitted that they have applied for registration of project with RERA authority and a copy of the same has been attached.

DETERMINATION OF ISSUES:

40. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the authority is of the view in regard to the **first and second issue** raised by the complainant that as per clause 14.3 of the residence buyers agreement, the possession of the said apartment was to be handed over within 48 months+ grace period of 180 days from the date of approval of the building plans and/or fulfilment of the pre conditions imposed thereunder. The building plan approval was received on 03.07.2013 which has been admitted by the respondent in a





letter sent to the complainant on 07.12.2017. However, the date of consent to establish ~~cannot be ascertained from the perusal of records available in the case file.~~ ^{is 18.02.2014} Therefore, the due date of possession shall be computed from ~~05.07.2013.~~ ^{18.02.2014} The clause regarding the possession of the said unit is reproduced below:

"Clause 14.3: Possession and holding charges

the company proposes to offer the possession of the said residence unit to the allottee within a period of 48 months from the date of approval of the building plans and/or fulfilment of the pre conditions imposed. The allottee further agrees and understands that the company shall be entitled to a period of 180 days."

Accordingly, the due date of possession was ~~03.01.2018~~ ^{18.08.2018} and the possession has been delayed by ~~21~~ ⁰⁴ months ^{2 days}.

Pertaining to the issue relating to refund, it has been noted according to the letter sent by the respondents to the complainant dated 07.12.2017 the construction of the project is being carried out in full swing and that the construction of the basement are largely complete and IREO is also constructing few mockup apartments at site which are underway. Photographs of the status



of the project had been provided after which it is said that refund at this stage may not be granted as granting refund at such an advanced stage will hamper the remaining work of the project. It shall also hamper the interest of other allottees who wish to further continue with the project. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

FINDINGS OF THE AUTHORITY:

41. 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.

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





43. 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 obligations.
44. Complainant has raised an issue that he got booked a flat No.T2-8-SS, 8th floor, Tower-2, in Grand Hyatt, Gurgaon Residences for which out of total consideration of Rs.11,13,74,856/- he made payment of Rs.9,34,85,969/-. As per clause 14.3 of the builder buyer agreement dated 12.12.2013, possession was to be delivered within a period of 48 months + 180 days from the date of approval of building plans *and/or fulfilment of the preconditions imposed.*
45. Building plans were approved by the DTCP on 3.7.2013, as such the due date of delivery of possession comes out to be ~~3.01.2018~~. *18.08.2018*
46. However, counsel for the complainant has objected to this date as he claims that it should be counted from the date of signing of BBA. As per usual practice and as per judgment in **Neelkamal Realtors Suburban Pvt. Ltd. versus UOI and Ors (W.P. 2737 of 2017)**, decided by Bombay High Court, the date





of signing of the BBA taken as 4.4.2013 (when the builder has accepted the full amount)

47. As per the version of the counsel for the respondent, he has averred that as per Hon'ble Supreme Court judgment, the terms and conditions of BBA should prevail. However, the judgments which have been produced and placed on record are prior to the coming into force RERA. The licence of the builder has expired on 11.6.2016 which has not been renewed as on date. There is no firm date of delivery of possession on the part of the builder/promoter.
48. Counsel for the respondent has stated that they have applied for registration of the project after getting the licence renewed and the revised date of delivery of possession to be presumed is 30.6.2020. However, all the averments made by the counsel for the respondent lack any conformity. Since the complainant has made huge investment, as such he is entitled for late delivery possession charges till the final offering of the possession by the respondent. if builder/respondent fails to deliver the unit on 30.6.2020, in that case, complainant is



entitled for refund of the amount along with prescribed rate of interest.

DECISION AND DIRECTIONS OF THE AUTHORITY:

49. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions:

- (i) The respondent was duty bound to hand over the possession of the said unit by ~~03.01.2018~~ as **18.08.2018** committed by the respondent.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant on amount paid for every month of delay from the due date of possession i.e. ~~03.01.2018~~ **18.08.2018** till date amounting to **34,04,981/-** **Rs. 92,12,263/-** within 90 days of this order.
- (iii) Thereafter the monthly payment of interest amounting to Rs. 8,37,478/- on 10th of every month of delay till the handing over of possession.
- (iv) 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

50. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

Principal amount paid by the complainant	Interest accrued up to date of decision	Monthly interest to be paid till handover of possession
Rs. 9,34,85,969/-	Rs. 92,12,263/-	Rs. 8,37,478/-

34,04,981/-

51. The order is pronounced.
52. Case file be consigned to the registry.




(Samir Kumar)

Member


(Subhash Chander Kush)

Member

Date: 20.12.2018

Corrected Judgement uploaded on 09.02.2019

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 20.12.2018
Complaint No.	871/2018 Case titled as Pradeep Kumar Jaiswal V/S Ireo Residences Pvt Ltd.
Complainant	Pradeep Kumar Jaiswal
Represented through	Shri Dheeraj Gupta on behalf of the complainant
Respondent	Ireo Residences Pvt Ltd.
Respondent Represented through	Shri M.K.Dang Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act ibid be issued to the respondent. Registration branch is directed to do the needful.

Complainant has raised an issue that he got booked a flat No.T2-8-SS, 8th floor, Tower-2, in Grand Hyatt, Gurgaon Residences for which out of tota consideration of Rs.11,13,74,856/- he made payment of Rs.9,34,85,969/- . As per clause 14.3 of the Builder Buyer Agreement dated 12.12.2013, possession was to be delivered within a period of 48 months + 180 days from the date of approval of building plans.

Building plans were approved by the DTCP on 3.7.2013, as such the due date of delivery of possession comes out to be **3.1.2018**.

However, counsel for the complainant has objected to this date as he claims that it should be counted from the date of signing of BBA. As per usual practice and as per judgment in **Neelkamal Realtors Suburban Pvt. Ltd. versus UOI and Ors (W.P. 2737 of 2017)**, decided by Bombay High Court, the date of signing of the BBA taken as 4.4.2013 (when the builder has accepted the full amount).

As per the version of the counsel for the respondent, he has averred that as per Hon'ble Supreme Court judgment, the terms and conditions of BBA should prevail. However, the judgments which have been produced and placed on record are prior to the coming into force RERA Act. The licence of the builder has expired on 11.6.2016 which has not been renewed as on date. There is no firm date of delivery of possession on the part of the builder/promoter.

Counsel for the respondent has stated that they have applied for registration of the project after getting the licence renewed and the revised date of delivery of possession to be presumed is 30.6.2020. However, all the averments made by the counsel for the respondent lack any conformity. Since the complainant has made huge investment, as such he is entitled for late delivery possession charges till the final offering of the possession by the respondent. If builder/respondent fails to deliver the unit on 30.6.2020, in that case, complainant is entitled for refund of the amount alongwith prescribed rate of interest.

As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 3.1.2018 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 and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

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

Samir Kumar
(Member)
20.12.2018

Subhash Chander Kush
(Member)
20.12.2018

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

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1. Pradeep Kumar Jaiswal
R/o 602 A, the aralias, DLF Phase IV,
Gurugram

..Complainant

Versus

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CORAM:

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

Chairman
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Member

APPEARANCE:

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Advocate for the complainant
Advocate for the respondent

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3.	Payment plan	Construction linked
4.	Date of builder buyer agreement	12.12.2013
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	(as per letter sent to the complainant dated 07.12.2017)	
10.	Fire safety scheme approval	08.01.2015
11.	Consent to establish	Cannot be ascertained, as project is not registered. (* respondent be directed to submit relevant documents) Applied for registration.
12.	Possession As per clause 14.3: 48 months+ grace period of 180 days from the date of approval of building plans	03.01.2018 (calculated as per building plan approval date)
13.	Delay till date	Approximately 11 months
14.	Penalty: As per clause 14.4	Delay compensation of Rs 12.50/- per sq. ft. of super area

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 21.12.2018. The reply has been filed on behalf of the respondent.



FACTS OF THE CASE:

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referred to as the project") in Sector 58, Gurugram, and Haryana.

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12. It is also pertinent to state that respondent no 2 to 12 are associate companies of respondent no 1 and have signed as confirming parties to the buyers agreement.

13. At the time of signing of the buyers' agreement it was represented by the respondents that they have obtained various consents and assurances from the Director General of Department of Town and Country Planning, Haryana Chandigarh with regard to the development of the said land. It was further represented that the respondents are also entitled to develop group housing colony and the said representation was buttressed by the claim that the zoning for an area for approx 17.224 acres has been approved and out of this an area of approx 14.816 acres located near Southern Peripheral Road Sector 58 Gurugram Haryana has been earmarked from development in a condomium setting. At this stage it is relevant to mention that respondent no I had entered into a license agreement, technical services agreement, residences management agreement with Hyatt International corporation. All the agreement between respondent no 1 and 12 were entered into and executed on 28.09.2011. In pursuance to the



agreement between respondent no 1 and Hyatt International corporation, 280 branded residential units in an apartment setting were to be constructed in accordance with the approved building plan along with all the open areas, walkways, common areas, parking spaces, etc.

14. At this stage it is relevant to state that the respondents started to market / advertise the project and the units therein even before approval of the building plans by the concerned authority. Respondents even took certain amount on 04.01.2013 even though the admitted position is that the building plans were sanctioned on 3.07.2013. Such act is in violation of the license terms and conditions and on this ground alone the license of the respondents is liable to be cancelled. Complainants are taking independent action with respect to the breach of license terms by the respondents.

15. That the entire complex was to comprise of residences, dwelling units for economically weaker section, commercial areas, designated community sites, club recreational facilities and other units shop areas.



16. At the time of allotment the complainants were told that all the sanctions and approvals, licenses and NOCs are in place and the construction of the buildings and other areas are already underway. It was further represented by the respondents that the unit will be delivered within 3 years from the date of allotment with the grace period of 12 months. And under no circumstance would the delivery of unit be delayed beyond the period of 48 months. It is not also out of place that the primary selling point used by the respondents was the globally renowned name of Grand Hyatt coupled with the world class standards of hospitality and service consistent with the standards comparable to those generally prevailing in the International Grand Hyatt.

17. In terms of the agreement and the application form the total cost of the unit was Rs 10,55,10,356/- as basic Sale Price. Additionally, the respondents also levied Rs 518 per sq ft of super area towards the development charges and Rs 500 per sq ft against PLC

18. The complainants made a total payment amounting to Rs 1,374,856/-



19. Thereafter the respondents raised demands in terms of the payment plan mentioned in the agreement which was met by the applicant as and when raised by the respondents and there has been no default on the part of the complainant in the payment of any demand raised by the respondents.
20. It is submitted that towards the total consideration amount, the complainant has paid more than 95% of the amount.
21. In terms of the application form, the representatives of the respondents assured that the project and the unit would be completed within 3 years with or without the grace period of 12 months from the date of application i.e. 04.01.2013. However, as against the promises and assurances made by the respondents, they failed to complete the project and hand over the possession by 04.01.2013.
22. Since the respondents failed to hand over the possession within the stipulated time, the applicant visited the construction site to pursue the progress of the project. However, the complainant was shocked to learn that there was no sign of completion of project and in fact, at the project site,



the progress of the work has almost stopped. Accordingly, the complainant visited the office of the respondent to conduct a meeting to enquire about the reasons for the slow progress of the project.

23. In response to the queries raised by the complainant in the aforesaid meeting, the respondents sent a letter dated 07.12.2017 to the complainant whereby update on the pending work in the project. The respondents also enclosed photographs of the project from which it can be clearly seen that even on December 2017 the project is far from complete and not ready to be occupied.

24. Without prejudice to the fact, that the possession of the unit should have been delivered by January 2016 and latest by January 2017 in terms of the representation made at the time of applying for the unit in January 2013, the period for 4 years plus grace period of 6 months has already lapsed even from the date of approval of building plan i.e. 03.07.2013.

25. Even till the date of filing of the present claim, the respondents have not handed over the possession to the complainant



despite receiving more than 95% of the payment from the complainant towards the purchase of the flat.

ISSUE RAISED BY THE COMPLAINANTS:

26. The following issues have been raised by the complainant:

- i. Whether or not the respondents have violated terms and conditions of the residence buyers agreement and thereby delayed possession? or**
- ii. Whether or not the complainant is entitled to a refund of the amount invested by him?**

RELIEF SOUGHT BY THE COMPLAINANTS:

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

- i. Direct the respondents to refund the money paid by the complainants along with interest**
- ii. Cost of litigation be awarded in favour of the complainants and against the respondents.**
- iii. Any other relief/ direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint**



REPLY BY THE RESPONDENT:

28. The respondent submitted that they have always acted in accordance with the rules, regulations and provisions of the competent authority but also in accordance to the terms and conditions of the agreement agreed upon by them with several allottees. The respondent submitted that the respondent no 1 has entered into certain agreements with Hyatt International Corporation with regard to license agreement, technical services and resident management agreement and has invested more than 351 crores for the development and construction of the said project.

29. The respondent submitted that no representations were made by the respondents in order to lure the allottees to purchase units in the project of the respondents as falsely stated by the complainants.

30. Mr. Pradeep Jaiswal vide an application dated 04.01.2013 applied for the residential unit in the project of the respondents and made a payment of Rs 50,00,000. The respondent submitted that the complainants own declaration



under clause 4 of the booking application form that he has not been influenced by any plans, brochures in deciding to make the application to the respondents company. That the complainant had undertaken in clause 56 of the schedule 1 of booking application form and the possession of the unit is to be given within a time period of 48 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder.

31. The respondent submitted that the complainant is supposed to adhere to the terms and conditions of the residence purchase agreement that were mutually agreed upon by the parties to this complaint.
32. The respondent submitted that the approval of the building plans were sanctioned on 03.07.2013 (para I) the complainant knew from the very inception that the building plans have not been sanctioned and are tentative and the same has been accepted by him in clause 33 of schedule 1 of the booking application form.



33. The respondent denied that the complainants were denied that at the time of allotment, the complainants were allegedly told that all the sanctions and approvals, licenses and NOCs are in place or that the construction of the buildings and other areas already underway.
34. The respondents denied that the possession of the unit will be delivered within 3 years from the date of allotment with the grace period of 12 months.
35. The respondent submitted that the possession of the unit is supposed to be given strictly in terms of booking application form and residence purchase agreement.
36. The respondent further submitted that the complainant has an outstanding due of Rs 1,78,88,887/- along with other charges which were mutually agreed in the payment plan.
37. The respondents submitted that the time period for constructing and giving possession of the unit has not yet elapsed and the project is being constructed as per the terms and conditions of the allotment and the complainant is aware about the same.



38. The respondent submitted that the he sent a letter dated 07.12.2017 to the complainant whereby update on the pending work in the project was given along with the photographs of the said project.

39. The respondent submitted that they have applied for registration of project with RERA authority and a copy of the same has been attached.

DETERMINATION OF ISSUES:

40. After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the authority is of the view in regard to the **first and second issue** raised by the complainant that as per clause 14.3 of the residence buyers agreement, the possession of the said apartment was to be handed over within 48 months+ grace period of 180 days from the date of approval of the building plans and/or fulfilment of the pre conditions imposed thereunder. The building plan approval was received on 03.07.2013 which has been admitted by the respondent in a



letter sent to the complainant on 07.12.2017. However, the date of consent to establish cannot be ascertained from the perusal of records available in the case file. Therefore, the due date of possession shall be computed from 03.07.2013. The clause regarding the possession of the said unit is reproduced below:

“Clause 14.3: Possession and holding charges

the company proposes to offer the possession of the said residence unit to the allottee within a period of 48 months from the date of approval of the building plans and/or fulfilment of the pre conditions imposed. The allottee further agrees and understands that the company shall be entitled to a period of 180 days.”

Accordingly, the due date of possession was 03.01.2018 and the possession has been delayed by 11 months.

Pertaining to the issue relating to refund, it has been noted according to the letter sent by the respondents to the complainant dated 07.12.2017 the construction of the project is being carried out in full swing and that the construction of the basement are largely complete and IREO is also constructing few mockup apartments at site which are underway. Photographs of the status



of the project had been provided after which it is said that refund at this stage may not be granted as granting refund at such an advanced stage will hamper the remaining work of the project. It shall also hamper the interest of other allottees who wish to further continue with the project. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of the possession.

FINDINGS OF THE AUTHORITY:

41. 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.

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



43. 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 obligations.
44. Complainant has raised an issue that he got booked a flat No.T2-8-SS, 8th floor, Tower-2, in Grand Hyatt, Gurgaon Residences for which out of total consideration of Rs.11,13,74,856/- he made payment of Rs.9,34,85,969/-. As per clause 14.3 of the builder buyer agreement dated 12.12.2013, possession was to be delivered within a period of 48 months + 180 days from the date of approval of building plans
45. Building plans were approved by the DTCP on 3.7.2013, as such the due date of delivery of possession comes out to be 3.01.2018.
46. However, counsel for the complainant has objected to this date as he claims that it should be counted from the date of signing of BBA. As per usual practice and as per judgment in **Neelkamal Realtors Suburban Pvt. Ltd. versus UOI and Ors (W.P. 2737 of 2017)**, decided by Bombay High Court, the date



of signing of the BBA taken as 4.4.2013 (when the builder has accepted the full amount)

47. As per the version of the counsel for the respondent, he has averred that as per Hon'ble Supreme Court judgment, the terms and conditions of BBA should prevail. However, the judgments which have been produced and placed on record are prior to the coming into force RERA. The licence of the builder has expired on 11.6.2016 which has not been renewed as on date. There is no firm date of delivery of possession on the part of the builder/promoter.

48. Counsel for the respondent has stated that they have applied for registration of the project after getting the licence renewed and the revised date of delivery of possession to be presumed is 30.6.2020. However, all the averments made by the counsel for the respondent lack any conformity. Since the complainant has made huge investment, as such he is entitled for late delivery possession charges till the final offering of the possession by the respondent. If builder/respondent fails to deliver the unit on 30.6.2020, in that case, complainant is



entitled for refund of the amount along with prescribed rate of interest.

DECISION AND DIRECTIONS OF THE AUTHORITY:

49. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions:

- (i) The respondent was duty bound to hand over the possession of the said unit by 03.01.2018 as committed by the respondent.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant on amount paid for every month of delay from the due date of possession i.e. 03.01.2018 till date amounting to **Rs.92,12,263/-** within 90 days of this order.
- (iii) Thereafter the monthly payment of interest amounting to **Rs.8,37,478/-** on 10th of every month of delay till the handing over of possession.
- (iv) 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

50. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

Principal amount paid by the complainant	Interest accrued up to date of decision	Monthly interest to be paid till handover of possession
Rs. 9,34,85,969/-	Rs. 92,12,263/-	Rs. 8,37,478/-

51. The order is pronounced.

52. Case file be consigned to the registry.



(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Date: 20.12.2018

Judgement Uploaded on 05.01.2019