

PROCEEDINGS OF THE DAY

Day and Date	Monday and 21.01.2019
Complaint No.	904/2018 Case Titled As Premier Urban Apartment Owners Association V/S Maxworth Infrastructures Private Limited
Complainant	Premier Urban Apartment Owners Association
Represented through	Shri T.K.Sharma authorized person on behalf of complainant with Shri Anand Dabas, Advocate.
Respondent	Maxworth Infrastructures Private Limited
Respondent Represented through	None on behalf of the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

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 be issued to the respondent. Registration branch is directed to do the needful.

Complaint was filed on 13.9.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 3.10.2018, 16.10.2018 and 26.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 16.10.2018 and 26.11.2018 for non-filing of reply even after

service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint.

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.

Arguments heard.

A prayer has been made by the counsel for the complainant (registered RWA-Premier Urban Apartment Owners Association (copy of minutes of the meeting of governing body of RAW attached) that the possession of the flats/units in project "Premier Urban Housing" developed by M/s Maxworth Infrastructures Pvt. Ltd. Sector-15 Part-II, Gurugram were handed over to the complainants/Association. No occupation certificates were handed over to the RWA (numbering 168). There are following significant allied issues raised by the complainant :-

- i) To procure the occupation certificate,
- ii) To execute and register the conveyance deed of individual residential units,
- iii) To refund the amount of Rs.56,00,000/- alongwith Rs.6,92,92/- as service tax collected for club house membership as no club was constructed,
- iv) To refund the amount of Rs.1,26,00,000/- collected as interest free maintenance security deposited by complainant association,

v) To complete the fire safety requirements to ensure safety of residence,

Accordingly, considering all the facts and circumstances of the case, the authority is of the considered opinion that respondent is liable to obtain occupation certificate and completion certificate under the rules to execute and register conveyance deed of individual residential units in favour of respective allottees. In addition to this, respondent is also liable to refund an amount of Rs.56,00,000 alongwith Rs.6,92,000/- collected as service tax for construction of club house which has not been sanctioned in the approved building plan by the competent authority. Respondent is further directed to refund an amount of Rs.1,26,00,000/- collected from the allottees as interest free maintenance security as the respondent has miserably failed to provide any maintenance service to the allottees till date and the same is being maintained by the RWA itself.

In view of above decision, the respondent is directed to comply the above directions within a period of 30 days from the date of this order.

Complaint stands disposed of in above terms. 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. : 904 of 2018

First date of hearing: 21.01.2019

Date of decision : 21.01.2019

Premier Urban Apartment Owners
Association
R/o Premier Urban Apartment, Sector 15,
Part-2, Gurugram

Complainant

Versus

1.M/s Maxworth Infrastructures Private
Limited
Office: D-203, Philips Tower, Plot No.3,
Sector-23, Dwarka, New Delhi-110075
2.M/s Tiptop Estate Pvt. Ltd.
Regd. Office: G-23, Saket, New Delhi

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri T.K Sharma

Authorized person on behalf of
complainant

Shri Anand Dabas

Advocate for the complainant

None for the respondent

Advocate for the respondent

ORDER

1. A complaint dated 13.09.2018 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 Premier Urban Apartment owners association against the promoter M/s. Maxworth Infrastructures Private Limited on account of violation of the section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 03.09.2018. Notices w. r. t. hearing of the case were issued to the respondents on 03.10.2018, 16.10.2018 and 26.11.2018 for making his appearance. Besides this, a penalty of Rs. 5,000/- was imposed on 16.10.2018 and a penalty of Rs. 10,000/- was imposed on 26.11.2018. However, despite due and proper service of notices, the respondents did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondents 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 his complaint

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

1.	Name and location of the project	“Premier Urban”, Premier Urban Apartment, Sector 15, Part-2, Gurugram
2.	Payment plan	construction linked plan
3.	Nature of project	Residential colony
4.	RERA registration	Not registered
5.	DTCP licence no.	Not available
6.	Date of apartment buyer's agreement	12.03.2011
7.	Unit no.	C-0801, block C as per Possession letter
8.	Area of unit	1570 sq. ft. as per possession letter dated 11.03.2015
9.	Possession letter	19.03.2015
10.	Basic sale price	Rs.28,87,500/- as per page no. 79
11.	Total consideration	Rs.38,54,500/- as per page no. 79
12.	Permission to start construction as annexed C4	03.02.2011
13.	Total amount paid by the complainant	Cannot be ascertained
14.	Due date of Possession As per clause 14 of the apartment buyer's agreement 36 months	03.08.2014 but according to complainant due date of possession is 02.08.2014



	from the date of start of construction plus 6 months grace period i.e 03.02.2011	and possession letter is issued on 19.03.2015
15.	Delay in handing possession	7 months 16 days
16.	Delay possession charges as per clause 14	Rs.5/- sq. ft. per month for the delay in offering of the possession

4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Thereafter, again notice was send to respondents but despite service of notice the respondents neither appeared nor file their reply to the authority and complaint. As the respondents 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 respondents.

FACTS OF THE CASE:

5. The complainant submitted that complainant is a registered resident welfare association having registration no. HR-01-2016-02518 in respect of the residential complex name



premier urban situated at Sector-15, Part-II, Gurugram, Haryana.

6. The complainant submitted that Mr. Trilok Kumar Sharma, has been duly authorized by the complainant resident welfare association vide its resolution dated 29.07.2018 to file, institute, sign, verify and pursue the present complaint and other relevant documents to the complaint.
7. The complainant submitted that the respondents had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondents while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home(s) will be completed and delivered to them within the time agreed initially in the agreement and would be of the quality as promised by them while advertising and launching their project. They also assured to the consumers that they have secured all the necessary sanctions and approvals from the appropriate



authorities for the construction and completion of the real estate project sold by them to the consumers in general.

8. It is submitted that the respondents were very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines as well as the standard and quality of the construction and that is the prime factor which a consumer would consider while purchasing his / her dream home. The respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and they would provide all the required and promised amenities and facilities in the said residential project which are assured by them while advertising the said residential project.



9. The complainant submitted that the respondents arranged the visit of its representatives to the consumers and it was

categorically promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential apartment in the name of allottees immediately upon the booking. The respondents also had shown the permission dated 03.02.2011 to erect a building on the proposed site and relying upon those assurances and believing them to be true, the various consumers and allottees booked residential units in the proposed project of the respondents total measuring an area of approx. 2.3 acres in the complex named "Premier Urban" containing approximately 168 flats on the project land to be developed by respondents jointly. It was further assured by the respondents that the occupation certificate of the said residential project as well as the individual residential units situated in the said project would be secured by the respondents upon the completion of the construction of the said project and the title of the individual units to be purchased by the consumers/ allottees would be conveyed in their favour immediately upon the completion of said



residential project. It was also promised by the respondents that all the amenities and facilities in the said residential project would be same as promised by the respondent in their advertisement material as well as agreed in the buyer's agreement executed by the respondents with the individual allottees.

10. That the respondents assured the allottees that they would issue the allotment letters along with the builder buyer's agreement at the earliest and maximum within one week from the date of booking, made by an individual allottee. However, the respondents did not fulfil their promise and assurance and after much follow ups and repeated requests and reminders, builders have issued the builder buyer's agreement to the allottees.

11. That the respondents along with the basic sale price of any individual unit had also charged E.D.C., I.D.C, P.L.C., Club membership charges, parking space charges from the allottees. The respondents had also charged from each allottee a onetime interest free maintenance security deposit amounting to Rs. 75,000/- per residential unit. The



respondents had also charged Rs. 50,000/- plus service tax amounting to Rs.6180/- per residential unit as club house charges. The respondents had also charged a sum of Rs.1,77,81,032/- plus Rs.21,99,216/- as service tax thereon from the allottees / buyers' arbitrarily and illegally towards electricity connection charges.

12. That at the time of execution of the buyer's agreement, the respondents misusing their dominant position had coerced and pressurized the allottees to sign the arbitrary, illegal and unilateral terms of the said buyer's agreement and when the allottees objected to those arbitrary terms and conditions of the buyer's agreement more specifically the date for calculating the period of three years as promised by the respondents for the completion of the said residential project and refused to sign the same, the respondents threatened to forfeit the amount already paid by the allottees as sale consideration in respect of the said units and also to cancel their bookings. The allottees having no other option and to found themselves helpless and cheated had under duress and coercion signed the said buyer's agreement.



13. That as per the clause-14 of the said buyer's agreement the respondents had agreed and promised to complete the construction of the said units and deliver their possession within a period of 3 year with a six (6) months grace period thereon from the date of commencement of construction of that particular tower where buyer's units are located.

14. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the buyer's agreement, the allottees had approached the respondents and their officials inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the allottees about the completion and delivery said units. However, after the rigorous efforts on the part of the allottees, the respondents in September 2014 asked the allottees/buyers to make the payment for offer of possession of the remaining sale consideration within 30 days stating that they shall be receiving the completion certificate within 45 days. However, the allottees were surprised and shocked to see the quality of the construction including but not limited to the construction material, design,



quality of paint, design and quality of sewerage work, firefighting arrangements, club house status, seepage, electric panels, wires, their design and quality, water treatment plant etc. as the same were of inferior and substandard quality and were designed badly and were far away from the quality as promised by the respondents while selling the said residential project to the allottees.

15. That the allottees upon receiving the information regarding the possession of their individual residential flats from the respondents had asked for the completion certificate along with the occupation certificate from the respondents as both of these documents being of legal importance were required by the allottees for the conveyance of their respective units in their names and also for obtaining housing loan and any other kind of loan against their individual flats, however, the respondents avoided and refused to provide the completion certificate and the occupation certificates to the allottees for their flats on one pretext or the other and failed to provide any satisfactory answer for not providing the crucial documents to the respective allottees and by not providing



these documents, the respondents have breached the terms and conditions of the buyers agreement executed by them.

16. That as per para 21 of the buyer's agreements, the respondents have promised to execute the conveyance deed in favour of the allottees and get it registered immediately after receipt of the total consideration from the buyer's for their respective unit. It is evident that all the allottees of the said residential project had already paid all the charges and sale consideration of their respective units as per the buyers' agreement but despite that the respondents have failed to execute and register the conveyance deed in favour of any of the allottees. The allottees since then having no other option are running from pillar to post and had made repeated requests and reminders to the respondents to get their conveyance deed executed and registered but the respondents have not complied with any of the requests of the allottees and refused to fulfil their obligations without any reasons and without any fault on the part of allottees whatsoever. Therefore, the respondents have breached the terms of the buyer's agreement as well as the provisions of



the Real Estate (Regulation and Development) Act, 2016 specially section 11 which prescribes the functions and duties of the promoter which includes obtaining the completion and occupation certificate from the competent authority by the promoter and to make it available to the allottees individually. This section further makes the promoter further responsible to execute a registered conveyance deed in favour of the allottees along with the undivided proportionate title in common areas to the association of the allottees. Further, the respondents are also liable for the contravention of section 17 of the said Act which envisages that the promoter shall execute a registered conveyance deed in favour of the allottees within 30 days after obtaining the completion certificate. However, in the present case, the respondent have not even obtained the completion certificate despite the expiry of 4 long years therefore the question of conveyance deed is still a distant dream for the allottees as the respondent evidently applied for the issuance of the completion certificate with the concerned authority only on 03.11.2014 and that too without providing the required



mandatory documents and for these contraventions , the respondents are liable to be punished as provided under section 61 as well as other relevant provisions of the said Act.

17. That as per para no. 22 of the buyer's agreement, it has been categorically mentioned by the respondents that unless a conveyance deed is executed and registered in favour of buyers, the respondents shall continue to be the owner of the said unit and the amounts paid by the buyers under this agreement shall merely be an advance payment for purchase of said unit and shall not give the buyer any lien or interest for the said unit. Upon considering this clause of buyer's agreement it is clear that the buyers despite making the entire payment for their units to the respondents are still not the owners of their individual units and the respondents at their own sweet will can any time throw out the buyers from their dream homes on the basis of this draconian clause of this agreement and this imminent and severe threat of dispossession is continuously hanging over their heads without any fault on their part and had made their lives miserable.



18. That as per para 31 of buyer's agreement, the respondents had unconditionally agreed for the maintenance of residential complex and its common areas in respect of various services, facilities, amenities including sanitation, street light, security, water supply, electricity, sewage etc maintaining the best standards and parameters. The respondents being promoter are liable to provide the maintenance as agreed by them under the provisions of section 11 of said Act, wherein it is their responsibility to provide and maintain the essential services on reasonable charges till the taking over of the maintenance of the project by the association of allottees. In the present case, after much efforts and fight, the complainant association had partially taken over the maintenance of said residential project as the respondents failed to provide the services to the satisfaction of the complainant despite receiving a sum of Rs.1,26,00,000/- as interest free maintenance security.

19. That upon taking over the maintenance of the said residential project, the complainant association found that the respondents were severely negligent in the maintenance of



the services in respect of fire fighting system, seepage, electricity charges payment, sewage treatment plant, electric sub-station, paint quality of outer walls, sewer piping system, water supply etc. The respondents also failed to install the air pressurisation system in the Lifts and fresh-air ducts and fans in the basement and the estimated cost of installation of these is around Rs.37.40 lakhs approximately. Further the exterior paint done by the respondents is of very inferior quality and needs to be redone the estimated cost whereof is approximately Rs.40 lakhs which the respondents were duty bound to pay. It was also found by the complainant that the electric panels and electric wires used in the said project were of inferior quality and the cheque given by the respondents for the payment of electricity charges to DHBVN was also dishonoured due to "Insufficient Funds". That the respondents despite having received an amount of Rs.1,26,00,000/- with them as interest free maintenance security was not maintaining the society at all as per the agreed terms and conditions. The complainant association had written several communications and had several



meetings with the respondent and their officials to rectify the defects and deficiencies caused by the respondents in maintaining the society but the respondents straightway refused to comply with any of their responsibilities and obligations as agreed by them in the buyer's agreement and therefore, the complainant association was forced to pay the electricity charges and to spend the expenses for the rectification of the defects caused by the respondent which they were legally obliged and responsible to pay as per the provisions of section 11 (4) (g) of the said Act being promoter of the said residential project for which the respondents are liable to be punished under the relevant provisions of said Act.

20. The complainant submitted that the complainant association as on today had spent a sum of Rs. 9,77,549/- for the rectification of defects and deficiencies caused by the respondents in the maintenance of the society which the respondents are legally as well as contractually liable to pay to the complainant society. The complainant society is still calculating the other expenses which they had to incur due to



the defaults of the respondents and these shall be placed on record once completed. The respondents are also liable to refund a sum of Rs.1,26,00,000/- illegally misappropriated by them from the fund of interest free maintenance security deposit. The respondents are illegally holding onto this amount even after handing over the maintenance to the complainant association and the respondents have refused to refund this amount to the complainant association with an ulterior motive to misuse it for their personal use.

21. The complainant submitted that the respondents as per section 19 (5) of the said Act alongwith the other relevant provisions are liable to provide the necessary documents and plans including that of common areas after handing over the physical possession of the apartment or the floor. However, in the present case, the respondents have not provided even a single document in respect of the said society to the complainant association which the complainant association has been requesting to the respondents for a long period. Therefore, the respondents are liable to be punished and prosecuted for the contravention of section 19 as well.



22. That the respondents have also not delivered the possession of the residential units to the allottees as per the agreed timelines of buyer's agreement and **have caused delay of 3 months** and the conduct on the part of respondent regarding delay in delivery of possession of the said units has clearly manifested that respondents never ever had any intention to deliver the said units on time as agreed. It has also cleared the air on the fact that all the promises made by the respondents at the time of sale of involved units were fake and false. The respondents had made all those false, fake, wrongful and fraudulent promises just to induce the allottees to buy the said units on the basis of their false and frivolous promises, which the respondents never intended to fulfil. The respondents in their advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the allottees.

23. That the cause of action accrued in favour of the allottees and against the respondents from the date of booking of the said units and it further arose when respondents failed /neglected



to deliver the said units within a stipulated time period. The cause of action further arose when the respondents have not completed the said project with the assured facilities and amenities. It further arose when the respondents have not rectified the defects in maintenance despite the requests made by the allottees and it is continuing and is still subsisting on day-to-day basis as the respondents have still not rectified their defects and not fulfilled their obligations as per the buyer's agreement.

ISSUES RAISED BY THE COMPLAINANTS:

24. **The following issues have been raised by the complainant:**

1. Whether the respondents are guilty of unfair and fraudulent trade practice?
2. Whether the respondents are guilty of deficiency in services?
3. Whether the document titled as "buyer's agreement" is one sided and unilateral?



4. Whether the document titled as “buyer’s agreement” was signed by the allottees under duress and coercion?
5. Whether the allottees are entitled for the compounding interest @18% p.a on the total sale consideration paid by the individual allottees for the said units due to the delay caused by respondents in completion and delivery of said units as per the timelines agreed in buyer’s agreement?
6. Whether the respondents are liable to be prosecuted for contravening Section 12 of the Real Estate (Regulation and Development) Act, 2016 for giving incorrect and false statement while selling the said apartment to the allottees?
7. Whether the respondent are liable to be prosecuted for contravening section 11 (b) of the Real Estate (Regulation and Development) Act, 2016 for not obtaining the completion and occupation certificate in respect of the said project?



8. Whether the respondents are liable to be prosecuted for contravening section 11 (d) of The Real Estate (Regulation and Development) Act, 2016 for not providing and maintaining the essential services?
9. Whether the respondents are liable to be prosecuted for contravening section 11 (f) of The Real Estate (Regulation and Development) Act, 2016 for not executing a registered conveyance deed in favour of the allottees?
10. Whether the respondents are liable to be prosecuted for contravening section 11 (g) of The Real Estate (Regulation and Development) Act, 2016 for not paying all outgoings regarding charges for water, electricity and other maintenance charges before the handing over the maintenance to the association?
11. Whether the respondents are liable to be prosecuted for contravening section 17 of The Real Estate (Regulation and Development) Act, 2016 for not executing and



registering the conveyance deed in favour of the allottees?

RELIEF SOUGHT BY THE COMPLAINANTS:

25. In view of the facts mentioned the following reliefs have been sought by the complainant:

- a) To direct the respondents either to construct the club house as agreed by them under the terms of buyer's agreement or to refund the amount of Rs. 56,00,000/- plus Rs. 6,92,000/- as service tax collected towards the club house membership to the complainant association to enable the complainant to get the club constructed on their own.
- b) To direct the respondents to handover/ refund the amount of Rs.1,26,00,000/- collected as the interest free maintenance security deposit to the complainant association to enable the complainant to perform its services in respect of maintenance of said project smoothly.



- c) To direct the respondents to pay the charges/ expenses incurred by the complainant association of Rs.9,77,549/- for rectification of defects ad deficiencies/defects in services and amenities.
- d) To direct the respondents to pay the charges/ expenses to be incurred by the complainant association towards installation of air pressurization system in the lifts and fresh-air ducts & fans in the basement and replacement of hose-reel estimated at Rs. 37,40,000/- and further direct the respondent to pay another sum of Rs.40 lakhs towards exterior paint of the society.
- e) To direct the respondents to immediately procure the completion and occupation certificate in respect of entire project as well as the individual residential units.
- f) To direct the respondents to immediately execute and register the conveyance deed of individual residential units in favour of the allottees to enable them to become the legal owners of their residential units.
- g) To direct the respondents to immediately execute the relevant documents in favour of the complainant



association in respect of the common areas of the said residential project.

- h) Pass an order levying heavy penalty on the respondents for contravention of section 11, 12, 14, 17, 19 and other applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and rules made thereunder.

DETERMINATION OF ISSUES

After considering the facts submitted by the complainant, the issues wise findings are as hereunder:

26. With respect to **first, second, sixth and seventh issues** raised by the complainant, the complainants have made averment without substantiating the same in material particulars. As such, this issue cannot be determined.
27. With respect to **third issue** raised by complainant, delay compensation payable by the respondents @Rs.5/- per sq. ft. of the super area per month of delay of the unit for the period of delay beyond 36 + 6 months as per clause 14 of buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondents 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.”

28. With respect to **fourth issue** raised by the complainant, as alleged by the complainant the respondents misusing their dominant position had coerced and pressurized the allottees to sign the arbitrary, illegal and unilateral terms of the said buyer’s agreement and when the allottees objected to those arbitrary terms and conditions of the buyer’s agreement more specifically the date for calculating the period of three years as promised by the respondents for the completion of the said residential project and refused to sign the same, the respondents threatened to forfeit the amount already paid by the allottees as sale consideration in respect of the said units and also to cancel their bookings. The allottees having no



other option and to found themselves helpless and cheated had under duress and coercion signed the said buyer's agreement.

29. With respect to **fifth issue** raised by the complainant, the prayer of the complainant regarding payment of interest 18% for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is not allowed. 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. 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.

30. With respect to **eight issue** raised by complainant, as per para 31 of buyer's agreement, the respondents had unconditionally agreed for the maintenance of residential



complex and its common areas in respect of various services, facilities, amenities including sanitation, street light, security, water supply, electricity, sewage etc maintaining the best standards and parameters. The respondents being promoter are liable to provide the maintenance as agreed by them under the provisions of Section 11 of said Act, wherein it is their responsibility to provide and maintain the essential services on reasonable charges till the taking over of the maintenance of the project by the association of allottees. In the present case, after much efforts and fight, the complainant association had partially taken over the maintenance of said residential project as the respondents failed to provide the services to the satisfaction of the complainant despite receiving a sum of Rs.1,26,00,000/- as interest free maintenance security.



31. With respect to **ninth and eleventh issues** raised by complainant, the respondents are liable to be prosecuted for contravening Section 11 (f) and under section 17 of The Real Estate (Regulation and Development) Act, 2016 for not

executing a registered conveyance deed in favour of the allottees.

32. With respect to **tenth issue** raised by the complainant, the complainant association found that the respondents were severely negligent in the maintenance of the services in respect of firefighting system, seepage, electricity charges payment, sewage treatment plant, electric sub-station, paint quality of outer walls, sewer piping system, water supply etc. The respondents also failed to install the air pressurisation system in the lifts and fresh-air ducts and fans in the basement and the estimated cost of installation of these is around Rs.37.40 lakhs approximately. Further the exterior paint done by the respondents is of very inferior quality and needs to be redone the estimated cost whereof is approximately Rs.40 lakhs which the respondents were duty bound to pay. It was also found by the complainant that the electric panels and electric wires used in the said project were of inferior quality and the cheque given by the respondents for the payment of electricity charges to DHBVN was also dishonoured due to "Insufficient Funds". That the



respondents despite having received an amount of Rs.1,26,00,000/- with them as interest free maintenance security was not maintaining the society at all as per the agreed terms and conditions.

FINDINGS OF THE AUTHORITY:

33. 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.
34. 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.



35. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
36. 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 of the Act and to fulfil its obligations.
37. As the respondents have 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 respondents, it is sufficient to prove that such information was available with the website and an electronic communication (e-mail) was served on the respondents.
38. Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to



the respondents. Registration branch is directed to do the needful.

39. Complaint was filed on 13.9.2018. Notices w.r.t. reply to the complaint were issued to the respondents on 03.10.2018, 16.10.2018 and 26.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 16.10.2018 and 26.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondents neither filed the reply nor came before the authority. From the above stated conduct of the respondents, it appears that respondents do not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondents and to decide the matter on merits by taking into a count legal/factual propositions, as raised, by the complainant in his complaint. 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.



40. A prayer has been made by the counsel for the complainant (registered RWA-Premier Urban Apartment Owners Association (copy of minutes of the meeting of governing body of RAW attached) that the possession of the flats/units in project "Premier Urban Housing" developed by M/s Maxworth Infrastructures Pvt. Ltd. Sector-15 Part-II, Gurugram were handed over to the complainants/ association. No occupation certificates were handed over to the RWA (numbering 168).

41. There are following significant allied issues raised by the complainant:-

- i. To procure the occupation certificate,
- ii. To execute and register the conveyance deed of individual residential units,
- iii. To refund the amount of Rs. 56,00,000/- alongwith Rs.6,92,92/- as service tax collected for club house membership as no club was constructed,



- iv. To refund the amount of Rs.1,26,00,000/- collected as interest free maintenance security deposited by complainant association,
- v. To complete the fire safety requirements to ensure safety of residence.

42. Accordingly, considering all the facts and circumstances of the case, the authority is of the considered opinion that respondents are liable to obtain occupation certificate and completion certificate under the rules to execute and register conveyance deed of individual residential units in favour of respective allottees. In addition to this, respondents are also liable to refund an amount of Rs. 56,00,000 alongwith Rs.6,92,000/- collected as service tax for construction of club house which has not been sanctioned in the approved building plan by the competent authority. Respondents are further directed to refund an amount of Rs.1,26,00,000/- collected from the allottees as interest free maintenance security as the respondent has miserably failed to provide any maintenance service to the allottees till date and the same is being maintained by the RWA itself.



43. In view of above decision, the respondents are directed to comply the above directions within a period of 30 days from the date of this order.

DECISION AND DIRECTIONS OF THE AUTHORITY:

44. 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. Respondents are liable to obtain occupation certificate and completion certificate under the rules to execute and register conveyance deed of individual residential units in favour of respective allottees.
- ii. Respondents are also liable to refund an amount of Rs.56,00,000/- alongwith Rs.6,92,000/- collected as service tax for construction of club house which has not been sanctioned in the approved building plan by the competent authority. Respondents are further directed to refund an amount of Rs.1,26,00,000/- collected from



the allottees as interest free maintenance security as the respondent has miserably failed to provide any maintenance service to the allottees till date and the same is being maintained by the RWA itself.

iii. The respondents are directed to comply the above directions within a period of 30 days from the date of this order.

iv. Since, the respondents have failed to get the project registered under section 3(1) of the Real Estate (Regulation and Development) Act, 2016, hence, penal proceedings under section 59 of the Act be initiated against them.

45. The order is pronounced.

46. 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

Judgement Uploaded on 08.02.2019