

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

Complaint No. : 116 of 2018  
First date of hearing: 01.05.2018  
Date of Decision : 22.10.2018

Mr. Mohit Mittal,  
R/o. H.No.-565, First Floor,  
Sector-5, Gurugram-122001,  
Haryana

...Complainant

Versus

M/s. Haamid Real Estate Pvt. Ltd.  
(Through Mr. Tirath Lal Anand and Mr. Bala  
Krishna Pandey)  
Regd. Office: 232-B, Fourth Floor Okhla  
Industrial Estate, Phase-III,  
New Delhi- 110020

...Respondents

**CORAM:**

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

Chairman  
Member  
Member

**APPEARANCE:**

Shri Mohit Mittal  
Shri Rajeev Bhatia

Complainant in person  
DGM (legal) on behalf of the  
respondent company

**ORDER**

1. A complaint dated 01.05.2018 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



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Development) Rules, 2017 by the complainant Mr. Mohit Mittal, against the promoter M/s Haamid Real Estate Ltd., on account of violation of terms of the flat buyer's agreement executed on 03.05.2014 in respect of unit number C 034, 3<sup>rd</sup> floor, block/tower 'C' in the project 'the peaceful homes' located at sector 70A, Gurugram, for not handing over possession on the due date i.e. 20.04.2017 (as per the flat buyers agreement mentioned by the complainant in his rejoinder) which is an obligation under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The peaceful homes", sector 5, Gurugram
2.	Nature of real estate project	Not available
3.	Apartment/unit no.	C034 on 3 <sup>rd</sup> floor, block/tower 'C'
4.	Apartment measuring	1565 sq. ft.
5.	RERA registered/ unregistered.	<b>unregistered</b>
6.	Booking date	14.06.2012
7.	Date of allotment letter	23.05.2013
8.	Date of execution of apartment buyer's agreement	03.06.2014
9.	Payment plan	construction linked payment plan
10.	Total consideration	Rs. 1,09,75,150/-
11.	Total amount paid by the complainant till date	Rs.91,85,272/-
12.	Percentage of consideration amount	80% approx.

*S. Kaur*



*CEO*



13.	Date of commencement of construction	21.04.2014
14.	Date of delivery of possession as per clause of flat buyer's agreement (clause 11(a):-36 months' period + 6 months' from the date of commencement of construction)	21.10.2017
15.	Delay in handing over possession till date	1 year.
16.	Penalty clause as per apartment buyer's agreement dated 03.06.2014	If the company delays in handing possession within stipulated time, it shall pay @Rs. 5/- per sq. ft. for the first 6 months of the delay.

3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An allotment letter is available on record. As per the submission made by the counsel for the complainant at the time of final argument which the possession of the subject apartment was to be delivered by 21.04.2017. Neither the respondent has delivered the possession of the said unit till 22.10.2018 to the purchaser nor they have paid delay charges at Rs. 5/- per sq. ft. per month of the carpet area of the said flat for the period of such delay. Therefore, the promoter has not fulfilled his committed liability till date.



Case



4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 01.05.2018. The counsel for the respondent appeared on 01.05.2018, 05.06.2018, 19.07.2018, 04.09.2018 and 26.09.2018. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply dated on 15.05.2018 and the complainant filed the rejoinder on 27.07.2018.

#### Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 27.06.2012 the complainant booked in the project of the respondent namely 'the Peaceful homes', 3<sup>rd</sup> floor, tower-C, situated at Sector -5, the builder buyer agreement was executed on 03.06.2014 of the flat measuring 1565 sq. ft. The promoter of the project increased the BSP amount from Rs. 5850/- per sq. ft. to Rs. 6106/- to include Rs.4,00,000/- as a car parking charges in the BSP.
6. The complainant paid booking amount of Rs.9,00,000/- vide cheque. The apartment buyer's agreement was executed on

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03.06.2012 wherein the developer agreed to handover possession of the flat within 36 months from the date of commencement of construction of the complex upon the receipt of all project related approvals and the respondent failed to develop so called project within the said period. The complainant submitted that the promoter started the construction after 2 years of taking advance amount and demand letter dated 21.04.2014 was received from M/s Haamid Real Estate Pvt. Ltd. asking for depositing an amount of Rs. 9,91,021/- for the commencement of construction.

7. The complainant submitted that the basic sale price was Rs.95,55,890/- and the complainant has paid Rs.95,94,898/- till date on various occasion as per the payment plan. That the complainant has approached the respondent company time and again, but the respondent company has neither responded to the complainant's queries nor have delivered the possession of the said unit. Further, the complainant has stated that the quality of the construction done by the promoter is of low quality. Promoter further raised the demand asking 18% p.a. interest for delay in payment from the

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complainant and under new GST regime, the promoter is not passing the benefit of input tax credit to complainant. The promoter is demanding more money for the construction without having HARERA registration due to which the complainants home loan bank ICICI refused to disburse the amount without HARERA number.

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

- i. Whether the complainant is entitled for the possession of the subject flat/apartment as per the terms of BBA dated 03.06.2014?
- ii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers wherein higher covered area was promised whereas lesser covered area has been given?
- iii. Whether the quality of the construction is sub-standard and not in accordance with the provisions of the agreement?
- iv. Whether the promoter charged car parking and to get rid of separate charges he included in the flat BSP per sq. ft.?





- v. Whether the interest cost being demanded by the developer is unreasonable?
- vi. Whether the promoter not compensating for delay of possession as per BBA?
- vii. Whether the promoter not passing the benefit of input tax credit to the complainant under the new GST regime?
- viii. Whether the promoter has registered the project under HARERA?

9. **Relief sought:**

The complainant is seeking the following relief:

- i. Direct the respondents to refund the entire amount of Rs. 95,94,989/- per annum with 18% interest.

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**Respondent's reply**

10. The respondents admitted the fact that they are the directors of Haamid Real Estate Pvt. Ltd. having its registered office in Okhla Industrial Area, New Delhi. The name of the respondents has been improperly joined. The present complaint deserves to be dismissed for mis joinder of necessary parties. The prayer sought in the complaint can only be granted against the



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company and not against the respondents independently as a registered company being independent juristic person has to sue and be sued in its own.

11. The respondents submitted that this authority may kindly be pleased to dismiss the complaint as being not maintainable against the respondents in personal capacity or give 60 days' time to file reply to the complaint in this case.
12. On behalf of respondent no. 3 it is asserted that the changes with respect to the array of parties was allowed by the Hon'ble authority but the complainant has not amended memo of parties.

#### **Rejoinder of the complainant**

13. The complainant contended the said flat is booked in the name of the complainant and his wife and hence complainant has the right to act on the representative capacity and the objection of respondents in this regard is not sustainable. It is reiterated that as per the flat buyer's agreement the respondent should have handed over the possession by around 20.04.2017.









However, the respondents have miserably failed to complete the project and is yet to hand over the project.

14. The complainant further contended that the respondents themselves stated that it would take some time to make project habitable. In fact, on the assumption that the flat will be handed over to the complainant by April, 2017, the respondents have taken more than 80% of the cost of the flat which means that the respondents had no intention to hand over the flat within the period stipulated in the agreement and hence, has committed cheating. This forum has been entrusted with the proper jurisdiction to adjudicate upon the present complaint.

15. It is further submitted that RERA supersedes and has an overriding effect over the provisions of the Arbitration Act, 1996 since RERA has been enacted under the said Arbitration Act, 1996 and the remedy of approaching RERA is not in derogation of the arbitration and conciliation Act, 1996 by mere presence of arbitration clause under the agreements. Hence, complaint under RERA can be filed as it a special forum constituted as an adjudicating mechanism taking aid of section



34 of the RERA Act, despite the presence of an arbitration clause as per the builder buyer agreement dated 03.06.2014.

### Determination of issues

- I. Regarding the **first issue** raised by the complainant, the promoter was under a legal obligation for handing over the possession as per the BBA. During the course of arguments, the complainant stated that as per the terms of agreement, possession of the flat was to be delivered within 42 months from the date of construction which was started on 21.04.2014 and on calculation the due date of delivery of possession comes out to be 21.10.2017. However, the respondent has defaulted in fulfilling its contractual obligation by not giving the possession of the flat within stipulated period and there is a delay of more than one and half years for which the complainant is entitled for delay possession charges in the form of prescribed rate of interest @ 10.75% p.a. for the delay as per the provision of section 18(1) proviso of the Act *ibid*.



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- II. Regarding **the remaining issues** or contentions raised by the complainant are not supported by iota of evidence, hence those are liable to be dismissed.
- III. However, the respondent has failed to get their project registered which is in violation of section 3 of the Real Estate (Regulation and Development) Act, 2016 and therefore is liable for being prosecuted under section 59 of the Act, *ibid*.

**Findings of the Authority:**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

16. With respect to the first issue raised by the complainant the authority came across that as per clause of builder buyer's agreement, the possession of the flat was to be handed over within 42 months from the date of commencement of construction upon receipt of all project related approvals. In the present case, the construction was commenced on 21.04.2014. Therefore, the due date of handing over possession will be computed from 21.04.2014.



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Accordingly, the due date of possession was 20.10.2017 and the possession has been delayed by one year till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said flat as per clause of builder buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on 'delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*



As the possession of the flat was to be delivered by 21.10.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

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his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

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

**34 (f) Function of Authority -**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

19. With respect to the third issue raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay



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interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

20. It is further submitted that as regards the application u/s 8 arbitration and conciliation Act, 1996 as per clause 57 of builder buyer agreement dated 03.06.2014. The inference can be drawn out through the amendment of section 8 of the arbitration and conciliation Act, 1996 does not have the effect of nullifying the ratio of catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.

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**Decision and directions of the authority:-**

21. After hearing the arguments of both the parties and taking into consideration of facts and circumstances of the matter and in the interest of other allottees as the project is nearing completion, the authority is of the considered opinion that at this juncture the prayer of the complainant for refund of the deposited amount cannot be acceded to and the complainant is entitled for interest for delayed period of possession at the prescribed rate i.e. ~~10.45%~~<sup>10.75</sup> p.a. from the date due of possession i.e. 21.10.2017 which shall be paid by the respondents within a period of 90 days from the date of this order and subsequent monthly interest shall be paid before 10<sup>th</sup> of succeeding month after adjustment of delayed payment interest, if any at the same rate.

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22. Having regard to the issue raised by the complainant that the project is not registered with the authority which is in violation of section 3 (1) of the Real Estate (Regulation and



Development) Act 2016. Registration branch is directed to issue show-cause notice to the respondents as to why penal proceedings should not be initiated against the respondent under section 59 for violation of section 3 (1) of the Act ibid.

23. As far as the issues with regard to the poor quality of work at the site raised by the complainant, the respondents are directed to rectify the defects pointed out by the complainant before handing over the possession to the complainant.


24. Accordingly, the complainant stands disposed of in above terms.

25. Order is pronounced.

26. Case file be consigned to the registry.

  
**(Samir Kumar)**  
Member

  
**(Subhash Chander Kush)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 22.10.2018





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Chairman  
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**APPEARANCE:**

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4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up for hearing on 01.05.2018. The counsel for the respondent appeared on 01.05.2018, 05.06.2018, 19.07.2018, 04.09.2018 and 26.09.2018. The reply filed on behalf of the respondent has been perused. The respondent has supplied the details and status of the project along with the reply dated on 15.05.2018 and the complainant filed the rejoinder on 27.07.2018.

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

5. Briefly stated, the facts of the case as culled out from the case of complainant are that on 27.06.2012 the complainant booked in the project of the respondent namely 'the Peaceful homes', 3<sup>rd</sup> floor, tower-C, situated at Sector -5, the builder buyer agreement was executed on 03.06.2014 of the flat measuring 1565 sq. ft. The promoter of the project increased the BSP amount from Rs. 5850/- per sq. ft. to Rs. 6106/- to include Rs.4,00,000/- as a car parking charges in the BSP.
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7. The complainant submitted that the basic sale price was Rs.95,55,890/- and the complainant has paid Rs.95,94,898/- till date on various occasion as per the payment plan. That the complainant has approached the respondent company time and again, but the respondent company has neither responded to the complainant's queries nor have delivered the possession of the said unit. Further, the complainant has stated that the quality of the construction done by the promoter is of low quality. Promoter further raised the demand asking 18% p.a. interest for delay in payment from the

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

- i. Whether the complainant is entitled for the possession of the subject flat/apartment as per the terms of BBA dated 03.06.2014?
- ii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers wherein higher covered area was promised whereas lesser covered area has been given?
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- v. Whether the interest cost being demanded by the developer is unreasonable?
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9. **Relief sought:**

The complainant is seeking the following relief:

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**Respondent's reply**

10. The respondents admitted the fact that they are the directors of Haamid Real Estate Pvt. Ltd. having its registered office in Okhla Industrial Area, New Delhi. The name of the respondents has been improperly joined. The present complaint deserves to be dismissed for mis joinder of necessary parties. The prayer sought in the complaint can only be granted against the





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11. The respondents submitted that this authority may kindly be pleased to dismiss the complaint as being not maintainable against the respondents in personal capacity or give 60 days' time to file reply to the complaint in this case.
12. On behalf of respondent no. 3 it is asserted that the changes with respect to the array of parties was allowed by the Hon'ble authority but the complainant has not amended memo of parties.

**Rejoinder of the complainant**

13. The complainant contended the said flat is booked in the name of the complainant and his wife and hence complainant has the right to act on the representative capacity and the objection of respondents in this regard is not sustainable. It is reiterated that as per the flat buyer's agreement the respondent should have handed over the possession by around 20.04.2017.



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However, the respondents have miserably failed to complete the project and is yet to hand over the project.

14. The complainant further contended that the respondents themselves stated that it would take some time to make project habitable. In fact, on the assumption that the flat will be handed over to the complainant by April, 2017, the respondents have taken more than 80% of the cost of the flat which means that the respondents had no intention to hand over the flat within the period stipulated in the agreement and hence, has committed cheating. This forum has been entrusted with the proper jurisdiction to adjudicate upon the present complaint.

15. It is further submitted that RERA supersedes and has an overriding effect over the provisions of the Arbitration Act, 1996 since RERA has been enacted under the said Arbitration Act, 1996 and the remedy of approaching RERA is not in derogation of the arbitration and conciliation Act, 1996 by mere presence of arbitration clause under the agreements. Hence, complaint under RERA can be filed as it a special forum constituted as an adjudicating mechanism taking aid of section



34 of the RERA Act, despite the presence of an arbitration clause as per the builder buyer agreement dated 03.06.2014.

### Determination of issues

- I. Regarding the **first issue** raised by the complainant, the promoter was under a legal obligation for handing over the possession as per the BBA. During the course of arguments, the complainant stated that as per the terms of agreement, possession of the flat was to be delivered within 42 months from the date of construction which was started on 21.04.2014 and on calculation the due date of delivery of possession comes out to be 21.10.2017. However, the respondent has defaulted in fulfilling its contractual obligation by not giving the possession of the flat within stipulated period and there is a delay of more than one and half years for which the complainant is entitled for delay possession charges in the form of prescribed rate of interest @ 10.75% p.a. for the delay as per the provision of section 18(1) proviso of the Act *ibid*.



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- II. Regarding **the remaining issues** or contentions raised by the complainant are not supported by iota of evidence, hence those are liable to be dismissed.
- III. However, the respondent has failed to get their project registered which is in violation of section 3 of the Real Estate (Regulation and Development) Act, 2016 and therefore is liable for being prosecuted under section 59 of the Act, *ibid*.

**Findings of the Authority:**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

16. With respect to the first issue raised by the complainant the authority came across that as per clause of builder buyer's agreement, the possession of the flat was to be handed over within 42 months from the date of commencement of construction upon receipt of all project related approvals. In the present case, the construction was commenced on 21.04.2014. Therefore, the due date of handing over possession will be computed from 21.04.2014.



*Case*

Accordingly, the due date of possession was 20.10.2017 and the possession has been delayed by one year till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said flat as per clause of builder buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

*"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on 'delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*



As the possession of the flat was to be delivered by 21.10.2017, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016.

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

**34 (f) Function of Authority -**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

19. With respect to the third issue raised by the complainant, as the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay



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interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.

20. It is further submitted that as regards the application u/s 8 arbitration and conciliation Act, 1996 as per clause 57 of builder buyer agreement dated 03.06.2014. The inference can be drawn out through the amendment of section 8 of the arbitration and conciliation Act, 1996 does not have the effect of nullifying the ratio of catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.



**Decision and directions of the authority:-**

21. After hearing the arguments of both the parties and taking into consideration of facts and circumstances of the matter and in the interest of other allottees as the project is nearing completion, the authority is of the considered opinion that at this juncture the prayer of the complainant for refund of the deposited amount cannot be acceded to and the complainant is entitled for interest for delayed period of possession at the prescribed rate i.e. 10.45% p.a. from the date due of possession i.e. 21.10.2017 which shall be paid by the respondents within a period of 90 days from the date of this order and subsequent monthly interest shall be paid before 10<sup>th</sup> of succeeding month after adjustment of delayed payment interest, if any at the same rate.

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22. Having regard to the issue raised by the complainant that the project is not registered with the authority which is in violation of section 3 (1) of the Real Estate (Regulation and




Development) Act 2016. Registration branch is directed to issue show-cause notice to the respondents as to why penal proceedings should not be initiated against the respondent under section 59 for violation of section 3 (1) of the Act ibid.

23. As far as the issues with regard to the poor quality of work at the site raised by the complainant, the respondents are directed to rectify the defects pointed out by the complainant before handing over the possession to the complainant.
24. Accordingly, the complainant stands disposed of in above terms.
25. Order is pronounced.
26. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 22.10.2018

