

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 07.02.2019
Complaint No.	1527/2018 Case Titled As Rajesh Kumar V/S Clarion Properties Limited
Complainant	Rajesh Kumar
Represented through	Complainant in person with Shri Abhay Jain, Advocate
Respondent	M/S Clarion Properties Limited
Respondent Represented through	Ms. Savita Vashisht and Shri Ashish Tyagi, legal officers on behalf of respondent-company with Ms Raadambari Advocate
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.

Occupation certificate has been received by the respondent on 3.11.2017. The respondent has offered the possession of the unit to the complainant on 13.11.2017.

It is really a peculiar case.

As per clause 7.1 of the Builder Buyers Agreement dated 3.3.2015 for unit No.F-26, 1<sup>st</sup> floor, B-block, in project "Element One" Sector-47/49, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of construction or the date of execution of BBA whichever is later + 6 months grace period which comes out to be 3.3.2019. Complainant has so far made an amount of Rs.40,06,201/- to the respondent for the booked unit against a total sale consideration of Rs.67,89,150/-.

Since it was a construction linked plan and the offer of possession has already been made to the complainant but the complainant has defaulting in making timely payment and arrears are due. Accordingly, the complainant is liable to pay the balance amount due to the respondent alongwith prescribed rate of interest i.e.10.75%. Correspondence done by the respondent with the buyer w.r.t. cancellation of unit/flat will stands nullified. No holding and restoration charges will be charged by the respondent from the complainant.

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

Samir Kumar  
(Member)  
7.2.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 1527 of 2018**  
**Date of first hearing : 07.02.2019**  
**Date of decision : 07.02.2019**

Sh. Rajesh Kumar  
R/o 4091, Pragya Kunj Apartments,  
Sector 4C, Vasundhara, Ghaziabad,  
Uttar Pradesh-201012

**...Complainant**

Versus

Clarion Properties Ltd. (through its  
Chairman cum Managing Director)  
Office at: Plot no. 8, Sector-44, Gurugram-  
122002

**...Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Rajesh Kumar  
Shri Abhay Jain  
Shri Ashish Tyagi, Smt. Savita  
Vashisht  
Smt. Raadambari

Complainant in person  
Advocate for the complainant  
Legal officers on behalf of  
respondent company  
Advocate for the respondent



**ORDER**

1. A complaint dated 17.11.2018 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 Sh. Rajesh Kumar, against the promoter Clarion Properties Ltd. (through its Chairman cum Managing Director) on account of violation of clause 7.1 of the buyer's agreement executed on 03.03.2015 for retail unit no. F-26 on 1<sup>st</sup> floor, block-'B', admeasuring super area 423 sq. ft. approximately, in the project "Element One" for non fulfilment of obligations of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the buyer's agreement has been executed on 03.03.2015, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"Element One" in Sector 47/49, Gurugram
2.	Nature of real estate project	Commercial complex
3.	Unit no.	F-26, 1 <sup>st</sup> floor, block 'B'
4.	Project area	2.7625 acres
5.	Unit area	423 sq. ft.
6.	Registered/ not registered	<b>Not registered</b>



7.	DTCP license	86 of 2011 dated 20.09.2011
8.	Date of booking	02.09.2014 (as per annexure- 1, payment receipt, pg 33 of the complaint)
9.	Date of buyer's agreement	03.03.2015
10.	Date of occupation certificate	03.11.2017
11.	Date of final call letter-intimation of possession	13.11.2017
12.	Total consideration	BSP- Rs.65,56,500/- Rs. 67,89,150/- (as per payment schedule, pg 69 of the complaint)
13.	Total amount paid by the complainant	Rs. 40,06,201/- (as per payment receipts annexed with the complaint)
14.	Payment plan	Time linked payment plan
15.	Date of delivery of possession	Clause 7.1– 42 months from date of start of construction of block in which the said space is allotted or date of execution of agreement, whichever is later + 6 months grace period i.e. by <b>03.03.2019</b>  <b>Note: The date of start of construction cannot be ascertained. Thus, the due date of possession is calculated from the date of execution of agreement.</b>
16.	Delay of number of months/ years	<b>No delay. The</b>



	upto 07.02.2019	<b>complaint is pre-mature.</b>
17.	Penalty clause as per buyer's agreement dated 03.03.2015	Clause 7.5- Rs. 7/- per sq. ft. per month

4. The details provided above have been checked on the basis of the record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 03.03.2015 is available on record for retail unit no. F-26, 1<sup>st</sup> floor, block 'B', admeasuring super area 423 sq. ft. approximately, according to which the possession of the aforesaid unit is to be delivered by 03.03.2019.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 07.02.2019. The reply has been filed on behalf of the respondent and the same has been perused.

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

6. The complainant submitted that upon the proposal of the respondent, on 02.09.2014, the complainant booked a retail unit in the project named "Element One", by paying an amount of Rs.1,00,000/- to the respondent.



7. The complainant submitted that he paid, as and when demanded by the respondent, a total of Rs.23,01,290/- for the shop, from the time of booking of the shop in September 2014 to January 2015. The respondent took more than ten percent cost of the commercial unit before executing the buyer's agreement and violated section 13 of the Act. Around thirty percent (30%) cost of total consideration of the shop was taken by January 2015 by the respondent, but the buyer's agreement was not signed.
8. On 03.03.2015, the respondent executed the buyer's agreement for the shop in the project wherein as per clause 7.1, the possession should have been offered within 42 months from date of start of construction or date of execution of agreement, whichever is later + 6 months grace period. The date of start of construction cannot be ascertained. Thus, the due date of possession is calculated from the date of execution of agreement. Accordingly, the due date of possession comes out to be 03.03.2019.
9. The complainant submitted that he was not offered the opportunity to rectify/delete/modify the terms and conditions of the said buyer's agreement despite knowing well that the agreement was one-sided and there was no fair





play and transparency observed and followed by the respondent.

10. The complainant submitted that it was clearly mentioned in the payment schedule of the buyer's agreement that the complainant would pay Rs.21,99,600/- within two months from the date of registration of the shop, Rs.6,55,650/- within 12 months from date of registration, Rs.13,11,300/- within 21 months from date of registration, and Rs.26,22,600/- at the time of the offer of possession of the shop, which would be 03.09.2019.

11. The complainant submitted that in total, the complainant paid Rs.40,06,201/- as and when demanded by the respondent till June 2017 for the shop, out of the total consideration of around Rs.69,00,000/-. The remaining amount was to be paid by the complainant at the time of the offer of possession of the shop in September 2018.

12. The complainant submitted that the respondent suddenly issued a final call letter dated 13.11.2017, informing the complainant that the occupation certificate (OC) has been received by the respondent and the process of handing over the possession of the shop would be made shortly. A demand of the remaining amount of the shop, amounting to





Rs.43,48,765/- with exorbitant charge of Rs.2,00,443/- as interest charges on delay payment, without giving any reasons and justifications was raised to the complainant. All of sudden, the possession of the shop was advanced by almost one year without any prior information. The complainant was not in a financial position to make this huge payment all of a sudden, almost one year in advance.

13. The complainant submitted that the respondent demanded Rs.43,48,765/- from the complainant, including that of Rs.4,77,657/- for the stamp duty, Rs.41,300/- for miscellaneous charges for registration, Rs.1,15,951/- for tax and cess, Rs.42,300/- for interest free maintenance security deposit, Rs.74,872/- for electric connection charges, Rs.17,700/- for electric metre installation charges, Rs.59,118/- for one year advance maintenance charges and other miscellaneous charges without any justification and explanation. These illegal, unlawful and bogus demands were raised by the respondent to fleece the complainant.

14. The complainant submitted that the respondent had stated in its final call letter, dated 13.11.2017 that it had applied for the occupation certificate (OC) on 27.03.2017. It was after eight months that the complainant was informed about the



status of the OC. The respondent has not yet provided the copy of the OC, granted by the town and country planning department to the complainant.

15. The complainant submitted that as the maximum time period for grant of the OC from the Town and Country Planning Department is sixty days from the date of application, why did the respondent inform the complainant after eight months? The real reason behind the delay in granting the OC by the govt. authorities was that the application filed by respondent was incomplete. The objective of filing of application for the OC on 27.03.2017, was to avoid the registration of the project under HARERA, Gurugram, after notification of the Act on 28.07.2017 in Haryana, and to escape the obligations and liabilities under the Act, 2016 and the rules, 2017. It was an incomplete application, submitted on 27.03.2017 and the duty to file a legitimate application is an obligation of the promoter under the law.



16. The complainant submitted that the project 'Element One' was not complete on 27.03.2017 at the time of filing application for the OC, by the respondent. It is clear that the huge truckloads of cement, iron rods, wooden sheets and other building materials had been regularly entering the

premises even after 27.03.2017, the date on which the OC was applied. Large number of labourers, supervisors, security guards, instructors and other man-power had also been observed at the project site after the date of the application of the OC. The bills must have been raised for all materials, used in the construction of the building and the man power, engaged for the project. An investigation into all bills and the payment made against these bills would clearly establish the truth as on which date the particular work was completed. The respondent had applied for the OC on 27 March 2017 for its incomplete project to hoodwink the HARERA and to cheat the buyers including the complainant.

17. The complainant submitted that he was shocked to notice these illegal and unlawful demands of the respondent and approached its office various times to seek explanation of these demands but all went in vain.

18. The complainant submitted that however, the complainant started arranging the fund which was demanded by the respondent all of sudden, one year in advance, as per its buyer's agreement. The complainant wrote a letter dated 2 March 02.03.2018 to the respondent, mentioning that he



would soon complete all formalities for registration and would take possession of the unit.

19. The complainant submitted that he clearly informed the respondent that he was approaching the financial institutions for sanctioning of the loan which needs some time. As the possession of the shop had been advanced by one year all of a sudden, the complainant sought some more time to make all payments.

20. The complainant submitted that the respondent via its letter dated 16.04.2018, all of sudden, terminated the allotment of the shop without stating justified reasons, which came as a shock to the complainant.

21. The complainant submitted that he kept trying to arrange funds from the financial institution and ultimately Indiabulls sanctioned the loan and issued the loan sanction letter dated 23.08.2018. The complainant consequentially approached the respondent to furnish certain documents for disbursement of the loan amounts.

22. The complainant submitted that after various meetings with the representatives of the respondent at its office and exchange of letters, it was finalized that the complainant can make payments for his shop.



23. The complainant submitted that the respondent threatened , via letter dated 13.09.2018 informing the complainant about the termination of the allotment of the shop and issued a feign, bogus cheque of Rs.18,94,412/-, making full and final payment, but in reality the cheque was never issued and handed over to the complainant. Further, no cheque has ever been received by the complainant till date. In the letter, the respondent also claimed that the company is free to sell the said unit to any prospective buyer.
24. The complainant submitted that he has lost confidence and in fact has got no trust left in the developer/builder as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainant besides being guilty of indulging in unfair trade practices and then remaining non-responsive to the requisitions of the complainants.
25. The complainant submitted that the respondent has earned huge money by duping the innocent complainant and other buyers through its unfair trade practices and deficiencies in services and has caused the complainant immense pain, mental torture, agony, harassment, stress, anxiety and financial loss.



## 26. **Issues to be determined**

The relevant issues as per the complaint are as follows:-

- I. Whether the respondent's demand and taking more than ten percent of the cost of the shop before executing the buyer's agreement is justifiable?
- II. Whether the sudden demand of money, almost one year in advance as per the payment schedule as mentioned in the buyer's agreement, is valid?
- III. Whether the occupation certificate (OC), applied on 27.03.2017 was to hoodwink the HARERA, Gurugram and to escape the obligation of registration under the authority, after the notification of the Act on 28.07.2017 in Haryana?
- IV. Whether time sought by the complainant is permissible?

## 27. **Relief sought**

- I. Direct the respondent to handover the possession of the shop bearing no. F-26 in block 'B' in the project 'Element One' at Sector 47/49, Gurugram to the complainant, as the complainant is ready to pay all legitimate dues of the unit.

## **Respondent's reply**

28. The respondent submitted that the complaint filed by the complainant is extremely vexatious and has been filed only to





gain time to make the payments due from the complainant to the respondent. The main grievance of the complainant is that the offer of possession was made one year in advance, and this is one unique case where an early offer of possession is being resisted, obviously in order to avoid payment of due amounts against the sale consideration of the unit. The complainant in para 3.6 of the complaint states that he was taken by shock as the unit was offered to him “almost one year in advance”. The complainant has himself filed the buyers’ agreement, annexure III (payment schedule) of which clearly provides for a construction linked plan and not as per any fixed dates. The said annexure iii (payment schedule) specifically specifies that *“the sequence of one or more construction linked installments may vary depending on the stage of construction of the specific unit.”* The complaint thus deserves to be dismissed with exemplary costs.



29. The respondent submitted that besides being vexatious, the complaint is also not maintainable as the project stood completed in March 2017 itself and the application for occupation certificate was also made by the respondent as on 27.3.2017, thus the project does not fall in the category of projects on which RERA is applicable. It is further submitted that the effect of the act is prospective, as the project was



complete and application for occupation certificate was applied before publication of HRERA. Thus, this hon'ble regulatory authority has no jurisdiction to entertain the present complaint.

30. The respondent submitted that in this regard, it is pertinent to mention a decision of the Hon'ble Bombay High Court vide its judgment dated 06.12.2017 passed in writ petition no. 2737/17 titled as **Neelkamal Realtors Suburban Private Limited Vs Union of India &Ors.**, wherein it was held as under:

***"The provisions of Section 3(2) states that notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required in cases falling under Clauses (a), (b) and(c). The RERA takes care of exclusion of certain projects / constructions which will not be governed."***

The Hon'ble Bombay High Court has further held:

***"After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature."***



The literal reading of the above mentioned judgment delivered by the Hon'ble Bombay High Court is sufficient to hold that the authority is empowered to hear and decide only the complaints against the projects which are registered with the authority.

31. The respondent submitted that the complaints pertaining to compensation/damages and interest for a grievance under section 12, 14, section 18 and section 19 of the Real Estate (Regulation and Development) Act, 2016 are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before this hon'ble regulatory authority under rule-28.

32. The respondent submitted that the present complaint is also not maintainable as the agreement contains arbitration clause that mandates the invoking of arbitration proceedings in the event of a dispute between the parties.

33. The respondent submitted that the statement of objects and reasons as well as the preamble of the said Act clearly state that the RERA is enacted for effective consumer protection and to protect the interest of consumers in the real estate



sector. RERA is not enacted to protect the interest of investors or to subserve the malafide / vexatious objectives of the complainant. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer and nowhere in the present complaint has the complainant pleaded as to how the complainant is a consumer as defined in the Consumer Protection Act, 1986 qua the respondent. The complainant has purchased the said unit which is a commercial unit and has nowhere asserted that he intends to purchase the said unit for self-livelihood, rather, in para 2 of the complaint the complainant has asserted that he has purchased the said unit "for business".



34. The respondent submitted that this authority has no jurisdiction to entertain the present complaint as the complainant has not come to this hon'ble regulatory authority with clean hands and has concealed the material facts.
35. The respondent submitted that the complainant has concocted a false story to cover up his own defaults and has

raised false and frivolous issues and has filed the present complaint on false, frivolous and concocted grounds. This conduct of the complainant clearly indicates that the complainant is a mere speculator having invested with a view to earn quick profit, however, the complainant has failed to perform his contractual obligations.

36. The respondent submitted that he has completed the project as per approved plans and has applied for the occupation certificate on 27.03.2017 and duly obtained the same within the reasonable stipulated time on 03.11.2017. It is apparent that the complainant is a mere short term and speculative investor who had the motive and intention to make quick profit from sale of the said unit through the process of allotment. The respondent duly offered to the complainant the possession of the subject unit well within the stipulated time as per the buyer's agreement and it is the complainant, who failed to remit the payment and take the possession.

37. The respondent submitted that the complainant has defaulted to perform his part of the agreement by not rendering the amounts payable by him under the said agreement for the purchase of the unit. No negligence on part of the respondent has been established. Hence it is trite law



that the complainant cannot take undue advantage of his own wrong/fault and omissions.

38. The respondent submitted that the complainant is guilty of *supressio veri* and *supressio falsi* and has completely omitted to place the complete and true facts on record.

- i. The complainant has failed to bring to the notice of this hon'ble authority that it was in fact the complainant who has defaulted to adhere to the terms of this buyer's agreement including but not restricted to making timely payments towards the agreed payment schedule towards the flat purchased by the complainant.
- ii. The complainant has failed to abide by the terms of the buyer's agreement entered into between the parties. The complainant defaulted in payment as prescribed and which forms an integral part of the agreement. Further as per the agreement, the complainant has materially breached the said agreement by non-payment of monies due towards the subject unit. This material breach amounted to cancellation of the buyers agreement. The respondent was constrained to cancel the buyers agreement and suffered losses due to the blatant failure of the complainant.



39. The respondent submitted that the buyer's agreement is concluded contract, thus legally binding on both parties and either of the parties cannot get out of performance of their parts in the agreement. The respondent offered the unit for a consideration and its' terms and conditions which were unconditionally, unequivocally and absolutely accepted by the complainant. Hence, acceptance by the complainant was final and unqualified assent to the terms of an offer. The complainant further warranted that his conduct shall be in absolute accordance with the buyers' agreement whereupon the respondent had entered into the buyers agreement based on this sole assurance (whereas the complainant defaulted in payment while the completion of the unit was well within time). This act of the parties, collectively, concluded the buyers' agreement i.e. making it a legally enforceable and substantive contract, hence binding on all parties to the buyers agreement. Moreover, it is submitted that the complainant cannot get out of the contract unless there is concrete proof of coercion and/or fraud, which is absolutely absent in the instant case.

40. The respondent further submitted that the complainant failed to comply with the terms and conditions of the buyer's agreement and failed to remit the outstanding dues as per the





final call letter dated 13.11.2017. The respondent also sent reminders on 24.01.2018 and 27.02.2018, thereby calling the complainant to pay the outstanding dues with respect to the buyers agreement and take possession of the unit after due formality.

41. The respondent submitted that vide letter dated 16.04.2018, the respondent was constrained to terminate the allotment of unit of the complainant thereupon informing him that he is left with no rights, title, interest, charge or lien over the referred unit due to his failure to remit the long outstanding dues despite reminders and opportunities. Further, vide letter dated 27.06.2018, the respondent also refunded amount of Rs. 18,94,412/- and stood released and discharged from the liability to make refund of monies arising out of the referred termination.

42. The respondent further submitted that vide letter dated 13.09.2018, the respondent replied to the complainant's email dated 11.09.2018 wherein he was informed that pursuant to the termination of your unit, the respondent re-issued a cheque bearing cheque no. 352614 for an amount of Rs. 18,94,412/- towards full & final settlement.





43. The respondent submitted that besides the aforesaid, the complainant has thereafter in view of the legal notice dated 13.07.2018 and the present complaint has disclaimed any responsibility or liability and has hereby attempted to shift the liability upon the respondent. It is submitted that vide reply to the legal notice dated 18.10.2018, the respondent submitted that by way of such misconceived and vague allegations, the complainant was malafidely attempting to seek refund by misconstruing and misrepresenting the facts and circumstances so as to bring about unjust gain, by taking advantage of his own wrong. The respondent further denied that the complainant is not liable for the refund of the amount of Rs. 40 lacs and his demand is unacceptable being misconceived, legally and factually unsustainable and hence denied.

44. The respondent submitted that despite the contradictions and blatant failure of the complainant, the respondent again gave the opportunity to the complainant vide letter dated 21.11.2018 to restore his unit by remitting the payment due.



### **Determination of issues**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the

authority decides seriatim the issues raised by the parties as under:

45. In respect of the **first issue**, the buyer's agreement was executed between the parties on 03.03.2015, prior to coming into force of the RERA, 2016. Thus, the provision under section 13 of the said Act wherein respondent/promoter should not take a sum of more than ten percent of the cost of the unit before execution of the agreement, cannot be applied retrospectively.
46. In respect of **second issue**, as per clause 7.1 of the buyer's agreement dated 03.03.2015, the respondent company undertook to complete the construction of the block in which the said unit is to be located within a period of 42 months of the start of construction of block/tower in which the said space is allotted or execution of agreement, whichever is later with additional grace period of 6 months subject to force majeure, i.e. by 03.03.2019. Thus, the respondent company was at a liberty to complete the construction anytime before 03.03.2019 and accordingly, the demand for payment could be made. Thus, it cannot be said that the demand of money one year in advance upon completion of construction and obtaining OC is not valid.



47. In respect of **third issue**, the complainant has not furnished any concrete documentary proof in order to establish the alleged fact that the respondent applied for OC on 27.03.2017 in order to hoodwink the authority or to escape the obligation of registration under the authority after the notification on 28.07.2017. The authority is of the considered view that although the respondent applied for OC on 27.03.2017, prior to coming in force of the said rules, however, the OC was received on 03.11.2017, only after the coming into force of the said rules and thus, the respondent is not absolved from the obligation of getting the project in question registered with the authority. Rather, the respondent company is under an obligation to register the said project with the authority failing which, proceedings under section 59 shall be initiated against them.

48. In respect of **fourth issue**, it has been categorically stated by the complainant that upon early completion of construction by the respondent and subsequent demand of pending payment, he wrote to the respondent vide mail dated 02.03.2018 citing his inability to gather funds in short span of time and clear the dues. Accordingly, he applied for loan which was sanctioned. However, the respondent ignored the said request of the complainant and terminated the allotment



of the unit in question vide letter dated 16.04.2018. Subsequent to this, on 21.11.2018, the respondent offered restoration of unit to the complainant. Thus, the complainant is entitled to get the unit restored upon payment of the remaining amount out of the total consideration. However, the complainant has defaulted in making timely payment and for the said default, he is liable to pay the balance amount along with delayed payment interest at the prescribed rate of 10.75% per annum.

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

The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.

50. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.



### Findings of the authority

51. **Jurisdiction of the authority-** The respondent admitted that as the project “Element One” is located in Sector 47/49, Gurugram. As the project in question is situated in planning

area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding 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.



52. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & 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.

53. 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. This view has been upheld by the Supreme Court - in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

54. As per clause 7.1 of the agreement dated 03.03.2015, possession was to be handed over to the complainant by 03.03.2019. Complainant has so far made an amount of Rs.40,06,201/- to the respondent for the booked unit against a total sale consideration of Rs.67,89,150/-. The authority is of the view that it is a peculiar case as the offer of possession has already been made to the complainant on 13.11.2017 before the due date of possession but the complainant has defaulted in making timely payment as he did not anticipate





that possession will be offered in advance and thus, he did not have the finances to make the remaining payment and arrears are due on his part. Accordingly, the complainant is liable to pay the balance amount due to the respondent along with prescribed rate of interest i.e.10.75%. Correspondence done by the respondent with the buyer w.r.t. cancellation of unit/flat will stands nullified. No holding and restoration charges will be charged by the respondent from the complainant.

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

55. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- (i) The complainant is directed to pay the balance amount due to the respondent along with prescribed rate of interest i.e.10.75% per annum on account of delay in payment against the unit in question.
- (ii) Correspondence done by the respondent with the buyer w.r.t. cancellation of unit/flat will stands nullified. No holding and restoration charges will be charged by the respondent from the complainant.





56. As the project is registerable and has not been registered by the promoter thereby violating section 3(1) of the Act, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Act *ibid*. A copy of this order be endorsed to registration branch for further action in the matter.

57. The complaint is disposed of accordingly.

58. The order is pronounced.

59. Case file be consigned to the registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Subhash Chander Kush)**

Member

Date: 07.02.2019

Judgement Uploaded on 11.03.2019

