

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 26.02.2019
Complaint No.	644/2018 Case Titled As Mr. Pankaj Singh Sishodia V/S M/S Apex Buildwell Pvt. Ltd.
Complainant	Mr. Pankaj Singh Sishodia
Represented through	Complainant in person with Shri Ashutosh Kumar Advocate.
Respondent	M/S Apex Buildwell Pvt. Ltd.
Respondent Represented through	Shri Sandeep Choudhary Advocate for the respondent.
Last date of hearing	22.1.2019
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.

Arguments heard.

Averments made by the counsel for the respondent shall be adjudged at the time of registering of the project.

Report of Local Commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

"Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%."

As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

A plea has been taken by the counsel for the respondent that the licence could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.1.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

As per clause 3 (a) of the Builder Buyer Agreement dated 3.3.2017 for unit No.118, 1st floor, tower Jasmin, in project "Our Homes" Sector 37-C, Gurugram, possession was to be handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 2.12.2013 + 6 months grace period which comes out to be 2.6.2017. However, the respondent has not delivered the unit in time. Complainant has already paid

Rs.1,60,000/- to the respondent against a total sale consideration of Rs.16 Lakhs. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 2.6.2017 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

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

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

Samir Kumar
(Member)
26.2.2019

Subhash Chander Kush
(Member)

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

Complaint No. : 644 of 2018
First date of hearing: 13.12.2018
Date of Decision : 26.02.2019

Mr. Pankaj Singh Sishodia
R/O 1497, Sector 10 A, Police Station,
Gurugram

Complainant

Versus

M/s Apex Buildwell Pvt. Ltd.
Regd. Office: 14A/36, WEA,
Karol Bagh, New Delhi-110005.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Pankaj Singh Sishodia Complainant in person
Shri Karan Goval Advocate for the complainant
Shri Sandeep Choudhary Advocate for the respondent

ORDER

1. A complaint dated 01.08.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Pankaj Singh Sishodia, against the promoter M/s Apex Buildwell Pvt. Ltd., on account of violation of the clause 3(a) of the apartment



buyer's agreement executed on 03.03.2013 in respect of apartment number 118, 1th floor, block/tower 'Jasmine' in the project 'Our Homes' for not handing over possession on the due date i.e. 2nd June 2017 which is an obligation under section 11(4)(a) of the Act ibid.

2. Since the builder buyer's agreement dated 03.03.2013 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application under section 34(f) of the Act ibid for non-compliance of obligation on the part of the respondent.
3. The particulars of the complaint case are as under: -

Nature of project: multi-storey apartments

DTCP Licence no. 13 of 2012

The company has got approved zoning plans for the affordable group housing project from DTCP memo bearing number 3043 dated 24.02.2012.

1.	Name and location of the project	"Our Homes", Sector
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		37-C, Gurugram
2.	RERA registered/ not registered.	Not registered
3.	Apartment/unit no.	118 on 1 th floor, block/tower 'Jasmine'
4.	Apartment measuring	48 sq. mtr. of carpet area
5.	Booking date	25.02.2017
6.	Date of execution of apartment buyer's agreement	03.03.2017
7.	Payment plan	Time linked payment plan
8.	Basic sale price	Rs.16,00,000/-
9.	Total amount paid by the complainant till date	Rs.1,60,000/-
10.	Date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months grace period from the date of commencement of construction upon receipt of all approvals)	02.06.2017
11.	Consent to establish granted on	02.12.2013
12.	Delay in handing over possession till date	1 year 05 months
13.	Penalty clause as per apartment buyer's agreement dated 1.03.2013	Clause 3(c)(iv) of the agreement i.e. Rs.10/- per sq. ft per month of the carpet area of the said flat.



4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be

delivered by 02.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the carpet area of the said flat for the period of such delay as per clause 3(c)(iv) of apartment buyer's agreement dated 03.03.2017. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 13.12.2018. The case came up for hearing on 13.12.2018, 22.01.2019 and 26.02.2019. The reply filed on behalf of the respondent has been perused. The complainant has filed a rejoinder dated 10.02.2018 wherein he has re-asserted the contentions raised in the complaint.

Facts of the complaint

6. The complainant submitted that the respondent 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



respondent while launching and advertising any new housing project always commit and promise to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them.

7. The complainant submitted that the respondent is 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 timeline and that is the prime factor which a consumer would see while purchasing his/her dream home. 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 consumer will not go through the hardship of paying rent along-with the instalments of home loan in the case of other builders in market.



8. The complainant submitted that the relying upon the advertisement of the respondent, the complainant had applied in affordable housing project under Govt. of Haryana Affordable Housing Scheme and thus allotted apartment no.118, 1st floor, tower Jasmine having a carpet area of approximately 48 Sq. meters (where the carpet means the area enclosed under the exterior walls of the said apartment) with an exclusive right to use of on Village Gadoli-Khurd, Sector-37, Tehsil and District Gurugram together with the proportionate undivided, unidentified, impartible interest in the land underneath, the said housing complex with the right to use the common areas and facilities in the said housing complex vide apartment buyers' agreement dated 18.02.2013.

9. The complainant submitted that facts leading to delay in possession are as under:-

- i. That at the time of booking of aforesaid unit it was duly assured, represented and promised by the respondent that the said unit and real estate project will be ready to occupy by the complainant within a



period of 36 months from the date of commencement of construction of the complex with a grace period of six (6) months.

ii. That since the date of booking , the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.

iii. That the respondent failed to develop so called project within the period of thirty six months with grace period of 6 months.

10. The complainant submitted that he is concerned about the construction quality as when we had checked the internal wall plaster of my allotted unit, its sand is came to my hand and it seems that it was not mixed with the right proportion of cement. As he is not from the construction background and did a very basic test but this plaster material itself shows that the intention of respondent is not on quality but it is just to collect money and spend as low as possible on the construction. So, he request here, that some concerned



authority who issued license to the builder (under this Government Affordable Housing Project), should be accountable and have some mechanism to check the basic construction quality at this stage at least. If he don't have any such mechanism at present, we should add it immediately at least when buyers want to check this otherwise there will be a risk of life for more than 1100 families (approx. 5000 lives) who will start living there. This is important to mention here that this is not a private project and the license is issued under a government affordable housing scheme. Most of the people entered in this project that there should be some Govt authority checks and responsibilities and project will be completed within timeframe with good construction quality. Instead of playing a blame game by the builder and authority after some mis happening with the lives of approx. 5000 people, we request to please keep a check on its basic construction quality that he has built till now and for further remaining important work like electrification, lifts, fire safety etc. that is still pending as respondent will try to use / deploy cheapest



and lowest category material in absence of any such checks from the civic authority. This is the utmost factor of the complaint as this is not related to hard earned money / financial losses of the buyer but it is directly related to the life of buyer and his family so we request the entire hon'ble RERA committee to please record this fact and should impose some quality check mechanism which is also reachable to buyers for their satisfaction.

11. The complainant submitted that he had tried his level best to reach the representatives of Respondent to seek a satisfactory reply in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying monthly rent and extra Interest on his home loan due to delay in getting possession of the said unit. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.



12. The complainant submitted that some buyer of this projects have filed complaint about this delay in CM window & one of the complaint has been forwarded to DTP Office, Sec-14, Gurugram. On the request of home buyers , Mr. R.S. Batt visited the site along with ATP Mr. Manish on 15.01.2018 and at that point we came to know that builder license has been expired and not renewed. We all requested Mr. R.S. Batt to please take some action & help us to get this project complete as early as possible and I came to know that our request to Mr. R. S. Batt (DTP) helped a lot in the process of getting his license renewed. The reason to mention it here is that we should not be sufferer on account of any license expiration as our complaint helped him in this matter and moreover we paid all the demands on time even in time of license expiry. This is respondent's responsibility to chase for license renewal before a sufficient time of expiry & moreover chase with regular follow up till its renewed.



13. The complainant submitted that it seems that the funds collected from this project buyers moved outside in buying

other assets for their own interest . Even the new office building of Respondent at Sec-32, Gurugram has been commenced in the year of 2014. There are 2 reasons for mentioning this point here and these are

- i. That the respondents and their families flourish a lot in this time span on cost of all home buyers and their families mental and financial burden.
- ii. We came to know from some sources that Respondents has to pay lot of fine / fees to Govt. authorities for this delay and he is not willing to pay these fines for which solely respondent is responsible and this is further delaying the overall project.

Issues raised by the complainants are as follow:

- i. Whether the respondent delayed in handing over the possession of the unit to the complainant?
- ii. Whether the quality of construction/building material is of low quality due to which by touching the wall plaster its sand comes in hand?



- iii. Whether the complainant is entitled to interest for the unreasonable delay in handing over the possession?

Relief sought:

The complainant is seeking the following relief:

- i. Interest charged by the builder @ 18% p.a. on delayed payment so therefore respondent should pay as per below details.
- ii. Respondent should pay same interest 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to calculated as and when the thirty six months was completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above mentioned interest rate till the date of order pendente -lite
- iii. Direct the respondent to pay compensation of Rs. 2,00,000/-may increase as per rent working to complainant, for mental agony, harassment and



financial losses, as per Sec.18 read with Sec.19 of the RERA 2016.

- iv. To pay a sum of Rs. 10,000 as Cost of litigation in this complaint.
- v. Any other relief(s), which the hon'ble authority may deems fit and proper be also granted in favour of the complainant and against the respondent.

Respondent's reply

14. The respondent submitted that it is at the very outset submitted that the complaint under reply is neither tenable nor maintainable and has been filed with an oblique motive and intent to gain wrongfully.
15. The respondent submitted that the complainant booked the flat in question with open eyes and an apartment buyer's agreement dated 3.03.2017 was executed and only an amount of Rs. 1,60,000/- has been against the total consideration of Rs. 16,00,000/- and even otherwise as per the facts stated by the complainant there is no delay in delivering the possession and the complainant does not have any cause of action in filing the



present complaint and the complainant is estopped from filing the present complaint.

16. The respondent submitted that the respondent is very well committed to the development of the real estate object and the delay being occasioned for delivering the possession of the project as a whole is only because of explainable and excusable causes beyond the control of the respondent. Firstly, on grant of license bearing no. 13/2012 dated 22.02.2012 the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 07.05.2013 and the consent to establish by the office of Haryana state pollution control board, Panchkula was only granted on 02.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the License so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016 the respondent is seeking the renewal of the License from the office of director general town & country planning, Haryana which is yet to be received despite best efforts of the respondent. Further the provisions of real estate



(Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license No. 13/2012 the same got dismissed vide Orders dated 19.01.2018 leading to further operational obstacles in completion of the project. And since then the respondent is hard trying to avail all the approvals, permissions and sanctions from the relevant authorities. That had the approvals and license be granted in time the respondent, given the speed and efficiency of construction would have duly completed the project within the permissible time period by May, 2017.

17. The respondent submitted that he is suffering due to the delay that is being occasioned and has to face extra charges and costs and expenses in getting all the above permissions renewed. Pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date is much more advanced than the amount received and the complainant has very recently booked the flat with complete eyes open to all the above facts.



18. The respondent submitted that the reliefs prayed for the in the case pertains only for adjudication of the compensation, therefore, this hon'ble authority lacks jurisdiction in the present matter and only the Adjudicating Officer appointed u/s 71 of the Real Estate (Regulation and Development) Act, 2016 is empowered for the same and hence the present complaint filed under Rule 28 being non maintainable is liable to be rejected/dismissed right-away.
19. The respondent submitted that the complainant does not have any real cause of action to pursue the present complaint and the complainant has filed the present complaint only to harass the respondent builder and gain wrongfully. That the complainant and his associates finding a good opportunity to harass and extort money from the respondent as the license for the project is under the process of renewal are illegally entering into a conspiracy of defaming and harassing the respondent builder for wrongful gains by every possible manner and are even disturbing the construction at the site by illegally intimidating the staff there whereas the respondent is very much committed in delivering the possession of the



project. And the complainant is estopped in filing the present complaint as per the apartment buyer's agreement executed with the parties.

20. The respondent submitted that the respondent company is very much committed to develop the real estate project named Our Home located at Sector 37 C, Gurugram. And the construction work of the same is on full swing and as on date the construction the status is as under:

Civil Structure	:	Complete
Internal Plaster	:	Complete
White Wash	:	Under Process
Floorings	:	Under process - 68 % complete
Electric fittings	:	Under process – 70% complete

And the respondent subject to other causes beyond its control is quite scheduled to deliver the possession of the first phase of the project in December 2018 which comprises 432 flats in 10 towers and the complete delivery in 2nd phase in March, 2019 which comprises the 16 towers having 704 flats.



21. The respondent submitted that the respondent company being duty bound and committed to the project had filed an application for renewal of application way back on 11.02.2016 along with the renewal fees of Rs. 10,00,000/-. However, due to policy issues the License could not be renewed so far. And further due to the non renewal of the license the application for registration with the hon'ble HARERA could not be allowed and the application of the respondent was rejected. Given such rejection of the RERA registration the bankers are also not allowing the smooth finances and the respondent company had to suffer further but in any case the respondent company is not letting such issues come in way to deliver the project. The copy of license bearing no. 13 of 2012 dated 22.02.2012 is annexed herewith as **annexure R2**, Copy of BR-III, issued for sanction of building plans dated 7.05.2013 is annexed herewith as **annexure R3**, Copy of issue of consent to Establish certificate dated 2.12.2013 issued by Haryana State Pollution Control Board, Panchkula is annexed herewith as **annexure R4**. Copy of application for renewal of license dated 11.2.2016 is annexed herewith as **annexure R5**. Copy of



rejection of RERA registration is annexed herewith as **annexure R6.**

REJOINDER ON BEHALF OF THE COMPLAINTANT

22. The respondent contention of accusing the complainant to abuse the process of law is an untenable argument as the issues raised in the captioned complaint arises out of the non-adherence of the respondent to the terms and conditions of the builder buyer agreement ('BBA') dated **03.03.2017**. The respondent has also specifically violated the provisions of the act and that this hon'ble authority has the competent jurisdiction to adjudicate the present dispute and pass consequential orders

23. The BBA dated **30.03.2017** specified that the date of possession of the said flat will be 36 months from the **date of commencement of the construction of the project.** It is further stated that the hon'ble authority vide order dated 05.09.2018 in complaint no. 383 of 2018 has held the date of possession of this project 'Our Homes' be deemed as 02.06.2017. A tandem reading of the clauses of the BBA and



the order dated 05.09.2018, sets out that there is a severe delay in handing over the possession of the said flat and the plea of the builder of estopping the complainant from filing the present complaint is to be dismissed on the face of it.

24. The brazen assertion of respondent stating that the delay in payment of due is vehemently denied and disputed. It is submitted that the principally the complainant has always abided the demand letters whenever raised and paid the same as and when due. However, it is to be brought on record that the complainant though submitted the cheques on several occasions before the due date, however, the printed receipt generated and provided by the respondent always mentioned a date post the due date. That is to be brought on record that such an act on part of the builder is arbitrary and biased causing severe prejudice to the complainant. That in no situation there has been any severe delay on the demands raised by the respondent. That wherever there has been a delay on part of the complainant, the respondent has rightly charged an interest @ 18% p.a.



25. At this stage, it is also necessary to highlight that the respondent has claimed that over civil structure and internal plaster is complete for the project and more of less the project is nearing completion. However, it is reiterated that having a layman view on the project as a toto it can be construed that not even 60% of the project is completed. That it further understood that the respondent has previously submitted before the DTCP stating that the flats would be delivered by June 30, 2018. However, it is an admission on the respondent that till date no such delivery of flats has taken place. It is also placed on record that the respondent by way of the reply is undertaking to deliver 432 flats by December 2018 and the balance in March 2019. Thus at this juncture it is prayed that same may be recorded and the hon'ble authority may be leased to determine the interest to be computed from the date of possession as per the BBA till the date of actual possession

26. It is further highlighted that the respondent has provided that the HSPCB has provided the license only on 02.12.2013 and only after that the respondent could undertake construction. However, it is submitted that the respondent had already in



the year 2013 raised demand invoices to the effect of construction on the ground that of construction linked plan. That the argument of undertaking the construction post December 2013 is itself self-contradictory provided the respondent continuously raised invoices on the ground of construction being undertaken.

27. The fact that license of the respondent expired and was pending renewal has no particular relevance with the complainant. It is stated though the license is still pending, the same was not an embargo on the respondent to raise the timely demand invoices. The complainant despite being under severe financial stress still continued to honour all the demands raised timely. It is also submitted that such delay in renewal has nothing to do with the determination of interest for the complainant and the date of possession as per the BBA. That cost of such delay cannot be passed on to complainant who happens to belong to lower middle class background and has tried all his means to successfully purchase the flat by honoring the terms and conditions as set out in the BBA.



Determination of issues:

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

28. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 3(a) of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. In the present case, the consent to establish was granted to the respondent on 02.12.2013. Therefore, the due date of handing over possession will be computed from 02.12.2013. The clause regarding the possession of the said unit is reproduced below:

"3(a) offer of possession

...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be



required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities....”

Accordingly, the due date of possession was 2nd June 2017 and the possession has been delayed by one year six months and three days till the date of decision. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said apartment as per clause 3(c)(iv) of apartment 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 02nd June 2017 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under



section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

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 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:

Powers of Authority to issue directions

29. 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.

30. With respect to the **third issue** raised by the complainant, as the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable 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.
31. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.
32. With respect to the **second issue**, the complainant has provided no proof but made only assertion with respect to sub-standard quality of construction in the complaint.

Findings of the authority

33. **Jurisdiction of the authority-** The project “Our Homes” in sector 37-C, 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.

34. The preliminary objections raised by the respondent regarding subject matter 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.

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

38. Report of Local Commissioner dated 21.01.2019 has been received and placed on record. The relevant portion of LC report is as under:-

“Since the estimated cost and an expenditure incurred figures are available for the complete project i.e. for tower in Pocket -A and Pocket-B. The overall progress of the project has been assessed on the basis of expenditure and actual work done at site on 16.01.2019. Keeping in view the above facts and figures, it is reported that the work has been completed with respect to financially is 68.12% whereas the work has been completed physical of towers in Pocket-A is about 80% and tower in Pocket-



B is 50% approximately. Hence, the overall completion of the project physically is about 62.88%.”

39. As per averments made by the counsel for the respondent, the project shall be completed within a period of 4 months from the date of renewal of licence by DTCP Haryana. The authority expects that the matter will be expedited for renewal of the licence by the office of DTCP at the earliest. A letter in this regard may be written to DTCP Haryana by registration branch.

40. A plea has been taken by the counsel for the respondent that the licence could not be renewed, as such, the pace of project has been slowed down. On the previous date of hearing i.e. 22.01.2019, DTP was directed to appear in person, but he has failed to appear before the authority, as such a penalty of Rs.5,000/- is imposed upon DTP on account of non-compliance of directions of the authority.

41. As per clause 3 (a) of the builder buyer agreement dated 03.03.2017 for unit no.118, 1st floor, tower Jasmin, in project “Our Homes” Sector 37-C, Gurugram, possession was to be



handed over to the complainant within a period of 36 months or from the date of consent to establish i.e. 02.12.2013 + 6 months grace period which comes out to be 02.06.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.1,60,000/- to the respondent against a total sale consideration of Rs.16 Lakhs. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **02.06.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

Decision and directions of the authority

42. 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 issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% per annum w.e.f 02.06.2017



as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- iii. As the project is registerable and has not been registered by the promoters, 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.

43. The order is pronounced.

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

(Samir Kumar)
Member

(Subhash Chander Kush)
Member



Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.02.2019

Judgement Uploaded on 12.03.2019