

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

Complaint No.: 1216 of 2018
Date of First Hearing: 02.01.2019
Date of Decision : 07.02.2019

M/s. Denon India Ltd.
(Through its A.R. Sh. Mohan Kumar Nair)
Regd. office: - 18, Community Centre,
Mayapuri Phase I, New Delhi- 110064.

...Complainant

Versus

1. M/s Ireo Private Limited
(Through its Director)
Office at:-Ireo Campus, Archview Drive, Ireo
City, Golf Course Extension Road,
Gurugram, Haryana - 122101.

2. M/s. Nucleus Conbuild Pvt. Ltd.
Office at: 304, Kanchan House,
Karampura Commercial Complex,
New Delhi - 110015.

...Respondents

CORAM:

Shri Samir Kumar
Shri SubhashChander Kush

Member
Member

APPEARANCE:

Shri Dhruv Dutt
Shri Mohan Kumar Nair

Advocate for the complainant
Manager on behalf of
complainant company.

Shri M.K. Dang

Advocate for the respondent

ORDER

1. A complaint dated 09.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act,





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2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant M/s. Denon India Ltd. through its authorized representative Mr. Mohan Kumar Nair, against the respondents M/s Ireo Pvt. Ltd. through its director and M/s. Nucleus Conbuild Pvt. Ltd. through its directors on account of violation of clause 14.3 of apartment buyer's agreement dated 26.10.2012 for apartment no. D18_42, 17th floor, tower D with a super area of 6388.05 sq. ft. in the project "Ireo Gurgaon Hills", located at sector 2, gwal Pahari, Gurugram. The violation is being done by the promoter for not giving possession on due date i.e. 21.08.2017, which is an obligation under section 11 (4) (a) of the Act *ibid*.

2. Since, the apartment buyer agreement was executed on 26.10.2012 prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, hence the penal proceedings cannot be initiated retrospectively. Therefore, keeping in view the status of the case and submissions made by the parties, the authority has decided to treat this complaint as an



application for non-compliance of contractual obligation on the part of promoter in terms of the provision of section 34(f) of the Act ibid.

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

1.	Name and location of the project	"Ireo Gurgaon Hills" in Tower- B, sector 2, Gwal Pahari, Gurugram
2.	Allotted apartment/ unit no.	D18-42, 17 th floor, tower D
3.	Project area	11.07 acres
4.	RERA Registered/ unregistered	Applied on 08.08.2018, status pending
5.	Nature of real estate	group housing colony
6.	DTCP license no.	36 of 2011
7.	Date of booking	30.04.2012 (Annx C/6)
8.	Date of offer of allotment	19.07.2012 (Annx C/6)
9.	Date of apartment buyer agreement	26.10.2012 (Annx C/7)
10.	Total consideration as per payment plan	Rs. 6,25,76,146/- (Annx C/6)
11.	Total amount paid by the complainant	Rs. 5,61,47,570.69/- (Annx C/54) 6,27,35,079/-
12.	Payment plan	Construction linked payment plan
13.	Due date of delivery of possession	26.12.2017 (Note - approval for firefighting scheme was granted on 26.12.2013)
	Note: as per clause 14.3 of agreement - 42 months from date of approval of building plan or other formalities with regard to fire approvals, whichever is later + 180 days (6 months') grace period.	



14.	Approval of building sanction plan.	Not filed.
15.	Delay of number of months/ years in delivery of possession till the date of order.	One year, one months and 12 days.
16.	Penalty clause as per apartment buyer agreement dated 26.10.2012	Clause 14.4- If company fails to offer possession of the said apartment, it shall be liable to pay compensation@ Rs. 10/- per sq. ft. of the super area.
17.	Status of the project	Application for grant of part occupation certificate made by the respondent on 24.09.2018. (Annx R-14)

3. The details provided above have been checked as per record of the case file available, an apartment buyer agreement dated 26.10.2012 is available on record for apartment no. D18-42, 17th floor according to which the possession of the aforesaid unit was to be delivered on 26.12.2017. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondents appeared on 02.01.2019 The





case came up for hearing on 02.01.2019 and 07.02.2019.

The reply has been filed by the respondents on 26.10.2018 which has been perused by the authority.

Facts of the complaint: -

5. Briefly put facts relevant for the disposal of the present complaint are that on 30.04.2012 complainant through its authorized representative booked an apartment measuring 6388 sq. ft. in the project named "Ireo Gurgaon Hills" in sector 2, Gwal Pahari, Gurugram. Pursuant to aforesaid booking respondent vide allotment letter dated 19.07.2012 allotted an apartment bearing no. D18_42 on the 17th floor, tower D of the project in favour of complainant.

6. On 26.10.2012, apartment buyer agreement for allotted apartment was entered into between the parties wherein as per clause 14.3, the possession should have been delivered within 42 months from date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days' grace period. The complainant has made total payment of Rs. ~~5,64,74,777/-~~ ^{6,27,35,079/-} as against the total consideration of Rs.6,26,27,634/- on several occasions as



*Corrected wide order
dated 28/03/19*



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and when asked by the respondents. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondents.

7. The complainant further submitted that the construction was not being carried on and possession was not handed over in May, 2017 within the stipulated time of 48 months (including the grace period of 180 days) from the approval of building plan in May 2012 despite repeated reminders from the complainant.

9. The complainant alleged that respondents did not provide the details of construction status and RERA registration despite collecting substantial amount of sales consideration and requests being made by them. Hence, the complainant was constrained to file the present complaint.



Issues to be decided: -

- i. **Whether there is delay on the part of the respondents in delivering the possession of the apartment? If yes, how much delay?**

- ii. **Whether the respondents have wilfully failed to deliver the possession of the allotted apartment within stipulated period as per the terms of agreement?**
- iii. **Whether the complainant is entitled to interest for every month of delay on account of delay in handing over of possession?**
- iv. **Whether the respondent is liable to pay interest on the total amount received from the complainant from the date of payment till handing over the possession of the apartment?**

Reliefs sought: -

- i. **Direct the respondents to handover the possession of the apartment in question alongwith interest on the total amount paid by the complainant till handing over of the possession.**
- ii. **Direct the respondents to pay interest for every month of delay till the handing over of the possession.**





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iii. Direct the respondent to pay Rs. 75,000/- as cost of the proceedings.

Respondents' reply: -

10. The respondents submitted that the alleged frail allegations levelled under the guise of the present complaint, are totally false, incorrect, baseless and misconceived.
11. The respondents submitted that as per clause 54 of schedule I of the booking application and clause 14.3 of the agreement, the complainant was to receive possession of the apartment within a period of 42 months from the date of approval of the building plan or fulfilment of preconditions imposed thereunder. The parties had also agreed under the clause that a grace period of 180 days' would be provided to the respondent for any unforeseen delay. In the present case, the fire safety scheme approval was granted on 26.12.2013. Therefore, the precondition of obtaining all the requisite approvals was fulfilled only on 26.12.2013. The respondent further submitted that as per clause 14.5 of the apartment buyer agreement the complainant has agreed to further extended period of 12





months from the end of grace period. Therefore, 60 months' from 26.12.2013 shall expire on 26.12.2018.

12. The respondents submitted that as per the provisions of Real Estate (Regulation and Development) Act, 2016 the promoter is liable to compensate the allottee only in the event that the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale. Thus, the present complaint seeking compensation is pre-mature and without case.

13. The respondents have submitted that the payments were demanded from the complainant as per the payment plan but despite this fact, the complainant remained defaulter in making payments of instalments. The respondents have each and every allegations of the complainant and contended that the complaint is liable to be dismissed on merits.

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





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"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."

16. 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 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."

Determination of issues:-

17. As regards the **issue no. i, ii, iii and iv** raised by the complainant, from the perusal of record it is found that as per clause 14.3 of the agreement dated 26.12.2012, the possession of the unit was to be handed over to the complainant within a period of 42 months plus 180 days' (6 months') grace period from the date of approval of building plans and/or fulfilment of the pre-conditions imposed thereunder. In the present case, the fire safety scheme approval was received for the project in question by the respondents from the municipal corporation,



Gurugram on 26.12.2013 (**Annx R15**), hence, the due date for delivery of possession on calculation comes out to be 26.12.2017. Relevant clause 14.3 of the agreement be read as under:-

"subject to force majeure, as defined herein and further subject to the allottee having complied with all its obligations under the terms and conditions of this agreement, and not having defaulted under any provision(s) of this agreement including but not limited to the timely payment of the total sale consideration, registration charges, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the applicant within a period of 42 months from the date of approval of the building plans and/or fulfilment of the pre-conditions imposed thereunder. The allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ('Grace Period'), after the expiry of said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company".

23. The respondents have got approval of building plan from DTCP on 17.05.2012 and approval from fire safety scheme from the municipal corporation, Gurugram only on 26.12.2013. The authority is of the view that due date of handing over the possession should have been counted from the date they received the fire NOC which is of cardinal importance to the builder and if we count the date of offer of possession i.e. 42





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months + 180 days' grace period + approval for fire safety scheme, then the date of possession comes out **to be 26.12.2017**. However, no possession has been delivered to the complainant till date. Hence, the authority is of the considered view that there is a delay of more than a year on the part of the respondents in offering possession of the subject apartment. Hence, the complainant is entitled for the delay possession charges at the prescribed rate of 10.75% for delay so caused by the respondent in delivering the possession as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

Findings of the authority: -

22. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated



in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

23. Keeping in view the status of the project and intervening circumstance, the authority is of the view that the respondent has failed to deliver the possession of the apartment as per the terms of agreement dated 26.10.2012 till date. As such complainant is entitled for delayed possession charges at the prescribed rate of interest @10.75% p.a. as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

Decision and directions of the authority: -

24. Accordingly, the authority after hearing the arguments of both the parties and exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents-

- i. The respondents shall pay interest @ 10.75% p.a. on the paid amount of complainant as delayed possession





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charges from due date of delivery of possession i.e. 26.12.2017 till actual handing over of possession, failing which the complainant is entitled to withdraw from the project.

- ii. The arrears of interest accrued so far from due date of delivery of possession till the date of order shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly interest till handing over the possession be paid before 10th of subsequent month. Amount, if any, due from the complainant may be adjusted from the awarded delayed possession charges.

26. The order is pronounced.

27. Case file be consigned to the registry.



(Sanjiv Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated: -

Corrected Judgement uploaded on 10.04.2019



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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 07.02.2019
Complaint No.	1216/2018 Case Titled As Denon India Ltd V/S Ireo Pvt Ltd
Complainant	Denon India Ltd
Represented through	Shri Mohan Kumar Nair – Manager on behalf of the complainant with Shri Dhruv Dutt Sharma Advocate.
Respondent	Ireo Pvt Ltd
Respondent Represented through	Shri M.K.Dang Advocate for the respondent.
Last date of hearing	2.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

As per averments of respondent project is not registered but they have applied for registration

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.

As per clause 14.3 of the Builder Buyer Agreement dated 26.10.2012 for unit No. D-18-42, 17th floor, Tower-D, in project "Ireo Gurugram Hills", Sector-2, Gawal Pahari, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of approval of building plans or other formalities with regard to fire approval + 6 months

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

grace period + four months for getting fire approval which comes out to be 21.12.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.5,64,74,777/- to the respondent against a total sale consideration of Rs.6,25,76,148/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 21.12.2017, 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.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

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

Sam~~X~~ Kumar
(Member)
7.2.2019

Subhash Chander Kush
(Member)

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

Complaint No.: 1216 of 2018
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M/s. Denon India Ltd.
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Versus

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(Through its Director)
Office at:-Ireo Campus, Archview Drive, Ireo
City, Golf Course Extension Road,
Gurugram, Haryana - 122101.

2. M/s. Nucleus Conbuild Pvt. Ltd.
Office at: 304, Kanchan House,
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New Delhi - 110015.

...Respondents

CORAM:

Shri Samir Kumar
Shri SubhashChander Kush

Member
Member

APPEARANCE:

Shri Dhruv Dutt
Shri Mohan Kumar Nair

Advocate for the complainant
Manager on behalf of
complainant company.

Shri M.K. Dang

Advocate for the respondent

ORDER

1. A complaint dated 09.10.2018 was filed under section 31
of the Real Estate (Regulation and Development) Act,





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Complaint No. 1216 of 2018

2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant M/s. Denon India Ltd. through its authorized representative Mr. Mohan Kumar Nair, against the respondents M/s Ireo Pvt. Ltd. through its director and M/s. Nucleus Conbuild Pvt. Ltd. through its directors on account of violation of clause 14.3 of apartment buyer's agreement dated 26.10.2012 for apartment no. D18_42, 17th floor, tower D with a super area of 6388.05 sq. ft. in the project "Ireo Gurgaon Hills", located at sector 2, gwal Pahari, Gurugram. The violation is being done by the promoter for not giving possession on due date i.e. 21.08.2017, which is an obligation under section 11 (4) (a) of the Act ibid.

2. Since, the apartment buyer agreement was executed on 26.10.2012 prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, hence the penal proceedings cannot be initiated retrospectively. Therefore, keeping in view the status of the case and submissions made by the parties, the authority has decided to treat this complaint as an



application for non-compliance of contractual obligation on the part of promoter in terms of the provision of section 34(f) of the Act *ibid*.

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

1.	Name and location of the project	"Ireo Gurgaon Hills" in Tower- B, sector 2, Gwal Pahari, Gurugram
2.	Allotted apartment/ unit no.	D18-42,17 th floor, tower D
3.	Project area	11.07 acres
4.	RERA Registered/ unregistered	Applied on 08.08.2018, status pending
5.	Nature of real estate	group housing colony
6.	DTCP license no.	36 of 2011
7.	Date of booking	30.04.2012 (Annx C/6)
8.	Date of offer of allotment	19.07.2012 (Annx C/6)
9.	Date of apartment buyer agreement	26.10.2012 (Annx C/7)
10.	Total consideration as per payment plan	Rs. 6,25,76,146/- (Annx C/6)
11.	Total amount paid by the complainant	Rs. 5,64,45,570.69/- (Annx C/54)
12.	Payment plan	Construction linked payment plan
13.	Due date of delivery of possession	26.12.2017 Note: as per clause 14.3 of agreement - 42 months from date of approval of building plan or other formalities with regard to fire approvals, whichever is later + 180 days (6 months') grace period.
		(Note - approval for firefighting scheme was granted on 26.12.2013)





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14.	Approval of building sanction plan.	Not filed.
15.	Delay of number of months/ years in delivery of possession till the date of order.	One year, one months and 12 days.
16.	Penalty clause as per apartment buyer agreement dated 26.10.2012	Clause 14.4- If company fails to offer possession of the said apartment, it shall be liable to pay compensation@ Rs. 10/- per sq. ft. of the super area.
17.	Status of the project	Application for grant of part occupation certificate made by the respondent on 24.09.2018. (Annx R-14)

3. The details provided above have been checked as per record of the case file available, an apartment buyer agreement dated 26.10.2012 is available on record for apartment no. D18-42,17th floor according to which the possession of the aforesaid unit was to be delivered on 26.12.2017. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondents appeared on 02.01.2019 The



case came up for hearing on 02.01.2019 and 07.02.2019.

The reply has been filed by the respondents on 26.10.2018 which has been perused by the authority.

Facts of the complaint: -

5. Briefly put facts relevant for the disposal of the present complaint are that on 30.04.2012 complainant through its authorized representative booked an apartment measuring 6388 sq. ft. in the project named "Ireo Gurgaon Hills" in sector 2, Gwal Pahari, Gurugram. Pursuant to aforesaid booking respondent vide allotment letter dated 19.07.2012 allotted an apartment bearing no. D18_42 on the 17th floor, tower D of the project in favour of complainant.

6. On 26.10.2012, apartment buyer agreement for allotted apartment was entered into between the parties wherein as per clause 14.3, the possession should have been delivered within 42 months from date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days' grace period. The complainant has made total payment of Rs. 5,64,74,777/- as against the total consideration of Rs.6,26,27,634/- on several occasions as





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and when asked by the respondents. However, till date the possession of the said unit has not been handed over to the complainant despite making all requisite payments as per the demands raised by the respondents.

7. The complainant further submitted that the construction was not being carried on and possession was not handed over in May, 2017 within the stipulated time of 48 months (including the grace period of 180 days) from the approval of building plan in May 2012 despite repeated reminders from the complainant.

9. The complainant alleged that respondents did not provide the details of construction status and RERA registration despite collecting substantial amount of sales consideration and requests being made by them. Hence, the complainant was constrained to file the present complaint.



Issues to be decided: -

- i. **Whether there is delay on the part of the respondents in delivering the possession of the apartment? If yes, how much delay?**

- ii. **Whether the respondents have wilfully failed to deliver the possession of the allotted apartment within stipulated period as per the terms of agreement?**
- iii. **Whether the complainant is entitled to interest for every month of delay on account of delay in handing over of possession?**
- iv. **Whether the respondent is liable to pay interest on the total amount received from the complainant from the date of payment till handing over the possession of the apartment?**

Reliefs sought: -

- i. **Direct the respondents to handover the possession of the apartment in question alongwith interest on the total amount paid by the complainant till handing over of the possession.**
- ii. **Direct the respondents to pay interest for every month of delay till the handing over of the possession.**





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iii. Direct the respondent to pay Rs. 75,000/- as cost of the proceedings.

Respondents' reply: -

10. The respondents submitted that the alleged frail allegations levelled under the guise of the present complaint, are totally false, incorrect, baseless and misconceived.
11. The respondents submitted that as per clause 54 of schedule I of the booking application and clause 14.3 of the agreement, the complainant was to receive possession of the apartment within a period of 42 months from the date of approval of the building plan or fulfilment of preconditions imposed thereunder. The parties had also agreed under the clause that a grace period of 180 days' would be provided to the respondent for any unforeseen delay. In the present case, the fire safety scheme approval was granted on 26.12.2013. Therefore, the precondition of obtaining all the requisite approvals was fulfilled only on 26.12.2013. The respondent further submitted that as per clause 14.5 of the apartment buyer agreement the complainant has agreed to further extended period of 12





months from the end of grace period. Therefore, 60 months' from 26.12.2013 shall expire on 26.12.2018.

12. The respondents submitted that as per the provisions of Real Estate (Regulation and Development) Act, 2016 the promoter is liable to compensate the allottee only in the event that the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale. Thus, the present complaint seeking compensation is pre-mature and without case.

13. The respondents have submitted that the payments were demanded from the complainant as per the payment plan but despite this fact, the complainant remained defaulter in making payments of instalments. The respondents have each and every allegations of the complainant and contended that the complaint is liable to be dismissed on merits.

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





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"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."

16. 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 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."

Determination of issues:-

17. As regards the **issue no. i, ii, iii and iv** raised by the complainant, from the perusal of record it is found that as per clause 14.3 of the agreement dated 26.12.2012, the possession of the unit was to be handed over to the complainant within a period of 42 months plus 180 days' (6 months') grace period from the date of approval of building plans and/or fulfilment of the pre-conditions imposed thereunder. In the present case, the fire safety scheme approval was received for the project in question by the respondents from the municipal corporation,





Gurugram on 26.12.2013 (**Annx R15**), hence, the due date for delivery of possession on calculation comes out to be 26.12.2017. Relevant clause 14.3 of the agreement be read as under:-

"subject to force majeure, as defined herein and further subject to the allottee having complied with all its obligations under the terms and conditions of this agreement, and not having defaulted under any provision(s) of this agreement including but not limited to the timely payment of the total sale consideration, registration charges, stamp duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the applicant within a period of 42 months from the date of approval of the building plans and/or fulfilment of the pre-conditions imposed thereunder. The allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ('Grace Period'), after the expiry of said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company".

23. The respondents have got approval of building plan from DTCP on 17.05.2012 and approval from fire safety scheme from the municipal corporation, Gurugram only on 26.12.2013. The authority is of the view that due date of handing over the possession should have been counted from the date they received the fire NOC which is of cardinal importance to the builder and if we count the date of offer of possession i.e. 42





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months + 180 days' grace period + approval for fire safety scheme, then the date of possession comes out **to be 26.12.2017**. However, no possession has been delivered to the complainant till date. Hence, the authority is of the considered view that there is a delay of more than a year on the part of the respondents in offering possession of the subject apartment. Hence, the complainant is entitled for the delay possession charges at the prescribed rate of 10.75% for delay so caused by the respondent in delivering the possession as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

Findings of the authority: -

22. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated



in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

23. Keeping in view the status of the project and intervening circumstance, the authority is of the view that the respondent has failed to deliver the possession of the apartment as per the terms of agreement dated 26.10.2012 till date. As such complainant is entitled for delayed possession charges at the prescribed rate of interest @10.75% p.a. as per the provision of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project.

Decision and directions of the authority: -

24. Accordingly, the authority after hearing the arguments of both the parties and exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondents-

- i. The respondents shall pay interest @ 10.75% p.a. on the paid amount of complainant as delayed possession





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charges from due date of delivery of possession i.e. 26.12.2017 till actual handing over of possession, failing which the complainant is entitled to withdraw from the project.

- ii. The arrears of interest accrued so far from due date of delivery of possession till the date of order shall be paid to the complainant within 90 days from the date of issuance of this order and thereafter monthly interest till handing over the possession be paid before 10th of subsequent month. Amount, if any, due from the complainant may be adjusted from the awarded delayed possession charges.

26. The order is pronounced.

27. Case file be consigned to the registry.



(Sanjiv Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram.

Dated: -

Judgement uploaded on 07.03.2019