

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

**Complaint No. : 701 of 2018**  
**Date of Institution : 09.08.2018**  
**Date of Decision : 13.11.2018**

Mr Vidush K Mehta  
R/o A-4/07 Tower 2, Purvanchat height,  
Sector zeta 1, Greater Noida.

**...Complainant**

Versus

Umang Realtech Pvt Ltd  
R/o D-64, second floor, Defence colony,  
New Delhi- 110024

**...Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Dheeraj Talwar  
Shri Yash Verma

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 09.08.2018 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 Vidush K Mehta against the promoter Umang Realtech Pvt. Ltd. on account of violation of clause 7.1 of the apartment buyer agreement executed on 06.11.2012 for unit no. 601 in



tower E in the project "Winter Hills 77" for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

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

1.	Name and location of the project	Winter hills 77, Sector 77, Gurugram.
2.	Registered/not registered	<b>Not Registered</b>
3.	DTCP license number	67 of 2011 dated 16.07.2011
4.	Date of booking	05.02.2012
5.	Date of agreement	06.11.2012
6.	Unit area	1735 sq. ft.
7.	Unit no.	604, tower E
8.	Total Consideration	Rs. 90,33,125
9.	Total amount paid by the complainant	Rs 82,51,437
10.	Date of delivery of possession As per clause 7.1 of apartment buyer's agreement (by 31.12.2015+ 6months grace period from the date of when completion certificate is received)	By 30.06.2016
11.	Delay of number of months/ years till date	Approximately 2 years 4 months 15days



3. As per the details provided above, they have been checked as per record available in the case file provided by the complainant and respondent. A builder buyer agreement is



available on record for unit no 604, tower E according to which the possession of the aforesaid unit was to be delivered by 31.06.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 09.10.2018. The reply has been filed by the respondent on 25.09.2018.

#### FACTS OF THE CASE

5. That the complainant booked one flat in the project "Winter Hills 77" bearing unit no 604 in tower E admeasuring 1735 sq. ft. for which the complainant handed over cheque no 097678 and 134752 from HDFC Bank and cheque no 465084 and 465085 from Yes Bank, amounting to Rs 8,05,000 in favour of respondent as advance deposit.
6. That thereafter from time to time the respondent demanded payments from the complainant and accordingly the complainant have throughout earnestly made a total payment of Rs 82,51,437 as and when asked by the



respondent. Here it is quite worth mentioning that in this manner the complainant has ended up in making a payment which is much more than the basic sale price as mentioned in the apartment buyer's agreement.

7. That the respondent company has very cleverly and dishonestly already received huge amount of money from the complainant without even completing all their required works which very much falls under their basic sale price and as such the respondent company has mischievously and fraudulently totally stopped their construction if the said housing project midway long time back.
8. That the respondent company has also very cleverly and mischievously already recovered and received payments even against those items such as club membership charges, external electrification charges, fire fighting equipment charges, as back on 05.11.2012 from the complainant.
9. That the respondent company has also failed in meeting their deadline of completing the entire construction well before their committed date of 31.12.2015 plus grace period of 6 months.
10. That the respondent executed the apartment buyer's agreement on 06.11.2012 and changed the wording of "to





give possession of the flat to the applicant by 31.03.2015” in the respondent company’s application form (para no 14) while booking the flat on 28.04.2012 and thereafter completely changed to the words “completion of construction work by 31.12.2012” in the apartment buyers agreement on 06.11.2012 and thus the same clearly indicates the unfair, deceptive and fraudulent intention coupled with ulterior motives on the part of the respondent.

11. That the respondent has been giving excuses from time to time and again apart from giving false assurance one after another. That the complainant visited the site of the said project and observed to their extreme shock that no construction activity whatsoever is being carried out at the site and no labour and no material was lying at site which clearly confirmed that the respondent has dishonestly abandoned the said project.



#### **ISSUES RAISED BY THE COMPLAINANT**

12. The following issues have been raised by the complainants:

- i. Whether or not the developer has violated the terms and conditions of apartment buyer's agreement and not offered possession on the due date?
- ii. Whether or not the respondent has failed to obtain all the required licenses, sanctions, approvals, occupation certificate etc. within a stipulated time from the competent authorities?
- iii. Whether or not the respondent is justified in recovering payments against club membership charges, external electrification charges, fire fighting equipment charged, external development charges, car parking charges etc. even when the respondent had not even started with the construction of the second floor of the project?

**RELIEF SOUGHT BY THE COMPLAINANT:**

13. Following reliefs have been prayed for:
  - i. Refund of the total amount of Rs 82,51,437: the order for refund of this amount should be given because of the fact that the complainant has already paid the above mentioned amount to the respondent against the proposed apartment which the respondent has



totally failed to complete the construction within their committed period.

- ii. This hon'ble authority is requested that the order of payment of interest amounting to Rs 63,57,166 should also be given as per clause 4.5 of the apartment buyers agreement because the respondent has not only failed to complete the construction within the committed period and despite endless requests and reminders not completed even till today.
- iii. This hon'ble authority is very humbly requested that the order for very heavy penalties and punishment should also be given to the respondent.
- iv. This hon'ble authority is very humbly requested that the order for payment of litigation expenses of Rs 20,000 shall also be granted.
- v. Refund of interest payments to the complainant of Rs. 15,37,059 for the period 01.09.2013 to 31.03.2018, the complainant had availed loan from HDFC Bank for the apartment in the month of September 2013 but the respondent has failed to hand over the possession as per their committed date.





**REPLY BY THE RESPONDENT**

14. The respondent submitted that no cause of action to file the present complaint. The present complaint is filed without any cause of action and only on experimental basis. There is no deficiency of service or unfair trade practice on the part of respondent. As per clause 7.1 and 7.2 of the apartment buyer agreement, due date for handing over possession is 31.12.2015 plus a grace period of 180 days and as and when the completion certificate is received by the respondent.

15. Further the respondent submitted that since there is an arbitration clause in the agreement, complaint without invoking arbitration is liable to be dismissed. The relationship between the complainant and respondent is defined and decided by the apartment buyers agreement executed between both parties. It is submitted that a specific clause for referring disputes to arbitration is included in the said agreement vide clause 14.6.

16. The respondent further submitted that there is no delay since the respondent is entitled for reasonable extension of time for handing over possession in terms of the agreed terms of the agreement. The respondent has given various





reasons as to why there was delay in handing over the possession to the unit buyers therefore justifying himself of his obligation which he has failed.

17. The respondent also submitted that the complainant has suppressed material facts in relation to the status of project. The complainant also made regular default in making payments.

18. The respondent submitted that the complainant has approached this hon'ble authority with unclean hands. The respondent submitted that the complainant has prayed for relief for refund of amount paid which has to be claimed in a suit for recovery after paying appropriate court fee. In order to avoid payment of court fee, the complainant has not raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this hon'ble authority.

19. The respondent further submitted that the complainant is not entitled to seek any remedies beyond the terms of the agreement and the allegations in the present complaint cannot be decided summarily and thus this complaint is out of the jurisdiction of this hon'ble authority.



20. Lastly, the respondent submitted that he is bonafidely attempting to complete the project construction in a time bound manner considering the interests of its customers.

### DETERMINATION OF ISSUES

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

- i. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 7.1 of buyer's agreement; the possession of the said apartment was to be handed over by 31.06.2016. The clause regarding the possession of the said unit is reproduced below:

#### "7.1 Time of handing over the possession

...the company, subject to force majeure, undertakes to complete the construction and apply for the completion certificate by 31.12.2015, subject to a grace period of 6 months and as and when the completion certificate is received, possession of the said apartment to the buyer shall be offered which the buyer has noted and confirmed."







Accordingly, the due date of possession was 30.06.2016 and the possession has been delayed by two years four months 15 days till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 30.12.2012 + 6 months grace period as per clause 7.9 of buyer's agreement which 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 others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

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

Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the unit number 604 on 6th floor tower-E in the project



'WINTER HILLS 77', to the complainant by the committed date i.e. 31.06.2016 as per the said agreement and the possession has been delayed by more than 2 years 4 months 15 days till date of decision. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of possession.

- ii. **With respect to the second issue**, the respondent has applied for the grant of registration of the project to be set up at Sector 77, tehsil Gurugram, district Gurugram, State Haryana on 10.04.2018. The respondent has obtained the DTCP license no 67 of 2011 dated 16.07.2011 and the building plans have been approved as per the information recorded in the agreement. However the respondent has not yet received the completion certificate/occupation certificate based upon which the respondent has to deliver possession of the sold units to the allottees. Thus, the respondent has failed in obtaining the necessary approvals and sanctions from the competent authorities.

- iii. **With respect to the third issue,**





Clause 3.1 provides the basis on which the aforesaid charges have been raised. As such, in the absence of any allegation of fraud, misrepresentation, mistake, the authority will uphold the sanctity of contracts and enforce all contractual rights and obligation.

Thus the respondent is not justified in recovering payments against club membership charges, external electrification charges, fire fighting equipment charges, external development charges, car parking charges etc.

#### FINDINGS OF AUTHORITY:

22. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.



23. The authority is of the view of that the respondent has delayed the possession by approximately 2 years 4 months 15 days and thus is liable to hand over possession under section 11(4)(a)
24. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
25. 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.
26. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) and Rule 15 of the rules proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.



**DECISION AND DIRECTIONS OF THE AUTHORITY:**

27. 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 here by issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is duty bound to hand over the possession of the said unit by 30.06.2016 as committed by the respondent.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 30.06.2016 till 13.11.2018 within 90 days of this order and thereafter on 10<sup>th</sup> of every month of delay till the handing over of possession.
- (iii) If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

28. The order is pronounced.


29. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered





and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

Deleted  
vide order  
dated  
25/02/19.

30. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Date: 13.11.2018

Prepared by: Srishti Mor

Checked by: Shreya Gupta

Corrected Judgement uploaded on 17.04.2019





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**CORAM:**

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Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
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**APPEARANCE:**

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Shri Yash Verma Advocate for the respondent

**ORDER**

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tower E in the project “Winter Hills 77” for not giving possession by the due date which is an obligation of the promoter under section 11 (4) (a) of the Act ibid.

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

1.	Name and location of the project	Winter hills 77, Sector 77, Gurugram.
2.	Registered/not registered	<b>Not Registered</b>
3.	DTCP license number	67 of 2011 dated 16.07.2011
4.	Date of booking	05.02.2012
5.	Date of agreement	06.11.2012
6.	Unit area	1735 sq. ft.
7.	Unit no.	604, tower E
8.	Total Consideration	Rs. 90,33,125
9.	Total amount paid by the complainant	Rs 82,51,437
10.	Date of delivery of possession As per clause 7.1 of apartment buyer’s agreement (by 31.12.2015+ 6 months grace period from the date of when completion certificate is received)	By 30.06.2016
11.	Delay of number of months/ years till date	Approximately 2 years 4 months 15days



3. As per the details provided above, they have been checked as per record available in the case file provided by the complainant and respondent. A builder buyer agreement is



available on record for unit no 604, tower E according to which the possession of the aforesaid unit was to be delivered by 31.06.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 09.10.2018. The reply has been filed by the respondent on 25.09.2018.

#### FACTS OF THE CASE

5. That the complainant booked one flat in the project "Winter Hills 77" bearing unit no 604 in tower E admeasuring 1735 sq. ft. for which the complainant handed over cheque no 097678 and 134752 from HDFC Bank and cheque no 465084 and 465085 from Yes Bank, amounting to Rs 8,05,000 in favour of respondent as advance deposit.

6. That thereafter from time to time the respondent demanded payments from the complainant and accordingly the complainant have throughout earnestly made a total payment of Rs 82,51,437 as and when asked by the



respondent. Here it is quite worth mentioning that in this manner the complainant has ended up in making a payment which is much more than the basic sale price as mentioned in the apartment buyer's agreement.

7. That the respondent company has very cleverly and dishonestly already received huge amount of money from the complainant without even completing all their required works which very much falls under their basic sale price and as such the respondent company has mischievously and fraudulently totally stopped their construction if the said housing project midway long time back.
8. That the respondent company has also very cleverly and mischievously already recovered and received payments even against those items such as club membership charges, external electrification charges, fire fighting equipment charges, as back on 05.11.2012 from the complainant.
9. That the respondent company has also failed in meeting their deadline of completing the entire construction well before their committed date of 31.12.2015 plus grace period of 6 months.
10. That the respondent executed the apartment buyer's agreement on 06.11.2012 and changed the wording of "to





give possession of the flat to the applicant by 31.03.2015” in the respondent company’s application form (para no 14) while booking the flat on 28.04.2012 and thereafter completely changed to the words “completion of construction work by 31.12.2012” in the apartment buyers agreement on 06.11.2012 and thus the same clearly indicates the unfair, deceptive and fraudulent intention coupled with ulterior motives on the part of the respondent.

11. That the respondent has been giving excuses from time to time and again apart from giving false assurance one after another. That the complainant visited the site of the said project and observed to their extreme shock that no construction activity whatsoever is being carried out at the site and no labour and no material was lying at site which clearly confirmed that the respondent has dishonestly abandoned the said project.



#### **ISSUES RAISED BY THE COMPLAINANT**

12. The following issues have been raised by the complainants:

- i. Whether or not the developer has violated the terms and conditions of apartment buyer's agreement and not offered possession on the due date?
- ii. Whether or not the respondent has failed to obtain all the required licenses, sanctions, approvals, occupation certificate etc. within a stipulated time from the competent authorities?
- iii. Whether or not the respondent is justified in recovering payments against club membership charges, external electrification charges, fire fighting equipment charged, external development charges, car parking charges etc. even when the respondent had not even started with the construction of the second floor of the project?

**RELIEF SOUGHT BY THE COMPLAINANT:**

13. Following reliefs have been prayed for:
  - i. Refund of the total amount of Rs 82,51,437: the order for refund of this amount should be given because of the fact that the complainant has already paid the above mentioned amount to the respondent against the proposed apartment which the respondent has



totally failed to complete the construction within their committed period.

- ii. This hon'ble authority is requested that the order of payment of interest amounting to Rs 63,57,166 should also be given as per clause 4.5 of the apartment buyers agreement because the respondent has not only failed to complete the construction within the committed period and despite endless requests and reminders not completed even till today.
- iii. This hon'ble authority is very humbly requested that the order for very heavy penalties and punishment should also be given to the respondent.
- iv. This hon'ble authority is very humbly requested that the order for payment of litigation expenses of Rs 20,000 shall also be granted.
- v. Refund of interest payments to the complainant of Rs. 15,37,059 for the period 01.09.2013 to 31.03.2018, the complainant had availed loan from HDFC Bank for the apartment in the month of September 2013 but the respondent has failed to hand over the possession as per their committed date.





## REPLY BY THE RESPONDENT

14. The respondent submitted that no cause of action to file the present complaint. The present complaint is filed without any cause of action and only on experimental basis. There is no deficiency of service or unfair trade practice on the part of respondent. As per clause 7.1 and 7.2 of the apartment buyer agreement, due date for handing over possession is 31.12.2015 plus a grace period of 180 days and as and when the completion certificate is received by the respondent.

15. Further the respondent submitted that since there is an arbitration clause in the agreement, complaint without invoking arbitration is liable to be dismissed. The relationship between the complainant and respondent is defined and decided by the apartment buyers agreement executed between both parties. It is submitted that a specific clause for referring disputes to arbitration is included in the said agreement vide clause 14.6.

16. The respondent further submitted that there is no delay since the respondent is entitled for reasonable extension of time for handing over possession in terms of the agreed terms of the agreement. The respondent has given various



reasons as to why there was delay in handing over the possession to the unit buyers therefore justifying himself of his obligation which he has failed.

17. The respondent also submitted that the complainant has suppressed material facts in relation to the status of project. The complainant also made regular default in making payments.

18. The respondent submitted that the complainant has approached this hon'ble authority with unclean hands. The respondent submitted that the complainant has prayed for relief for refund of amount paid which has to be claimed in a suit for recovery after paying appropriate court fee. In order to avoid payment of court fee, the complainant has not raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this hon'ble authority.

19. The respondent further submitted that the complainant is not entitled to seek any remedies beyond the terms of the agreement and the allegations in the present complaint cannot be decided summarily and thus this complaint is out of the jurisdiction of this hon'ble authority.



20. Lastly, the respondent submitted that he is bonafidely attempting to complete the project construction in a time bound manner considering the interests of its customers.

### DETERMINATION OF ISSUES

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

- i. With respect to the **first issue** raised by the complainant, the authority came across that as per clause 7.1 of buyer's agreement; the possession of the said apartment was to be handed over by 31.06.2016. The clause regarding the possession of the said unit is reproduced below:

**"7.1 Time of handing over the possession**

...the company, subject to force majeure, undertakes to complete the construction and apply for the completion certificate by 31.12.2015, subject to a grace period of 6 months and as and when the completion certificate is received, possession of the said apartment to the buyer shall be offered which the buyer has noted and confirmed."





Accordingly, the due date of possession was 30.06.2016 and the possession has been delayed by two years four months 15 days till the date of decision. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the super area of the unit for the period of delay beyond 30.12.2012 + 6 months grace period as per clause 7.9 of buyer's agreement which 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 others. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

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



Keeping in view the present status of the project and intervening circumstances, the authority is of the considered opinion that the respondent has failed to deliver the possession of the unit number 604 on 6th floor tower-E in the project

'WINTER HILLS 77', to the complainant by the committed date i.e. 31.06.2016 as per the said agreement and the possession has been delayed by more than 2 years 4 months 15 days till date of decision. Thus, the complainant is entitled to interest at prescribed rate for every month of delay till the handing over of possession.

- ii. **With respect to the second issue**, the respondent has applied for the grant of registration of the project to be set up at Sector 77, tehsil Gurugram, district Gurugram, State Haryana on 10.04.2018. The respondent has obtained the DTCP license no 67 of 2011 dated 16.07.2011 and the building plans have been approved as per the information recorded in the agreement. However the respondent has not yet received the completion certificate/occupation certificate based upon which the respondent has to deliver possession of the sold units to the allottees. Thus, the respondent has failed in obtaining the necessary approvals and sanctions from the competent authorities.

- iii. **With respect to the third issue**,



Clause 3.1 provides the basis on which the aforesaid charges have been raised. As such, in the absence of any allegation of fraud, misrepresentation, mistake, the authority will uphold the sanctity of contracts and enforce all contractual rights and obligation.

Thus the respondent is not justified in recovering payments against club membership charges, external electrification charges, fire fighting equipment charges, external development charges, car parking charges etc.

**FINDINGS OF AUTHORITY:**

22. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. 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.





23. The authority is of the view of that the respondent has delayed the possession by approximately 2 years 4 months 15 days and thus is liable to hand over possession under section 11(4)(a)
24. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
25. 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.
26. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) and Rule 15 of the rules proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession.



**DECISION AND DIRECTIONS OF THE AUTHORITY:**

27. 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 here by issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is duty bound to hand over the possession of the said unit by 30.06.2016 as committed by the respondent.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% on the amount deposited by the complainant for every month of delay from the due date of possession i.e. 30.06.2016 till 13.11.2018 within 90 days of this order and thereafter on 10<sup>th</sup> of every month of delay till the handing over of possession.
- (iii) If the possession is not given on the date committed by the respondent then the complainant shall be at liberty to further approach the authority for the remedy as provided under the provisions, i.e. Section 19(4) of the Act *ibid*.

28. The order is pronounced.

29. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered



and for that separate proceeding will be initiated against the respondent u/s 59 of the Act by the registration branch.

30. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date: 13.11.2018



HARERA  
GURUGRAM





**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 13.11.2018
Complaint No.	701/2018 case titled as Mr. Vidush K Mehta Vs M/s Umang Realtech Pvt Ltd.
Complainant	Mr. Vidush K Gupta
Represented through	Complainant in person with Shri Dheeraj Talwar, Advocate.
Respondent	M/s Umang Realtech Pvt Ltd.
Respondent Represented through	Shri Yash Verma, Advocate for the respondent.
Last date of hearing	9.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

As per clause 7.1 of the Apartment Buyer Agreement, the possession of the flat was to be delivered to the complainant on 31.6.2016 which has not been delivered as on date. Complainant has already paid an amount of Rs.82,51,437/- i.e. approximately 95% of the sale consideration. As per provisions of Section 18 (1) of RERA Act, the respondent is bound to pay late delivery charges at the prescribed rate of interest i.e. 10.75% per annum from 30.6.2016 i.e. from the committed date of delivery of possession.

Since no possession has been delivered, as such, builder will give cumulative interest till date from the date of possession i.e. 30.6.2016. Arrears of interest accrued so far shall be paid to the complainant within 90

days from the date of issuance of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

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

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)