

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

Complaint no. : 1203 of 2018
Date of first hearing: 07.03.2019
Date of decision : 15.03.2019

1. Mr. Nipun Mehta
2. Mrs. Shikha Chander
R/o: A-58, Vikaspuri, New Delhi -110018 **...Complainants**

Versus

M/s Sidhartha Buildhome Pvt. Ltd.
Office at: Plot no. 6, 5th floor, Sector-44,
Gurugram-122003 **...Respondent**

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Nipun Mehta
Shri Akash Gupta
Shri Prashant Sheoran
Shri H.K.P Sinha

Complainant in person
Advocate for the complainants
Advocate for the respondent
Manager, Legal for respondent



ORDER

1. A complaint dated 13.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) rules, 2017 by the complainants Mr. Nipun Mehta and Mrs. Shikha Chander, against the promoter M/s Sidhartha Buildhome Pvt. Ltd., on account of violation of clause 11.1 read with clause 13 of the apartment buyer's agreement executed on 18.04.2012 for unit no. E-705 in the project "NCR One" with a super area of 1780 sq. ft. 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. Since, the buyer's agreement has been executed on 18.04.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"NCR One" in village Wazirpur, Sector 95, Gurugram
2.	Unit no.	E-705, 7 th floor, tower-E
3.	Unit area	1780 sq. ft'
4.	Nature of real estate project	Group housing colony





5.	Project area	10.712 Acres
6.	RERA Registered/ not registered	Not registered
7.	DTCP license	64 of 2008 dated 19.03.2008
8.	Allotment letter	06.03.2012
9.	Date of apartment buyer's agreement	18.04.2012
10.	Total consideration	Rs. 55,15,240/- (page 48)
11.	Total amount paid by the Complainants as per statement of account dated 09.01.2017	Rs. 53,28,973/-
12.	Payment plan	Construction Linked Plan
13.	Date of delivery of possession Clause 11.1 r/w clause 13 - 36 months from start of foundation of tower in which apartment is located + 6 months grace period	23.04.2016 (date of start of foundation is 23.10.2012 as per page 77)
14.	Delay in handing over possession till date of decision	2 years 10 months 20 days
15.	Penalty clause as per apartment buyer's agreement	Clause 12.1- Rs. 5/- sq. ft. of super area of apartment per month for period of delay



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement dated 18.04.2012 is available on record for unit no. E-705 according to which the possession of the



aforesaid unit was to be delivered by 23.04.2016. Neither the respondent has handed over possession by the due date nor has paid any compensation in terms of clause 12.1 of the said agreement duly executed between the parties. Thus, the respondent has failed to fulfil its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply filed on behalf of respondent has been perused. The case came up for hearing on 07.03.2019 and 15.03.2019. the respondent through its counsel appeared on 07.03.2019.

Facts as per the complaint

6. Mr. Nipun Mehta and Mrs. Shikha Chander residents of A-58, Vikaspuri, New Delhi-110018 booked a unit with developer, M/s Sidhartha Buildhome Pvt. Ltd. vide application dated 13.11.2011 which was received in developer office on 16.11.2011 for an allotment of flat in tower-E, floor no. 07, flat no. E 705 admeasuring 1780 sq. ft' in project called "NCR-ONE" to be constructed by the developer at Sector-95, Gurugram, Haryana in conformity with the sanctioned plan, designs, drawings and elevations as shown in the brochure.





7. Thereafter the apartment buyer's agreement was concluded on 18.04.2012. The complainants made 95% payment of the total cost of the apartment as per construction linked plan and honoured their commitment as buyer as per payment plan. They have been paying since 17.11.2011 with last payment made on 02.01.2017. The balance roughly five per cent of payment towards purchase price of the apartment is to be paid upon possession of apartment.
8. As per clause no. 11 of the said agreement completion of construction, the possession of the above said flat was to be handed over with all amenities shown in the brochure and occupancy plus completion certificate from the concerned authorities within a period of 42 months (36 months from the date of start of foundation in this case with a grace period of 6 months).
9. Thus the possession of our unit should have been handed over to the complainants/them latest by 15.05.2016 taking into account 36 months and grace period of six months. Reality is that they have been sitting almost for 2 ½ years post the promised date of possession given by developer as per the said agreement and with no near hope in sight. Arbitrary reasons





and false promises have been received from developer multiple times.

10. It is also pertinent to mention here that the booking was made of the subject flat on 13.11.2011 but developer started construction only on 15.11.2012 after lapse of period of 365 days from the date of booking thus keeping the clients funds amounting to Rs. 13,50,000/- with them with intent of earning interest cost at the cost of the buyer.
11. As per clause 12.1 of apartment buyer's agreement: "In case, the developer fails to complete the construction with the agreed period of 36 months plus six months grace period as hereinabove mentioned, the developer would pay the buyer compensation @ Rs. 5/- sq. ft. of the super area of the apartment per month for the period of delay. Thus the complainants are entitled to receive Rs. 5/- per sq. ft. per month i.e. 1780 sq. ft. Rs.5 = Rs. 8900/- per month w.e.f. 15.05.2016 till receiving of physical possession of the said apartment with all complete amenities advertised in the brochure and plans i.e. Internal Development as per brochure received at the time of booking of flat consisting of functional club/internal roads, Pole lights/landscaping/working of lifts/copy of occupancy certificate etc.





12. The complainants submitted that they as buyer have not received any amount till date calculated as per the above w.e.f 15.05.2016 and nor the developer has provided any intention or communication on the same. Multiple letters to same effect were sent to developer also which are unanswered by the developer.
13. Developer acted in an unjust manner and posted a communication based on arbitrary excuses and reasons for delay of 20+ months in project calling them the force majeure circumstances vide their e-mail dated 13.02.2017. Arbitrary reasons cited were ground water extraction ban, ban on mining of sand in Haryana and Rajasthan, jat agitation, National Green Tribunal order for stopping the construction, demonetisation of currency notes and many others.
14. They as buyers find these reasons as unjustified and have rejected these reasons via ^{their} ~~our~~ letter dated 23.08.2017 to which the developer never acknowledged nor provided any reply.
15. They also visited the project site multiple times and it is to bring to kind notice that the work seems to be stalled, hardly any labour is seen working over this tower and after a period



Corrected vide order
dated 27/05/19.



of seven years, the plaster of the walls is still not completed, flooring work has still not started other fittings and fixtures that was to be provided by the developer. Thus, there is no hope when the said flat will be handed over as final possession along with all amenities as per brochure.

16. As per revised notification on reduction in EDC/IDC charges issued by Haryana government, developer needs to refund the excess EDC/IDC charges paid by them along with interest @ 18 per cent per annum from the date of receipt of the payment by builder against these charges.
17. Developer has not registered the project in question with the hon'ble authority and is escaping the RERA regulations so as to stay away from coming under the ambit of HR RERA.

18. Issues raised by the complainants

The relevant issues as culled out from the complaint are as follows:-

- I. Whether the respondent is liable to provide refund of the amount paid by the complainants along with interest at prescribed rate from the date of payments?



- II. Whether the respondent is liable to provide the facilities as mentioned in the brochure along with possession?
- III. Whether the respondent is liable to provide refund of excess IDC/EDC charged along with interest @18% p.a.?
- IV. Whether the respondent has registered its project with RERA?

19. Relief sought

- I. To direct the respondent to fully refund the amount paid by the complainants amounting to Rs. 53,28,973/- from the date of deposit of funds along with interest at the prescribed rate.
- II. To provide possession till December, 2018 upon receipt of completion certificate and occupancy certificate.
- III. To refund the excess EDC/IDC paid by the buyer along with 18% interest p.a.
- IV. To direct the respondent to comply with HRERA registration requirements.





- V. To direct the respondent to complete the project as per commitments of amenities as mentioned in brochure.
- VI. To direct the respondent to enter into a new buyer's agreement after registration with RERA.

Respondent's reply

20. In reply to the complaint filed by the complainant, the respondent submitted that the complainants have not disclosed complete facts regarding the project in question as well as the payments made by them. The period for completion of the unit/project, in terms of the contract, was agreed to commence from the date of starting of construction and not from date of signing the apartment buyer's agreement. It is further submitted that in the apartment buyer's agreement, it was specifically stated that the said period shall commence from the date of start a foundation of the particular tower in which the apartment is located. The clause 11.1 of the agreement may kindly be considered in this regard.

21. It is further submitted that in the present case, the apartment buyer agreement was signed on 18.04.2012 and foundation work of the tower in which the unit in question is located





started from the 23.10.2012, thus the time period of offer of possession shall be deemed to start from 23.10.2012. It is further submitted that even the applicability of 42 months which includes the grace period is subject to timely payment of instalments which in the present case, the complainants have failed to do. It is submitted that the details of the payments made by the complainant clearly shows the delay made by them over a period of time.

22. The complaint filed by the complainants is not maintainable in the eyes of law. It is submitted that the complainants themselves are at fault, having defaulted while making payments against the demands raised by the respondent. It is submitted that since the time of booking, till now, the respondent has raised several demand letters and the complainants persistently failed to pay the amount on time. It is submitted that since 17.11.2011 till 08.01.2019, the complainants made delayed payments and the total time period of delay is approximate 1457 days i.e. 4 years approx. It is submitted that as per the apartment buyer's agreement, it had been specifically agreed that the date/time of possession shall be subject to timely payments by the allottee. In the present case, as the allottees themselves delayed payments





and the total number of days which the complainants took to make payment, the respondent is entitled to add above stated time period in delivery of possession. Thus, without prejudice to the rights of the respondent, it is submitted that even from the date of apartment buyer's agreement, the time for delivery of possession shall be in the year 2020. It is submitted that as per the agreement, initial time period for the delivery of possession was 42 months and if the total number of days which the complainant took to make the payment is added than the date of possession will be in the year 2020, which is yet to arrive. Thus, the present complaint is premature and is not maintainable.

23. The respondent submitted that the capability of the respondent to deliver shall always remain subject to various terms and conditions of the allotment and one of such conditions is timely payment by all the customers/allottees. It is submitted that it is impossible for any builder to erect a building or execute a project without inflow of funds from the customers. For a proper and timely development of the project, it is necessary that all the customers must pay the demanded amounts as and when the demand for installments is raised. It is submitted that it is only due to the fault of the





customers including the present complainant as well, that the development of tower in question is at slow pace. However, the respondent is still trying its best to develop the building i.e. in which the present unit is situated, so that the possession of the units can be offered as soon as possible. It is further submitted that the above mentioned reason is not the only reason which caused the unintentional delay in the development of the tower in question.

24. It is further submitted that there are several other circumstances which are beyond the control of the respondent and which severely hampered the development work. It is submitted that the respondent, despite of facing various difficulties and obstructions in the development work, is still committed to complete the development of project i.e. (NCR One) in which the unit in question is being developed. It is further submitted that the complainants have malafidely tried to portray that the project is not developed. It is submitted that the project 'NCR One' consists of 10 towers out of which 5 towers were to be developed under phase-I and 5 towers were to be developed under phase-II. The construction of the said project i.e. NCR One is at advanced stages. The respondent had already received occupation certificate of phase I and the



phase II is in progress. The respondent is committed and is trying its level best to complete the project as soon as possible, even though several customers have not paid the demanded installments including the complainants.

25. It is submitted that it is the funds collected from customers on the basis of which the developer can raise and complete the construction in time but in the present case as already stated above several customers including the present complainant have failed to make timely payment. Thus, the respondent is facing difficulties in raising construction. However, it is the bonafide of respondent that it is still giving its best to complete the construction of whole of the project including the tower in which unit in question in question is situated. That the said photographs show the advanced stage of construction of the tower in question. It is submitted that the construction work is on the verge of completion and any refund at this stage would be highly prejudicial not only to the rights of the respondent but also the rights of other allottees as well.



26. It is further submitted that the parties to the present complaint are bound by the agreement entered upon by them and in lieu of the same complainants are bound to pay delayed payment interest which as on today is Rs. 91,979/-. Thus, when the



complainants are themselves at fault, they cannot blame the respondent for delay in possession.

27. It is denied that the respondent has ever acted in unjust manner or posed any communication based on arbitrary excuses. It is denied that there is delay of 20+ months. It is also denied that the complainants visited project sites several times or the work at the site is stalled or the hardly any worker is seen working. That the photographs attached by the respondent duly reveals about the actual state of affair at the project site.
28. The complainant have levelled allegation in lieu of EDC/IDC charges without giving any authentic proof of any such govt. notification. The complainants never tried to contact respondent as they knew it very well that they themselves are at fault in making timely payment.
29. It is therefore prayed that keeping in view of above stated facts and circumstances, the complainants are not entitled for any sort of relief from the honourable authority. Thus, the present complaint may kindly be dismissed in the interest of justice.





Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the complainants as under:

30. Regarding the **first issue** raised by the complainants, the authority came across clause 11.1 read with clause 13 of the agreement dated 18.04.2012 which is reproduced hereunder:

"36 months from start of foundation of tower in which apartment is located + 6 months grace period"

Therefore, the due date of handing over possession comes out to be 23.04.2016 and there is a delay of 2 years 10 months 20 days till the date of decision. Complainants are seeking refund of the amount deposited with the respondent alongwith interest. Considering all the pros and cons of the matter, the authority is of the considered opinion that if the complainant wants to wriggle out of the project, respondent is at liberty to deduct 10% of BSP and refund the balance amount to the complainants with prescribed rate of interest @10.75% p.a. within a period of 90 days from the date of issuance of this order.





With respect to the **second and third issue**, the complainants have only made averments without substantiating the same in material particulars. Therefore, the said issue cannot be decided.

31. Regarding the **fourth issue**, the respondent has failed to register the project in question in terms of section 3 of the Real Estate (Regulation and Development) Act, 2016. Thus, the respondent is directed to file the application for registration of the project, failing which penal proceedings can be initiated under section 59 of the Act.

Findings of the authority

32. **Jurisdiction of the authority-** The project "NCR One" is located in village Wazirpur, Sector 95, 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~~ *residential* in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.





The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

33. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid.*

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

35. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that as per the agreement, the due date of possession is 23.04.2016, and there is a delay of 2 years 10 months 20 days till date. The project is not registered as on date and the complainants are seeking refund of the amount paid. The respondent is at liberty to deduct 10% of BSP and refund the balance amount to the complainants along with



interest @10.75% p.a. within 90 days from issuance of this order.

Decision and directions of the authority

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

- (i) Since the project is not registered, 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.
- (ii) Case of the complainant is that he had booked a unit/flat ~~EX-G-5, 7~~ ^{E-705, 7th floor, Tower-E} in project "NCR One" in village Wazirpur, sector 95, Gurugram and buyer's agreement to effect was executed inter-se the parties on 18.04.2012. By virtue of clause 11 read with 13.1 of the buyer's agreement, the respondent was duty bound to deliver the unit/apartment to the complainant within a period of 36 months from the date of start of foundation of tower i.e. 23.10.2012 in which the apartment of the complainant is located



*Corrected vide
order dated 27/05/19*

plus 6 months grace period which comes out to be 23.04.2016.

- (iii) As per the report of local commissioner appointed in the matter only 35% work at site is complete.
- (iv) Complainant is seeking refund of the amount deposited with the respondent alongwith interest. Considering all the pros and cons of the matter, the authority is of the considered opinion that if the complainant wants to wriggle out of the project, respondent is at liberty to deduct 10% of BSP and refund the balance amount to the complainants with prescribed rate of interest @10.75% p.a. within a period of 90 days from the date of issuance of this order.

37. The complaint is disposed of accordingly.

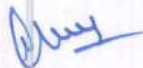
38. Case file be consigned to the registry.




(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Date: 15.03.2019

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1. A complaint dated 13.11.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

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2. Since, the buyer's agreement has been executed on 18.04.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"NCR One" in village Wazirpur, Sector 95, Gurugram
2.	Unit no.	E-705, 7 th floor, tower-E
3.	Unit area	1780 sq. ft'
4.	Nature of real estate project	Group housing colony



5.	Project area	10.712 Acres
6.	RERA Registered/ not registered	Not registered
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10.	Total consideration	Rs. 55,15,240/- (page 48)
11.	Total amount paid by the Complainants as per statement of account dated 09.01.2017	Rs. 53,28,973/-
12.	Payment plan	Construction Linked Plan
13.	Date of delivery of possession Clause 11.1 r/w clause 13 - 36 months from start of foundation of tower in which apartment is located + 6 months grace period	23.04.2016 (date of start of foundation is 23.10.2012 as per page 77)
14.	Delay in handing over possession till date of decision	2 years 10 months 20 days
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4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. An apartment buyer's agreement dated 18.04.2012 is available on record for unit no. E-705 according to which the possession of the

aforesaid unit was to be delivered by 23.04.2016. Neither the respondent has handed over possession by the due date nor has paid any compensation in terms of clause 12.1 of the said agreement duly executed between the parties. Thus, the respondent has failed to fulfil its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply filed on behalf of respondent has been perused. The case came up for hearing on 07.03.2019 and 15.03.2019. the respondent through its counsel appeared on 07.03.2019.

Facts as per the complaint

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8. As per clause no. 11 of the said agreement completion of construction, the possession of the above said flat was to be handed over with all amenities shown in the brochure and occupancy plus completion certificate from the concerned authorities within a period of 42 months (36 months from the date of start of foundation in this case with a grace period of 6 months).
9. Thus the possession of our unit should have been handed over to the complainants/them latest by 15.05.2016 taking into account 36 months and grace period of six months. Reality is that they have been sitting almost for 2 ½ years post the promised date of possession given by developer as per the said agreement and with no near hope in sight. Arbitrary reasons



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The relevant issues as culled out from the complaint are as follows:-

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Respondent's reply

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21. It is further submitted that in the present case, the apartment buyer agreement was signed on 18.04.2012 and foundation work of the tower in which the unit in question is located



started from the 23.10.2012, thus the time period of offer of possession shall be deemed to start from 23.10.2012. It is further submitted that even the applicability of 42 months which includes the grace period is subject to timely payment of instalments which in the present case, the complainants have failed to do. It is submitted that the details of the payments made by the complainant clearly shows the delay made by them over a period of time.

22. The complaint filed by the complainants is not maintainable in the eyes of law. It is submitted that the complainants themselves are at fault, having defaulted while making payments against the demands raised by the respondent. It is submitted that since the time of booking, till now, the respondent has raised several demand letters and the complainants persistently failed to pay the amount on time. It is submitted that since 17.11.2011 till 08.01.2019, the complainants made delayed payments and the total time period of delay is approximate 1457 days i.e. 4 years approx. It is submitted that as per the apartment buyer's agreement, it had been specifically agreed that the date/time of possession shall be subject to timely payments by the allottee. In the present case, as the allottees themselves delayed payments



and the total number of days which the complainants took to make payment, the respondent is entitled to add above stated time period in delivery of possession. Thus, without prejudice to the rights of the respondent, it is submitted that even from the date of apartment buyer's agreement, the time for delivery of possession shall be in the year 2020. It is submitted that as per the agreement, initial time period for the delivery of possession was 42 months and if the total number of days which the complainant took to make the payment is added than the date of possession will be in the year 2020, which is yet to arrive. Thus, the present complaint is premature and is not maintainable.

23. The respondent submitted that the capability of the respondent to deliver shall always remain subject to various terms and conditions of the allotment and one of such conditions is timely payment by all the customers/allottees. It is submitted that it is impossible for any builder to erect a building or execute a project without inflow of funds from the customers. For a proper and timely development of the project, it is necessary that all the customers must pay the demanded amounts as and when the demand for installments is raised. It is submitted that it is only due to the fault of the



customers including the present complainant as well, that the development of tower in question is at slow pace. However, the respondent is still trying its best to develop the building i.e. in which the present unit is situated, so that the possession of the units can be offered as soon as possible. It is further submitted that the above mentioned reason is not the only reason which caused the unintentional delay in the development of the tower in question.

24. It is further submitted that there are several other circumstances which are beyond the control of the respondent and which severely hampered the development work. It is submitted that the respondent, despite of facing various difficulties and obstructions in the development work, is still committed to complete the development of project i.e. (NCR One) in which the unit in question is being developed. It is further submitted that the complainants have malafidely tried to portray that the project is not developed. It is submitted that the project 'NCR One' consists of 10 towers out of which 5 towers were to be developed under phase-I and 5 towers were to be developed under phase-II. The construction of the said project i.e. NCR One is at advanced stages. The respondent had already received occupation certificate of phase I and the



phase II is in progress. The respondent is committed and is trying its level best to complete the project as soon as possible, even though several customers have not paid the demanded installments including the complainants.

25. It is submitted that it is the funds collected from customers on the basis of which the developer can raise and complete the construction in time but in the present case as already stated above several customers including the present complainant have failed to make timely payment. Thus, the respondent is facing difficulties in raising construction. However, it is the bonafide of respondent that it is still giving its best to complete the construction of whole of the project including the tower in which unit in question is situated. That the said photographs show the advanced stage of construction of the tower in question. It is submitted that the construction work is on the verge of completion and any refund at this stage would be highly prejudicial not only to the rights of the respondent but also the rights of other allottees as well.

26. It is further submitted that the parties to the present complaint are bound by the agreement entered upon by them and in lieu of the same complainants are bound to pay delayed payment interest which as on today is Rs. 91,979/-. Thus, when the



complainants are themselves at fault, they cannot blame the respondent for delay in possession.

27. It is denied that the respondent has ever acted in unjust manner or posed any communication based on arbitrary excuses. It is denied that there is delay of 20+ months. It is also denied that the complainants visited project sites several times or the work at the site is stalled or the hardly any worker is seen working. That the photographs attached by the respondent duly reveals about the actual state of affair at the project site.
28. The complainant have levelled allegation in lieu of EDC/IDC charges without giving any authentic proof of any such govt. notification. The complainants never tried to contact respondent as they knew it very well that they themselves are at fault in making timely payment.
29. It is therefore prayed that keeping in view of above stated facts and circumstances, the complainants are not entitled for any sort of relief from the honourable authority. Thus, the present complaint may kindly be dismissed in the interest of justice.



Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the complainants as under:

30. Regarding the **first issue** raised by the complainants, the authority came across clause 11.1 read with clause 13 of the agreement dated 18.04.2012 which is reproduced hereunder:

“36 months from start of foundation of tower in which apartment is located + 6 months grace period”

Therefore, the due date of handing over possession comes out to be 23.04.2016 and there is a delay of 2 years 10 months 20 days till the date of decision. Complainants are seeking refund of the amount deposited with the respondent alongwith interest. Considering all the pros and cons of the matter, the authority is of the considered opinion that if the complainant wants to wriggle out of the project, respondent is at liberty to deduct 10% of BSP and refund the balance amount to the complainants with prescribed rate of interest @10.75% p.a. within a period of 90 days from the date of issuance of this order.



With respect to the **second and third issue**, the complainants have only made averments without substantiating the same in material particulars. Therefore, the said issue cannot be decided.

31. Regarding the **fourth issue**, the respondent has failed to register the project in question in terms of section 3 of the Real Estate (Regulation and Development) Act, 2016. Thus, the respondent is directed to file the application for registration of the project, failing which penal proceedings can be initiated under section 59 of the Act.

Findings of the authority

32. **Jurisdiction of the authority-** The project “NCR One” is located in village Wazirpur, Sector 95, Gurugram. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.



The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

33. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*.

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

35. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that as per the agreement, the due date of possession is 23.04.2016, and there is a delay of 2 years 10 months 20 days till date. The project is not registered as on date and the complainants are seeking refund of the amount paid. The respondent is at liberty to deduct 10% of BSP and refund the balance amount to the complainants along with



interest @10.75% p.a. within 90 days from issuance of this order.

Decision and directions of the authority

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

- (i) Since the project is not registered, 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.
- (ii) Case of the complainant is that he had booked a unit/flat EX-G-5, in project "NCR One" in village Wazirpur, sector 95, Gurugram and buyer's agreement to effect was executed inter-se the parties on 18.04.2012. By virtue of clause 11 read with 13.1 of the buyer's agreement, the respondent was duty bound to deliver the unit/apartment to the complainant within a period of 36 months from the date of start of foundation of tower i.e. 23.10.2012 in which the apartment of the complainant is located



plus 6 months grace period which comes out to be 23.04.2016.

- (iii) As per the report of local commissioner appointed in the matter only 35% work at site is complete.
- (iv) Complainant is seeking refund of the amount deposited with the respondent alongwith interest. Considering all the pros and cons of the matter, the authority is of the considered opinion that if the complainant wants to wriggle out of the project, respondent is at liberty to deduct 10% of BSP and refund the balance amount to the complainants with prescribed rate of interest @10.75% p.a. within a period of 90 days from the date of issuance of this order.

37. The complaint is disposed of accordingly.

38. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 15.03.2019

Judgement uploaded on 12.04.2019