

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

Complaint no. : 142 of 2019
Date of first hearing: 28.03.2019
Date of decision : 28.03.2019

1. Mrs. Ashma Marwah
2. Mr. Raman Marwah
Both R/o M-198, 2nd floor, Vikas Puri,
New Delhi-110018

Complainants

Versus

M/s Sidhartha Buildhome Pvt. Ltd.
Address: 6, 5th floor, Sector-44,
Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Ashma Marwah and Raman Marwah
Shri Prashant Sheoran

Complainants in person
Advocate for the respondent

ORDER

1. A complaint dated 13.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Ashma Marwah and Mr. Raman Marwah, against the promoter M/s



Sidhartha Buildhome Pvt. Ltd. on account of violation of the clause 11 read with clause 13 of the apartment buyer's agreement dated 09.12.2011 in respect of unit described below in the project 'NCR One' for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 09.12.2011 i.e. prior to the commencement of the Act *ibid*, 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 part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under:

1.	Name and location of the project	"NCR One", Sector 95, Gurugram.
2.	Nature of the project	Group housing colony
3.	Project area	10.712 acres
4.	DTCP license no.	64 of 2008 dated 19.03.2008
5.	RERA registered/not registered	Not registered
6.	Apartment/unit no.	E-1601, 16 th floor, tower E



7.	Unit measuring	1496 sq. ft.
8.	Apartment buyer's agreement executed on	09.12.2011
9.	Payment plan	Construction linked payment plan
10.	Total consideration amount as per payment plan annexed with the said agreement.	Rs.46,40,760/-
11.	Total amount paid by the complainant as per receipt annexed by complainants	Rs. 41,24,295/- 45,08,295/- (Note: To be ascertained during proceedings)
12.	Date of delivery of possession as per apartment buyer's agreement (as per clause 11.1 read with clause 13 of the said agreement, 36 months from the date of start of foundation of a particular tower i.e..15.11.2012 + 6 months grace period)	15.05.2016 (Date of start of particular tower is taken as alleged by the respondent)
13.	Delay in handing over the possession till date of decision	2 years, 10 months, 13 days
14.	Penalty clause as per the said agreement	Clause 12.1 i.e. @Rs.5/- per sq. ft. of the super area of the apartment per month for the period of delay.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An apartment buyer's agreement dated 09.12.2011 is available on record for the aforesaid unit according to which the possession of the said

Corrected vide order dated 25/07/19.

apartment was to be delivered by 15.05.2016. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor they have paid any compensation in terms of clause 12.1 for the delay so caused as per the said agreement duly executed between the parties. Therefore, 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 respondent through its counsel appeared on 28.03.2019. The case came up for hearing on 28.03.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainants submitted that they booked a flat for residential purpose in project of the respondent namely the "NCR One" at Sector-95, Gurgaon, Haryana on 27.07.2011 for a total cost of Rs. 46,40,760/- (plus applicable taxes).
7. The complainants submitted that he had paid for the apartment during for the last 7 years as per agreed schedule

of the builder with not even one day delay in the respective payments and only 10% i.e. Rs. 2,00,000/- approx. is pending to be paid which will be due at the time of possession along with the applicable stamp duty amount. This apartment was supposed to be delivered within three and half years of the booking, but it is still in a condition that it seems that it would not be able to be delivered in more than 1.5 year or so the complainants submitted that to enquire about the reasons for delay, they visit the offices of the respondent and the project location every 4-6 months but were never told of the actual reasons for delay. The status of the project has remained same over the past 3-4 years with no signs of completion.

8. The complainants submitted they had taken a loan of Rs. 30,00,000/- from HDFC Bank since January, 2012 for the said apartment and paying the EMI, inclusive of interest at the rate of 10.05% on the said amount of the said bank loan since then.

Issues to be decided:

9. The relevant issues raised by the complainants are as follow:

- i. Whether the respondent is liable for unjustifiable delay in construction and development of the said project and entitled to interest at prescribed rate for the delay so caused?
- ii. Whether the respondent is liable for compromising the construction quality?

Reliefs sought

The complainants are seeking the following reliefs:

- i. To instruct the builder to refund the entire money paid by the complainants along with the interest till date.
- ii. To instruct the builder to handover the possession of the flat on priority.
- iii. To pay interest at the prescribed rate on the total amount paid by the complainants till date for the delay of the period of more than 4 years.
- iv. To instruct them to adjust the final payment of 10% from the interest to be payable from the date of decision to the actual date of the possession of the said apartment.

Reply on behalf of the respondent:

10. The respondents submitted that 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 of foundation of the particular tower in which the apartment is located. The clause number 11.1 of the agreement may kindly be considered in this regard.
11. The respondent submitted that in the present case the apartment buyer's agreement was signed on 09.12.2011. and foundation work of the tower in which the unit in question is located started from the 15.11.2012. Thus the time period for offer of possession shall be deemed to start from 15.11.2012. It is further submitted that even the applicability of 42 months which includes the grace period is subject to force majeure. It is submitted that the circumstances which are beyond the control of respondent is scarcity of fund, which arose due to nonpayment of several allottees. It is factually correct that without fund, it is not possible to construct a



tower in a rapid pace. It is submitted that the project is to be taken as whole and not as single unit and if more than 50% allottees are defaulting in payment, then surely it will hamper construction progress. Thus, there is not fault on the part of respondent and subjected to force majeure, the date of possession is deemed to be extended till all the allottees made their 100% demanded amount.

12. The respondent 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 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.

13. It is further submitted that the complainant 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 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. It is submitted that more than 70% of the construction work is completed and it will be completed by the end of year 2019.

Determination of issues:

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

14. With respect to the **first issue** raised by the complainants, as per clause 11.1 read with clause 13 of the apartment buyer's



agreement dated 09.12.2011 for unit No.E-1601, tower-E, in project "NCR One" Sector-95, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of start of foundation of a particular tower i.e. 15.11.2012 + 6 months grace period which comes out to be 14.05.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs. ~~41,24,712/-~~ ^{45,08,295/-} to the respondent against a total sale consideration of Rs.46,40,760/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 14.05.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

15. With respect to the **second issue** raised by the complainants, the complainants have failed to produce any documentary evidence in support of their complaint. Hence decided negatively.

*Corrected vide order
dated 25/07/19.*

Findings of the authority

16. 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.
17. Since the project is not registered, notice under 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.

18. Arguments heard the counsel for the respondent has stated at bar that they shall be delivering the possession by December 2019. Though the project is not registered with the authority but the respondent has acknowledged the fact that they shall be getting the license renewed from DTCP after paying IDC/EDC. The respondent shall deliver the possession in the month of December 2019. However, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum.

19. As per clause 11.1 read with clause 13 of the apartment buyer's agreement dated 09.12.2011 for unit no. E-1601, tower-E, in project "NCR One" Sector-95, Gurugram, the possession was to be handed over to the complainant within a period of 36 months from the date of start of foundation of a particular tower i.e. 15.11.2012 + 6 months grace period which comes out to be 14.05.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs. ~~41,24,712/-~~ ^{45,08,295/-} to the respondent against a total sale consideration of Rs.46,40,760/-. As such, complainants are entitled for delayed possession charges at prescribed rate of

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interest i.e. 10.75% per annum w.e.f 14.05.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Directions of the authority


20. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

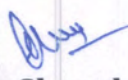
(i) The respondent is directed to pay interest for delayed possession from the due date of possession i.e. 14.05.2016 till date of handing over of possession.

(ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% per annum from 14.05.2016 till date of handing over of possession.

The amount shall be paid to the complainants within 90 days of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

21. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*.
22. The order is pronounced.
23. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2019

Corrected Judgement uploaded on 19.08.2019

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1. A complaint dated 13.01.2019 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mrs. Ashma Marwah and Mr. Raman Marwah, against the promoter M/s

Sidhartha Buildhome Pvt. Ltd. on account of violation of the clause 11 read with clause 13 of the apartment buyer's agreement dated 09.12.2011 in respect of unit described below in the project 'NCR One' for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement has been executed on 09.12.2011 i.e. prior to the commencement of the Act *ibid*, 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 part of the promoter/respondent in terms of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under:

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4.	DTCP license no.	64 of 2008 dated 19.03.2008
5.	RERA registered/not registered	Not registered
6.	Apartment/unit no.	E-1601, 16 th floor, tower E

7.	Unit measuring	1496 sq. ft.
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9.	Payment plan	Construction linked payment plan
10.	Total consideration amount as per payment plan annexed with the said agreement.	Rs.46,40,760/-
11.	Total amount paid by the complainant as per receipt annexed by complainants	Rs.41,24,295/- (Note: To be ascertained during proceedings)
12.	Date of delivery of possession as per apartment buyer's agreement (as per clause 11.1 read with clause 13 of the said agreement, 36 months from the date of start of foundation of a particular tower i.e. 15.11.2012 + 6 months grace period)	15.05.2016 (Date of start of particular tower is taken as alleged by the respondent)
13.	Delay in handing over the possession till date of decision	2 years, 10 months, 13 days
14.	Penalty clause as per the said agreement	Clause 12.1 i.e. @Rs.5/- per sq. ft. of the super area of the apartment per month for the period of delay.

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. An apartment buyer's agreement dated 09.12.2011 is available on record for the aforesaid unit according to which the possession of the said

apartment was to be delivered by 15.05.2016. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor they have paid any compensation in terms of clause 12.1 for the delay so caused as per the said agreement duly executed between the parties. Therefore, 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 respondent through its counsel appeared on 28.03.2019. The case came up for hearing on 28.03.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

6. The complainants submitted that they booked a flat for residential purpose in project of the respondent namely the "NCR One" at Sector-95, Gurgaon, Haryana on 27.07.2011 for a total cost of Rs. 46,40,760/- (plus applicable taxes).
7. The complainants submitted that he had paid for the apartment during for the last 7 years as per agreed schedule

of the builder with not even one day delay in the respective payments and only 10% i.e. Rs. 2,00,000/- approx. is pending to be paid which will be due at the time of possession along with the applicable stamp duty amount. This apartment was supposed to be delivered within three and half years of the booking, but it is still in a condition that it seems that it would not be able to be delivered in more than 1.5 year or so the complainants submitted that to enquire about the reasons for delay, they visit the offices of the respondent and the project location every 4-6 months but were never told of the actual reasons for delay. The status of the project has remained same over the past 3-4 years with no signs of completion.

8. The complainants submitted they had taken a loan of Rs. 30,00,000/- from HDFC Bank since January, 2012 for the said apartment and paying the EMI, inclusive of interest at the rate of 10.05% on the said amount of the said bank loan since then.

Issues to be decided:

9. The relevant issues raised by the complainants are as follow:

- i. Whether the respondent is liable for unjustifiable delay in construction and development of the said project and entitled to interest at prescribed rate for the delay so caused?
- ii. Whether the respondent is liable for compromising the construction quality?

Reliefs sought

The complainants are seeking the following reliefs:

- i. To instruct the builder to refund the entire money paid by the complainants along with the interest till date.
- ii. To instruct the builder to handover the possession of the flat on priority.
- iii. To pay interest at the prescribed rate on the total amount paid by the complainants till date for the delay of the period of more than 4 years.
- iv. To instruct them to adjust the final payment of 10% from the interest to be payable from the date of decision to the actual date of the possession of the said apartment.

Reply on behalf of the respondent:

10. The respondents submitted that 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 of foundation of the particular tower in which the apartment is located. The clause number 11.1 of the agreement may kindly be considered in this regard.
11. The respondent submitted that in the present case the apartment buyer's agreement was signed on 09.12.2011. and foundation work of the tower in which the unit in question is located started from the 15.11.2012. Thus the time period for offer of possession shall be deemed to start from 15.11.2012. It is further submitted that even the applicability of 42 months which includes the grace period is subject to force majeure. It is submitted that the circumstances which are beyond the control of respondent is scarcity of fund, which arose due to nonpayment of several allottees. It is factually correct that without fund, it is not possible to construct a

tower in a rapid pace. It is submitted that the project is to be taken as whole and not as single unit and if more than 50% allottees are defaulting in payment, then surely it will hamper construction progress. Thus, there is not fault on the part of respondent and subjected to force majeure, the date of possession is deemed to be extended till all the allottees made their 100% demanded amount.

12. The respondent 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 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.

13. It is further submitted that the complainant 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 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. It is submitted that more than 70% of the construction work is completed and it will be completed by the end of year 2019.

Determination of issues:

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

14. With respect to the **first issue** raised by the complainants, as per clause 11.1 read with clause 13 of the apartment buyer's

agreement dated 09.12.2011 for unit No.E-1601, tower-E, in project "NCR One" Sector-95, Gurugram, possession was to be handed over to the complainants within a period of 36 months from the date of start of foundation of a particular tower i.e. 15.11.2012 + 6 months grace period which comes out to be 14.05.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.41,24,712/- to the respondent against a total sale consideration of Rs.46,40,760/-. As such, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 14.05.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

15. With respect to the **second issue** raised by the complainants, the complainants have failed to produce any documentary evidence in support of their complaint. Hence decided negatively.

Findings of the authority

16. 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 Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.
17. Since the project is not registered, notice under 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.

18. Arguments heard the counsel for the respondent has stated at bar that they shall be delivering the possession by December 2019. Though the project is not registered with the authority but the respondent has acknowledged the fact that they shall be getting the license renewed from DTCP after paying IDC/EDC. The respondent shall deliver the possession in the month of December 2019. However, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum.

19. As per clause 11.1 read with clause 13 of the apartment buyer's agreement dated 09.12.2011 for unit no. E-1601, tower-E, in project "NCR One" Sector-95, Gurugram, the possession was to be handed over to the complainant within a period of 36 months from the date of start of foundation of a particular tower i.e. 15.11.2012 + 6 months grace period which comes out to be 14.05.2016. However, the respondent has not delivered the unit in time. Complainants have already paid Rs.41,24,712/- to the respondent against a total sale consideration of Rs.46,40,760/-. As such, complainants are entitled for delayed possession charges at prescribed rate of

interest i.e. 10.75% per annum w.e.f 14.05.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

Directions of the authority

20. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) The respondent is directed to pay interest for delayed possession from the due date of possession i.e. 14.05.2016 till date of handing over of possession.
- (ii) The respondent is directed to give interest to the complainant at the prescribed rate of 10.75% per annum from 14.05.2016 till date of handing over of possession. The amount shall be paid to the complainants within 90 days of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

21. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent under the Act *ibid*.

22. The order is pronounced.

23. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:

Judgement uploaded on 28.05.2019

(Subhash Chander Kush)

Member

HARERA
GURUGRAM