

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

**Complaint No. : 28 of 2018**  
**First date of hearing : 12.04.2018**  
**Date of Decision : 02.08.2018**

Anil Kumar Tyagi and Mrs. Sushila Tyagi,  
R/o Flat No. 458, Sector 19, Poket-3,  
Akshardham Apartment, Dwarka, New  
Delhi-110075

**...Complainants**

Versus

M/s Sidhartha Buildhome Pvt Ltd.  
Office at: Plot No. 6, 5<sup>th</sup> floor, sector 44  
gurgoan

**...Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Sukbhir Singh Yadav  
Shri M.K. Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. A complaint dated 05.03.2018 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 complainant Mr.



Anil Kumar Tyagi and Mrs. Sushila Tyagi against the promoter M/s Sidhartha Buildhome Pvt Ltd. for not giving possession on 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	Sidhartha Esteela sector-103 Pvt. Ltd.
2.	Unit No.	B-204
3.	Date of Agreement	12.01.2012
4.	Total Consideration	Rs. 76,40,300/-
5.	Total amount paid by the complainant	Rs. 75,11,060/-
6.	Payment plan	Construction Linked plan
7.	Date of delivery of possession. As per clause 12.1 of the buyer's agreement (36 Months + 6 months grace period from the date of upon receipt of all statutory approvals)	12.07.2015(36 months + 6 months)
8.	Delay of number of months	3 years 3 months
9.	Penalty clause as per apartment buyer's agreement	Clause 13.1 i.e. Rs. 5/- sq. ft per month of the super area
10.	DTCP license no.	17 of 2011



3. As per the details provided above, which have been checked as per record of the case file, a builder buyer agreement is available on record for Unit No. B-204, according to which the possession of the aforesaid unit

was to be delivered by 12.08.2015 including the grace period. The promoter has failed to deliver the possession of the said unit to the complainants, 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 01.05.2018. The case came up for hearing on 12.04.2018, 01.05.2018, 24.05.2018, 30.05.2018, 12.07.2018 and 02.08.2018. The reply has been filed on behalf of the respondent on 18.06.2018.

#### **Facts of the complaint**

5. Complainants have booked a flat at Sidharatha Estella project situated at Sector-103, Gurugram, Haryana promoted by a reputed Sidhartha Buildhome Pvt. Ltd. i.e. the respondent. The complainants along with their family members and broker visited the site. The location was excellent, and they consulted the local representative of the developer. On date 04.01.2012 a provisional allotment was given by builder in tower – B, second floor (apartment no. B-204) of size 1910 sq. ft. thereafter a flat buyer agreement



was executed between complainants and respondent on date 12.01.2012. The total sale consideration of aforesaid flat was Rs.76,40,300/- including two covered car parking, club membership and IFMS etc. The complainant continued to pay remaining instalment as per the schedule and already paid more than 95% amount i.e. Rs.75,11,060/-. The complainants are regularly visiting at the office of respondent party as well as construction site and making efforts to get the possession of allotted flats but all in vain. The complainants had purchased the flat with intention that after purchase burden of rental would go off. Moreover, it was promised by the respondent at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscape lawns, club/pool, school, EWS etc. as shown in brochure at the time of sale would be handed over to the complainants as soon as construction completes i.e. 36 months as per flat buyer agreement.

A perusal of the photograph it shows that project takes furthermore than 3 years to complete in all respect. It is very difficult for complainants to wait furthermore than 3 years for possession. That due to the acts of the above and of the terms and conditions of the flat buyer agreement the



complainants have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice and thereby caused breach of contract and deficiency in the services of the respondent party.

That the cause of action for the present complaint arose in or around 2012 when the buyer agreement containing unfair and unreasonable terms was forced upon the Allottes. That the complainants are entitled to get refund of the amount paid to the respondent party towards purchasing of flats.

**Issues raised by the complainants are as follow:**

- i. Whether the developer has violated the terms and conditions of flat Buyer Agreement?
- ii. Whether there is any reasonable justification for delay to give possession of flats?
- iii. Whether there has been deliberate or otherwise, misrepresentation on the part of the developers for delay in giving possession?



- iv. Whether complainants are entitled for refund of all money paid to Respondent?
- v. Whether complainants are entitled for compounding interest @ 24% per annum from date of booking to till date.
- vi. Whether complainants are entitled for compensation as penalty for delayed possession?
- vii. Whether complainants are entitled for any other relief?

### Relief sought

- i. That pass an appropriate award directing the Respondent parties to refund/return the amount Rs.75,11,060/- paid by the Complainant to the Respondent party as instalments towards purchase of flat, along with interest @ 19% per annum from the date of deposit.
- ii. Respondent party may kindly be directed to pay an amount of Rs.10,00,000/- for deficiency in service.
- iii. Respondent party may kindly be directed to pay an amount of Rs.5,00,000/- as litigation expenses.
- iv. Respondent party may kindly be directed to refund with interest the charges collected under the heads of





EDC/IDC, 2<sup>nd</sup> Floor PLC, Club Membership, IFMS, Corner Facing PLC and covered Car Parking etc. to the respective Allottees.

- v. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the Flat Buyer Agreement.

### Reply

6. That respondent submits that an appeal for renewal of license dated 18.10.2017 has already been filed before the DTCP. This project is not covered within the ambit of the provisions of RERA Act,2016. Since the project of the respondent is not registered with the RERA, therefore this Hon'ble Authority does not have any jurisdiction to decide any dispute related to it.
7. That the remaining contents of the facts of the complaint are to admit. It is not admitted that family members of complainants always insisted to buy a flat or that the complainants and his family members were anxious to buy of their own independent flat. It is submitted that the complainant are real estate investors who had booked the apartment in question with a view to earn quick profit in a short period.



8. It is submitted that it is complainants own declaration under the heading of buyer's representations' in the apartment buyer's agreement that they have not relied upon nor have been influenced by any plans, brochures, advertisements, representation, promises or any other information and furthermore that they have made their own judgment in good faith and investigations in deciding to enter into the Agreement. The complainants are deliberately trying to mislead this Hon'ble Authority by making false averments.
9. It is submitted that all demands were raised by the respondent in accordance with the payment plan which was mutually agreed between the parties to this false and frivolous complaint. However, the complainants failed to pay the instalments as per the agreed time schedule. Moreover, a substantial amount of payment is left to be paid by the complainants to the respondent company.
10. There are several reasons for delay such as delay on the part of the complainants in making the timely payment, ban of construction imposed by various orders of the High Court, National Green Tribunal and due to agitations, which hampered the construction process. It is submitted that





according to Clause 12.2 of the apartment buyer's agreement.

11. It is submitted that only finishing work is going on and as soon as it is completed the unit shall be handed over to the complainants. In the present facts and circumstances, it cannot be urged that time is of the essence of the agreement. It is reasserted that the respondent being a customer-oriented company shall pay the compensation, if any, to the complainants strictly in accordance with the terms and conditions of the apartment buyer's agreement.
12. The respondent denied that the complainants are entitled to get refund of all the amount paid to the respondent party towards purchasing of flats with compound interest.
13. That the complainants have not approached this Hon'ble Authority with clean hands and have intentionally suppressed and concealed the material facts. The conduct of the complainant has been malaise and they are not entitled to any relief at all.
14. It is submitted that in accordance with Section 71 of the RERA Act read with Rules 21(4) and 29 of the Haryana Real Estate Rules, 2017, the authority shall appoint an



adjudicating officer for holding an inquiry in the prescribed manner.

### **Proposed Issues by Respondent**

- i. whether this complaint is maintainable before this Hon'ble Authority?
- ii. Whether this Hon'ble Authority has the jurisdiction to decide the claim of compensation and interest as falsely prayed by the complainants?
- iii. Whether the complainants have deliberately misled this Hon'ble Authority by concealing the relevant facts unnecessarily harass and pressurize the respondent company?

### **Written Arguments**

15. Contention of the complainants are as follow: That at the time of booking this unit the builder promised to give the possession within 36 months from the date of booking. That as per payment schedule, complainants paid more than 95% of the total cost i.e. Rs 75,11060/- till date 17.01.2017. total sale consideration of the flat was Rs. 76,40,300/-. That the delay of more than 3 years is not an ordinate delay and till date also flat is not fully ready for occupancy.



The respondent contented that; As per that as per clause 12.1 of the apartment buyer agreement states that the developer based on its present plan and contemplates to complete construction of the said apartment within 36 months plus grace period 6 months which shall be intimated to the buyer from the date of statutory approvals. It may be noted that the last of these approvals, fire approval was granted only on 01.03.2013 in the terms of clause 12.1 of the agreement, the proposed time for handing over the possession has to be computed from 01.03.2013. therefore 42 months from 01.03.2013, expired only on 01.09.2016. There could not have been delay till 01.09.2016. it is pertinent mentioned here that the respondent company shall pay the compensation for the delayed payment. It is submitted that all demands were raised by the respondent in accordance with the payment plan which was mutually agreed between the parties to this false and frivolous complaint.



### **Issues decided**

16. 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 parties as under:

17. As per clause 12.1 of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of commencement of construction (with a grace period of 6 months) upon receipt of all project related approvals. Therefore, the due date of handing over possession will be computed from 12.07.2015. The clause regarding the possession of the said unit is reproduced below:

*"3(a) offer of possession*

*...the Developer proposes to handover the possession of the said flat within a period of thirty-six (36) Months with grace period of 6 Months, from the date of commencement of construction upon receipt of all project related approvals including sanction of building plan/ revised plan and approvals of all concerned authorities including the fire service department , civil aviation department , traffic department , pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restriction from any court/authorities...."*



18. Accordingly, the due date of possession was 12.07.2015. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of the carpet area of the said flat as per clause 13.1 of apartment buyer's agreement is held to

be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors.** (W.P 2737 of 2017), wherein the Bombay HC bench held that:

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

19. As the possession of the flat was to be delivered by 12.07.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

**“11.4 The promoter shall—**

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common*



*areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."*

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

**34 (f) Function of Authority –**

*To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

21. The complainants requested that necessary directions be issued by the authority under section 37 of the Aaaaact ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

**37. Powers of Authority to issue directions**

*The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*





22. As the promoter has failed to fulfil his obligation under section 11, the promoter is liable under section 18(1) proviso to pay to the complainants interest, at the prescribed rate, for every month of delay till the handing over of possession. Section 18(1) is reproduced below:

*“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*



23. The complainants reserve his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

24. 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 complainants at a later stage.

25. Keeping in view the present status of the project and intervening circumstances, the authority is of considered opinion that refund cannot be allowed as demanded by the complainants as construction is completed up to 85 % and counsel for the respondent has assured that the possession of unit may handed over to him up to 12.07.2019. Upon this the counsel for complainants stated that his client is ready to take possession on the fresh date given by the respondent, in case the interest is awarded to the complaints from the due date possession i.e.12.07.2019 till handing over the possession.



26. The authority is not awarding the amount for litigation charges and the same may granted through adjudicating officer. The charges collected for EDC/IDC cannot be refunded as the same are justified in terms of clause 3.4 of the flat buyer agreement.
27. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

#### **Decision and directions of the authority**

28. 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. That the complainants are entitled to claim the interest from the due date of possession at the prescribe rate of interest till the handing over possession of the unit.



- ii. The respondent is further directed to handover the possession of the said unit latest by 12.07.2019 as assured by the respondent during oral arguments.
- iii. Thus, the respondent is directed to give interest at the prescribe rate i.e. 10.15% within 45 days from the due date of possession till today and later 10<sup>th</sup> of every subsequent month till actual handing over the possession.
29. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.
30. The order is pronounced

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member



HARERA  
GURUGRAM

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

Dated :02.08.2018



HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 02.08.2018
Complaint No.	28/2018 case titled as Mr. Anil Kumar Tyagi versus M/s Sidhartha Buildhome Pvt. Ltd.
Complainant	Mr. Anil Kumar Tyagi
Represented through	Complainant in person with Shri Sukhbir Yadav Advocate
Respondent	M/s Sidhartha Buildhome Pvt. Ltd.
Respondent Represented through	Shri M.K.Dang Advocate for the respondent.

**PROCEEDINGS**

Amended complaint filed. Arguments have been heard.

The counsel for the respondent made a statement that the construction is completed upto 85%. The complainant has submitted that the licence of the respondent has been cancelled but the counsel for the respondent stated that the appeal against the cancellation is pending with the competent authority. Unless and until the appeal is decided, it cannot be assumed that the licence has been cancelled.

The counsel for the respondent has assured that the possession of unit may be handed over to him upto 12.7.2015 (36 month+6 grace period). At this stage of construction of project, it is not possible to refund the amount of the complainant. Upon this, the counsel of complainant stated that his client is ready to take the possession on the fresh date given by the respondent, in case the interest is awarded to the complainant from the due date of possession i.e. 12.7.2015 till handing over possession. The authority arrived at the conclusion that the complainant is entitled to claim the interest from the due date of possession at the prescribed rate of interest till the handing over possession of the unit. Thus the respondent is directed to give interest at the prescribed rate i.e. 10.15% within 45 days from due date of possession till today and later on by 10<sup>th</sup> of every subsequent month till actual handing over the possession. The complaint is disposed of accordingly. Detail order will follow. File be consigned to the Registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)

2.8.2018