

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

**Complaint No. : 207 of 2018**  
**Date of First  
Hearing : 30.05.2018**  
**Date of Decision : 22.10.2018**

1. Mr. Aman Kumar Yadav  
2. Mr. Sarvajeet Yadav  
R/o 15/188, Arjan Vihar, Delhi Cantt-  
110010

**...Complainants**

Versus

M/s Sidhartha Buildhome Pvt. Ltd.  
Office at: Plot no. 6, 5<sup>th</sup> floor, Sector-44,  
Gurugram-122003  
Regd. Office: Shop no. 1 and 4, Local  
shopping centre, Pushp Vihar, Madangir,  
New Delhi-110062

**...Respondent**

**CORAM:**

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

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

**APPEARANCE:**

Shri Aman Kumar Yadav  
Shri Naresh Kumar Yadav  
Shri Prashant Sheoran  
Shri Sachin Saroha

Complainant in person  
Advocate for the complainants  
Advocate for the respondent  
AGM (Sales) of the respondent



## ORDER

1. A complaint dated 27.04.2018 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. Aman Kumar Yadav and Mr. Sarvajeet Yadav, against the promoter M/s Sidhartha Buildhome Pvt. Ltd., on account of violation of clause 13.1 read with clause 11.1 of the apartment buyer's agreement executed on 16.11.2012 for unit no. EX-G-5 in the project "NCR One" with a super area of 2330 sq. ft. 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	"NCR One" in village Wazirpur, Sector 95, Gurugram
2.	Unit no.	EX-G-5
3.	Nature of real estate project	Group housing colony
4.	Project area	10.712 Acres
5.	RERA Registered/ not registered	<b>Not registered</b>
6.	DTCP license	64 of 2008
7.	Date of booking	13.06.2012
8.	Date of apartment buyer's agreement	16.11.2012
9.	Total consideration	Rs. 82,29,085/-



10.	Total amount paid by the complainants	Rs. 34,07,511/-
11.	Payment plan	Construction Linked Plan
12.	Date of delivery of possession	<b>28.06.2020</b> Clause 13.1 r/w clause 11.1 – 36 months from start of foundation of tower in which apartment is located (28.12.2016-as per demand letter in annexure 22) + 6 months grace period i.e. 28.06.2020
13.	Delay of number of months/ years upto 22.10.2018	<b>Note: The complaint is pre-mature</b>
14.	Penalty clause as per apartment buyer's agreement dated 16.11.2012	Clause 12.1- Rs. 5/- sq. ft. of super area of apartment per month for period of delay Clause 22.1- Refund with simple interest @ 12% p.a. till date of refund



3. 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 16.11.2012 is available on record for unit no. EX-G-5 according to which the possession of the aforesaid unit was to be delivered by 28.06.2020.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared through his counsel on 30.05.2018. The case came up for hearing on 30.05.2018, 10.07.2018, 09.08.2018, 27.09.2018 and 22.10.2018. The reply has been filed by the respondent on 09.08.2018.

#### **Facts as per the complaint**

5. On 13.06.2012, the complainants booked a residential unit in the project named "NCR One" in village Wazirpur, Sector 95, Gurugram by paying an advance amount of Rs 6,44,245/- to the respondent. Accordingly, the complainants were allotted a unit bearing EX-G-5 on the ground floor.
6. On 16.11.2012, an apartment buyer's agreement was entered into between the parties wherein as per clause 13.1 r/w clause 11.1, the construction should have been completed within a period of 36 months from date of start of foundation of a particular tower in which the apartment is located + 6 months grace period. The complainants made payments of all instalments demanded by the respondent amounting to a total of Rs 34,07,511/- as against the total consideration of Rs. 82,29,085/-.



7. The complainants submitted that they visited the site of the aforesaid project on 27.02.2018 and found that construction work at the site has not moved any further. Rather, only some columns were standing.
8. The complainants submitted that more than five years and ten months have elapsed since the booking of the apartment in question and the respondent intentionally, by misrepresentation, persuasion and false assurances deceived the complainants into a belief that the respondent would complete the construction of the aforesaid project and deliver the possession of the aforesaid apartment/flat to the complainants by the end of June 2015 and thereby dishonestly, with mala fide intentions and ulterior motives induced the complainants to book the aforesaid apartment/ flat and part with their hard earned money and caused wrongful gain to the respondent and wrongful loss to the complainants.
9. The complainants submitted that despite repeated calls, meetings and emails sent to the respondent, no definite commitment was shown to timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants.



10. As per clause 13.1 of the apartment buyer's agreement, the company proposed to hand over the possession of the said unit on completion of construction by 08.06.2020 as per clause 11.1. The clause regarding construction of the said unit is reproduced below:

*11.1- " The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said apartment, within a period of 36 months from the date of start of foundation of a particular tower in which the apartment is located with a grace period of 6 months, on receipt of sanction plans/revised building plans and approvals of all the concerned authorities."*

### 11. Issues raised by the complainants

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

- I. Whether the complainants have paid to the respondent a sum of Rs. 34,07,511/- in respect of the aforesaid apartment/ flat in question?
- II. Whether the respondent has failed to register itself under the aforesaid act, rules and regulations made thereunder?
- III. Whether the respondent has violated or contravened the provisions of the aforesaid act, rules and regulations made thereunder or aforesaid application or agreement dated



16.11.2012 and failed to complete the construction of the aforesaid project and to handover the physical possession of the aforesaid apartment/flat to the complainants?

IV. Whether the complainants are entitled to refund of the aforesaid amount of Rs 34,07,511/- alongwith 24% interest since the booking of the aforesaid flat till its full and final payment?

V. Whether the complainants are entitled to compensation on account of failure of respondent to handover the possession of the flat/ apartment to the complainants within three years?

VI. Whether the complainants are entitled to the rent for the last two to three years, as has been paid by the complainants during the last two to three years?

## 12. Relief sought

- I. Direct the respondent to fully refund the amount paid by the complainants amounting to Rs 34,07,511/- alongwith 24% interest since the booking of the apartment till its full and final realization.

## Respondent's reply

13. The respondent submitted that they are committed to provide



proper infrastructure and all the basic facilities and amenities to its customers. However, the capability of the respondent to deliver remains subject to various terms and conditions of the allotment and one such condition is timely payment by all the allottees. It is submitted that it is but impossible for any builder to erect a building or execute a project without inflow of funds, from its allottees. For a proper and timely development of the areas of the project it is necessary that all the customers must pay the demanded amounts as and when, the demand for instalments is raised. It is submitted that it is only due to fault of the customers including the present complainants as well, that the development of tower in question is being developed at slow pace. However, the respondent is still trying its best to develop the building, i.e. executive floors out of its own fund, so that the possession of the units can be offered as soon as possible.



14. It is further submitted by the respondent that the abovementioned reason is not the only reason which caused the unintentional delay in the development of the executive floors in question. There are several other circumstances which are beyond the control of the respondent and which severely hampered the development work.



15. It is submitted that the project NCR One consists of 10 towers out of which 5 towers were developed under Phase-I and 5 towers were to be developed under Phase-II. The construction of the project is at advanced stage.
16. The respondent denied that the respondent ever represented or persuaded the complainants that they would complete the construction of the said project and deliver the physical possession of the individual unit of the same by end of June 2015. It is submitted that the respondent raised a demand as per the payment plan against start of ground floor roof slab and EDC and IDC on 12.01.2017 against the aforementioned demand, the complainants paid the amount of EDC and IDC, i.e. Rs. 4,122/- but refrained themselves from paying an amount of Rs. 10,57,565/- against start of ground floor slab.
17. The respondent further submitted that the foundation work was started on 08.12.2016, thus, 3 years from the date of starting of foundation work would end in December 2019. It is wrong and denied that the respondent is not in a position to deliver the possession up to agreed period, i.e. December 2019. Thus, the question of refund of the principal amount deposited by the complainants along with interest does not arise.



18. It is denied that the complainants many times visited the site/ project in question or visited the registered office of the respondent. It is further denied that the complainants did not receive any satisfactory answer/ response from the respondent in respect of plan of execution of construction. It is submitted that after the demand dated 12.01.2017 of an amount of Rs 10,7,565/- was raised, the complainants never visited or contacted the respondent with a motive of avoiding the payment of the same.
19. The respondent submitted that though the respondent has a legal right to forfeit the amounts paid by the complainants in case of non-payment of demands but as a good gesture the said step has not been taken yet. It is submitted that whatever payment was made by the complainants has been utilized to raise construction of executive floors.
20. The respondent denied any sort of intentional or unintentional misrepresentation, persuasion, false assurances, on their part or that the respondent deceived the complainants into the belief that construction of the aforesaid project will be completed, and delivery of possession will be given by the end of June 2015.



### **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 parties as under:

21. Regarding the **first issue** raised by the complainants, it is admitted by the respondent in para 10 of the reply that the complainants have paid a sum of Rs 34,07,511/- in respect of the aforesaid apartment in question.
22. Regarding the **second issue**, the respondent has failed to register the project in question under 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.
23. Regarding the **third and fourth issue** in the complaint, as per clause 13.1 read with clause 11.1 of the agreement, the due date of possession of the apartment in question is 08.06.2020. Thus, the complaint is pre-mature. However, the booking was made on 13.06.2012 much prior to the start of foundation and the welcome letter was issued on 09.07.2012. The buyer had



made a payment of Rs.19.92.099/- prior to the execution of the said agreement. However, the construction was tardy and the builder raised demand on 08.12.2016 at the time of start of foundation. Thus, in such circumstances, it will be just and proper to calculate the time period from the date of welcome letter cum letter of confirmation of payment of first instalment, i.e. 09.07.2012. Hence, the due date of possession comes out to be 09.01.2016(36 months from 09.07.2012+ 6 months grace period). On account of failure to hand over the possession and unauthorizedly keeping the money of the complainants, the respondent is liable to give refund of the amount paid by the complainants to the tune of Rs. 34,07,511/- with prescribed interest @ 10.45% per annum from different dates of payments.

24. Regarding **fifth and sixth issue**, the complainants can seek compensation and rent before the adjudicating officer.
25. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

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.

26. The complainants made a statement in the proceedings of 10.07.2018 reserving their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.

### Findings of the authority

27. **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.

28. 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 28.06.2020, thereby making the complaint pre-mature. However, the welcome letter cum letter of confirmation of payment of first instalment was issued on 09.07.2012 and the buyer had made a payment of Rs.19,92,099/- much prior to the execution of the agreement along with the fact that the builder raised demand on start of foundation on 28.12.2016 as the construction was tardy. Thus, the buyer unauthorizedly kept the money deposited by the complainants for a very long period. This clearly shows the dominating position of the builder wherein he has framed a one-sided agreement and took money to the tune of Rs. 34,07,511/-. The project is not registered as on date wherein any commitment of the builder towards handing over of complete possession can be ascertained. In such circumstances, it will be just and proper to calculate the time period from the date of welcome letter cum letter of confirmation of payment of first instalment, i.e. 09.07.2012.



Hence, the due date of possession comes out to be 09.01.2016 (36 months from 09.07.2012+ 6 months grace period).

Keeping in view the above circumstances, there is no choice but to order refund of the amount of Rs. 34,07,511/- received from the complainants along with prescribed rate of interest @ 10.45% per annum from different dates of payments. The amount shall be paid to the complainants within 90 days of this order.

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

29. 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) The respondent is directed to refund to the complainants
- (ii) the principal sum of Rs.34,07,511/- paid by him on account of the failure of the respondent in handing over the possession.
- (iii) The respondent is directed to give interest to the complainants at the prescribed rate of 10.45% per annum from different dates of payments. The amount



shall be paid to the complainants within 90 days of this order.

30. The complaint is disposed of accordingly.
31. The order is pronounced.
32. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 22.10.2018

Judgement uploaded 19.12.2018

