

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 13.12.2018
Complaint No.	612/2018 Case titled as Mr. Vikas Kumar V/S Siddharth Buildhome Pvt. Ltd & Ors.
Complainant	Mr. Vikas Kumar
Represented through	Complainant in person with Shri Rakesh Kumar, Advocate.
Respondent	Siddharth Buildhome Pvt. Ltd & Ors.
Respondent Represented through	Shri Prashant Sheoran, Advocate for the respondent.
Last date of hearing	25.9.2018
Proceeding Recorded by	Naresh Kumari

**Proceedings**

Arguments heard.

As per clause 13.1 read with clause 11.1 of the Flat Buyer Agreement dated 1.9.2011, for unit No.301, 3rd floor, Tower- A in "NCR One" in Village Wazirpur, Sector 95, Gurugram, possession was to be handed over to the complainant within a period of 36 months + 6 months grace period from the date of start of foundation of a particular tower in which the apartment is located (29.11.2011) which comes out to be 29.5.2015. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.42,08,289/- with the respondent. As such, complainant is entitled for delayed possession charges @ 10.75% per annum w.e.f

29.5.2015 till the date of offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10<sup>th</sup> of subsequent month.

As a good will conjecture, the builder-respondent is ready to offer an alternative liable flat till the actual date of delivery of possession without any rent.

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

Samir Kumar  
(Member)  
13.12.2018

Subhash Chander Kush  
(Member)  
13.12.2018

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

**Complaint no. : 612 of 2018**  
**Date of first hearing : 25.09.2018**  
**Date of decision : 13.12.2018**

Mr. Vikas Kumar  
R/o. 767/18, Shastri Nagar,  
Rohtak, Haryana.

**Complainant**

Versus

1. Siddharth Buildhome Pvt. Ltd.  
R/o. 6, Siddharth Apartments,  
Block-B, Sector 44, Gurugram-122011.
2. Mr. Sidharth Chouhan,  
Address: Pnd-081, floor-8,  
The Pinnacle, DLF City Phase 5, 122003.
3. Mr. Dharpal Dudeja,  
Address: A-121, Sainik Colony  
Sector-49, Faridabad-121001.
4. Chairman/Managing Director  
M/s Sidhartha Buildhome Pvt. Ltd.  
168-169, Amar Colony, Lajpat Nagar,  
New Delhi-110024.
5. Mr. Arun Kothwal,  
Authorised person  
Address: 6, Sidhartha Apartment, Block  
B, Sector 44, Gurugram, Haryana-  
122011.

**Respondents**



**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Vikas Kumar	Complainant in person
Shri Rakesh Kumar	Advocate for the complainant
Shri Prashant Sheoran	Advocate for the respondent
Proceeded ex-parte	For respondent no. 2 to 5

**ORDER**

1. A complaint dated 26.07.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Vikas Kumar, against the promoter M/s Sidhartha Buildhome Pvt. Ltd. and ors., on account of violation of clause 13.1 read with clause 11.1 of the apartment buyer's agreement executed on 01.09.2011 in respect of the apartment 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 01.09.2011 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 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: -

- Nature of the project- Group housing colony
- DTCP License no.- 64 of 2008 dated 19.03.2008

1.	Name and location of the project	"NCR One" in village Wazirpur, Sector 95, Gurugram
2.	Project area	10.712 acres
3.	RERA registered/ not registered	<b>Not registered</b>
4.	Unit no.	301, 3 <sup>rd</sup> floor, tower A
5.	Unit measuring	1435 sq. ft.
6.	Date of apartment buyer's agreement	01.09.2011
7.	Total consideration as per statement of account dated 06.04.2017	Rs.43,61,275/-
8.	Total amount paid by the complainant as per statement of account dated 06.04.2017	Rs.42,08,289/-
9.	Payment plan	Construction linked plan
10.	Due date of delivery of possession as per <b>clause 13.1 read with clause 11.1</b> of apartments buyer's agreement i.e. 36 months + 6 months from the date start of foundation of a particular tower in which the apartment is located.  (on <b>29.11.2011</b> demand on account of "on start of foundation" was raised as per statement of account dated 06.04.2011)	29.05.2015



11.	Delay in handing over possession till date of decision	3 years 6 months 14 days
12.	Penalty clause as per apartment buyer's agreement dated 01.09.2011	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

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 01.09.2011 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 29.05.2015. Neither the respondent has delivered the possession of the said unit till date to the complainant nor they have paid any compensation as per clause 12.1 of the said apartment buyer's agreement. Therefore, the promoter has not fulfilled his committed liability as on date.

5. 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 13.12.2018. The case came up for hearing on 13.12.2018. The reply filed by the respondent has been perused.



### Brief facts of the complaint

6. Briefly stated, the facts of the complaint are that in the month of January 2011, the complainants booked a flat in the respondent's project namely "NCR One", Sector 95, Gurugram. The complainant made first payment of Rs.1,00,000/- on 19.01.2011 and a receipt with reference no. SIR/01660 was issued by respondents.
7. The complainant submitted that respondents allotted apartment no. A-301 to complainant measuring 1435 sq. ft. The complainant made payment of all the instalments to the respondent as per provisional allotment letter dated 30.08.2011 for which complainant availed home loan facility from State Bank of India and is paying regular EMI approximate to Rs.30,000/- per month. That till date complainant has paid an amount of Rs.42,08,289 to the respondents and made payment of Rs.13,68,891/- to bank towards home loan EMI.
8. The complainant submitted that as per clause 11 of the builder buyer agreement, the respondents were bound to handover the possession of the flat within 36 months of booking however, respondents have miserably failed to keep their words. The complainant submitted that seeing the



malpractices and deficiencies in the respondent's services and finding no other alternative, the complainant approached the respondent for cancellation of booking and refund of amount paid by complainant vide email dated 23.01.2017 and letter dated 24.01.2017 which is duly received by the respondents.

9. The complainant submitted that despite repeated calls, meetings and emails sent to the respondent, the respondent has made no efforts to make the aforesaid payment and have been procrastinating the said issue by making false promises and statements.
10. The complainant submitted that on 09.06.2017, complainant through his council sent a legal notice to respondents for cancellation of booking and refund of amount paid by complainant with interest. The complainant submitted that on 21.11.2017, he approached CM Grievances Redress and Monitoring System Haryana Chief Minister Office for cancellation of booking and refund of amount paid by complainant.



### 11. Issues to be decided

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



- i. Whether the respondent has committed breach of contract by not handing over possession of the flat by due date i.e. 24.10.2013?
- ii. Whether the respondent is liable to refund Rs.42,08,289/- with 18% interest per annum, for a period of first 60 days calculated from 24.10.2013 and thereafter 24% interest for delaying the possession of the plot beyond stipulated date i.e. 24.10.2013 till physical possession is handed over in all respect?

## 12. Relief sought

The relief sought by the complainant area as follow:

- i. The respondent may be directed to pay amount for delaying the possession of the plot beyond the stipulated date i.e. 24.10.2013 till handing over the possession.
- ii. The respondent may kindly be directed to pay 18% interest per annum for the period of first 60 days calculated from 24.10.2013 and thereafter 24% interest for delaying the possession of the plot beyond stipulated date i.e. 24.10.013 till physical possession is handed over in all respect.



- iii. That the respondent may kindly be directed to refund Rs.42,08,289/- with 18% interest per annum, for the period of first 60 days calculated from 24.10.2013 and thereafter 24% interest from the date of payment till the date of refund.

### **Respondent's reply**

13. The respondent submitted that the complainant has not disclosed complete facts regarding the project in question as well as the payment made by him. It is correct that the complainant had booked the unit in question in the year 2011 by depositing Rs.10 lakh. That the period of completion of the unit/project, in terms of clause 11.1 of the agreement shall commence from the date of start of foundation of the particular tower in which the apartment is located and not from the date of booking.

14. The respondent submitted that the builder buyer agreement was signed on 1.09.2011 and foundation work of the tower in which the unit in question is located started from 15.11.2012, thus the time period of 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 timely payment of instalments and in the present



case the complainant has failed to do so. It is submitted that the details of payment made by the complainant clearly shows the delay by him over a period of time.

15. The respondent submitted that the plea of complainant that he took loan and for the same reason he had suffered losses, then in that case it is the complainant to sue the bank for not disbursing the payment in time. That the total delay on different occasions comes to 659 days.

16. 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 allottees. 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, out of funds so that the possession of the units can be offered as soon as possible.

17. The respondent 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. That the construction of the project is at advanced



stage and the same is apparent from the photographs duly attached with the reply. It is submitted that the said photographs substantiate the fact that 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 instalments including the complainant. 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 the allottees as well.

18. The respondent denied that they ever made lame excuse. It is submitted that the respondent always tried to complete the project in time subjected to timely payment of its customers. It is denied that the complainant had any right to seek refund. That no such request was ever made by the complainant. That there is no mal practice or deficiencies in respondent's services.

19. The respondent submitted that the complainant has no right to seeks same relief from different authority. It is submitted that as admitted by complainant himself he had already approached CM Grievances Redress and Monitoring System, thus the present complaint is not maintainable.



### Determination of issues

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

20. With respect to the **first and second issues** raised by the complainant, as per clause 13.1 read with clause 11.1 of the agreement, the possession of the unit was to be handed over within 36 months + 6 months from the date start of foundation of a particular tower in which the apartment is located. The demand on account of “on start of foundation” was raised on 29.11.2011 as per statement of account dated 06.04.2011. Therefore, the due date of possession shall be computed from 29.11.2011. The clause regarding the possession 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.”*

21. Accordingly, the due date of possession was 29.05.2015 and the possession has been delayed by three years six month



and fourteen days till the date of decision. As the possession of the flat was to be delivered by 29.05.2015 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 Real Estate (Regulation and Development) Act, 2016.

22. In the present the complainant is seeking refund. It is evident from the pictures annexed by the respondent with the reply that the construction of the tower in which the unit in question is situated is almost complete. Therefore, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall adversely affect the right of allottees who wish to continue with the project. Further, it will also hamper the completion of the project as the project is almost complete. However, as the respondent has failed to fulfil his obligation under section 11(4)(a) of the Act *ibid*, therefore the promoter is liable under section 18(1) proviso of the Act *ibid*, to pay interest to the complainant at prescribed rate i.e. 10.75% per annum for every month of delay till the handing over of possession.



### Findings of the authority

23. **Jurisdiction of the authority-** 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town & Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present complaint, 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.

24. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation.



### Decision and directions of the authority

25. 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 the interest so accrued on the amount paid by the complainant i.e. **Rs.42,08,289/-** at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 29.05.2015 till the actual date of handing over of the possession.
- (ii) The respondent is directed to pay accrued interest i.e. **Rs.16,03,819.38/-** to the complainant from the due date of possession till the date of decision, on account of delay in handing over of possession to the complainants within 90 days from the date of decision. Thereafter, the monthly payment of interest i.e. **Rs.37,699.26/-** till handing over of the possession, so accrues shall be paid by 10<sup>th</sup> of every succeeding month.





Principal amount paid by the complainant	Interest accrued up to date of decision	Monthly interest to be paid till handover of possession
Rs.42,08,289/-	Rs.16,03,819.38/-	Rs.37,699.26/-

26. The project is registerable and has not been registered by the promoters. Thus, 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 section 59 of the Act *ibid*.

27. The order is pronounced.

28. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:13.12.2018



Judgement Uploaded on 05.01.2019