

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 07.02.2019
Complaint No.	488/2018 Case Titled As Mr. Netra Prakash Sharma V/S Siddhartha Buildhome Pvt. Ltd.
Complainant	Mr. Netra Prakash Sharma
Represented through	Complainant in person
Respondent	Siddhartha Buildhome Pvt. Ltd.
Respondent Represented through	Shri H.K.P Sinha authorized representative on behalf of respondent-company Shri Prashant Sheoran, Advocate for the respondent.
Last date of hearing	15.1.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

**Project is not registered with the authority.**

Since the project is not registered, as such, notice under section 59 of 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.

Report dated 5.2.2019 of local commissioner has been received, placed on the file.

As per clause 11.1 of the Builder Buyer Agreement dated 18.2.2012 for unit No.406, Tower-E, 4<sup>th</sup> floor, in project NCR ONE, Sector-95, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the start of foundation i.e. 15.11.2012 + 6 months grace period which comes out to be 15.5.2016. However, the respondent has not delivered

the unit in time. Complainant has already paid Rs.50,94,244/- to the respondent against a total sale consideration of Rs. 53,20,250/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 15.5.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

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 offer of possession shall be paid before 10<sup>th</sup> of subsequent month.

The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.

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

Samir Kumar  
(Member)  
7.2.2019

Subhash Chander Kush  
(Member)

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

**Complaint No. : 488 of 2018**  
**First date of hearing : 28.08.2018**  
**Date of Decision : 07.02.2019**

Mr. Netra Prakash Sharma  
R/o H.no. 1273. 1<sup>st</sup> floor. Sector 46,  
Gurugram, Haryana

**Complainant**

Versus

M/s Siddhartha Buildhome Private limited  
Regd Office: Plot no. 6, 5<sup>th</sup> floor, sector 44,  
Gurugram, Haryana-122003

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

Member  
Member

**APPEARANCE:**

Mr. Netra Prakash Sharma Complainants in person

Shri Prashant Sheoran with Advocate for respondent  
Shri H.K.P Sinha authorized  
representative on behalf of  
respondent-company



**ORDER**

1. A complaint dated 29.06.2018 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. Netra Prakash Sharma, against the promoter M/s Siddhartha Buildhome Private Limited, on account of violation of clause 11.1 of the apartment buyer's agreement executed on 18.02.2012 for apartment no 406, tower E, 4<sup>th</sup> floor in the project "NCR one" with a super area of 1775 sq. ft. for not giving possession on the due date i.e. on 15.05.2016 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 18.02.2012 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 promoters/respondents 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, sector 95, Gurugram, Haryana
2.	Apartment No.	406, tower E, 4 <sup>th</sup> floor
3.	Apartment area	1775 sq. ft.



4.	Nature of project	Group housing colony
5.	DTCP license no.	64 of 2008
6.	Project area	10.712 acres
7.	Registered/ unregistered	<b>Unregistered (applied on 27.06.2018)</b>
8.	Date of booking	12.07.2010
9.	Date of apartment buyer agreement	18.02.2012
10.	Total sale consideration (clause 3.5)	Rs 53,20,250/- (as per Statement of account dated 20.04.2018 (annx P-42))
11.	Total amount paid by the complainant till date	Rs 50,94,244/-
12.	Payment plan	Construction linked payment plan
13.	Date of delivery of possession Clause 11.1 (36 months from the date of start of foundation of a particular tower i.e. 15.11.2012 plus 6 months of grace period) (as per SOA dated 20.04.2018)	15.05.2016
14.	Delay of number of years/months/days till date	2 years 7 months
15.	Penalty clause	Clause 12.1 i.e. Rs 5/-sq. ft. of the super area of the apartment
16.	Status of the project	Construction work near completion as per the respondent's reply

4. The details provided above have been checked as per the record available in the case file provided by the complainant and the respondent. An apartment buyer's agreement dated



18.02.2012 is available on record for apartment no. 406, tower E, 4<sup>th</sup> floor according to which the possession of the aforesaid unit was to be delivered by 15.05.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till date and there has been a delay of more than 2 years.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 28.08.2018. The case came up for hearing on 28.08.2018, 30.08.2018, 06.12.2018, 15.01.2019 and 07.02.2019. The reply has been filed by the respondent on 28.08.2018.

#### **FACTS OF THE CASE**

6. The complainant submitted that the respondent had already launched the project even before he booked an apartment in the month of July 2010, the complainant booked an apartment by depositing 10% of BSP i.e. Rs 3, 60,000/- and the promoter gave him the assurance that the project would be ready by January, 2014.

7. The complainant submitted that even after a period of 8 years the tower is still incomplete. He further submitted that despite



visiting their office in sector 44, Gurugram and sector 95 he was informed that the project would be ready by next 3-6 months.

8. The complainant submitted that he paid a total amount of Rs 50,94,244/- till date and even then, there was is no confirmation of possession by the builder.
9. The complainant submitted that he also paid PLC charge of Rs 2,66,250/- for the unit that was park facing but the unit that was allotted to him was road facing and the amount for park facing was not deducted or adjusted in any of the demand letters issued to him by the promoter.
10. The complainant submitted that he also paid an amount of Rs 2,00,000/- for a covered car parking, but as of the existing rule the promoter had to offer to the complainant one free car parking, but no communication was made regarding that also.
11. The complainant submitted that as per the apartment buyer's agreement dated 18.02.2012 the total cost of the apartment was mentioned as Rs. 53,20,250/- but in the latest statement of accounts the total cost was changed to Rs 52,37,750/-. The difference was due to the miscalculation of the EDC and IDC charges.



12. The complainant submitted that as per clause 11.1, the due date of possession comes out to 15.05.2016, but till date the possession has not been delivered to him. Clause 11.1 is reproduced below:

***Clause 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."***

#### ISSUES RAISED BY THE COMPLAINANT

- I. What is the definite date of handing over of possession to the complainant?
- II. Whether the respondent is liable to compensate the complainant as per clause 12 of the apartment buyer's agreement for not delivering the possession on time?
- III. Whether the respondent is liable for charging extra amount as PLC of the apartment which is park facing?





## RELIEF SOUGHT

- I. Direct the respondent to refund the total amount of Rs 50,94,244/- along with interest at the prescribed rate.

## RESPONDENT'S REPLY

13. The respondent admitted the agreed date of possession as per the apartment buyer's agreement dated 18.02.2012, but the respondent submitted that there had been irregularity in making the payments by the complainant.
14. The respondent submitted that it is totally false that the complainant is allotted a road facing instead of park facing. It was further submitted that the plans duly sanctioned show that the unit in question is a park facing unit. It is further denied that the builder had offered one free parking.
15. 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. It was further submitted that the construction of the project is at advanced stage.
16. The respondent submitted that due to factors beyond control of the company the construction was hindered but currently, the construction work is on the verge of completion and at this



stage refund would not be a viable option as it would be prejudicial to the rights of the respondent but also the rights of other allottees as well.

17. The respondent submitted that the parties to the present complaint are bound by the agreement entered upon by them and in lieu of the same, the complainant is bound to pay delayed payment interest which as on today is Rs 3,12,258/-. Thus, when the complainant is himself at fault, so he cannot blame the respondent for delay in possession.
18. The respondent submitted that the present complaint has only been filed by the complainant, whereas the unit in question thereof had been allotted to two applicants namely the complainant himself and the 2<sup>nd</sup> complainant that is Shri Varun Sharma. The present complaint at the behest of only one of the two allottees is legally not maintainable.

#### DETERMINATION OF ISSUES

19. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:
  - i. **First issue:** With respect to the issue raised by the complainant, as per clause 11.1 as already stated above the due date of delivery of possession is 15.05.2016 and there has been a delay



of more than 2 years, thus the complainant is entitled for the delay charges from the due date of possession till the offer of possession at the prescribed rate under the Act. Moreover, the actual date of offer of possession can only be determined during the proceedings when both the parties agree, as of now the due date has lapsed and the complainant is entitled for the delayed interest at the prescribed rate.

ii. **Second issue:** With respect to the issue raised by the complainant, as the apartment buyer agreement dated 18.02.2012, as per clause 11.1 the due date of the possession i.e. 15.05.2016 signed by both the parties is sacrosanct, the promoter is liable to pay the penalty as per the clause 12 for not handing over the possession on time which is Rs 5/- sq. ft. of the super area of the apartment.

iii. **Third issue:** With respect to the issue raised by the complainant, as per clause 4.1 of the apartment buyer agreement dated 18.02.2012 the developer can charge PLC at the rate as stipulated per sq. ft. for the super area of the apartment and as per clause 3.5 of the agreement the buyer as opted and agreed to be pay the PLC.



### **Inferences drawn by the authority**

20. As the concerned project is located in sector 95, Gurugram and is in the nature of real estate project i.e. group housing colony therefore the authority has complete territorial and subject matter jurisdiction to entertain the present complaint.

21. The authority has complete subject matter 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 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, and the nature of the project relates to real estate therefore this authority has complete territorial jurisdiction and subject matter jurisdiction to entertain the present complaint.

22. **Local commissioner report-** The report has been filed on 05.02.2019 by the local commissioner that the overall progress of the project has been assessed on the basis of actual work done at site on 24.012.2018. Keeping in view above facts, it is



reported that the work of tower E has been completed physically about 35% approximately.

23. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe that since the project is not registered, as such, 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. Report dated 05.02.2019 of local commissioner has been received, placed on the file.

24. As per clause 11.1 of the builder buyer agreement dated 18.2.2012 for unit No.406, Tower-E, 4<sup>th</sup> floor, in project NCR ONE, Sector-95, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the start of foundation i.e. 15.11.2012 + 6 months grace period which comes out to be 15.05.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.50,94,244/- to the respondent against a total sale consideration of Rs. 53,20,250/-.

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

24. 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 here by issues the following directions to the respondent in the interest of justice and fair play:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 15.05.2016 as the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.
- ii. 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 offer of possession shall be paid before 10<sup>th</sup> of subsequent month.
- iv. The respondent is directed to adjust the payment of delayed possession charges towards dues from the complainant, if any.
- v. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent under section 59 of the Real Estate (Regulation and Development) Act, 2016 by the registration branch.



26. The order is pronounced.

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

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated: 07.02.2019

Judgement Uploaded on 12.02.2019



HARERA  
GURUGRAM

