

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

**Complaint no. : 2082 of 2018**  
**Date of first hearing: 20.03.2019**  
**Date of decision : 20.03.2019**

Mr. Virender Kumar Garg,  
R/o Flat no. 21, Saubhagya apartment,  
Sec-21D, Faridabad-121001.

**Complainant**

Versus

M/s Sidhartha Buildhome Pvt. Ltd.  
(through its Managing Director and other  
Directors)  
Address: Plot No. 128, G.F., Sector-44,  
Gurugram-122003.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member  
Member**

**APPEARANCE:**

Shri Virender Kumar Garg Complainant in person  
Shri Prashant Sheoran and Advocates for the respondent  
Shri H.K.P. Sinha

**ORDER**

1. A complaint dated 07.12.2018 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. Virender

Kumar Garg, against the promoter M/s Sidhartha Buildhome Pvt. Ltd. on account of violation of the clause 11 of the apartment buyer's agreement dated 29.06.2012 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 29.06.2012 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:

**Note: The agreement has been executed between Mr. Virender Kumar Garg and Ms. Aarushi (minor) and the respondent.**

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 2018 dated 19.03.2008
5.	RERA registered/not registered	<b>Not registered</b>
6.	Date of allotment letter	24.07.2012
7.	Date of booking	26.04.2012
8.	Apartment/unit no.	Ex-G4, ground floor, tower Ex-4
9.	Unit measuring	2330 sq. ft.
10.	Buyer's agreement executed on	29.06.2012
11.	Payment plan	Construction linked payment plan
12.	Total consideration amount as per payment plan annexed with the said agreement.	Rs.75,31,250/-
13.	Total amount paid by the complainant as per the receipts annexed with the complaint	Rs.18,50,476/-
14.	Due date of delivery of possession as per apartment buyer's agreement (as per clause 11 of the said agreement, 36 months from the date of start of foundation of a particular tower i.e.07.12.2016 as per demand letter annexed with complainant+ 6 months grace period)	07.06.2020

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. An apartment buyer's agreement dated 29.06.2012 is available on record for the

aforesaid unit according to which the possession of the said apartment is to be delivered by 07.06.2020.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent through his counsel appeared on 20.03.2019. The case came up for hearing on 20.03.2019. The reply has been filed by the respondent on 30.01.2019 and the same has been perused.

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

6. The complainant submitted that he booked a flat for residential purpose in project of the respondent namely the "NCR One" at Sector-95, Gurugram, Haryana. The respondent made incorrect and false statement in its advertisement material in order to induce the complainant to book a flat in the said project stating that the project shall be a state of art premier project and shall be one of its kind with all modern facilities/amenities. It was represented by the respondent that the said project will be developed after completing the

entire development and obtaining the completion certificate from the local authority.

7. The complainant submitted that he filed the application form on 15.06.2018 which was pre-printed with attached terms and conditions. Based on the representations of the respondent, the complainant was induced to sign pre-printed allotment letter dated 24.07.2012 by virtue of which the respondent allotted flat bearing no. EX-4 ground floor, having super area of 2,330 sq. ft. in the said project.
8. The complainant submitted that the apartment buyer's agreement was duly signed and executed between the parties on 29.06.2012. The complainant has paid a total sum of Rs.18,50,476/- against the total sale consideration of Rs.75,31,250/- towards the aforesaid unit. The aforesaid payment was made as and when demands were raised by the respondent company.
9. The complainant submitted that the respondent has failed to deliver the possession after expiry of 42 months (36 months as promised with 6 months grace period) from the date of

apartment buyer's agreement. The complainant approached the respondent several times, but he failed to give concrete schedule. There has been no update on the website. The complainant learnt that the respondent company has cheated various customers in different projects. There is very slow progress at site and the project is lying abandoned.

10. The complainant submitted that to his knowledge, the respondent has even failed to get the project registered under the relevant provisions of the Act and is thus acting in complete disregard of law. The Act clearly stipulates that every on-going project within a period of three months from the date of commencement of Act, needs to file an appropriate application for registration.

11. The complainant submitted that the respondent has even changed the design of Ex-4, tower plan also without my consent and informing the same in writing also. Details of the original design are attached in the brochures as independent floors 4 & 5. This has created mess in these independent floors and due to the aforesaid changes, the complainant has lost his interest to go ahead for the said flat. Current

construction status photographs as on 17.06.2018 are also attached. (Note: No pictures have been annexed with the paper book)

### **Issues to be decided**

12. The relevant issues raised by the complainant are as follow:

- i. Whether the respondent/promoter made false representations about the project in question in order to induce the complainant to make booking?
- ii. Whether the respondent is liable for unjustifiable delay in construction and development of the said project?
- iii. Whether the respondent is liable to refund the amount deposited by the complainant along with interest at prescribed rate p.a.?

### **13. Reliefs sought**

The complainant is seeking the following reliefs:

- i. Initiate the proceedings against the respondent for not getting the project registered under the provisions of the Act *ibid*.

- ii. The respondent be directed to refund a sum of Rs.18,50,476/- along with interest at prescribed rate of interest per annum.

**Reply on behalf of the respondent**

14. The respondent denied making incorrect or false statement in its advertisement material in order to induce the complainant to book a flat in its project NCR ONE, Sector-95, Gurugram.
15. The respondent denied that the complainant has made payment as and when demands were raised by the respondent. It is submitted that the complainant stopped making payment in the year 2016 itself. It is submitted that the unit in question is located in executive floors and none of the allottees has made payment against amount demanded. Thus, how would it will be possible to construct a structure if the allottees do not make payment on time. If the allottees had made payment on time, the structure would have been completed by now but from the complaint itself it is clear that even the present complainant had paid only  $\frac{1}{4}$  of total sale consideration. It is submitted that how could a person



possibly expect a full-fledged building by paying only ¼th of the total sale consideration. Since the complainant himself is at fault he is not entitled to any refund as claimed. It is submitted since the complainant himself failed to make payment, his unit is liable to be cancelled and he is only entitled to amount after deduction of earnest money without interest as per RERA as well as interest on delayed payment and taxes i.e. Rs.7,79,425 /-.

16. The respondent denied that it has failed to deliver the possession after expiry of 42 months from the date of apartment buyer's agreement. It is denied that the complainant has approached the respondent several times or the same has failed to give concrete schedule. It is denied that the complainant learnt that the respondent has cheated various customers in different projects. It is denied that there is very slow progress at site or the project is lying abandoned. It is submitted that the date of possession is subjected to force majeure and one of such circumstance is scarcity of fund and the complainant cannot take benefit of its own wrong.

17. The respondent denied that it has even changed the design of Ex. 4, tower plan without the complainant's consent. It is denied that the respondent has created mess in these independent floors due to which the complainant has lost his interest to go ahead for the said flat. The photographs attached with the complaint are not admitted to be correct.

18. The respondent submitted that the complainant is only entitled to refund of balance amount after deduction of earnest money without interest. It is therefore prayed that the present complaint may kindly be dismissed and the appropriate direction against cancellation of unit as well as deduction of earnest money may kindly be passed, in the interest of justice.

#### **Determination of issues**

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

19. With respect to the **first issue** raised by the complainant, the complainant has failed to furnish any documentary proof in

order to establish that he was induced to make booking due to false representations of the respondent.

20. With respect to the **second and third issue** raised by the complainant, as per clause 11 of the apartment buyer's agreement dated 29.06.2012, the possession of the unit was to be handed over within 36 months from the date of start of foundation of a particular tower plus grace period of 6 months. In the present complaint, the demand on account of 'start of foundation' was raised by the respondent on 07.12.2016. Therefore, the due date of handing over the possession shall be computed from 07.12.2016. The clause regarding the possession of the said unit is reproduced below:

*"11. Completion of construction*

*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 06 months, on receipt of sanction plans/revised building plans and approvals of all the concerned authorities."*

21. Accordingly, the due date of possession is 07.06.2020, thereby making the complaint pre-mature. However, the

complainant signed the application form on 30.04.2012 along with booking amount of Rs.6,00,000/- and the buyer had made a payment of Rs.18,50,476/- much prior to the execution of the said agreement along with the fact that the builder raised demand on start of foundation on 07.12.2016 as the construction was tardy. Thus, the buyer unauthorizedly kept the money deposited by the complainant 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.18,50,476/-. The project is not registered as on date wherein any commitment of the builder towards handing over of complete possession can be ascertained.

22. Keeping in view the above circumstances, there is no choice but to order refund of the amount of Rs.18,50,476/- received from the complainants along with prescribed rate of interest @ 10.75% per annum from different dates of payments. The amount shall be paid to the complainants within 90 days of this order.

### Findings of the authority

23. 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.

24. An amendment to the complaint was filed by the complainant along with the complaint wherein he has stated that he is not appearing before the authority for compensation but for fulfilment of the obligations by the promoter as per provisions of the said Act ibid and reserves his right to seek compensation from the promoter for which

he shall make separate application to the adjudicating officer, if required.

25. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid*. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act *ibid*.

26. Complainant has brought on record a copy of order dated 06.07.2018, passed by State Consumer Disputes Redressal Commission, Haryana Panchkula, in complaint no. 17 of 2017 vide which it had been stated as below: -

*“In view of the statement made by complainant, present complaint is hereby dismissed as withdrawn with liberty to file a fresh complaint on the same very cause of action before competent Fora.”*

27. As per clause 11 of the agreement dated 29.06.2012, for unit no. Ex-G4, ground floor, tower Ex-4, in project “NCR One”, group housing colony, vide licence no. 64 of 19.03.2008, admeasuring 2330 square feet, Sector-95, Gurugram, 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. 07.12.2016 + 6 months grace period which comes out to be 07.06.2020. Complainant has already paid Rs. 18,50,476/- to the respondent against a total sale consideration of Rs. 75,31,250/-.

28. **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.
29. During inspection the local commissioner found that 10-12 labourers were present in the tower-E and they were collecting the waste material from the units just to show that the work is in progress. Over all progress of the tower has been assessed on the basis of actual construction at site and it is reported that the physical progress of the tower-E is about 45%.

30. Since the project is not registered, as such, no date for delivery of possession of the unit can be ascertained. There is no hope and scope for completion of the project, the authority has no choice but to direct the respondent to refund the entire amount i.e. Rs. 18,50,476/- alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

**Directions of the authority**

31. 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 refund the entire amount i.e. Rs. 18,50,476/- alongwith prescribed rate of interest i.e. 10.75% per annum from the date of receipt of payments within 90 days from the date of this order.



32. 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 section 59 of the Act ibid. A copy of this order be endorsed to registration branch for further action in the matter.

33. The order is pronounced.

34. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.03.2019

**Judgement uploaded on 25.04.2019**