

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

Complaint no.	:	2942/2020
Date of filing complaint:		13.10.2020
First date of hearing:		01.07.2021
Date of decision	:	14.07.2022

1. Mr. Amit Chadha 2. Mrs. Kokila Chadha both R/o: H.no. 10-SF, Lilac -2, Sector - 49, Gurugram, Haryana-122001	Complainants
Versus	
Chd Developers Ltd R/o: 702-707, Emaar Digital Greens, Tower A, Sector 61, Golf Course Ext Road, Gurugram	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Geetansh Nagpal (Advocate)	Complainant
Shri Sachin Rao Proxy Counsel for Shri Ravi Aggarwal (Advocate)	Respondent

GURUGRAM

ORDER

- The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	“Resortico”, Sector-34, Gurugram, Haryana
2.	Project area	10.025 acres
3.	Nature of the project	Commercial Project
4.	DTCP License	17 of 2014 dated 10.06.2014 upto 09.06.2019
5.	Name of the licensee	Mukesh Kumar S/o Tulsiram
6.	RERA Registered/ not registered	Registered bearing no. 159 of 2017 dated 29.08.2017 Valid till 28.07.2021 + 6 months COVID extension = 28.01.2022
7.	Unit no.	CRT-T03-06/01 (Annexure C/5-page no. 90 of the agreement)
8.	Unit measuring (carpet area)	709 sq. ft. (Annexure C/5-page no. 90 of the agreement)
9.	Date of allotment letter	15.05.2015 (Annexure C/6 on page no. 114 of complaint)
10.	Date of execution of Serviced Apartment buyer's agreement	09.02.2016 (Annexure C/5 on page no. 89 of agreement)

<p>11. Possession clause</p>	<p>12</p> <p>12 Barring unforeseen circumstances and force majeure events, court indulgence as stipulated hereunder, the possession of the said Serviced Apartment is proposed to be delivered by the Company to the Allottee within 48 months from the date of execution of this Agreement, subject to payment by the Allottee(s) towards the Basic Sale Price and Other Charges, as demanded in terms of this Agreement. The time frame for delivery of possession provided herein above is tentative and shall be subject to force majeure, court indulgence and timely and prompt payment of all installments and the formalities for completion required. The Company shall be entitled to avail time for completion of construction of the Project if the delay occurs due to departmental delay or any other circumstance beyond the power and control of the Company. The Company shall be entitled to six (6) months additional period in the event there is delay in handing over possession.</p> <p>However, in case of delay beyond the period of six (6) months and such delay is attributable to the Company, the Company shall be liable to pay compensation @Rs 10.00 per sq. ft. per month of the super area of the serviced apartment for the period of further delay. The adjustment of compensation, if any shall be done at the time of conveyance of the serviced apartment and not earlier.</p>
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		(Emphasis supplied).
12.	Construction linked payment plan	Page 93 of annexure/5 Page 115-116 of annexure C/7
13.	Due date of delivery of possession as per clause 12 of Serviced Apartment buyer's agreement	09.08.2020 (Calculated from the date of execution of this Agreement,)
14.	Total sale consideration	Rs 32,12,762.60 /- (Annexure C-7 on page no. 116 of the complaint)
15.	Total amount paid by the complainants	Rs 18,24,419/- (Page no. 13 of the reply)
16.	Occupation Certificate	Not received
17.	Offer of possession	Not offered
18.	Grace Period	The authority allows the grace period keeping in view the fact that this grace period of 6 months is unqualified/ unconditional and has been sought for handing over of possession.

B. Facts of the complaint:

3. That the complainants submitted an application on 15.05.2015 and booked a Serviced Apartment No. CRT-T03-06/01, 1 BHK admeasuring 709 Sq. Ft. in the Chd Resortico project measuring 10.025 acres at Sector-34, Sohna, Gurugram, Haryana. The complainants opted for Construction Linked Payment Plan. On the same day a Allotment Letter was issued by the respondent to the complainants in respect of the Serviced Apartment for a Total Consideration of Rs. 32,12,762.60.
4. That the respondent company sent one detailed Serviced Apartment Buyer's Agreement to the complainants and requested

for signing the agreement which was signed on 09.02.2016 and returned to the builder, wherein as per the clause 1.1 Page No. 3 of Serviced Apartment Buyer's Agreement, the sale price of the Unit i.e Total consideration payable by the complainants to the respondent included the basic sale price (Basic Sale Price / BSP) of Rs. 27,65,10 calculated at the rate of Rs. 3900/- sq. ft. on super area along with other charges as per Clause 1.2 Page No. 3 of Serviced Apartment Buyer's Agreement such as Preferential Location Charges, External Development Charges (EDC) & Infrastructure Development Charges (IDC), etc. out of which the complainants had already paid Rs. 8,29,530 prior to signing of the Serviced Apartment Buyer's Agreement and other charges as mentioned in the Serviced Apartment Buyer's Agreement.

5. That the complainants signed the agreement on 09.02.2016 in the hope that they would be delivered the unit within 48 months plus 6 months grace period i.e., by 09.08.2020 as per clause 12 of the agreement Page No. 12. The complainants were also handed over one detailed payment plan which was Construction Linked Payment Plan. It may be worth noting that the Serviced Apartment Buyer's Agreement was signed eight months and 6 days after having accepted the initial deposit (on 15.05.2015) as stated above. The period for delivery of the Unit as per the Serviced Apartment Buyer's Agreement is applicable from the date of signing the Serviced Apartment Buyer's Agreement.
6. That the due date of possession comes out to be 09.08.2020 as per Clause 12 of Serviced Apartment Buyer's Agreement. The respondent raised demand of Rs. 2,86,187.17 on 24.06.2015 and the same was paid by the complainants vide 2 Cheques, bearing

267972 dated 09.07.2015 drawn on ICICI Bank for a sum of Rs. 2,00,000 and 153709 dated 09.07.2015 drawn on Axis Bank Ltd. for a sum of Rs. 86,188.

7. That the respondent raised the demand of Rs. 2,86,532 on 12.01.2016 and the same was paid by the complainants vide 2 Cheques, bearing 294791 dated 24.01.2016 drawn on ICICI Bank for a sum of Rs. 66,533 and 153710 dated 24.01.2016 drawn on Axis Bank Ltd. for a sum of Rs. 2,00,000. The respondent raised the demand of Rs. 3,32,618.15 on 04.11.2016 and the same was paid by the complainants vide NEFT. The Complainants sent an email on 21.11.2016 to the respondent complaining about the slow pace of work and expressed their distrust towards the respondent. Furthermore, the complainants also enquired about the slow work pace.
8. That the respondent raised the demand of Rs. 3,48,970 on 30.11.2017 and the same was paid by the complainants vide 2 EFTs, bearing EFT No. RTGS 9056 dated 16.12.2017 drawn on RTGS for a sum of Rs. 2,08,970 and another EFT No. RTGS 4028 dated 16.12.2017 drawn on RTGS for a sum of Rs. 1,40,000. Hence, the total amount paid by the complainants amounts to Rs. 18,24,417 which was made upto 16.12.2017 against a total demand of Rs. 32,12,762.60 which amounts to more than 56% of the total payment, made within 22 months of executing the Serviced Apartment Buyer's Agreement.
9. That on 15.12.2018, the complainants followed up with the respondent regarding the construction progress of their Unit. That after not getting a response of the last three mails of the

complainants dated 13.07.2019, 17.07.2019 and 21.08.2019, the complainants then decided to ask for a refund of Rs. 18,24,417 with interest @ 18% per annum from the date of deposit till the date of its realization and close the matter amicably on 31.08.2019.

10. That on 02.09.2019, the respondent responded via e-mail and clarified that the delay in construction was because of a contractor issue and certain appropriate measures were being undertaken in order to expedite construction for timely possession of all units. The respondent further stated in the same mail that in accordance with the HRERA timelines, the possession will be offered in phases now and that the possession of complainants unit has been moved to Phase 2, to be delivered tentatively by June 2021. Moreover, the respondent has manipulated the meaning of Clause No. 8 of the Serviced Apartment Buyer's Agreement as the aforementioned Clause clearly lays down the scenario in which the allottee fails to comply with the terms and conditions of the Serviced Apartment Buyer's Agreement, but in the present case, the complainants have made timely payments in accordance with the demand letters duly raised by the respondent.
11. That on the same day the complainants were shocked by the unfair and unprofessional conduct of the respondent as the construction of Complainants' Unit in Tower-3 was shifted to Phase-2 without any prior intimation.
12. The respondent has completely failed to honor the promises and has not provided the services as promised and agreed through the

brochure, and the different advertisements released from time to time.

13. It is abundantly clear that the respondent has played a fraud upon the complainants and has cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within the stipulated period. In spite of this, the respondent has been issuing demand for payment along with interest, despite the fact that the payments are made under the Construction Linked Plan for which the corresponding construction has not taken place.
14. That when the construction activity at the project site did not resume for over months, the complainants organized several meetings with the representatives of the respondent and visited the said project and various departments including DTCP office/HRERA website to obtain information on the following facts which the respondent did not disclose to the complainants at the time of launch and/ or allotment of apartment and/ or execution of the Serviced Apartment Buyer's Agreement.
 - a) **NO FUNDS TO COMPLETE THE PROJECT:** The respondent has not disclosed the details of the funds received and has mentioned in several meetings that there are no funds to construct the project and thus, the construction has been stalled.
 - b) The respondent has also diverted the amount paid by the buyers of the project to other projects/businesses

of the respondent as investments/loans/deposits etc. and/ or payment of interest at very high rates to group companies/investors and /or loan funding/mortgage of receivables from CHD Resortico project to fund the other projects of the respondent, which would be evident from the books of accounts of the respondent.

- c) If this information would have been available at the time of booking the apartment or while the respondent was making regular demands of scheduled installments, either the complainants would have not booked the apartment or would have asked for an undertaking that any funds paid by the complainants should not be distributed/diverted till completion of the aforesaid project to any other project.
15. That the cause of action accrued in favour of the complainants and against the respondent on the date when the later advertised the said project. It again arose on diverse dates when the apartments owners entered into their respective Agreement. It also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the owners have not been delivered the

apartments and the infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day to day basis.

16. That as per section 18 of the RERA 2016, the respondent is liable to pay interest to the allottees. Accordingly, the Complainants are entitled to get interest on the paid amount along with interest at the rate as prescribed by the Hon'ble Authority per annum from due date of possession as per flat buyer agreement till the date of handing over of possession.

C. Relief sought by the complainants:

17. The complainants have sought the following relief(s):
 - i. Direct the respondent to refund the amount of Rs. 18,24,419/- along with interest.
 - ii. Direct the respondent to pay compensation to recompense for the loss or injury injury as there has been deficiency in service which has resulted in loss or injury or Rs. 5,00,000.
 - iii. Order the respondent to pay compensation for harassment/injury both mental on account of mental agony, hardship, and trauma and physical to the tune of Rs. 5,00,000 holding the respondent guilty of indulging into unfair practices and providing deficient services to the complainants.
 - iv. Direct the respondent to pay the litigation fees incurred by the complainants on account of this case of Rs. 2,00,000.
18. The respondent put in appearance through its counsel Sh. Sachin Rao but did not file any written reply despite giving several

opportunities. So, the authority was left with no option but to proceed with the complaint based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

19. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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;

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

20. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainants:

E.1 Direct the respondent to refund the amount of Rs. 18,24,419/- along with interest.

21. Keeping in view the fact that the allottee-complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
22. The due date of possession as per agreement for sale as mentioned in the table above is 09.02.2020 and there is delay of 1 year 2 months 4 days on the date of filing of the complaint.
23. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession

of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

Then, the Hon'ble Supreme Court in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** 2021-2022(1) RCR ,357 and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. observed as under:

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules

and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

25. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
26. The Authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 18,24,419/-with interest at the rate of 9.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

E.2 Direct the the respondent to pay compensation to recompense for the loss or injury injury as there has been deficiency in service which has resulted in loss or injury or Rs. 5,00,000.

E.3 Order the respondent to pay compensation for harassment/injury both mental on account of mental agony, hardship, and trauma and physical to the tune of Rs. 5,00,000 holding the respondent guilty of indulging into unfair practices and providing deficient services to the complainants.

E.4 Direct the respondent to pay the litigation fees incurred by the complainants on account of this case of Rs. 2,00,000

27. The complainants are claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

F. Directions issued the Authority:

28. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent/ promoter is directed to refund the amount of Rs.18,24,419/- received by it from the complainants along with interest at the rate of 9.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development)

- Rules 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
29. Complaint stands disposed of.
30. File be consigned to the Registry.

V.I - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

D.KK
(Dr. KK Khandelwal)

Chairman

Dated: 14.07.2022



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