

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

Complaint no. :	87/2020
Date of filing complaint:	17.01.2020
First date of hearing:	03.02.2020
Date of decision :	14.07.2022

1. Mr. Varun Aggarwal R/o: 166, 2 nd Floor, Block- C, District Courts Gurugram, Haryana - 122001	Complainant
Versus	
M/s CHD Developers Ltd R/o: Sf-17-17, 1 st floor, madame bhikaji cama bhawan 11, bhikaji cama place, New Delhi 110066	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
None	Complainant
Sh. Sachin Rao Proxy Counsel for Shri Ravi Agarwal (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 Colony
4.	DTCP License	17 of 2014 dated 10.06.2014 valid up to 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-T06-06/01 (Annexure 2 Page no. 9 of complaint)
8.	Unit measuring (carpet area)	709 sq. ft. (Annexure 2 Page no. 9 of complaint)
9.	Date of Booking	2013
10.	Allotment Letter	15.05.2015 (Annexure 2 Page no. 9 of complaint)
11.	Date of execution of builder buyer agreement	Not Executed



12.	Possession clause	<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 form 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 handling 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</p>
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		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. (Emphasis supplied). In the absence of BBA, the possession clause has been taken from similar complaint of the same project
13.	Due date of possession	09.08.2020 (Due Date calculated from the BBA of the similar complaint of the same project)
14.	Total sale consideration	Rs.31,77,312.60/- (Annexure 3 on page no. 11 of complaint)
15.	Total amount paid by the complainants	Rs. 11,28,178 (Annexure 3 on page no. 11 of complaint)
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:

- That in the year 2013 vide booking application M/s Tirupati Investments, an allottee booked an apartment in the project being developed by Chd Developers Limited in the name and style of "Chd Resortico" commercial colony located at Sector 34, Sohna, District- Gurugram, Haryana.

4. That subsequent to the booking, an allotment letter dated 15-05-2015 was malafide issued after 1.5 years from the date of booking. An allotment letter was issued in the name of complainant dated 15-05-2015, unit bearing no. CRT-T-06-06/01, 1 BHK admeasuring 709 sq. ft. in 'Chd Resortico' Sector-34, Sohna Gurgaon, Haryana. The allotment letter further stated that total consideration of the unit is Rs. 31,77,312.60/-
5. That on post receiving of the allotment letter, the allottee persuaded the respondent company to execute the service agreement, but to the utter surprise of the complainant, no service agreement / flat buyer agreement has been executed till date, for best of the reasons known to respondent.
6. That the construction of the project was to be completed within 48 months from the date of expression of interest i.e., 2013 and the said stipulated period has also been lapsed, but till date neither the construction of the project has been completed, flat buyer agreement has been executed nor the possession of the said unit has been handed over to the complainant.
7. That it is most humbly submitted, despite taking more than 10% of the total sale consideration amount, the respondent company did not execute the agreement and has violated the applicable provisions of RERA Act 2016.
8. That in terms of the contractual stipulation, the basic sale price of the unit was described as Rs. 28,36,000/- However, the complainant, has already paid a sum of Rs. 11,28,178/-
9. That in the said duration i.e. since 2013 till date, there has been many instances, wherein, the complainant, has requested the

respondent, to refund the deposited amount paid him as the respondent has failed to execute the service agreement / builder buyer agreement and consequently to hand over the unit in question . Thus, the complainant is left with no hope of getting the possession of the unit, as till date the project site has yet not seen the light of the day.

10. That till date, the total amount paid by the complainant is Rs. 11,28,178/- and the same has been duly admitted by the respondent in the statement of accounts, as provided by the respondent aggrieved by the continuous omissions and default committed by respondent in handing over the possession to the complainant. Therefore, the complainant most respectfully prays before this Hon'ble Court to kindly allow the present complaint for providing refund of the entire principal amount paid him along with interest rate of 18% from the date of individual payments, till the realization of the amount.

C. Relief sought by the complainant:

11. The complainant has sought the following relief(s):
- Direct the respondent to refund the amount of Rs. 11,28,178/- along with interest.
12. 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 based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

13. 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.



14. 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 complainant at a later stage.

E. Findings on the relief sought by the complainant:

E.1 Direct the respondent to refund the amount of Rs. 11,28,178/- along with interest.

15. Keeping in view the fact that the allottee- complainants wishes to withdraw from the project and is 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.
16. The due date of possession as per agreement for sale as mentioned in the table above is 09.08.2020 and there is delay of 6 months 23 days on the date of filing of the complaint.
17. 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

18. 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 allottee wishes 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.

19. This is without prejudice to any other remedy available to the allottee including compensation for which he 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.
20. The Authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 11,28,178 /- with interest at the rate of 9.50% (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*.

F. Directions issued the Authority:

21. Hence, the Authority hereby passes this order and issue 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.11,28,178/- received by it from the complainant along with



interest at the rate of 9.50% 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.
22. Complaint stands disposed of.
23. File be consigned to the Registry.

V.I - 3
(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.07.2022

