

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

Complaint no. : 136 of 2019
First date of hearing: 30.04.2019
Date of decision : 30.04.2019

Mr. Bhasham Parashar
R/o. U-80/21, 1st floor, DLF-3,
Gurugram, Haryana.

Complainant

Versus

1. CHD Developers Ltd
Registered office at: SF-16-17, 1st floor Madame
Bhikaji Cama Bhawan,11, Bhikaji Cama Place,
New Delhi: 110066.

2. Square Yards Consulting Pvt. Ltd.
Address: - 442-443, Spaze- I Tech Park,
B-3 block, Sohna Road, Gurugram, Haryana.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Gauri Desai Proxy counsel for Shri Vidhan Vyas,
advocate for the complainant
Shri Anup Gupta Advocate for the respondents

ORDER

1. A complaint dated 17.01.2019 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. Bhasham Parashar against the respondents CHD Developers Ltd. and

Square Yards Consulting Pvt. Ltd. in respect of allotment letter dated 23.06.2015 for serviced apartment no. CRT-T12-01/10 measuring 709 sq. ft. in CHD Resortico project, located at Sector – 34, Sohna Road, Gurugram.

2. Since, the allotment letter dated 23.06.2015 was issued 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 noncompliance of contractual obligation on the part of the promoter/respondents in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	CHD Resortico, Sector 34, Sohna Road, Gurugram
2.	RERA registered/ Unregistered	Registered vide no.159 of 2017
3.	Nature of real estate project	Commercial colony
4.	Total area of the project	10.025 acres
5.	DTCP License no.	17 of 2014 dated 10.06.2014
6.	RERA registration valid up to	28.07.2021
7.	Apartment/unit no.	CRT-T12-01/10
8.	Apartment measuring	709 sq. ft.
	Allotment letter	23.06.2015 (Annx D)

9.	Execution of service apartment buyers agreement	Not executed
10.	Payment plan	Construction linked
11.	Total consideration as per allotment letter dated 23.06.2015	Rs. 31,63,132.60/- (Annx D)
12.	Total consideration paid by complainant as per account statement dated 10.07.20115 (inclusive of taxes)	Rs 5,59,460/- (Annx F)
13.	Due date of delivery of possession as per clause 12 of sample service apartment buyer's agreement: 48 months+ grace period of 6 months from the date of execution of the agreement	Cannot be ascertained as the buyer's agreement was not executed
14.	Penalty as per clause 12	Rs 10/- per sq. ft. per month of the super area

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 respondents. An allotment letter dated 23.06.2015 is available on record for the aforesaid apartment
5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 30.04.2019. The reply filed on behalf of the respondents on 15.02.2019 which has been perused by the authority.

Facts of the complaint:-

6. Present proceedings before this hon'ble authority have been initiated due to malpractices, cheating and fraud committed by the opposite parties upon the complainant, consequentially for the refund of money illegally misappropriated by the opposite parties.
7. The complainant submits that the opposite party is a private limited company, having its registered office at SF-16-17, first floor, madame bhikaji kama place New Delhi - 110066 engaged in the business of real estate. The opposite parties proposed to construct and develop and market a housing project named "Resortico", for which reason, as communicated by the opposite parties, allotment of land situated at village Dhunela, Sector 34, Sohna, District Gurgaon, Haryana.
8. The complainant submitted that Sqaure Yards Consulting Pvt. Herein after referred respondents no. 2 operates the real estate aggregation and transaction portal claims to be the no. pan India distributor by revenues for primary residential real estate in India and virtual monopoly in foreign market.

9. The complainant submitted that upon repeated insistence of respondents no.2 and after looking at the reputation of the firm in the market, the complainant booked a 1 BHK apartment in the respondents' project "CHD Resortico" through respondents no. 2 for a consideration of Rs.2,50,000/- as a token amount which was paid by the complainant by cheques of Rs. 50,000/- each. Upon such booking respondent no.2 issued a credit note.
10. The property has been valued at Rs.27,50,920/- and complainant agreed to pay the same as the basic sale price consideration exclusive of any tax for purchase of the said property as per clause 1.1 of the serviced apartment buyer's agreement.
11. The complainant alleged that even after receiving the cheque worth Rs.2.50 lacs the complainant has not received any acknowledgement, information or document regarding booking from either of the respondents other than the credit note which was issued by respondent no.2 after a period of one month. It was further alleged by the complainant that respondent no.2 has provided the information which includes

the pdf presentation, tentative site layouts, proposed unit layout and application form through mail dated 13.05.2015 after a lapse of 19 months.

12. The complainant submitted that the letter of allotment has been issued by respondent no.1 on 31.12.2015 after a lapse of 26 months from the date of booking which was in gross violation of section 11 of the RERA Act.
13. The complainant further submitted that they had clearly represented their requirement and intention to the respondents that he wanted to book a residential apartment for his family. The complainant solely rely on the representation made by the respondents that said project is residential in nature and not the commercial one.
14. The complainant submitted that in the presentation provided by respondents no.2 through email dated 13.05.2015 shows the malafide intention of the respondent no. 2. In this email a disclaimer has been given by the respondent no.2 that the contents of this hand out are purely conceptual and do not represent in any manner a legal offering or promise. The owner designated architects and consultants reserves the

right to delete, alter, change or replace any details, specification without notice. This will amount to deficiency in service to the complainant by the respondents.

15. Despite such continuous deficiency of service, the complainant with bonafide intention adhere to the payment plan decide between them which well evident from the copy of statement of accounts.
16. The complainant submitted that an allotment letter dated 23.06.2015 was provided to complainant by respondent no. 2 for serviced apartment no. CRT-T12-01/10 of 709sq.ft. in the project. However, by that time the complainant had got to know that such property was commercial in nature and not the residential.
17. Upon visit and enquiry, the complainant was shocked to find out that serviced apartment was less than 400sq ft. which is cheating on the part of respondent no.2 and complainant should be compensated for it or given the window for an exit as per section 19 of Haryana RERA Act. Furthermore, there has been a violation of section 14(3) of the RERA Act.

18. Despite repeated representation to respondent no.1 regarding change in property from residential to commercial the complainant did not receive any positive response. Therefore, the complainant wrote an email to respondent no. 2 requesting for cancellation of his booked flat or transfer the payment to any other investment opportunity.
19. The complainant submitted that he has paid Rs. 6 lacs approx. till date as per the payment plan chosen by the respondents but he has not been provided with the copy of the signed or dated agreement of “serviced apartment buyer’s agreement” and the same is evident from blank copy of the same. It can be seen that in the buyer’s agreement, clause 12 with the heading “time of handing over possession” clearly states within 48 months from the date of execution of this agreement apartment is proposed to be delivered by the company. There has been a delay of 12 months. The delay in providing the buyer’s agreement will also qualify as deficiency of service and shows the mala fide intention of the company.

20. The complainant demanded for an apartment that was park and pool facing and also in eastern direction on which he also received an assurance. However, the said allotted apartment did not meet any such criteria. Hence, the present complaint filed by the complainant filed by the authority.

Issues to be determined:-

- a) Whether the actual area is much less than the area promised by the respondents. It comes to approx. less than 400 sq. ft.?
- b) Whether the builder and the real estate agent, in connivance, refused to give the original documents to the complainants?
- c) Whether false representations were made by the real estate agent and/or the CHD Developers to the complainants?

Reliefs sought:-

- Decide the case as per section 19 of Haryana RERA, 2018 and allow the complainant to withdraw from the said project with the refund of Rs.5,59,460/- along with interest.

Respondent no. 1's reply:-

21. The respondent submitted that the present complaint is liable to be dismissed on the following grounds –

- i. The instant complaint has been filed without fault of the respondents.
- ii. In pursuance of clause no. 16 of the application form, BBA was required to be signed and returned by the complainant within 30 days from the date of communication to the respondents, failing which the said application form would be liable to be cancelled at the sole discretion of the respondents and the earnest money paid by the complainant towards his services apartment would stand be forfeited. However, the complainant has failed to return the signed buyer's agreement in terms of clause no. 16 till date.
- iii. The complainant had failed to make the payment of instalment for and due against "within 60 days of booking" and due against "on commencement of excavation" as per opted plan, despite having been receipt of various demand letters dated 05.08.2015, 12.01.2016 and reminder letter's dated 17.09.2015, 12.11.2015, 11.12.2015, 29.03.2016 and 05.05.2016.

- iv. The allotment was already cancelled on 14.06.2016 on account of non-payment of due instalment as per opted plan and also amount deposited by the complainant towards said allotment was forfeited, in pursuance of said application form.
- v. After cancellation of the said allotment in pursuance of said application form, the complainant has no right to claim against the answering respondents and therefore, the instant complaint is liable to be dismissed.
- vi. The complainant himself acted in breach and therefore, not entitle for any relief from this authority.
- vii. The said project is already registered under HRERA and the terms thereof are also binding upon the complainant.
22. The respondent submitted that the complainant was merely speculating in the property market, realizing that they will not be able to make profit on their investment/ the value of the investment is less because of the crash of the prices of the properties in the real estate market, is seeking to pass on his loss to the answering respondents.
23. The respondent submitted that in and around May 2015, the complainant approached the answering respondent and expressed interest in booking unit in the project/ commercial

colony “CHD Resortico” situated at Sector 34, Gurugram. In pursuant thereof on 23.06.2015, the complainant applied to the respondent for booking of a serviced apartment no. T12-01-10, having super area of 709 sq. ft. at the basic sale price of Rs. 3,880/- per sq. ft. if super area vide application form dated 23.06.2015 and also inspected the project site, seen the title documents of the land including the license no. 17 of 2014, sanctioned building plan and all other relevant documents related to the competency of the respondent preserved in BLUE BOOK at site/ head office.

24. All terms and conditions of the said application form was fully read and understood by the complainant and also agreed to abide by the same.

25. The respondent submitted that it has issued an allotment letter dated 23.06.2015 to the complainant allotting serviced apartment no. CRT-T12-01/10, admeasuring 709 sq. ft. in the project for total consideration of Rs. 31,63,132.60/- exclusive of other charges/taxes, etc. The allotment was on the basis of terms and conditions contained in the application form.

26. The respondent submitted that the complainant agreed and undertaken to make payment in a timely period as per the construction linked payment plan on the demand being

raised by the respondent. The complainant failed to make the payment of the instalment for and due against “within 60 days of booking” amounting to Rs. 2,84,720/- demanded on 05.08.2015 which was required to be paid before due dated 28.08.2015; and instalment for and due against “on commencement of excavation” amounting to Rs. 2,85,064.09/- and arrears of previous balance of Rs. 2,94,700.66/- demanded on 12.01.2016 which was required to be paid before due dated 25.01.2016.

27. The respondent submitted that on account of non-payment of the said instalment by the complainant within due date , reminders were sent to the complainant on 17.09.2015, 12.11.2015, 11.12.2015, 29.03.2016 and 05.05.2016.

28. On 08.01.2016, the answering respondent granted permission for excavation/digging of foundation/basement work of the said project vide permit no. 1636. The said permission was valid upto 08.05.2016.

29. The respondent submitted that on 09.01.2016, the answering respondent started excavation/ digging of foundation/basement work at the site of the said project. Despite having been receipt of various demand letter/s and reminder letter/s towards due instalment as per opted plan

for the said services apartment, the complainant completely failed to pay the due instalment/s; return the signed buyer's agreement in terms of clause 16 of the said application form and comply agreed to the terms and conditions of the application form as stated hereinabove.

30. Therefore, on 14.06.2016, the answering respondent cancelled the allotment and also forfeited the amount deposited by the complainant towards the said allotment in pursuance of the application form.

31. The respondents submitted that the respondents company has registered the said project under the provisions of the Act and the registration number is 159 of 2017. The said registration shall be valid for a period commencing from 29.08.2017 to 28.07.2021 and thereby the respondents has been granted time till 2021 for completion of the said project.

Note – No reply has been filed by respondent no. 2.

Determination of issues:-

32. 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:

- a. With respect to the **first issue** raised by the complainant, the authority came across that as per application form dated 23.06.2015 (annexure R 2), which was duly signed by the complainant, the super area of the serviced apartment in question has been mentioned as 709 sq. ft., moreover the statement of accounts issued by respondent no. 1 also shows the measuring area of the apartment as 709 sq. ft. In this regard, the complainant never raised any protest letter/email to the respondent as regards the alleged reduction in super area by 400 sq. ft. approx. Hence, this issue cannot be decided in favour of the complainant for the want of documentary evidence of bar of estoppel of the complainant.
- b. With respect to the **second and third** issue raised by the complainant, the complainant has failed to produce any documentary evidence in support of his allegation. However, on perusal of application form dated 23.06.2015 duly signed by the complainant, it is clearly evident that the complainant was aware of the fact that the serviced apartment in question was commercial in nature and not the residential one.

Findings of the authority:-

33. 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 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.

34. Arguments heard. Complainant by way of this complaint is seeking relief in the form of refund of deposited amount to the respondent i.e. Rs. 5,59,460/- alongwith interest for the purchase of unit no. CRT-T12-01/10, admeasuring 709 sq. ft. in "CHD Resortico" , located at Sector 34, Sohna Road, Gurugram. No serviced apartment buyer's agreement for the unit in question was executed between the parties, as such, the due date of delivery of possession cannot be ascertained. The complainant alleged that on visiting the office of the respondent and enquiring about the progress of the project, the complainant was shocked to find that service apartment

was less than 400 square feet which is not fair on the part of the respondent and he further requested the respondent to change the commercial property to the residential apartment but the respondent has failed to reply. Instead of paying Rs. 5,59,460/- to the respondent, the complainant has failed to get signed the buyer's agreement in respect of the booked unit in question.

35. During the course of arguments, the respondent while replying the contentions of the complainant submits that the complainant has no case before this authority as he himself has failed to comply with the terms and conditions of the allotment of unit and failed to pay the due amount, hence, the respondent was well within its rights to cancel the booked unit vide cancellation letter dated 14.06.2016 and forfeited the deposited amount.

36. Considering the rival contentions of the parties and the meagre amount paid by the complainant, the authority is of the considered view that the respondent in the event of cancellation of the booked unit cannot forfeit more than 10% of total sale consideration plus taxes, if any paid to the government.

Decision and directions of the authority:-

37. 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 parties in the interest of justice and fair play:-

- The respondent is directed to refund the paid up amount of the complainant after deducting 10% of the total sales consideration without interest within 90 days from the date of issuance of this order.

38. The order is pronounced.

39. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 30.04.2019.

Judgement uploaded on 27.05.2019