

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

**Complaint no. : 615 of 2018**

**First date of hearing : 26.09.2018**

**Date of decision : 11.04.2019**

1. Mr. Aditya Jha  
R/o flat no. T-09-14-04, tower no. 9,  
Avenue 71, Sector-71, Gurugram, **Complainant**  
Haryana

Versus

1. M/s CHD Developers Ltd.  
Office at: SF-16-17, first floor,  
Madam Bhikaji Cama Bhawan,  
Bhikaji Cama place, New Delhi-  
110066 **Respondents**

2. M/s Root Developers Pvt. Ltd.  
R/o F-17, Central plaza, Golf course  
road, DLF p  
hase 5, Sector 53, Gurugram,122002

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Varun Chugh  
Shri Karan Singh

Advocate for the complainant  
Authorised representative for  
the respondents

Shri Ishaan Dang

Advocate for the respondent  
no.2

**ORDER**

1. A complaint dated 26.07.2018 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. Aditya Jha, against the promoters M/s CHD Developers Ltd. and M/s Root Developers Pvt. Ltd.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Avenue 71" Sector-71 Gurugram
2.	Nature of project	Group housing complex
3.	DTCP license no.	50 of 2008
4.	Registered/ unregistered	Not registered
5.	Unit no.	T-09-14/04
6.	Unit admeasuring	2193 sq. ft.
7.	Allotment letter	29.09.2011
8.	Date of execution apartment buyers agreement	21.03.2012
9.	Basic sale price as per clause 2 of the apartment buyers agreement	Rs. 82,23,750/-
10.	Total amount paid by the complainant	Rs. 95,27,355/- as provided in the complaint.
11.	Occupation certificate granted on (as per table -A of the reply at pg. 4 of reply)	06.10.2015
12.	Possession certificate dated	18.05.2018
13.	Due date of delivery of possession as per clause 15: within 36 months from the date	21.09.2015

	of execution of this agreement + 6 months grace period)	
14.	Delay of number of months/ years up to offer of possession i.e. 18.05.2018	2 years 7 months 27days
15.	Penalty as per clause 15 of the apartment buyer's agreement dated 21.03.2012	Rs. 5/- per sq. ft. per month of the super area of the flat

3. The details provided above, have been checked as per record of the case file. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. Accordingly, the respondents appeared on 26.09.2018. The case came up for hearing on 26.09.2018, 17.10.2018, 20.11.2018, 08.01.2019, 18.01.2019, 15.02.2019. The reply has been filed on behalf of the respondent no.1 on dated 14.09.2018.

#### FACTS OF COMPLAINTS

5. The complainant submitted that the flat no. T-09-14/04 in the project of the respondent named "Avenue-71", at Sector-71, Gurugram, Haryana was originally allotted by the respondent jointly in favour of Mr. Surinder Kumar Sharma and Mrs. Sheila Devi Sharma vide allotment letter dated 29.09.2011.
6. The complainant submitted that the apartment buyer's agreement dated 21.03 2012 was also executed between Mr. Surinder Kumar Sharma and Mrs. Sheila Devi Sharma (the

initial allottee of said flat) and the respondents, whereby the total sale consideration of the said flat was Rs.82,23,750/- excluding other charges, in terms thereof.

7. The complainant submitted that in pursuance of the said agreement, the initial allottee of said flat had transferred/assigned his/her the rights and liabilities in the said flat under the agreement in favour of Mr. Nikhil Kaul and Mrs. Sumila Kukreja (the subsequent allottee of the said flat). The said transferee/assignment had confirmed/endorsed by the respondent on 25.06.2012.
8. The complainant submitted that the subsequent allottee of the said flat named Mr. Nikhil Kaul and Mrs. Sumila Kukreja had also transferred/assigned his right/title/interest in the said flat under the agreement in favour of the complainant herein and also executed other requisite documents. In pursuance thereof, the respondents had assigned the allotment of the said flat in favour of the complainant vide assignment of allotment letter dated 29.12.2017 and also credited total sum of Rs. 95,27,355/- in the complainant's account and the said transferred/assignment was also confirmed/endorsed by the respondent on 08.01.2018.

9. The complainant submitted that he had paid the entire consideration in terms of the apartment buyers agreement and nothing remains due towards sale consideration of the said flat under the agreement.
10. The complainant submitted that the physical possession of the said flat had been offered to him by the respondent no.1. However, the possession certificate was to be signed by the respondent no.2. Moreover, the respondent no.2 (the collaborator in the said project) having share of number of apartments/flats in the tower situated in the project of the respondent named "Avenue-71", at Sector-71, Gurugram, Haryana and the possession certificate of those flats/apartments are to be signed by respondent no.2 and sale deed/conveyance deed of those flats/apartments in the said project, which are share of respondent no.2 are also to be registered in favour of the complainant/other allottees/occupants only upon receipt of NOC/authorization in favour of the respondent no.1 from respondent no. 2.
11. The complainant submitted that respondent no.2 had not signed the said possession certificate intentionally and therefore, respondent no.1 having no option but to hand over the physical possession of the said flat to the complainant on 18.05.2018. The complainant had already signed the

possession certificate dated 18.05.2018 in respect thereto, which was also required to be signed by respondent no.2, However, respondent no.2 did not sign the said possession certificate till date. Moreover, the complainant is residing in the said flat since 18.05.2018. The complainant had made several communications/requests and also sent an email dated 09.07.2018 asking for execution and registration of his sale deed of the said flat. However, despite the receipt of all communications, the respondents have failed to execute and register sale deed of said flat till dated. Moreover, the respondent no.2 is also not issuing NOC/authorisation in favour of the respondent no. 1 for execution/registration of sale deed of the said flat in favour of the complainant.

12. The complainant submitted that respondent no. 1 has also stated to the complainant that they could only execute and register the sale deed of the said flat in favour of the complainant only upon receipt of NOC from the respondent no.2 and/or authorization in favour of the respondent no.1 authorizing to execute and record sale deed of said flat in favour of the complainant and/or those flats in said project which were share of respondent no.2 under collaboration agreement.
13. The respondents are jointly and severally liable for the above acts and omissions and therefore the complainant has preferred

to file complaint before this hon'ble authority for appropriate relief and direction to the respondents to execute and register sale deed of the said flat in favour of the complainant.

### **ISSUES TO BE DECIDED**

14. Following issues have been raised by the complainant

- i. Whether the respondent no.1 and respondent no.2 are jointly and severally liable towards their acts and omissions and breach of the agreement?
- ii. Whether the respondent no. 1 and respondent no.2 are jointly and severally liable towards non-execution and registration of said flat in favour of the complainant despite receipt of entire sale consideration?
- iii. Whether the respondent no.2 being collaborator in the said project is held liable for delaying the execution and registration of sale deed of the said flat in favour of the complainant?
- iv. Whether the respondent no.2 being collaborator in the said project is liable and under obligation to sign possession certificate for the flats which were share of the respondent no.2 in the said project under collaboration?

- v. Whether the respondent no.2 being collaborator in the said project is liable and under obligation to issue NOC in favour of respondent no.1 and also authorizing respondent no.1 to execute and register sale deed of the said flat in favour of the complainant and/or for the flats which were share of the respondent no.2 in the said project under collaboration?

#### **RELIEF SOUGHT BY THE COMPLAINANT**

15. The complainant is seeking the following relief:

- i. Direct the respondents to execute and register sale of the said flat in favour of the complainant

#### **REPLY ON BEHALF OF RESPONDENT NO.1**

15. The respondent no. 1 submitted that it had entered into agreement dated 13.02.2010 with the respondent no.2 i.e. M/s. Roots Developers Limited and landowners and thereby acquired development and construction rights of a multi storey group housing complex on the land measuring about 16.4650 acres in village Fazlipur Jharsa in District Gurugram and the terms of the respondent no.1 was, inter-alia, fully entitled, and authorized to carry out development and construction on the said land.

16. Respondent no.1 had developed a residential group housing colony named "Avenue-71" in Sector-71, Gurugram, Haryana and also obtained occupation certificate w.r.t the towers situated in the said project. The occupation certificate with respect to tower in question was received on 06.10.2015.

17. The respondent no.1 stated that respondent no.2 has share of the apartments/units/flats in the said project in terms of above said agreement. The contents of clause no. 29 of the said apartment buyer's agreement dated 13.02.2010 is reproduced hereinbelow for ready reference:

*"... 29. That if so desired by the First Party (the Respondent No 2 herein) / Owners, the Second Party will market / sell share of saleable super area of the First Party / Owners on payment of marketing charges at the rate of 5% of the basic sale price only exclusive of external development charges IDC and car parking etc. The amount of marketing charges referred to above shall be deducted by the Second Party (the Respondent No.1 "herein) from the first three instalments paid by the prospective purchaser in respect of apartment sold by the second party upon the instruction of the first party / owners and forming part of the allocation of the first party / owners The first party / owners shall always be entitled to independently market their allocation in the proposed project ... "*

18. The respondent no. 1 stated that the respondent no.2 had authorized to the respondent no. 1 to sell its share of approximately 152 apartments/units/flats in the said project on its behalf. Further, the respondent no.2 was required to issue NOC/ authorization w.r.t above said 152

apartments/units/flats for execution and registration of the said 152 apartments/units/ flats. The possession certificate of the said 152 apartments/ units/flats was also required to be signed by the respondent no.2 only. The respondent no.1 had issued NOC/authorization for 100 apartments/units/flats out of 152 units till dated.

19. The respondent no.1 has already sent an email dated 26.03.2018 to the respondent no.2 asking to issue NOC/ authorization for execution and registration of sale deed w.r.t. to balance 52 apartments, a copy of an email dated 26.03.2018 along with annexures showing name of allottee apartments. Despite receipt of said email from respondent no.1, respondent no.2 did not issue requisite NOC/ authorization for said 52 apartments. The respondent no.1 has also made various communications and reminders requesting the respondent no.2 to issue required NOC/ authorization for execution and registration of said 52 apartments. However, despite various communications/ reminders/requests from the respondent no.1, the said requisite NOC / authorization is not issued by the respondent no.2 and the complainant and other allottees are also facing same problem.

## DETERMINATION OF ISSUES

20. With respect to the **issues** raised by the complainant in respect to the execution of conveyance deed in respect of flat no T/09-14/04 in project "Avenue 71, sector 71, Gurugram possession of which has already been handed over to the complainant. Argument advanced on behalf of the rival parties heard at length and the authority has concluded that complainant is not at all concerned with the internal wrangling between the respondents. In the circumstances the complainant is fully entitled to get the conveyance deed executed in his favour from the respondents. In the considered opinion of the authority, the matter between the respondents does not come within the purview of the authority as the matter is of civil nature. Both the builder and license holder are equally responsible for executing the conveyance deed registered, as such authority directs both the landlord and license holder and the developers m/s CHD to get the conveyance deed executed within a period of 45 days failing which the complainant has recourse as per the provisions of law.

## FINDINGS OF THE AUTHORITY

25. **Jurisdiction of the authority-** 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 14.12.2017 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, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

26. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

27. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligations.

28. Argument advanced on behalf of the rival parties heard at length and the authority has concluded that complainant is not at all concerned with the internal wrangling between the respondents. In the circumstances the complainant is fully entitled to get the conveyance deed executed in his favour from the respondents. In the considered opinion of the authority, the matter between the respondents does not come within the purview of the authority as the matter is of civil nature. Both the builder and license holder are equally responsible for executing the conveyance deed registered, as such authority directs both the landlord and license holder and the developers m/s CHD to get the conveyance deed executed within a period of 45 days failing which the complainant has recourse as per the provisions of law.

**DECISION AND DIRECTION OF THE AUTHORITY: -**

29. Keeping in view the facts, documents as adduced by the complainant and the respondent, the authority exercising its power under section 37 of the Act hereby issues the following directions to the respondent in the interest of justice:-

- i. Both the builder and license holder are equally responsible for executing the conveyance deed registered, as such authority directs both the landlord

and license holder and the developers m/s CHD to get the conveyance deed executed within a period of 45 days failing which the complainant has recourse as per the provisions of law.

ii. Complainant is fully entitled to get the conveyance deed executed in his favour from the respondents.

30. 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. A copy of this order be endorsed to registration branch for further action in the matter.

31. The order is pronounced.

32. A copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander  
Kush)** Member

Haryana Real Estate Regulatory Authority, Gurugram