

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

Complaint No. : 137 of 2019
Date of first hearing : 18.04.2019
Date of Decision : 18.04.2019

1. Smt Nilam Singh
2. Shri Akash Kumar
Both R/o 372/2, Rajiv Colony, NH8,
Gurugram.

Complainants

Versus

M/s Chirag Buildtec Pvt. Ltd.
Office at: 359/1B, Punjabi Bazar, Kotla,
Mubarakpur, New Delhi 110003
Also at: Building no. 80, Sector- 44,
Gurugram

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Yudhvir Singh and Shri Harsh Jain Advocates for the complainants
Shri Sumeet Kaul and Shri Sumit Kumar Advocate for the respondent

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 complainants Smt. Nilam Singh and Shri Akash kumar, against the promoter M/s Chirag Buildtec Pvt.,Ltd. in respect of apartment no. 607 admeasuring super area 645.29 sq ft in tower E of the project “ROF Ananda” for non-fulfilment of obligations of the promoter under section 11(4)(a) of the Act ibid.

2. Since, the booking was made on 14.04.2017 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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

1.	Name and location of the project	“ROF Ananda” Sector 95, Gurugram
2.	Nature of real estate project	Affordable group housing colony
3.	Unit no.	607, tower E
4.	Project area	5.04375 acres
5.	Unit area	645.29 sq. ft.
6.	Registered/ not registered	Registered 184 of 2017 dated 14.09.2017

7.	Date of completion as per RERA registration certificate	13.09.2021
8.	DTCP license	17 of 2016 dated 25.10.2016
9.	Date of booking	14.04.2017 (as per application form)
10.	Date of apartment buyer's agreement	05.10.2017 (as alleged by the complainant in his complaint) Note: There is no apartment buyer's agreement annexed with the file
11.	Total consideration	Cannot be ascertained
12.	Total amount paid by the complainants	Rs. 10,62,832/- (as per demand draft with receiving seal by promoter, annexed with file)
13.	Payment plan	Cannot be ascertained
14.	Due date of delivery of possession	Cannot be ascertained
15.	Delay of number of months	Cannot be ascertained
16.	Surrender deed	20.08.2018

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. As per the flat buyer's agreement (as alleged by the complainant) dated 05.10.2017 for unit no. 601 tower E, admeasuring super area of 607 sq. ft. The promoter has failed to adhere with his

contractual obligations. Moreover, a surrender deed dated 20.08.2018 is annexed with the file. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 18.04.2019. The reply has been filed by the respondent and the same has been perused.

Facts of the complaint

1. The complainant submitted that they entered into an apartment buyer agreement dated 05.10.2017 with the respondent, to purchase the premises bearing apartment no. 607 in tower E of project 'ROF Ananda' located at sector 95, Gurugram.
2. The complainants submitted that in total they have paid an amount of Rs. 10,62,832/- till date for the abovementioned project.
3. The complainants submitted that due to financial constraints they wanted to surrender the said apartment and communicated the same to the respondent vide letter dated 20.08.2018.
4. The complainants submitted that they signed a surrender deed dated 20.08.2018 and provided same to the respondent along with the letter dated 20.08.2018 and

original documents/acknowledgements pertaining to apartment buyer agreement dated 05.10.2017.

5. The complainants submitted that they however, did not receive back any intimation or communication from the respondent regarding the status of surrender deed as the same was not executed by the respondent.
6. The complainants submitted that they repeatedly approached the respondent, however, no response was provided by the respondent.
7. The complainants submitted that they are now aggrieved as the respondent failed to execute the abovementioned surrender deed dated 20.08.2018 and has not returned to the complainants documents pertaining to the project or amount paid by the respondent.
8. **Issues to be decided**
 - I. Whether the respondent can be ordered and compelled to execute the surrender deed 20.08.2018?
 - II. Whether the respondent can be ordered to refund back the amount of the Rs. 10,62,832/- paid by the complainant to the respondent on different instances as instalments for the above-mentioned project?

9. Relief sought

- I. Direct the respondent to provide the complainants with the required receipts, documents and acknowledgements pertaining to the apartment buyer's agreement dated 05.10.2017.
- II. The respondent be ordered to refund back the amount of Rs. 10,62,832/- paid by the complainant to the respondent on different instances as instalments for the abovementioned project.
- III. The respondent be ordered and compelled to execute the surrender deed dated 20.08.2018.

Respondent's reply

10. The respondent submitted that the present complaint filed by the complainants has been filed in gross abuse of process of law and thus deserves to be dismissed on this ground alone.
11. The respondent submitted that the complainants have filed complaint under the Real Estate (Regulations and Development) Act, 2016 hereinafter referred to as the "Act", for surrendering apartment that was allotted to them and for the refund of their money of Rs.10,62,832/- which they have paid till date to the respondent. However, it is

submitted that there are no provisions in the Act which states for pre-mature refund of money when the project is in advanced stage and the possession date is also in December 2021. The complainants can't use this Act as a recovery tool against the respondent.

12. The respondent submitted that this act was enacted by the legislature to bring some reforms in the real estate sector. This Act intended to bring transparency and efficiency in the industry.

13. The respondent submitted that section 18 of the Act talks about return of amount and compensation. The respondent submitted that the analysis of the above said provisions of the Act clearly goes on to show that the Act can be put into motion if the promoter fails to deliver the possession of the apartment, plot or building in accordance with the terms of the agreement. In the present case, the date of handing over the possessions to the complainants is December 2021. Thus invoking the Act and knocking the doors of the forum is premature and bad in law.

14. It is submitted by the answering respondent that the date of completion of project in the registration certificate is December 2021, thus there is no breach of any provisions by

the respondent. The complainants could have invoked the provisions of the Act only if there would have been any breach of provisions by the respondent. The jurisdiction of the Id. forum / Id. tribunal/authority under the Act can be invoked only if there is delay in handing over the possession of the apartment by the promoter, which is not the subject matter in the present case.

15. The respondent submitted that the residential project which is being executed by the respondent is a project under the “affordable housing scheme” in line with the vision of the Prime Minister “Housing for All” by 2022. The project is Known by the name of “ANANDA” and the complainants have also been allotted an apartment in the said project. The respondent has invested huge money in making this project successful and also the construction at the project site is in full swing. If at this stage the complainants ask for refund of money, this shall set a bad precedent whereby every other allottee will seek refund from the respondent. This in turn shall lead to collapse of the project, leaving the respondent in a financial crunch.
16. The respondent submitted that the present project of the respondent is in reality a welfare project carried out with

the aim to provide a home to those who genuinely need one. The project is regulated by the government, who from allotment of land to the promoter, transparency in allotment of apartments and regulating the price per unit have a role to play. Thus, if allottees start backing out from the project and seek refund of their money, it shall fail the entire purpose of the affordable housing scheme.

17. The respondent submitted that the complainants seem to be kind of buyers who intend to seek return on their investments in a short span of time. In case the investments don't yield the returns in a particular project, the preference is shifted to some other investment destination. This behaviour of the complainants needs to be discouraged.
18. The respondent submitted that if the respondent refunds the money of the complainants, the present apartment allotted to the complainants will again have to be put to a draw, incurring expenses for the respondent. The successful allottee in the draw shall again pay the respondent as start of the project, despite the fact that 40% of the project is completed. Thus, putting the respondent to economic disadvantage and financial loss.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

19. In respect of the **first and second issue**, as per clause 5 (iii)(h) of the Affordable Housing Policy 2013, under the affordable housing scheme, the complainant is at the liberty to withdraw from the project by foregoing Rs. 25000/- BBA to this effect was executed inter-se the parties on 05.10.2017. Relevant portion of clause 5 (iii)(h) of affordable housing policy 2013, is reproduced below:

“In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the coloniser.”

Findings of the authority

20. **Jurisdiction of the authority-** The project “ROF ANANDA” is located in Sector-95, Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning)

dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete 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.

21. The authority is of the opinion that complainants are entitled to seek refund of the amount paid deducting the surrender value of Rs. 25000/- as per clause 5 (iii)(h) of the Affordable Housing Policy 2013.

Decision and directions of the authority

22. 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:

- (i) The respondent is directed to refund the amount paid by the complainant after deducting Rs. 25000/- as per affordable

housing policy 2013 within 90 days from the date of this order. No interest shall be paid by the respondent.

23. The complaint is disposed of accordingly.

24. The order is pronounced.

25. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 18.04.2019

Judgement Uploaded on 29.05.2019

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

HARERA
GURUGRAM