



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

Complaint no. :	904/2020
Date of filing complaint:	20.02.2020
First date of hearing:	16.04.2020
Date of decision :	28.07.2022

Rakesh Kumar R/o: H.No. F-129, Lane No. W5A, Western Avenue Sainik Farm, Delhi	Complainant
Versus	
M/s CHD Developers Ltd R/o: CHD City Karnal opp. Oasis, GT Road , Karnal , Haryana , 132001	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant in person	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 complainant, 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	CHD Resortico ,Sector 34, Sohna Distt., Gurugram,
2.	Project area	Not Mentioned
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
7.	Expression of interest	29.10.2013 by paying Rs. 5,00,000/- to the respondent (As pleaded by the complainant in the facts)
8.	Unit no.	CRT-T04-01/09 (Page no. 20 of complaint)
9.	Unit admeasuring	709 sq. ft. (Page no. 20 of complaint)
10.	Allotment Letter	15.05.2015 (Page no. 20 of complaint)
11.	Date of execution of builder buyer agreement	Not Executed
12.	Possession clause	12 12 Barring unforeseen



	<p>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 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</p>
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		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 delivery of possession	29.01.2021 (Calculated from the date of execution of agreement i.e 29.01.2016 in another case plus grace period of 6 months)
14.	Total sale consideration	Rs.31,91,492/- (Page no. 21 of complaint)
15.	Total amount paid by the complainant	Rs. 17,95,765/- (Page 21 of applicant ledger of the complaint) Rs. 26,46,869/- (Page 17 of the respondent's application)
16.	Indemnity Bond and non-disclosure agreement	20.08.2018 (Amount of Rs. 8,35,512 received by the complainant)
17.	Occupation Certificate	Not received
18.	Offer of possession	Not offered

B. Facts of the complaint:

- That the respondent issued an advertisement for an upcoming project CHD RESORTICO at Sector 34, Sohna District, Gurugram in the month of October 2013 which was to be completed within 36 month i.e. on or before Dec 2016. The complainant coming to know about the same made an expression of interest dated

29.10.2013 to the respondent under the construction linked plan and paid an amount of Rs. 5,00,000/-by cheque.

4. That the allotment of the unit was made by the respondent on 15.05.2015 to the complainant for flat No. CRT-T04-01/09 in its project CHD RESORTICO for a total sale consideration of Rs.31,91,492/-. The complainant made payment for a total sum of Rs 17,95,765/- towards the costs of the flat.
5. That the complainant had taken a housing loan of Rs. 8, 92,224 from Bajaj Housing Finance Limited to make the payment to the respondent towards the sale consideration of this flat. Since the above project was being sold in pre-launch period the complainant requested the respondent many times to refund the money paid by him with interest and cancel the allotment.
6. The complainant also filed a complaint through the facility of CM Window, Government of Haryana against the respondent.
7. That the respondent agreed to the request of the complainant to withdraw from the project and refund the principal amount paid. The respondent refused to give interest to the complainant despite requesting for the same. The respondent officers told that if the complainant did not sign the documents, they would not pay the principal amount also. The complainant and the respondent signed a Non-Disclosure Agreement. The complainant issued Indemnity Bond and Affidavit cum Undertaking to the respondent. In that agreement, the respondent handed over three postdates cheques totalling an amount of Rs. 8,35,512/- to the complainant, which was the amount paid by him from his own savings and which have been encashed.

8. That the respondent also agreed to repay the entire outstanding housing loan taken from Bajaj Housing Finance Limited of Rs. 8,92,224 on or before 23.11.2018 or pay the interest amount of Rs. 7790/- until the loan is fully paid by it which was the amount paid to it the sale consideration.
9. That the complainant was thus made to withdraw from the project and hand over the original documents to the respondent. Since, the respondent has not fulfilled his part of his promise by not repaying the entire loan amount to Bajaj Housing Finance Limited; so, the respondent does not have any right to sell, mortgage, lease or create any third party interest in the Flat No. CRT-TO4 01/09 in its project CHD RESORTICO at Sector 34, Sohna District, Gurugram, originally allotted to the complainant and against whose sale consideration the payments were made. That flat cannot be considered to have been cancelled till the entire amount paid against is fully refunded.
10. That the complainant is paying the Housing Loan instalment since July 2019 as the respondent is not reimbursing the same which he has agreed in the non-disclosure agreement signed on 20.08.2018 .The complainant requested the respondent many times to pay and close the housing loan which he has promised to pay. However, the respondent officers are stating that they would not pay the same.
11. That in terms of Section 12, 18 and other provisions of the Act and Rules, the respondent has not paid the interest amount with respect to the advance money of Rs. 17,95,765/- which it had received from the complainant.

12. Further, the respondent has not repaid and closed the housing loan of Rs. 8,92,224 and interest until the loan is fully repaid/closed, towards construction of the flat and the respondent agreed to repay as the money against the flat.
13. That the respondent is thus liable to pay interest to the complainant for the period, it had the money of the complainant i.e., from October 2013 to August 2018. Further, the respondent is liable to repay the housing loan money paid to it towards the sale consideration. Additionally, the respondent is liable to compensate the complainant for the above acts and deeds causing loss of time, opportunity and resources to the complainant.
14. Therefore, the complainant most respectfully prays before this Hon'ble Authority to kindly allow the present complaint for providing repay the housing loan taken from the bajaj housing finance along with interest rate of 18% from the date of individual payments, till the realization of the amount.

C. Relief sought by the complainant:

15. The complainant has sought the following relief(s):
 - i. Direct the respondent to pay interest on the money paid by the complainant to the respondent during the period October 2013 to August 2018.
 - ii. Direct the respondent to repay the housing loan of Rs. 8,92,224/- to Bajaj Housing Finance Limited, the complainant had borrowed and paid to the respondent towards the sale consideration of the flat and which the complainant had agreed to repay for withdrawing from the project.

- iii. Direct the respondent to repay the interest of Rs. 7790/- on the housing loan of Rs. 8,92,224/- to Bajaj Housing Finance Limited, the complainant had borrowed and paid the respondent towards the sale consideration of the flat until the housing loan is fully repaid by the respondent and which the complainant had agreed to repay.
 - iv. Direct the respondent not to create any third party-right interest in the said unit.
16. 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:

17. 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

18. 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) The promoter shall-

(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.

19. 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.

20. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 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*** wherein it has been laid down as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

21. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant:

E1 Direct the respondent to pay interest on the money paid by the complainant to the respondent during the period October 2013 to August 2018.

22. A project by the name of CHD Resortico Sector 34 Sohna District Gurugram was being developed by the respondent developer. The complainant applied and was allotted a unit bearing no. CRT-T04-01/09 vide letter of allotment on 15.05.2015 for a total sale consideration of Rs. 31,91,492/-. No buyer agreement was

executed between the parties. But as per possession clause taken from another file of the same project the due date for completion of project and handing over possession was fixed as 48 months from the date of buyer agreement and which comes to be 29.01.2021.

23. That the complainant paid a total sum of Rs. 17,95,765/- against the allotted unit inclusive of loan of Rs. 8,92,224. /- taken from Bajaj Housing Finance Ltd. However on 20.08.2018 the parties entered into a settlement and on the basis of which the respondent issued three postdated cheques for Rs.8,35,512/- and the same have been encashed .
24. An Indemnity Bond in this regard was also executed by the complainant. A perusal of receipt attached with non-disclosure agreement signed on 20.08.2018 shows that beside receiving four post dated cheques on 23.08.2018 for amount of Rs. 2,08,878/- each the complainant also received three post dated cheques of the same date for Rs. 7,790/- each totaling to Rs. 23,370/- . It was further agreed that after receipt of above-mentioned amount, the claimant would be left with no claim against the developer.
25. So, keeping in view the above-mentioned facts the respondent - promoter is not liable to pay any amount by way of interest on the money paid by him against allotted unit minus the loan amount taken from Bajaj Housing Finance Ltd.

E.2 Direct the respondent to repay the housing loan of Rs. 8,92,224 to Bajaj Housing Finance Limited, which the complainant had borrowed and paid the respondent towards the sale consideration of the flat and which the complainant



and which the complainant had agreed to repay for withdrawing from the project.

E3 Direct the respondent to repay the interest of Rs. 7790/- on the housing loan of Rs. 8,92,224/- to Bajaj Housing Finance Limited, which the complainant had borrowed and paid the respondent towards the sale consideration of the flat until the housing loan is fully repaid by the respondent and which the complainant had agreed to repay.

E.4 Direct the respondent not to create any third party-right interest in the said unit.

26. The above-mentioned issues from 2 to 4 are being taken together as they are interconnected. The complainant paid a total sum of Rs. 17,95,765/- against the allotted unit inclusive of loan of Rs. 8,92,224 taken from Bajaj Housing Finance Ltd.
27. There was settlement entered into between the parties with regard to the allotted unit. The complainant had already received Rs. 8,35,512/- and Rs. 23,370/- towards the paid up and interest amount respectively. It was further agreed between the parties while making settlement as under -

The company has also assure the undersigned that they will pay loan amount to the bank on or before of the payment of last instalment of cheque as stated in table A above or bank interest shall be payable by the company till payment of loan amount to the bank by the company.

28. Thus, in view of settlement and assurance mentioned above, the respondent/ promoter is liable to pay the loan amount of Rs 8,92,224/- to the banker of complainant besides interest if any till whole of the loan amount is paid.

29. However, till the loan amount inclusive of interest is paid, the respondent promoter would not create any third-party rights over the allotted unit.

F. Directions issued the Authority:


30. 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 liable to pay the loan amount of Rs 8,92,224/- to the banker of complainant besides interest if any till whole of the loan amount is paid.

31. Complaint stands disposed of.

32. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.07.2022

