

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

Complaint no. : 2153 of 2018
First date of hearing: 09.04.2019
Date of decision : 09.04.2019

1. Mr. Karambir Malik
R/o – 1899. Gali no.9, Rajiv Nagar, Gurugram-
122017
Haryana

Complainant

Versus

M/s Chintels India Ltd.
Chintels corporate park, 1st floor, sector-114,
Gurugram-122017, Haryana

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Venkat Rao Advocate for the complainant
Shri Nishi Ranjan Singh Advocate for the respondent

ORDER

1. A complaint dated 14.12.2018 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. Karambir Malik, against the promoter M/s Chintels India Ltd, on account of non-refunding of balance amount after cancellation of the

unit in question vide letter dated 02.11.2018 in the project
'Chintel paradiso.'

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

1.	Name and location of the project	"Chintel paradiso" Sector-109, Gurugram
2.	Nature of project	Group housing colony
3.	Area of project	12.306 acres
4.	Apartment/unit No.	J-501, tower-9
5.	Apartment measuring	1,785.00 sq. ft
6.	DTCP licence no.	251 of 2007 dated 2.11.2007 and 9 of 2008 dated 17.01.2008
7.	RERA registered/ not registered.	Not registered
8.	OC received on in respect of tower-1,2,3 and 9 on	20.06.2017
9.	OC received on in respect of tower-4,5,6,7 and 8 on	18.08.2016
10.	Date of execution of apartment allotment agreement	Not Executed
11.	Date of booking	23.12.2011
12.	Payment plan	Construction linked payment plan
13.	Total sale consideration	Rs.94,60,396/- as per statement of the complainant
14.	Cancellation letter dated	02.11.2018 (annexure- C/3)
15.	Total amount paid by the complainant till date	Rs.62,37,928/- as per statement of the complainants
16.	Due date of delivery of possession	Can not be ascertained
17.	Delay in handing over possession	Can not be ascertained

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 09.04.2019. The case came up for hearing on 09.04.2019. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

5. The complainant submitted that he had purchased a residential apartment bearing no. J-501, tower-9, in the project Chintels paradisio, sector-109, Gurugram, measuring 1785 sq. ft. for a total sale consideration 94,60,396/- and paid an amount of Rs. 12,25,901/- (Rupees Four Lacs Only) as booking amount. The complainant was provisionally allotted apartment No. J-501 in the said Project.
6. The complainant submitted that he paid a sum of Rs. 50,12,027/- towards agreed sale consideration of the unit whenever demands were raised by the respondent and had

paid a total amount of Rs. 62,77,928 till February 2015 towards sale consideration.

7. The complainant submitted that he visited the site of the project in March 2015 and complainant was shocked to see that there was no construction going on the site. The complainant had paid instalment till completion of the super structure. However, only the ground floor slab was completed. Thus, he stopped payment to the demands raised by the respondent.
8. The complainant submitted that he received the demand of Rs. 55,97,920 vide letter dated 15.06.2017. Thereafter, the respondent cancelled the allotment of the apartment of the complainant vide letter dated 02.11.2018.
9. **Issues raised by the complainants are as follows:**
 - i. Whether the respondent has failed to complete the project in stipulated time?
 - ii. Whether the respondent has failed to deliver the possession of the unit with amenities as promised at the time of booking?

- iii. Whether the respondent is required to register the phase/project 'Chintel Paradiso' situated at sector-109, Gurugram, Haryana?
- iv. Whether the respondent is liable to refund the amount along with the interest under Section 18 of The Real Estate (Regulation and Development) Act, 2016?

Relief sought:

The complainants are seeking the following relief:

- i. To direct the respondent to refund the entire amount paid by the complainant along with interest @ 18% per annum from the date of respective deposits till its actual realisation;
- ii. To direct the respondent to refund the amount of Rs. 4,00,000/- (Rupees Four Lacs Only) plus brokerage charges @ 2% on account escalation in price of the Unit to enable complainant to buy similar unit in the similar project/area.
- iii. To conduct such inquiry under section 35 of the act into the affairs of **the respondent**;

- iv. To pass such direction, as may be deemed fit, under section 37 & 38 of the Act, towards giving effect to any one or more of the above sought reliefs.

Reply on behalf of the respondent:

10. The respondent submitted that complainant has not approached this hon'ble tribunal with clean hands and has suppressed true and material facts from this hon'ble tribunal. Respondent also submitted that the complainant with a view to take advantage of his own wrong of not making the payments as per the agreed schedule, has malafidely raised frivolous allegation that he visited the site in march 2015 and found that no construction was going on and there was only ground floor slab constructed, without furnishing any documentary proof in this regard. Respondent also submitted that possession of some units were also offered to various occupant in the month of June 2017 and registration of sale deeds was also done on 30.11.2017.
11. Even the complainant did not make any complaint to the respondent in this regard neither stopped payment on these frivolous grounds.

12. The respondent submitted that after so many reminders respondent vide letter dated 20.03.2018 sent a show cause notice for cancellation of allotment for non-payment and further while sending the letter dated 20.03.2018, again granted time of 30 days for making payment to complainant therefore the complainant is not entitled for any relief.
13. The respondent submitted that project was completed with minor delay and occupancy certificate with regard to unit was received on 20.06.2017.
14. The respondent submitted that hon'ble tribunal does not have jurisdiction to adjudicate the present complaint as the respondent company had already obtained the occupancy certificate with regard to the unit in dispute on 20/06/2017. Hence the project Chintels Paradiso does not required a registration under THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016. Thus the provisions of RERA are not applicable on the project Chintels Paradiso.
15. The respondent submitted that since the complainant was not making the payments as per agreement after Feb 2015, therefore, the respondent sent various reminders and

thereafter vide its letter dated 20.03.2018 sent a show cause notice for cancellation of allotment of his flat for non-payment. Even the respondent while sending the show cause letter dated 20.03.2018 further granted time of 30 days for making the payment. However, the complainant in complete defiance of the agreed terms and condition of the allotment neither replied the said letters nor made the payment demanded from him and hence allotment was cancelled, therefore present complaint is liable to be dismissed.

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:

16. With respect to the **first issue** raised by the complainant, as the respondent has already received the occupation certificate vide dated **OC received** on in respect of tower-1,2,3 and 9 on **20.06.2017** and **OC received** on in respect of tower-4,5,6, and 8 on 18.08.2016. Hence the construction of the project in

question has already been completed. Therefore, this issue is decided negatively.

17. With respect to the **second, third and fourth issues** raised by the complainant, it has been stated that the company Chintels has received occupation certificate on 20.6.2017, copy of occupation certificate is placed on record. As such, it is obligatory on the part of builder to get his project registered and it attracts the penal conditions. As per facts of the case, a flat was booked with the respondent on 23.12.2011, in project "Chintel Paradiso" Sector 109, Gurugram a group housing colony. As per provisions of allotment letter, the flat was to be delivered within a period of 36 months from the date of construction plus 6 months grace period which comes out to be December 2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.62,77,928/- (major amount) to the respondent against a total sale consideration of Rs.94,60,396/-. It was a construction linked plan. No offer of possession has ever made to the complainant even after receipt of the occupation certificate on 20.06.2017 on the plea that complainant has not

made full payments. However, at a lateral stage the respondent sent him a letter of cancellation on 2.11.2018 arbitrarily and unilaterally. In the meantime, the builder kept on raising a demands as well as issuance of show cause notice on 30.3.2018 to the complainant. The counsel for complainant has submitted a recent Hon'ble Supreme Court judgment passed in **Pioneer Urban Land & Infrastructure Ltd. versus Govindan Raghavan** and the Hon'ble Apex court has taken a very strict and patent view which is identical to the facts of the present case and covers all the patent of law and justice on its four corners.

18. Keeping in view and taking a necessary clue of the judgment of Hon'ble Apex Court, the authority is of the considered view that in order to check the high handedness of the respondent and taking the unilateral and arbitrary action against the complainant, the authority ordered **refund of the amount** paid by the buyer alongwith prescribed rate of interest within a period of 90 days from the issuance of this order.

FINDINGS OF THE AUTHORITY

19. 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.
20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District. 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.
21. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
22. 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 of the Act and to fulfil its obligations.

23. Since the project is not registered, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
24. Shri Venkat Rao Advocate has appeared on behalf of the complainant and filed power of attorney.
25. However, it has been stated that the company Chintels has received occupation certificate on 20.6.2017, copy of occupation certificate is placed on record. As such, it is obligatory on the part of builder to get his project registered and it attracts the penal conditions. As per facts of the case, a flat was booked with the respondent on 23.12.2011, in project "Chintel Paradiso" Sector 109, Gurugram a group housing colony. As per provisions of allotment letter, the flat was to be delivered within a period of 36 months from the date of construction plus 6 months grace period which comes out to be December 2015. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.62,77,928/- to the respondent against a total sale consideration of Rs.94,60,396/-. It was a construction linked

plan. No offer of possession has ever made to the complainant even after receipt of the occupation certificate on 20.06.2017 on the plea that complainant has not made full payments. However, at a lateral stage the respondent sent him a letter of cancellation on 02.11.2018 arbitrarily and unilaterally. In the meantime, the builder kept on raising a demands as well as issuance of show cause notice on 30.3.2018 to the complainant. The buyer's counsel has submitted a recent Hon'ble Supreme Court judgment passed in **Pioneer Urban Land & Infrastructure Ltd. versus Govindan Raghavan** and the Hon'ble Apex court has taken a very strict and patent view which is identical to the facts of the present case and covers all the patent of law and justice on its four corners. The operative part of para Nos.9 & 10 of the judgment ibid reads as under:-

Para No.9 & 10:

"We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant-Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent-Purchaser within the time stipulated in the Agreement, or within reasonable time thereafter. The Respondent-Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @ 10% to the Bank. In the meanwhile, the Respondent-Flat Purchaser also located an alternate property in Grogam. In these circumstances, the Respondent-Flat Purchaser was entitled to be granted the relief

prayed for i.e. refund of the entire amount deposited by him with interest.

The Civil Appeals are accordingly dismissed, and the Final Judgment and Order dated 23.10.2018 passed by the National Consumer Disputes Redressal Commission is affirmed. The appellant is granted a period of three months from today to refund the amount to the respondent. All pending applications, if any, are accordingly disposed of.”

26. Keeping in view and taking a necessary clue of the judgment of Hon’ble Apex Court, the authority is of the considered view that in order to check the high handedness of the respondent and taking the unilateral and arbitrary action against the complainant, the authority ordered **refund of the amount** paid by the buyer alongwith prescribed rate of interest within a period of 90 days from the issuance of this order.

Decision and directions of the authority

27. 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 issue direction to the respondent
- i. The respondent shall be liable **refund of the amount** paid by the buyer alongwith prescribed rate of interest within a period of 90 days from the issuance of this order.

28. The order is pronounced.

29. Case file be consigned to the registry. Copy of this order be endorsed to registration branch.

(Samir Kumar)

Member

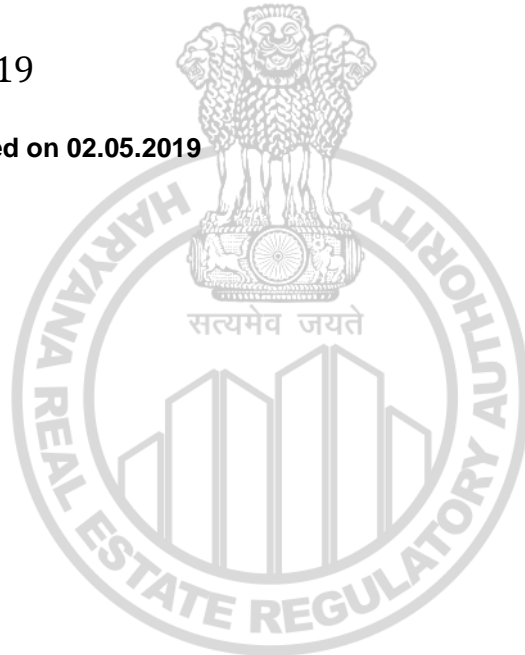
(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2019

Judgement uploaded on 02.05.2019



HARERA
GURUGRAM