

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

Complaint no. : 333 of 2019
Date of first hearing : 24.04.2019
Date of decision : 30.05.2019

Mr. Atam Parkash Chugh,
R/o 28G, Hospital Area,
Near Gole Market, Nilokheri,
District: Karnal (HR)-132117

Complainant

Versus

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

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Atam Prakash Chugh Complainant in person
Shri Mani Mathur Proxy counsel for Shri Anup Gupta
advocate for the respondent

ORDER

1. A complaint dated 04.02.2019 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. Atam Parkash Chugh, against the promoter CHD Developers Ltd., on

account of violation of clause 13 of the apartment buyer's agreement executed on 19.12.2012 for unit no. T06-14/02, tower- T06 admeasuring 1633 sq. ft in the project "CHD 106 Golf Avenue" for not giving possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since, the apartment buyer's agreement dated 19.12.2012 has been executed prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat this complaint as an application to issue directions for compliance of statutory obligations by the promoters under 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	"CHD 106 Golf Avenue", Sector - 106
2.	Unit no.	T06-14/02, tower-T06
3.	Unit area	1633 sq. ft
4.	DTCP license	69 of 2012
5.	Nature of real estate project	Residential group housing colony
6.	HRERA Registered/ not registered	Registered vide no. 08 of 2019 dated 21.02.2019

7.	HRERA registration valid upto	30.06.2021
8.	Allotment letter	05.10.2012
9.	Date of apartment buyer's agreement	19.12.2012
10.	Total consideration	Rs.91,08,368/- (page 15 of compliant)
11.	Total amount paid by the complainants as per receipts annexed with the complaint	Rs.86,36,357/-
12.	Date of booking	20.09.2012
13.	Payment plan	Construction linked plan
14.	Due date of delivery of possession of the said flat (As per clause 13) <i>"42 months from date of execution of agreement plus 6 months of additional delay"</i>	19.12.2016
15.	Delay in handing over of possession till date of decision	2 years 4 months 4 days
16.	Penalty clause as per clause 13 of the apartment buyer's agreement	Rs.10 per sq. ft per month of the super area of apartment for the period of further delay

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 complainant and the respondent. An apartment buyer's agreement dated 19.12.2012 is available on record for the

forementioned apartment according to which the possession of the aforesaid unit was to be delivered by 19.12.2016. Neither the respondent has delivered the possession of the said flat by the due date nor has paid delayed interest in terms of the said agreement for the delay so caused. Therefore, the promoters have failed to fulfil its 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 24.04.2019 and 30.05.2019. The respondent through its counsel appeared on 24.04.2019. The reply was filed by respondent on 22.02.2019 and has been perused.

Facts of the complaint

6. The complainant submitted that he booked a residential apartment in project of the respondent "106 Golf Avenue" at Sector-106, Gurugram in Daulatabad Village, Haryana under the Apartment buyer's agreement dated 19.12.2012.

7. The complainant submitted that after collecting 95% payment of the basic sale price including car parking charges with service tax and EDC/IDC charges in full, amounting to Rs.85,36,357/- till December 2016, the respondent suspended construction from early 2016 till March 2018. In February 2018, in meeting with buyers, respondent promised to start the construction from March 2018 and complete 4 towers by December 2018. In a subsequent meeting on 04.08.2018, respondent shifted the completion date of tower-6 from December 2018 to February 2019. Complainant visited site in December 2018 and found that skeleton staff and labourers were employed at project site and as per progress of the work, the completion will extend beyond the revised promised date.
8. The complainant submitted that respondent is yet to be registered with RERA. He has made a false commitment to RERA to hand over the flats in tower 6 by February 2019. The complainant submitted that respondent's licence has expired and is yet to be renewed.
9. The complainant submitted that though respondent has charged 100% EDC/IDC by December 2013 from the complainant but did not deposit the same with state exchequer which amounts to breach of trust.

10. The complainant submitted that the respondent has wrongly levied car parking charges of Rs.3,00,000/-
11. The complainant submitted that many complaints against respondent have been made by various buyers of this project with the authority. The authority has given its ruling to give possession of the flats to the buyers as per the date committed by the respondent in his affidavit filed with the authority and also to pay penalty of interest on the sum paid by the complainants till handing over of possession.
12. **Issues raised by the complainant**

The complainant is seeking the following issues:

- i. Whether the respondent is entitled to charge IDC/EDC charges in full even after 2 years of committed date of delivery?
- ii. Whether the respondent should be made to pay penalty to the complainant for the delay in giving possession?
- iii. Whether the respondent has levied the car parking charges?

- iv. Whether the agreement entered by respondent with complainant is totally one sided which imposed biased terms on the complainant?
- v. Whether the CHD Developers Ltd. are avoiding registration under HRERA?

13. Relief sought

The complainant is seeking the following reliefs:

- i. Respondent to ensure, an early date of possession with quality of work as per specifications in builder buyer agreement.
- ii. Respondent to comply with hon'ble HRERA court judgments for the cases as with respect to handing over the apartment and penalty.
- iii. Project quality and technical audit to be conducted at respondent's risk and cost as tower construction was completed structurally way back in early 2014 and since then project was abandoned and long-time has elapsed.
- iv. Respondent to pay interest for the delay at the prescribed rates for delay so caused till possession.

- v. Instructions to respondent to deposit 100% EDC/IDC with concerned authorities so that external development can take place in right earnest.
- vi. One sided agreement needs to be balanced.
- vii. Wrongfully levied parking charges to be refunded.
- viii. If the respondent does not comply and deliver as per directions of hon'ble HRERA court, penalty of 10% as estimated cost of the project shall be imposed on the respondent and under section 59(1) read with section 3(1) of the Real Estate (Regulation and Development) Act, 2016. Particularly the proviso to section 3(1) which mandates the promoters of ongoing project to register within the 3 months from the date of commencement of the Act and the said respondent be directed to register forthwith in a stipulated time. Besides, complainant can seek refund of total amount paid along with penalty at the prescribed rate of interest.
- ix. Seeing all the facts and previous history of respondent's malpractice to change BBA and fake commitments given to various courts, authorities, with no intention and willingness to adhere his given commitments on project

completion and the mental agony caused to the complainant, this confers, that respondent will never deliver the flats in certain time period with quality construction and liveable condition in the said housing project.

- x. With respect to diversion of funds by the respondent, the hon'ble RERA court may like to take a view.

Respondent's reply

14. The respondent submitted that at the outset it is stated that there is no merit whatsoever in the complaint filed and the same is liable to be dismissed with costs. Save as otherwise specifically admitted in the present reply, it is stated that the contents of the complaint are wrong and are denied.
15. The respondent submitted that the present reply of behalf of the answering respondent is being signed by Mr. Swatantra Saxena, Manager -Legal, who has been duly authorized by the board of directors of respondent company vide its board resolution dated 12.09.2018
16. The respondent submitted that the complainant has misdirected himself in filing the above captioned complaint before this Id. authority as the reliefs being claimed by the

complainant cannot be said to even fall within the realm of jurisdiction of this Id. authority.

17. The respondent submitted that complainant is not entitled for refund of money along with interest. In actual fact, the real purpose of the complaint is to seek refund of money with interest because of a severe slump / decline in the prices of properties. The complainant who was merely speculating in the property market, realizing that he will not be able to make a profit on his investment /the value of the investment is less because of the crash of the prices of properties in the real estate market, is seeking to pass on his loss to the respondent. If, there had been an increase in the prices of properties, which was the trend at the time of execution of the apartment buyer's agreement, the complainant would have never sought return of money.

18. The parties had executed an apartment buyer's agreement on 19.12.2012. In terms of the apartment buyer's agreement, the complainant had agreed to purchase the apartment bearing no. T06-14/02 in tower no. 06 of the residential group housing colony named "106 Golf Avenue" in Sector-106, Gurugram, Haryana for a total consideration amount of Rs.91,08,368/- excluding other applicable taxes and charges.

19. The respondent submitted that it was agreed in terms of clause 13 of the apartment buyer's agreement that the possession of the apartment would be given to the Complainant within a period of 42 months from the date of the execution of the apartment buyer's agreement and that the respondent would be entitled to an additional period of 06 months. It is further provided that the time period for delivery of possession was "tentative" and was subject to force majeure events, court indulgence, timely payment of all instalments and the formalities for completion, as provided in the apartment buyer's agreement.
20. The respondent respectfully submits that the complainant has sought to wrongly portray as if no work has been carried out and that the construction is far from completion. In fact, to the contrary, the construction is almost complete and mostly only the some interior and finishing work is required to be completed and the respondent submits that the same is in progress or all most completed.
21. The respondent submitted that it is stated that the 42 months period provided for delivery of possession expired on 19.06.2016. The additional period of 06 months expired on 19.12.2016. After the execution of the apartment buyer's

agreement, the respondent had received a letter bearing no. HSPCB/GRN/2015/516 dated 01.05.2015 from the Regional Office North, Haryana State Pollution Control Board, informing the opposite party that “vide order dated 07.04.2015 and 10.04.2015 in original application no.21 of 2014 titled as “*Vardhaman Kaushik Vs. Union of India*”, the Hon’ble National Green Tribunal, New Delhi has taken very serious views regarding pollution resulting from construction and other allied activities emitting dust emission and directed to stoppage of construction activities of all construction sites and in pursuance/compliances thereto of said letter/order the respondent had to stop all the construction activities between the period May 2015 to August 2015. Thus, the construction could not be carried out for a period of about 4-6 months because of the order passed by the Hon’ble N.G.T. and compliance thereto in pursuance of said letter dated 01.05.2015. This period is also therefore to be excluded. Further, due to demonetization that took place in India in November 2016, a situation of financial crisis had arisen which was not only suffered by the respondent but in fact by every

person in the country. The sudden scarcity of valid currency notes and consequent lack of funds affected the construction activity at site which only got resolved after a period of 2 (two) months. Moreover, the office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity.

22. The construction has slowed down for the reasons stated above and also because of a severe slump in the real estate market. The complainant is not entitled to seek refund as the money has already been used for the purposes of carrying out the construction and other ancillary activities related to the project.

23. It is humbly and respectfully submitted that in group housing projects a certain amount of delay can occur due to various reasons including departmental compliances/approval from time to time.

24. As stated above, there is no delay as such and in case of any delay, the complainant is entitled to a reasonable compensation which is already provided in the apartment buyer's agreement and the final adjustment could be carried

out at the time of delivery of possession and execution of conveyance deed and final payments. It is settled law and has been held by Hon'ble Supreme Court of India, that:

“14. Incidentally the law is well settled on this score on which no further dilation is required in this judgment to the effect that when the contract itself provides for extension of time, the same cannot be termed to be the essence of the contract and default however, in such a case does not make the contract voidable either. It becomes voidable provided the matter in issue can be brought within the ambit of the first para of Section 55 and it is only in that event that the Government would be entitled to claim damages and not otherwise.”

25. The apartment buyer's agreement was executed between the parties prior to the RERA and HRERA. It is stated that the BBA was executed between the parties on 19.12.2012, which is prior to coming into effect of the said Act and the Rules. The determination of relationship between the complainant and respondent company is governed by the terms and conditions of the said agreement including the payment of delay compensation and the same contention is supported on perusal of explanation 1 to the draft agreement for sale as provided under the said Rules

26. Therefore Id. authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties *inter-se* in accordance with the BBA signed between the complainant and respondent company. It is a matter of record and rather a

conceded position that no such agreement, as referred to under the provisions of said Act or said Rules, has been executed between the complainant and the respondent. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, is the agreement dated 19.12.2012, executed much prior to coming into force of said Act or said Rules and therefore, in case of any delay, the complainant is entitled to a reasonable compensation which is already provided in the apartment buyer's agreement and the final adjustment could be carried out at the time of delivery of possession and execution of conveyance deed and final payments.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

27. With respect to the **first and third issues** raised by the complainant, the authority came across clause 1.2 of the apartment buyer's agreement which is reproduced hereunder:

"in addition to the basic sale price of the said apartment, the allottee has agreed to pay the following costs, charges, fees and deposits as per the payment schedule, forming part of the consideration for the allotment of the said apartment"

Thereafter Clause (b):

“External development charges (EDC) and Internal development charges (IDC) Rs.5,65,018.00/- “

Thereafter Clause (c):

“Car parking charges in basement @Rs.3,00,000/- “

Thus, the respondent is well within his rights to claim the respective charges. Hence, the laid issues are decided in negative.

3. With respect to the **second and fourth issues** raised by the complainant, the authority came across clause 13 of the apartment buyer’s agreement which is reproduced hereunder:

“possession of the said apartment is proposed to be delivered by the company to the allottee within 42 months from the date of this agreement..

...the company shall be entitled to 6 months additional period in the event there is delay in handling over possession”

The due date comes out to be 19.12.2016 and the possession has been delayed by 2 years 4 months 4 days. Thereby violating the said clause of the agreement dated 19.12.2012. Thus, the promoter has failed to fulfil its obligation under section 11(4) of the Act *ibid*.

28. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso of the Act ibid read with rule 15 of the Rules ibid, to pay interest to the complainant, at the prescribed rate, for every month of delay till the offer of possession.

29. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the super area of the unit for the period of delay beyond 42 + 6 months as per clause 13 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)***, wherein the Bombay HC bench observed that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

With respect to the **fifth issue** raised by the complainant, the project is registered with the authority vide registration no. 08 dated 21.02.2019 and as per registration certificate, the registration is valid till 30.06.2021.

Findings of the authority

30. **Jurisdiction of the authority-** The project 'CHD 106 Golf Avenue' is situated in Sector-106, Gurugram. 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 dated 14.12.2017 to entertain the present complaint.
31. 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.
32. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.

33. 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.

34. Report of the local commissioner dated 29.05.2019 has been placed on record. The relevant portion of the report is reproduced as under:-

"The complete project is physically inspected, and it is observed that only 5-10 labour force were imposed on site just to misguide the authority as the condition of site states that no work has been carried out since 1 year. The work progress is based upon the actual construction on site: -

. The overall progress of the project is approximately 40-45 per cent only.

. The work progress in tower 6 is approximately 55-60 per cent only.

. The work progress of complainant unit is approximately 60-65 per cent only.

. At some places on the site, it was observed that the quality of bricks used was very poor, cracks were observed in the plaster and walls".

35. As per clause 13 of the apartment buyer's agreement dated 19.12.2012 for unit no.T06-14/02, tower-T06, in project "CHD 106 Golf Avenue" Sector-106, Gurugram, possession was to be handed over to the complainant within a period of 42 months from the date of execution of said agreement + 6 months grace period which comes out to be 19.12.2016. However, the

respondent has not delivered the unit in time. Complainant has already paid Rs.86,36,357/- to the respondent against a total sale consideration of Rs.91,08,368/- (excluding taxes). As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 19.12.2016 as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till offer of possession.

36. The promoter shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
37. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.65% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
38. Clause 1.2 of the apartment buyer's agreement which is reproduced hereunder:

"in addition to the basic sale price of the said apartment, the allottee has agreed to pay the following costs, charges, fees and deposits as per the payment schedule, forming part of the consideration for the allotment of the said apartment"

Thereafter clause (b):

"External development charges (EDC) and Internal development charges (IDC) Rs.5,65,018.00/- "

Thereafter clause (c):

“Car parking charges in basement @Rs.3,00,000/- “

Thus, the respondent is well within his rights to claim the respective charges.

Decision and directions of the authority

39. 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 in the interest of justice and fair play:

- i. The respondent shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.65% p.a. from due date of possession i.e. 19.12.2016 till the handing over of the possession to the allottee.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order. Thereafter, the monthly payment of interest till offer of the possession so accrued shall be paid on or before 10th of subsequent month.

- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The promoter shall not charge anything from the complainant which is not part of the apartment buyer's agreement.
40. The complaint is disposed of accordingly.
41. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 30.05.2019

Judgement uploaded on 11.06.2019

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